

CRIMINAL TRIAL

————Compoundable case — *Aquittal—*
Subsequent resilement, effect of.

The Magistrate is in duty bound to order an acquittal on the filing of the compromise petition signed by both parties in Court for an offence which is compoundable without leave of the Court and the complainant cannot, by a subsequent withdrawal of the petition before any order is passed on it, insist upon the case being proceeded with. *Dharichhan Singh v. Emperor.*

40 Cr. L. J. 460 :
180 I. C. 627 : 19 P. L. T. 840 :
5 B. R. 463 : 11 R. P. 525 :
A. I. R. 1939 Pat. 141.

————Compromise— *Magistrate, if can send record of proceedings to Police for opinion—*
Proper course.

A Magistrate has no right to send the record of the proceedings, before him which are of a judicial character, to the Superintendent of Police for taking his opinion. The proper course for him is to ask the Prosecuting Inspector to take his instructions from the District Magistrate, or from the Superintendent of Police, as to the attitude of the Crown towards the proposed compromise. *Dharichhan Singh v. Emperor.*

40 Cr. L. J. 460 :
180 I. C. 627 : 19 P. L. T. 840 :
5 B. R. 463 : 11 R. P. 525 :
A. I. R. 1939 Pat. 141.

————Confession.

A confession by each of the co-accused throwing entire burden on the other is inadmissible against the latter. *Nawab v. Emperor.*

37 Cr. L. J. 75 :
159 I. C. 381 : 8 R. L. 383 :
A. I. R. 1935 Lah. 35.

————Confession.

A confession made by the accused to the *zaildar*, in the absence of any evidence that any threat or inducement was held out by the *zaildar* must not be excluded from consideration. *Wali v. Emperor.*

34 Cr. L. J. 1173 :
146 I. C. 172 : 34 P. L. R. 330 :
6 R. L. 180 : A. I. R. 1933 Lah. 664.

————Confession.

A confession must be accepted or rejected as a whole if it is to be relied on, the part which implicates as well as the part which exculpates, though the part which exculpates may appear inherently incredible because there is no evidence to prove that the part which exculpates is false. But by "evidence" is meant not only direct evidence but circumstantial evidence, and a Judge must not leave out of his consideration when considering the truth or falsity of a confession or its parts, those probabilities and those presumptions which may properly arise from the other evidence on record, regard being had to the common course of natural events and human conduct to which S. 114, Evidence Act, refers, because little evidence is necessary to rebut statements which are in themselves

CRIMINAL TRIAL

inherently incredible, even when made by an accused in a confession. *Jado Ram v. Emperor.*

40 Cr. L. J. 93 :
178 I. C. 520 : 11 R. S. 93 :
1939 Kar. 75 : A. I. R. 1938 Sind 202.

————Confession.

A confession must be taken into account as a whole. *Pathani v. Emperor.*

36 Cr. L. J. 247 :
152 I. C. 1077 : 35 P. L. R. 559 :
7 R. L. 361 : A. I. R. 1934 Lah. 673.

————Confession.

A confession taken by a Magistrate in jail with a Police Officer in the next room and subsequently retracted could not be acted upon unless supported by very good corroboration and its evidentiary value as against a co-accused is practically nil. *Indar Datt v. Emperor.*

32 Cr. L. J. 818 :
132 I. C. 185 : I. R. 1931 Lah. 537 :
A. I. R. 1931 Lah. 408.

————Confession.

A confession though retracted can be used in evidence against the person making it, if it is believed to be true and made voluntarily. *Bhikhari v. Emperor.*

35 Cr. L. J. 1113 :
150 I. C. 819 : 11 O. W. N. 851 :
7 R. O. 44 : 1934 O. L. R. 627 :
A. I. R. 1934 Oudh 405.

————Confession.

A confession which has been retracted must be viewed with suspicion. But if it is considered to have been a voluntary confession and substantially true, it can be admitted into evidence and used against its maker. *Barnabas Christian v. Emperor.*

36 Cr. L. J. 12 :
152 I. C. 275 : 15 P. L. T. 711 :
7 R. P. 163 : A. I. R. 1935 Pat. 586.

————Confession.

A Court may convict an accused person on his own uncorroborated confession which has been subsequently retracted, provided the Court is satisfied that the confession was made voluntarily and that it is true in fact. *Khimji Khelsi v. Emperor.*

36 Cr. L. J. 1037 :
156 I. C. 972 : 8 R. S. 20.

————Confession.

A man of sound mind and of full age who makes a statement in ordinary simple language must be bound by the language of the statement made and by its ordinary plain meaning. *Badoo Singh v. Emperor.*

37 Cr. L. J. 163 :
159 I. C. 875 : 1936 O. L. R. 5 :
1936 O. W. N. 64 : 8 R. O. 212 :
A. I. R. 1936 Oudh 156.

————Confession.

A retracted confession may be used against the man who has made it; but its value as a piece of evidence against other accused is almost nil. *Shyam Lal v. Emperor.*

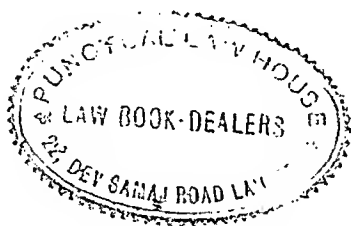
36 Cr. L. J. 1086 :
156 I. C. 978 : 8 R. A. 71.

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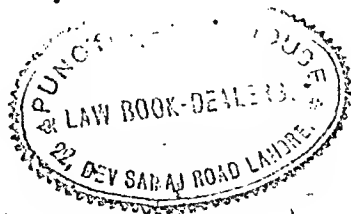


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EMIGRATION ACT (XXI OF 1883)

———S. 63 (d)—*Scope of.*

Writer bewailing economic distress and calling authorities apathetic is not guilty—Allegation of dishonest motives in protecting industries because they are foreign, comes within S. 63. *In the matter of: Ananda Bazar Patrika.* (F. B.)

33 Cr. L. J. 839 :
140 I. C. 5 : 37 C. W. N. 104 :
60 Cal. 408 : I. R. 1932 Cal. 675 :
A. I. R. 1932 Cal. 745.

EMIGRATION ACT (XXI OF 1883)

———S. 107—*Master's liability for servant's act—Servant violating the provisions of the emigration in the course of his employment.*

If a servant having been appointed as an agent for a particular business by his master enters into an agreement in connection with that business, everything which he does within the scope of his employment for that purpose will be binding upon the master, and the master will be criminally liable for such acts of the servant under Emigration Act. *Emperor v. Haji Shaik Mahomad Shustri.*

7 Cr. L. J. 238 :
9 Bom. L. R. 1059 : 32 Bom. 10.

———Ss. 107, 108—*Scope and object of.*

The coupling of the word "conditions" with the word "terms" in S. 107 of the Act makes out the intention of the Legislature to be that the officer authorised to grant the permission should have power to impose any reasonable terms and conditions he thinks proper as conditions precedent to the grant, whether they relate to the terms of the agreement itself or being extraneous to it, relate to the execution or other considerations which have to be taken into account in order to protect the interests of the Native of India departing out of it by sea. S. 29, Emigration Act, makes the execution of the agreement referred to there in the presence of the Protector, compulsory. In S. 108 of the Act, the power conferred on the Local Government, who have delegated their power to the Protector, is discretionary, and it is left to that Government to decide whether in any particular case any agreement referred to in S. 107 shall be executed or not in its presence, that is, in the presence of the Protector acting as its delegated authority. *Emperor v. A. M. Jeevanjee.*

6 Cr. L. J. 240 :
9 Bom. L. R. 967 :
I. L. R. 31 Bom. 611.

———S. 111 (1)—*Scope and object of.*

Where on an information a summons is issued to the accused, and owing to its disclosing no offence, a fresh summons is issued without any fresh or supplemental information, the error, omission or irregularity in the fresh summons, is not sufficient, under S. 537, Cr. P. C., to upset the finding and sentence unless it has in fact occasioned "a failure of justice." Sub-s. 1 of S. 111, Emigration Act, hits at not merely entering into an agreement but also at any attempt to

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enter into it. An attempt consists in some external act which shows that progress is made in the direction of it or towards maturing and effecting it, that is, something tangible and ostensible of which the law can take hold, which can be alleged and proved. Sub-s. 1 of S. 111, Emigration Act, 1883, does not break in upon the rule of law embodied in the maxim *qui per alium facit per seipsum facit re videtur* who does an act through another is deemed in law to do it himself. The Act leaves untouched the right of every person to enter into such agreements through an agent. It merely provides that such agreements shall not be entered into without the previous permission of the Local Government. The intention of the section is to hold the master liable for his servant's act, provided the act was done by the servant so as to bind the master according to the law of contract. *Emperor v. A. M. Jeevanjee.*

6 Cr. L. J. 240 :
9 Bom. L. R. 967 : I. L. R. 31 Bom. 611.

EMIGRATION ACT (VII OF 1932)

———S. 25 (2), (b)—*Conviction under—Person assisting workers to emigrate for working on hire—Agreement to work for hire need not be proved for offence under S. 25 (2), (b).*

When a person assists or attempts to assist skilled workers for emigrating to a place outside India for working on hire at his shop, it is not necessary for convicting that person of an offence under S. 25 (2) (b) to prove that there was an agreement between the person and the workers to work for hire. Neither it is necessary to consider whether the workers were in fact engaged by such person at his shop. *Public Prosecutor v. Natesa Pillai.*

40 Cr. L. J. 957 :
184 I. C. 370 : 49 L. W. 381 :
1939, 1 M. L. J. 131 :
1939 M. W. N. 124 :
12 R. M. 439 (2) :
A. I. R. 1939 Mad. 445.

ENCROACHMENT

———*Definition of.*

An encroachment is an unlawful gaining upon the right of possession of another man. *Hirji Baldeo v. Manbhoom District Board.*

15 Cr. L. J. 187 :
22 I. C. 763 : 18 C. W. N. 1120.

ENGLISH CRIMINAL EVIDENCE ACT 1898 (61 and 62 Vict. C. 36)

———S. 1.

See also Evidence Act, 1872, S. 21.

ENGLISH LAW

———*English decisions, whether binding.*

The rules laid down in English cases should not be taken to bind a Court in construing an Indian Act. There is no reason why in a codifying enactment the Court should introduce any rule of interpretation borrowed from

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EVIDENCE

meaning of a Statute. *Pandurang S. Katti v. Minnie Henriella Katti*. 29 Cr. L. J. 513 : 109 I. C. 337 : 30 Bom. L. R. 350 : 52 Bom. 262 : A. I. R. 1928 Bom. 117.

EUROPEAN BRITISH SUBJECT.

See also Cr. P. C., S. 4 (i).

———*Appeal—Appeal against conviction by Court of Session—Judicial Commissioner's power to entertain such appeal—High Court, meaning of, in reference to proceedings against European British subject—Cr. P. C., Ss. 4 (j) and 410.*

The appellant, whose claim to be dealt with as a European British subject was admitted both by the Committing Magistrate and the Court of Session, was convicted under Ss. 417 and 474, Penal Code. He filed an appeal against his conviction in the Court of the Judicial Commissioner of Oudh: *Held*, that the appeal in this case, under S. 410, Cr. P. C., lay to the High Court. The "High Court," in reference to proceedings against European British subjects in Oudh, means the High Court of Judicature for the North-Western Provinces. *Thomas v. Emperor*.

11 Cr. L. J. 723 : 8 I. C. 873 : 13 O. C. 335.

———*Cr. P. C., 1898, S. 107—Proceedings under.*

The expression "inquire into or try any charge" in S. 443, Cr. P. C., applies to proceedings under S. 107 of the Code. The party, against whom proceedings under S. 107, Cr. P. C., are instituted, is in the position of an accused person. *Bhom Lal Chowdhury v. R. F. Hopcroft*.

9 Cr. L. J. 36 : 1 I. C. 737 : 13 C. W. N. 151 : 8 C. L. J. 565 : 36 Cal. 163.

———*Waiver.*

A European British subject can relinquish his right to be dealt with as such. *Barindra Kumar v. Emperor*.

11 Cr. L. J. 453 : 7 I. C. 359 : 37 Cal. 467.

EVIDENCE

- Admissibility.
- Appreciation of.
- Benefit of doubt.
- Child evidence of.
- Child witness.
- Circumstantial.
- Circumstantial evidence.
- Competency of approver to depose.
- Competency of witnesses.
- Confession made to person in presence of police.
- Contradiction of.
- Corroboration.
- Court witness.
- Credibility.
- Criminal trial.
- Cross-examination.
- Documentary.
- Duty of Court.
- Duty of Judges.
- Dying declaration.
- Exclusion of.
- Expert evidence.

EVIDENCE

- Hostile witness.
- Identification.
- Identification evidence.
- Illiterate witnesses.
- Interested evidence.
- Medical evidence.
- Medical witness.
- Miscellaneous.
- Opinion.
- Oral.
- Oral evidence.
- Personal knowledge.
- Presumption.
- Reading over of.
- Record of.
- Registrable document.
- Relevancy.
- Roznamcha* reports, whether evidence of facts mentioned.
- Statements to police.
- Sufficiency.
- Trial by Jury.
- Value of.

See also (i) Admissibility.

(ii) Advocate.

(iii) Board of Revenue.

(iv) Burma Habitual Offenders' Restriction Act, 1919, S. 7.

(v) Circumstantial evidence.

(vi) Confession.

(vii) Cr. P. C., 1898, Ss. 55, 110, 110 Cl. (f), 118, 145, 161, 162, 179, 215, 263, 288, 292, 298, 303, 423, 428, 439, 443, 512.

(viii) Criminal trial.

(ix) Excise Act, 1872, Ss. 6, 32, 33, 54, 74, 157.

(x) Murder.

(xi) Opinion.

(xii) Penal Code, 1860, S. 100, 201, 300, 302, 411, 477-A.

(xiii) Prosecution.

(xiv) Punjab Municipal Act, S. 95.

(xv) Sentence.

(xvi) Sessions trial.

(xvii) Trade mark.

———Admissibility.

A letter written by an accused person, when self-disserving, is *prima facie* evidence against him, if it relates distinctly to a relevant point; it is not necessary that it should be signed; it is enough if it is traced to the writer, and is admissible, though it was intercepted or surreptitiously detained and opened. *Booth G. H. v. Emperor*.

15 Cr. L. J. 35 : 22 I. C. 179 : 18 C. L. J. 567 : 18 C. W. N. 386 : 41 Cal. 545 : A. I. R. 1914 Cal. 649.

———Admissibility.

A *panchnama* is not evidence of the statements of the accused and witnesses embodied therein. In so far, however, as it is a list prepared under S. 103, Cr. P. C., of property found and places searched, a *panchnama* should be proved and exhibited as relevant evidence of these matters. *Imperator v. Misri*.

12 Cr. L. J. 489 : 12 I. C. 209 : 5 S. L. R. 31.

LIST OF ABBREVIATIONS

REPORTS

A. or All.	...	Indian Law Reports, Allahabad.
A. L. J.	...	Allahabad Law Journal.
A. I. R. 1940 All.	...	All India Reporter, 1940, Allahabad.
I. R. (1930) All.	...	Indian Rulings (1930), Allahabad.
12 R. A.	...	Indian Rulings (Vol. 12), Allahabad.
B. or Bom.	...	Indian Law Reports, Bombay.
Bom. L. R.	...	Bombay Law Reporter.
A. I. R. (1940) Bom.	...	All India Reporter (1940), Bombay.
I. R. (1930) Bom.	...	Indian Rulings (1930), Bombay.
12 R. B.	...	Indian Rulings (Vol. 12), Bombay.
Bur. L. J.	...	Burma Law Journal.
Bur. L. T.	...	Burma Law Times.
C. or Cal.	...	Indian Law Reports, Calcutta.
C. L. J.	...	Calcutta Law Journal.
Cr. L. J.	...	Criminal Law Journal.
C. W. N.	...	Calcutta Weekly Notes.
A. I. R. (1940) Cal.	...	All India Reporter (1940), Calcutta.
I. R. (1930) Cal.	...	Indian Rulings (1930), Calcutta.
12 R. C.	...	Indian Rulings (Vol. 12), Calcutta.
I. A.	...	Law Reports, Indian Appeals.
I. C. or Ind. Cas.	...	Indian Cases.
L. or Lah.	...	Indian Law Reports, Lahore.
L. B. R.	...	Lower Burma Rulings.
L. W.	...	Law Weekly (Madras).
Luck.	...	Indian Law Reports, Lucknow.
A. I. R. (1940) Lah.	...	All India Reports, (1940), Lahore.
I. R. (1930) Lah.	...	Indian Rulings (1930), Lahore.
12 R. L.	...	Indian Rulings (Vol. 12), Lahore.
Lah. L. J. or L. L. J.	...	Lahore Law Journal.
M. or Mad.	...	Indian Law Reports, Madras.
M. L. J.	...	Madras Law Journal.
M. L. T.	...	Madras Law Times.
M. W. N.	...	Madras Weekly Notes.
A. I. R. (1940) Mad.	...	All India Reporter (1940), Madras.
I. R. (1930) Mad.	...	Indian Rulings (1930), Madras.
12 R. M.	...	Indian Rulings (Vol. 12), Madras.
N. L. J.	...	Nagpur Law Journal.
N. L. R.	...	Nagpur Law Reports.
A. I. R. (1940) Nag.	...	All India Reporter (1940), Nagpur.
I. R. (1930) Nag.	...	Indian Rulings (1930), Nagpur.
12 R. N.	...	Indian Rulings (Vol. 12), Nagpur.
O. C.	...	Ondh Cases.
O. L. R.	...	Oudh Law Reports.
O. L. J.	...	Oudh Law Journal.
O. W. N.	...	Oudh Weekly Notes.
A. I. R. (1940) Oudh	...	All India Reporter (1940), Oudh.
I. R. (1930) Oudh	...	Indian Rulings (1930), Oudh.
12 R. O.	...	Indian Rulings (Vol. 12), Oudh.
P. R.	...	Punjab Record.
A. I. R. (1940) Pesh.	...	All India Reporter (1940), Peshawar.
P. L. R.	...	Punjab Law Reporter.
P. W. R.	...	Punjab Weekly Reporter.
P. or Pat.	...	Indian Law Reports, Patna.
A. I. R. (1940) Pat.	...	All India Reporter (1940), Patna.
I. R. (1930) Pat.	...	Indian Rulings (1930), Patna.
12 R. P.	...	Indian Rulings (Vol. 12), Patna.
A. I. R. (1940) P. C.	...	All India Reporter (1940), Privy Council.
I. R. (1930) P. C.	...	Indian Rulings (1930), Privy Council.
B. R.	...	Bihar Reports.
Pat. L. J. or P. L. J.	...	Patna Law Journal.
Pat. L. W. or P. L. W.	...	Patna Law Weekly.
Pat. L. T. or P. L. T.	...	Patna Law Times.
Pat. L. R.	...	Patna Law Reporter.
R. or Rang.	...	Indian Law Reports, Rangoon.
A. I. R. (1940) Rang.	...	All India Reporter (1940), Rangoon.
I. R. (1930) Rang.	...	Indian Rulings (1930), Rangoon.
12 R. Rang.	...	Indian Rulings (Vol. 12), Rangoon.
R. D.	...	Revenue Decisions.
S. L. R.	...	Sind Law Reporter.
A. I. R. (1940) Sind.	...	All India Reporter (1944), Sind.
I. R. (1930) Sind.	...	Indian Rulings (1930), Sind.
Kar. (I. L. R.)	...	Indian Law Reports, Karachi.
12. R. S.	...	Indian Rulings (Vol. 12), Sind.
U. P. L. R.	...	United Provinces Law Reporter.
U. B. R.	...	Upper Burma Rulings.

EVIDENCE

———*Exclusion of—Instigating breach of the peace—Direct evidence of specific incidents, relevancy of.*

It is wrong to exclude from consideration direct evidence of specific incidents showing that the person to be bound down behaved as man of violent and aggressive temper. These are relevant to the question whether a man is likely to commit a breach of the peace or not and the evidence concerning those incidents is in no sense evidence of repute. *Baines v. Emperor.* 23 Cr. L. J. 394 :

67 I. C. 346 : A. I. R. 1922 Nag. 180.

———*Exclusion of.*

It is not always possible for the prosecution to prove the motive for crime, and the absence of any proof of motive is not in itself sufficient to justify the rejection of evidence which is otherwise reliable. *Emperor v. Balochkhan.* 11 Cr. L. J. 498 :

7 I. C. 601 : 4 S. L. R. 38.

———*Exclusion of.*

The mere fact that an eye-witness does not come forward immediately an investigation is begun, is not by itself in this country necessarily a sufficient ground for rejecting his testimony. *Miran Bakhsh v. Emperor.* 32 Cr. L. J. 1032 :

133 I. C. 446 : 32 P. L. R. 461 :

I. R. 1931 Lah. 782 :

A. I. R. 1931 Lah. 529.

———*Exclusion of—Prosecution withholding evidence.*

Prosecution witnesses can be kept back only when the Court is satisfied that they would not speak the truth. They cannot be kept back because they would not speak in favour of the prosecution. *Emperor v. Bal Gangadhar Tilak.* 1 Cr. L. J. 305 :

6 Bom. L. R. 324 :

I. L. R. 28 Bom. 479.

———*Exclusion of—Refusal to cross-examine witnesses—Subsequent request for re-calling witnesses—Refusal of Magistrate, legality of.*

Where the accused refuses to cross-examine prosecution witnesses when given an opportunity to do so, but subsequently requests to recall the witnesses for cross-examination, the refusal of Magistrate to comply with the request is justified. *Khuda Bakhsh v. Emperor.* 38 Cr. L. J. 24 :

165 I. C. 909 : 17 Lah. 284 :

38 P. L. R. 630 : 9 R. L. 321 :

A. I. R. 1936 Lah. 914.

———*Exclusion of.*

Witnesses, who voluntarily come forward, whether as friends or associates of an accused, to give him a good character, must not be brushed aside, unless they are discredited as regards their good faith and honesty just as witnesses in any other proceedings must be discredited before they are rejected by a Tribunal. *Angnoo Singh v. Emperor.* 24 Cr. L. J. 257 :

71 I. C. 865 : 20 A. L. J. 881 :

45 All. 109 : A. I. R. 1923 All. 35.

EVIDENCE

———*Expert evidence—Finger print expert.*

The evidence of a Finger Print Expert based on a comparison of a disputed thumb impression with other impressions of the alleged executant, is of no value where there is no evidence to show that the thumb impressions with which the disputed impression was compared were those of the alleged executant. The fact that, in such a case, the accused did not take the objection that the impressions with which the disputed impression was compared were not the thumb impressions of the alleged executant in his written statement, nor at the trial, does not relieve the prosecution of the burden of proving their identity. *Gaffar Buksh Khan v. Emperor.* 28 Cr. L. J. 411 :

101 I. C. 187 : 8 P. L. T. 393 :

A. I. R. 1927 Pat. 408.

———*Expert evidence—Identification—Finger-prints.*

The accused was charged with theft after three previous convictions, under Chap. XVII, Penal Code. To prove these convictions, which the accused denied, certain "Finger Impression Slips", were produced, together with statements signed by the officer in charge of the Finger-print Bureau to the effect that the impressions appearing thereon were those of the person against whom the specified convictions had been had. An officer of the Finger-print Bureau took impressions of the accused's fingers in Court and identified him as the person whose finger prints appeared on the "Finger Impression Slips": *Held*, that the previous convictions of the accused stated on the slips were not proved merely by the production of such slips. *Hulost v. Emperor.* 7 Cr. L. J. 406 :

4 L. B. R. 125.

———*Expert evidence—Material witness—Examination on Commission.*

Where an expert witness appears to be the principal witness in the case, his examination on Commission should not be granted. *McGrath v. Brachis.* 12 Cr. L. J. 64 :

9 I. C. 347 : 2 M. W. N. 97 :

9 M. L. T. 334.

———*Expert evidence—Value of.*

A Court is not to surrender its own opinion to that of experts who are called before it, but with such help as the experts can afford, the Court must form its own opinion on the subject in hand. *In the matter of: U, An Advocate.* (S. B.) 36 Cr. L. J. 961 :

156 I. C. 582 : 13 Rang. 518 :

8 R. Rang. 18 : A. I. R. 1935 Rang. 178.

———*Expert evidence—Value of.*

Although expert evidence derived from comparison of handwriting is very valuable as evidence corroborating the direct evidence, if any, on the point, it is only in rare cases that it can take its place. *Lalla Prasad v. Emperor.* 11 Cr. L. J. 114 :

5 I. C. 355 : 13 O. C. 1.

Cr. P. CODE (1898), S. 253

———S. 253—*Further enquiry.*

Further inquiry after discharge is improper unless the order of discharge was manifestly perverse or foolish or was based on a record of evidence which was obviously incomplete. *Emperor v. Keru.*

12 Cr. L. J. 364 :

11 I. C. 132 : 10 P. R. 1911 Cr. :

24 P. W. R. 1911 Cr. :

205 P. L. R. 1911.

———S. 253 (1)—*Further inquiry, when can be ordered.*

An order for further inquiry is justified where the Sessions Judge or any other Revisional Court finds that on the facts before the Magistrate there was enough material to warrant a conviction of the accused person and enough to call upon the accused to enter on his defence. *Daya Nand v. Emperor.*

26 Cr. L. J. 736 :

86 I. C. 224 : 23 A. L. J. 20 :

A. I. R. 1925 All. 298.

———S. 253—"Groundless" charge—*Meaning of.*

For a charge to be groundless under S. 253, the evidence must be such that no conviction can be rested on it. It does not mean that the evidence discloses no offence whatever. *Kasinatha Pillai v. Shanmugham Pillai.*

31 Cr. L. J. 275 :

121 I. C. 619 : 30 L. W. 273 :

57 M. L. J. 490 :

1929 M. W. N. 575 :

52 Mad. 987 : A. I. R. 1929 Mad. 754.

———S. 253—*Judgment—Order of discharge—Judgment.*

The Legislature does not render the writing of "reasons" necessary where an accused person is discharged after the trying Magistrate has heard all the evidence for the prosecution. But it is desirable that the Magistrate should record his reasons for discharge, though it is not compulsory. *Emperor v. Nabi Fakira.*

5 Cr. L. J. 255 :

9 Bom. L. R. 250.

———S. 253—*Judgment, meaning of—Discharge, effect of.*

An order of discharge is not a 'judgment'. A judgment is an order in a trial terminating in either the conviction or acquittal of the accused. The principle of *autrefois acquit* can have no application where an accused is discharged under S. 253 as there can be no trial when the accused is discharged. A discharge not operating as an acquittal leaves the matter at large for all purposes of judicial enquiry. *Emperor v. Maheshwar.*

11 Cr. L. J. 190 (b) :

4 I. C. 1113 : 5 M. L. T. 184.

———S. 253—*Procedure.*

Court cannot act under both the Cls. (1) and (2) of S. 253. *Saran Singh v. Kirpal Singh.*

36 Cr. L. J. 632 :

154 I. C. 1085 : 7 R. Pesh. 94 :

A. I. R. 1935 Pesh. 23.

———Ss. 252 (2), 253, 254, 258 (1), 535 (1)—*Procedure—Prosecution and defence taken—Failure to frame charge—Order, proper—Discharge—*

Cr. P. CODE (1898), S. 254

Complaint, fresh—Discovery of further evidence—Procedure.

A Magistrate, after recording the evidence for the prosecution and without framing a charge, asked the accused to name his witnesses and took down their evidence. He came to the conclusion that the case was false and wrote a full judgment after discussing all the evidence in the case and passed an order of discharge: *Held*, (1) that the procedure adopted by the Magistrate in asking the accused to name his witnesses before framing a charge was unwarranted: (2) that inasmuch as the procedure actually adopted was in substance that laid down in Chap. XXI except for the framing of a charge and the recording of a plea, the case could, in view of S. 535 (1), have ended in a valid order of acquittal. Where after a discharge a new complaint is filed alleging discovery of further evidence, the proper procedure would be to postpone issue of process till the former proceedings have been examined and a preliminary enquiry has been made regarding the alleged new evidence. *Orilal v. Kalu.*

18 Cr. L. J. 1006 :

42 I. C. 734 : A. I. R. 1917 L. Bur. 88.

———S. 254.

See also (i) Cr. P. C., Ss. 190, 204, 240, 252 (2), 349.

(ii) Criminal Trial—Commitment.

———S. 254 — *Commitment — Presidency Towns Insolvency Act (III of 1909), S. 103, offence under—Committal to High Court, legality of.*

A Presidency Magistrate had no power to commit a person accused of an offence under S. 103 of the Presidency Towns Insolvency Act, to the High Court inasmuch as a case under S. 193 of the said Act is a warrant case and can be adequately punished by the Presidency Magistrate. *Emperor v. Girish Chandra Kundu.*

31 Cr. L. J. 184 :

120 I. C. 813 : 56 Cal. 785 :

A. I. R. 1929 Cal. 777.

———Ss. 254, 255, 345—*Composition—Offence compoundable without sanction of Court—Presentation of compromise—Power of Court to alter charge—Acquittal—Trial—Inquiry.*

Where a Court has drawn up a charge of an offence compoundable without sanction of Court and this charge, having been read and explained to the accused, has been pleaded to, that Court should, upon the presentation to it of a petition of composition by the person mentioned in the last column in the table in S. 345, Cr. P. C., at once accept the petition and acquit the accused and has no power to alter the charge already drawn up. When the charge has been drawn up and read and explained to the accused and he has pleaded, the "inquiry" becomes a "trial". *Hasta v. Emperor.* (F. B.)

16 Cr. L. J. 81 :

26 I. C. 993 : 29 P. R. 1914 Cr. :

20 P. L. R. 1915 : A. I. R. 1914 Lah. 561.

———S. 254—*Committal.*

An unnecessary committal is an error of law

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which would justify the quashing of the commitment order. *Kesar v. Emperor*.

33 Cr. L. J. 680 :
138 I. C. 701 : 33 P. L. R. 185 :
I. R. 1932 Lah. 528 :
A. I. R. 1932 Lah. 263.

—S. 254—*Committal to Sessions—Commitment to Court of Sessions, where a Magistrate competent to try case, legality of.*

A Magistrate ought not to commit an accused person for trial to the Court of Session, in a case which he is competent to try and in which he can impose a sentence adequate to meet the ends of justice. *Emperor v. Bindeshri Goshain*.

20 Cr. L. J. 273 :
50 I. C. 161 : 17 A. L. J. 456 :
41 All. 454 : A. I. R. 1919 All. 366.

—S. 254—*Committal to Sessions—Commitment, when to be made.*

A Magistrate who is competent to try a case should not commit it to Sessions unless he considers that he cannot pass an adequate sentence. The mere fact that the Magistrate was a witness of the identification proceedings is not a sufficient reason for commitment. *Emperor v. Ram Jatan*.

25 Cr. L. 665 :
81 I. C. 153 : 21 A. L. J. 420 :
A. I. R. 1924 All. 185.

—S. 254—*Committal to Sessions.*

It is extremely undesirable that a case which can be adequately dealt with by a Magistrate himself should be committed to the Sessions. *Kesar v. Emperor*.

33 Cr. L. J. 680 :
138 I. C. 701 : 33 P. L. R. 185 :
I. R. 1932 Lah. 528 :
A. I. R. 1932 Lah. 263.

—Ss. 254, 307, 347—*Committal to Sessions—Proceedings before Magistrate—Refusal to commit to Sessions—Grounds.*

The fact that there is congestion of work in the Sessions Court is not a legal ground on which a Magistrate can decline to commit a case to the Court of Session. A Magistrate's powers of committal to the Sessions are not confined to cases where he considers that he cannot give adequate punishment. Other circumstances, such as, the gravity of the offence, the punishment prescribed for the offence, the section under which the accused is charged, the special difficulties of the case, its public importance and the wishes of the parties are matters to be considered in deciding the question whether a case should be committed to the Sessions and each case, has to be decided on its merits. Where the editor of a newspaper having a very wide circulation was charged with an offence under S. 124-A, Penal Code, and the accused prayed that he may be committed to the Sessions and the Magistrate refused to commit, the High Court held, that the case was a fit one for committal and directed the Magistrate to commit. *Krishnaji Prabhakar v. Emperor*.

30 Cr. L. J. 1090.
119 I. C. 666 : 33 Bom. L. R. 602 :
53 Bom. 611 : I. R. 1929 Bom. 538 :
A. I. R. 1929 Bom. 313.

—Ss. 254, 346, 347—*Committal to*

Cr. P. CODE (1898), S. 254

Sessions—Committal to Sessions, by Magistrate having power to sentence adequately, legality of—Grounds of commitment—Warrant cases, powers of Magistrate in trial of.

S. 254, Cr. P. C. makes it imperative on a Magistrate only to frame a charge and not to complete the trial to conviction or acquittal. That section simply lays down the procedure for the trial of warrant cases where the Magistrate considers it right and proper for himself to go on with the trial and is in no way a limitation of the right of a Magistrate given to him under S. 347 to commit a case for trial if he thinks that he should do so. S. 347, Cr. P. C. does not restrict the grounds on which a Magistrate should arrive at his opinion to commit a case to want of jurisdiction in himself or to his inability, in his own opinion, to sentence the accused adequately. Even where he can inflict the maximum sentence for the offence, he may still commit the accused for trial to the Court of Session or the High Court on such grounds as complicated question of law arising or the case being a fit one to be tried by Jury or with the aid of Assessors. The powers of a Magistrate who has taken a warrant case on his file for trial, are as follows:—He may try it through himself if he has jurisdiction; he may, if he thinks he cannot inflict a proper sentence, act under S. 364 or 349 and send it to a higher Magistrate; or he may, if he thinks that it is a proper case for Sessions, commit the accused under S. 347 or if he has not power to commit, send it to another Magistrate to commit under S. 346. *Crown Prosecutor v. Bhagavathi*.

19 Cr. L. J. 997 :
48 I. C. 337 : 35 M. L. J. 559 :
1918 M. W. N. 870 : 9 L. W. 14 :
42 Mad. 83 : A. I. R. 1919 Mad. 907.

—S. 254—*Examination of accused.*

The omission to examine the accused before the framing of a charge against him, provided he is examined after all the prosecution witnesses are examined and before he is called upon to enter into his defence, is not an irregularity as S. 254, Cr. P. C., does not make it mandatory to examine the accused before the framing of the charge. *Deoji v. Emperor*.

27 Cr. L. J. 830 :
95 I. C. 606 : A. I. R. 1926 Nag. 459.

—S. 254—*Framing of charge.*

Presidency Magistrate is bound to frame charge in an appealable warrant case. But when no objection is taken and there has been no failure of justice, High Court will not interfere with conviction. *Raghubir Kahar v. Emperor*.

33 Cr. L. J. 828 :
139 I. C. 755 : 36 C. W. N. 791 :
55 C. L. J. 448 : I. R. 1932 Cal. 651 :
A. I. R. 1932 Cal. 865.

—S. 254—*Framing of charge.*

S. 254 authorises the Magistrate to frame a charge even after hearing the first witness. *Hassan v. Emperor*.

38 Cr. L. J. 399 :
167 I. C. 318 :
9 R. Pesh. 85 : A. I. R. 1936 Pesh. 211.

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—S. 254, 342—*Framing of charge.*

In a warrant case it is imperative on a Magistrate to draw up a formal charge against the accused in the manner indicated in S. 254 and to strictly comply with the provisions of S. 342, Cr. P. C. *Mahamed Rafique v. Emperor.*

27 Cr. L. J. 406 :
93 I. C. 70 : 43 C. L. J. 100 :
A. I. R. 1926 Cal. 537.

—Ss. 254, 535 (2)—*Framing of charge—Omission to frame charge—Procedure—Re-trial.*

Under S. 254, a Magistrate is not bound to frame a charge unless he is of opinion that there is ground for presuming that the accused has committed an offence punishable with death, transportation or imprisonment for a term exceeding six months. In any case the omission to frame a charge is no ground for setting aside a conviction. *Ambika Prasad v. Emperor.*

32 Cr. L. J. 313 :
129 I. C. 369 (1) : 1930 A. L. J. 1314 :
I. R. 1931 All. 145 :
A. I. R. 1931 All. 7.

—S. 254—*Framing a charge, jurisdiction.*

Where a Magistrate discharges an accused of an offence under S. 152, Penal Code, he has jurisdiction to frame a charge for an offence under S. 160. *Sajan v. Emperor.*

34 Cr. L. J. 1044 :
145 I. C. 624 : 6 R. S. 33.
A. I. R. 1933 Sind 173.

—Ss. 254—*Further inquiry—Charge—Prima facie case.*

When a Magistrate after recording evidence of the prosecution feels doubt as to the guilt of the accused and passes an order of his discharge, the District Magistrate is not justified in directing further inquiry into the case on the ground that proper proceeding to give the benefit of doubt to an accused person is after hearing the case fully and framing a charge must not be framed when there is no ground for presuming that the accused has committed the offence. *Mul Chand v. Emperor.*

3 Cr. L. J. 345 :
7 P. L. R. 118 :
2 P. R. Cr. 1905.

—S. 254—*Procedure.*

Complaint under certain sections of Penal Code—charge and acquittal under another section—Acquittal set aside—Re-trial—Framing of charge under sections complained against is illegal. *Pulikanda Venkatasubbayya v. Maddi Venkata Lakshmayya.*

33 Cr. L. J. 825 :
139 I. C. 852 : 36 L. W. 623 :
[1932 M. W. N. 1218 : I. R. 1932 Mad. 798 :
A. I. R. 1933 Mad. 65 (2).]

—S. 254—*Procedure—Further cross-examination by accused—Fresh examination of accused whether necessary.*

The mere fact that in a warrant-case after the framing of a charge under S. 254, Cr. P. C., the prosecution witnesses are re-called and cross-examined under S. 256 does not render a fresh examination of the accused obligatory and the

Cr. P. CODE (1898), S. 255

omission to question the accused again at this stage does not amount to a non-compliance with the provisions of S. 342. *In re: Varisai Rowther.*

24 Cr. L. J. 547 :
73 I. C. 163 : 44 M. L. J. 567 :
17 L. W. 722 : 32 M. L. T. 385 :
46 Mad. 449 : 1923 M. W. N. 477 :
A. I. R. 1923 Mad. 609..

—Ss. 254, 255, 256, 257—*Procedure—Warrant cases—Provision of Code, binding nature of—Magistrate, whether can vary procedure according to usage—Cross-complaints—Prosecution evidence in one cannot be treated as defence in other.*

A Magistrate is not at liberty to substitute for the procedure of the Code a procedure which has arisen by usage, however convenient the latter may be. The provisions of the Code must be followed. Where, therefore, in trying two cross-complaints, the Magistrate heard the evidence for the prosecution in each and without framing a charge formally as required by S. 254, Cr. P. C., and without following the provisions of Ss. 255, 256 and 257 in the first case, he dealt with it as if a charge had been framed and treated the evidence in the other case as defence evidence in the first : *Held*, (1) that a trial conducted in a mode so materially different from that prescribed by law was not a proper trial ; (2) that the differences between the procedure followed and the legal procedure were of too fundamental and important a kind to be treated as irregularities curable by any of the sections in Chapter XLV of the Code. *Emperor v. Dosabhai J. Dhondy.*

16 Cr. L. J. 538 :
29 I. C. 666 : 17 Bom. L. R. 490 :
A. I. R. 1915 Bom. 14.

—S. 254—*Scope.*

S. 254 does not require or invite a Magistrate to give his reasons. *Bagomal v. Emperor.*

37 Cr. L. J. 152 :
159 I. C. 687 : 29 S. L. R. 339 :
8 R. S. 93 : A. I. R. 1935 Sind 223.

—S. 255—*Plea of guilty—Conviction on.*

There is no foundation for the view that an accused person cannot be convicted in a warrant case immediately on a plea of guilty, without being called on for his defence. *Emperor v. Taw Pyu.*

5 Cr. L. J. 416 :
3 L. B. R. 279.

—S. 255—*Plea of guilty effect of—Criminal Law Amendment Act (XIV of 1908), S. 17—Calling upon persons to form unlawful association—Offence.*

An accused person does not plead to a section of a Criminal Statute. He pleads guilty or not guilty to the facts alleged in the charge and a plea of guilty amounts only to an admission that he occupied the position as stated in the charge and committed the acts therein specified, but unless the facts averred in the charge amount in law to an offence under a particular section, a plea of guilty cannot amount to an admission of guilt under that section. A person who calls upon other person to form them-

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selves into an unlawful association cannot be said to have managed or assisted in managing an unlawful association or to have promoted or assisted in promoting a meeting of such association. He is not, therefore, guilty of offence under S. 17 (2) of the Criminal Law (Amendment) Act. He is, however, guilty of an offence under cl. (1) of S. 17. *Basant Singh v. Emperor*.

27 Cr. L. J. 907 :
96 I. C. 219 : 8 L. L. J. 251 :
7 Lah. 359 : 2 Lah. Cas. 320 :
27 P. L. R. 551 : A. I. R. 1926 Lah. 406.

—Ss. 255, 256—*Plea of guilty—Further evidence—Discretion of Magistrate.*

Where, after the framing of a charge, the accused pleads guilty, it is open to the Magistrate in his discretion to take further evidence, and it is also open to the Crown to suggest that this be done. *Emperor v. Rash Behari Ghose*.

22 Cr. L. J. 574 (a) :
62 I. C. 590 : 25 C. W. N. 212 :
A. I. R. 1921 Cal. 260.

—S. 255-A.

See Criminal Procedure Code, 1898, S. 526.

—S. 256.

See also (i) Cr. P. C. 1898, Ss. 110, 112, 117, 117 (2), 256, 342.

(ii) Evidence, Evidence Act, 1872, S. 33.

(iii) Penal Code, 1860, S. 341.

—S. 256.

—Adjournment.

—Applicability of.

—Costs.

—Cross-cases.

—Cross-examination.

—Defence.

—Defence evidence.

—Evidence.

—Examination of accused.

—Non-compliance.

—Omission to call accused to enter upon defence, effect.

—Prejudice.

—Procedure.

—Recall, meaning of.

—‘Remaining witnesses’, meaning of.

—Scope of.

—Ss. 256, 257—*Re-cross-examination of prosecution witnesses, right of, nature of—Witnesses not further cross-examined, evidence of, admissibility of—Evidence Act (I of 1872) S. 33.*

Waiver by the accused's Counsel of the right to re-cross-examine a prosecution witness cannot prejudice the rights of the accused under Ss. 256 and 257, Cr. P. C. The right referred to in S. 256, Cr. P. C. is absolute and unqualified and is intended to apply only where the witnesses are still before the Court and before they have been discharged from further attendance. Under S. 257, however, there is a discretion vested in the Court to re-summon the prosecution witnesses already examined, and where a witness has been allowed to depart on the representation of the accused that he is not required, any further application to re-cross-examine him must be deemed to fall under S. 257. Where the right to cross-examine a

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witness has been exercised, the evidence taken become complete for the purpose of being admitted in a later proceeding. The mere fact that the witness could have been subjected to a further cross-examination in the exercise of a further right is no ground for holding the evidence already taken to be inadmissible. *Lockley v. Emperor*.

21 Cr. L. J. 297 :
55 I. C. 345 : 11 L. W. 130 :
1920 M. W. N. 137 : 38 M. L. J. 209 :
43 Mad. 411 : 27 M. L. T. 289 :
A. I. R. 1920 Mad. 201.

—S. 256—*Adjournment.*

An adjournment need not be given to enable the accused to decide whether they would cross-examine any witnesses after the charge had been framed, although the Counsel is entitled to claim an adjournment for considering the question. *Ibrahim v. Emperor*.

36 Cr. L. J. 41 :
152 I. C. 236 : 31 N. L. R. 117 :
7 R. N. 80 : A. I. R. 1934 Nag. 209.

—Ss. 256, 257, 526—*Adjournment—Transfer application to superior Magistrate—Duty of Magistrate to adjourn.*

There is no duty cast on a Magistrate to adjourn a case because an application is being made to a superior Magistrate for transfer. S. 526, Cr. P. C., confines that duty to cases where application is made to the High Court. *Vaithinatha Iyer v. Kuppu Thevan*.

13 Cr. L. J. 828 :
17 I. C. 572 : 1912 M. W. N. 1121.

—S. 256—*Applicability of, to summary trial of warrant cases.*

The provisions of S. 256, Cr. P. C. apply in warrant cases, even if they are tried summarily. *Shidu v. Emperor*.

31 Cr. L. J. 683 :
124 I. C. 370 : 24 S. L. R. 336 :
A. I. R. 1930 Sind 146.

—S. 256—*Applicability of.*

S. 256 does not apply if the prosecution evidence is completed and only S. 257 is then applicable. *Mithiah Pilla v. Emperor*.

33 Cr. L. J. 738 :
139 I. C. 203 : 37 L. W. 134 :
1932 M. W. N. 857 : I. R. 1932 Mad. 641 :
A. I. R. 1932 Mad. 559.

—S. 256—*Applicability of—Inquiries into cases triable by Sessions Court—Accused, right of, to cross-examine prosecution witnesses after framing of charge.*

S. 256, Cr. P. C. provides, in the trial of warrant cases, for the recall of witnesses for the prosecution for cross-examination, after the charge has been framed. The section does not apply to enquiries into cases triable by the Sessions Court. *Baldeo Prasada v. Emperor*.

18 Cr. L. J. 105 :
37 I. C. 313 : 19 O. C. 239 :
A. I. R. 1917 Oudh 200.

—S. 256—*Applicability of.*

S. 256 does not apply to proceedings under S. 110. *Zamin v. Emperor*. 34 Cr. L. J. 468 :
142 I. C. 752 : I. R. 1933 Rang. 52 :
A. I. R. 1933 Rang. 29.

Cr. P. CODE (1898), S. 256———S. 256—*Applicability of.*

S. 256 has no application to a case under S. 110, Cr. P. C., and a person called upon to show cause under S. 110, Cr. P. C., has no right to further cross-examine the prosecution witnesses under S. 256, Cr. P. C. *Chintaman Singh v. Emperor*. 7 Cr. L. J. 146 : 7 C. L. J. 177 : 12 C. W. N. 299 : 35 Cal. 243.

———S. 256—*Applicability of.*

S. 256, Cr. P. C., is not applicable to a person called upon to give security for good behaviour but he has a qualified right given by S. 257 of the Code. *Nim v. Emperor*. 34 Cr. L. J. 9 : 140 I. C. 170 : 27 S. L. R. 19 : I. R. 1932 Sind 182 : A. I. R. 1933 Sind 8.

———S. 256—*Applicability of.*

The provisions of S. 256, Cr. P. C. are applicable to a summary trial of a warrant case. *Titlu Sahu v. Emperor*. 21 Cr. L. J. 630 : 57 I. C. 454 : 1920 Pat. 283 : 1 P. L. T. 652 : A. I. R. 1920 Pat. 492.

———S. 256 (1)—*Applicability of.*

S. 256 (1) does not apply to summary trials, and in such cases, the accused is not entitled to claim, as of right, the opportunity of re-calling prosecution witnesses for further cross-examination when no formal charge is framed and he is not required to plead in respect of it. *Gokaran v. Emperor*. 33 Cr. L. J. 506 : 137 I. C. 684 : 9 O. W. N. 334 : I. R. 1932 Oudh 257 : A. I. R. 1932 Oudh 242.

———S. 256—*Costs.*

Costs under S. 256 (6-A) cannot be granted when the application is not frivolous or vexatious. *Badle v. Emperor*. 150 I. C. 1095 : 36 P. L. R. 240 : 7 R. L. 91 : A. I. R. 1934 Lah. 516.

———Ss. 256, 257 — *Costs — Complainant failing to produce witness for further cross-examination—Saddling complainant with costs, legality of.*

A complainant cannot be ordered to pay costs to the accused after charge has been framed for failing to produce prosecution witnesses for re-cross-examination. *Abdul Ma'id v. Mehr Chand*. 30 Cr. L. J. 664 : 118 I. C. 710 : I. R. 1929 Lah. 566 : A. I. R. 1929 Lah. 766.

———S. 256—*Cross-cases—Effect of.*

Cross-cases—Commitment of principal case—Trial of cross-case as warrant case—Subsequent committal of cross-case without giving accused opportunity to re-call and cross-examine prosecution witnesses—Commitment must be quashed. *Lakshminarayana v. Suryanarayana*. 33 Cr. L. J. 765 : 139 I. C. 343 : 1932 M. W. N. 634 : 63 N. L. J. 101 : 36 L. W. 390 : I. R. 1932 Mad. 667 : A. I. R. 1932 Mad. 502.

———S. 256—*Cross-examination after charge—Accused represented by different counsel.*

Prosecution witnesses called for cross-examination after charge—Accused represented

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by different counsel—One leading cross-examination, others suggesting questions—No questions on behalf of one accused—Inference is they did not want to ask questions. *Deep Chand v. Emperor*. 36 Cr. L. J. 1260 : 157 I. C. 915 : 1935 A. L. J. 666 : 8 R. A. 236 : 1935 A. W. R. 685 : A. I. R. 1935 All. 627.

———S. 256—*Cross-examination after charge—Duty of Magistrate.*

A Magistrate is entitled to put a question to the accused as to whether he wants to cross-examine prosecution witnesses either immediately after the charge is framed or on the next date after the charge is framed ; but if he puts the question on the date the charge is framed, he is to give his reasons in writing for doing so under S. 256, Cr. P. C. His failure to give his reasons in writing, however, does not amount to anything more than an irregularity. At best it is a kind of omission in procedure contemplated by S. 537, which can be cured. If, therefore, such failure does not prejudice the accused, it does not vitiate the trial. *Nisar Ahmad v. Emperor*. 40 Cr. L. J. 419 : 180 I. C. 839 : 19 P. L. T. 845 : 5 B. R. 499 : 11 R. P. 541 : A. I. R. 1939 Pat. 172.

———S. 256—*Cross-examination after charge—Costs of witnesses.*

Under S. 256 an accused cannot be made to bear the costs of the prosecution witnesses summoned for further cross-examination. *Ramchandra Modak v. Emperor*. 27 Cr. L. J. 499 : 93 I. C. 693 : 5 Pat. 110 : 1926 Pat. 304 : A. I. R. 1926 Pat. 214.

———S. 256—*Cross-examination after charge—Waiver.*

S. 256, Cr. P. C., does not say at what particular time the accused is to be asked the question whether he wishes to cross-examine the prosecution witnesses, and up to what time he has this right. Therefore, where the accused was asked the question at the time of framing the charge and he could not at that instant answer, but subsequently before the case had been closed applied for recalling some of the prosecution witnesses for cross-examination, and the Magistrate refused the application on the grounds that the accused had waived his right and that the witnesses were sufficiently cross-examined before the charge : *Held*, that the order was against the wording and spirit of S. 256, and that the conviction of the accused must be quashed. *Inder Rai v. Emperor*. 11 Cr. L. J. 128 : 5 I. C. 408 : 14 C. W. N. 280.

———S. 256—*Cross-examination before charge—Right of accused.*

In warrant cases accused is not entitled as of right to cross-examine prosecution witnesses before charge. But the discretion should be used in favouring such examination. *Lachmi Narain v. Emperor*. 33 Cr. L. J. 310 : 136 I. C. 572 : 1932 A. L. J. 5 : 54 All. 212 : I. R. 1932 All. 220 : A. I. R. 1931 All. 621.

———S. 256—*Cross-examination—Charge framed—Adjournment asked—Application to*

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summon defence witnesses—Refusal of application—Not a mere irregularity—Conviction illegal.

After the examination of the prosecution witnesses in this case, a charge was framed against the accused and read and explained to him. He pleaded not guilty and was then asked whether he wished to cross-examine any of the prosecution witnesses. The accused who was not defended by a Pleader, asked that time be granted to him to engage a Vakil and for cross-examining the witnesses. The Magistrate construed this as a refusal to cross-examine. Subsequently, the accused's Vakil applied for process to compel the attendance of the prosecution witnesses and for summons to defence witnesses. The Magistrate refused both the prayers on the ground that the accused, on the framing of charge, refused to cross-examine the prosecution witnesses, and that the defence witnesses could not give reliable evidence one way or the other: *Held*, (1) that as the accused had no opportunity to cross-examine the prosecution witnesses, and was not previously informed that a charge would be framed against him on the date on which it was framed, the prosecution witnesses ought to have been re-summoned for cross-examination. The accused's application for adjournment to engage a Pleader was reasonable and ought to have been granted; (2) that the Magistrate's refusal to summon the defence witnesses was not a mere irregularity but an illegality, as he had no means for forming the opinion that the defence witnesses could not give any reliable evidence. *Arumugam Pillai v. Emperor*. 12 Cr. L. J. 548 : 12 I. C. 524 : 1911 2 M. W. N. 192.

———S. 256—Cross-examination—Commencement of inquiry as in a warrant case—Offence disclosed not triable as such—Duty of Magistrate to afford accused opportunity for cross-examination of prosecution witnesses.

Where an inquiry commenced as in a warrant case and the accused curtailed their cross-examination of the prosecution witnesses under the impression that they could have a further opportunity of cross-examining them, but no offence triable as a warrant case having been disclosed, the Magistrate closed the case and convicted the accused: *Held*, that it was the duty of the Magistrate to allow the accused an opportunity of completing their cross-examination before proceeding with the case. *In re: Appavu Padayachi*. 16 Cr. L. J. 250 : 28 I. C. 106 : A. I. R. 1916 Mad. 610.

———S. 256—Cross-examination—Duty of Magistrate.

A Magistrate is bound to record the question whether the accused desires to cross-examine witnesses and also the accused's answer thereto. *Har Kishen Das v. Emperor*.

38 Cr. L. J. 361 :
167 I. C. 236 (2) : 9 R. A. 517 :
1936 A. W. R. 1273 :
A. I. R. 1937 All. 127.

———S. 256—Cross-examination—Duty of Magistrate.

It is not illegal to put to an accused person

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on the same day that he is charged, the question whether he wished to cross-examine the prosecution witnesses. But where the Magistrate wishes to put that question the same day, he must record in writing the reasons for it. *Janardhanam v. Emperor*.

32 Cr. L. J. 221 :
129 I. C. 74 : 1930 M. W. N. 985 :
I. R. 1931 Mad. 218 :
A. I. R. 1930 Mad. 977.

———S. 256—Cross-examination—Duty of Magistrate.

The general rule laid down by S. 256, Cr. P. C. is to ask the accused to state whether he wishes to cross-examine any of the witnesses on behalf of the prosecution at the commencement of the next hearing, and in exceptional cases forthwith if the Magistrate for reasons to be recorded in writing so thinks fit. A Magistrate cannot, however, make it a rule of his Court to ask the accused in every case after the charge is framed to state forthwith whether he wishes to cross-examine any of the witnesses examined on behalf of the prosecution. *Emperor v. Lakshman Ramshet Alwe*.

31 Cr. L. J. 309 :
121 I. C. 588 : 31 Bom. L. R. 593 :
53 Bom. 578 : A. I. R. 1929 Bom. 309.

———S. 256—Cross-examination—Expenses of witnesses—Duty of Magistrate.

Under S. 256, Cr. P. C., it is the duty of a Magistrate, if the accused wishes, to recall the prosecution witnesses for further cross-examination. The accused cannot be deprived of his right of further cross-examination on the ground of non-payment of the necessary expenses by him. *Amin Chand v. Emperor*.

6 Cr. L. J. 339 :
12 P. R. Cr. 1907 : 2 P. W. R. Cr. 91 :
9 P. L. R. 113.

———S. 256—Cross-examination of prosecution witnesses after charge.

When an accused person seeks to exercise the right of cross-examining prosecution witnesses conferred by S. 256, Cr. P. C., he cannot be required to deposit the expenses likely to be incurred by the witnesses. The right of the accused to cross-examine prosecution witnesses under the section is absolute. *Radhakishan v. Ramkrishna*. 25 Cr. L. J. 912 : 81 I. C. 448 : 7 N. L. J. 57 : A. I. R. 1924 Nag. 114.

———S. 256—Cross-examination of witnesses—Adjournment, absence of—Irregularity.

The provisions of S. 256, Cr. P. C., do not relate to the mode of trial and the failure of a Magistrate to follow those provisions strictly amounts to no more than irregularity in procedure, and where the irregularity does not result in a failure of justice, it does not effect the legality of the trial. *Chhajju v. Emperor*.

28 Cr. L. J. 229 :
99 I. C. 1029 : 25 A. L. J. 111 :
49 All. 316 : A. I. R. 1927 All. 217.

———S. 256—Cross-examination of prosecution witnesses, after charge—Magistrate, duty of.

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The provisions of S. 256, Cr. P. C., are imperative and it is an illegality to ignore them. It is not until a specific charge has been drawn up and explained to the accused that he is in a position fully to cross-examine the witnesses for the Crown and, therefore, he should, in all cases, be asked at that time if he wishes to recall witnesses for cross-examination, for the omission to follow the procedure involves remand and retrial of the case from the point of drawing up of the charge. *Moola v. Emperor.*

16 Cr. L. J. 146 :

27 I. C. 210 : 11 P. R. 1914 Cr. :

205 P. L. R. 1915 : A. I. R. 1914 Lah. 556.

———S. 256—Cross-examination of prosecution witnesses—Putting question to accused on same day, legality of—Recording of reasons, necessity of.

It is not illegal to put to an accused on the same day that he is charged, the question whether he wished to cross-examine the prosecution witnesses. But where the Magistrate wishes to put that question the same day, he must record in writing the reason for it. Where the Magistrate stated: "The accused is undefended. I, therefore, have not adjourned the case to another date to put this question:" Held, that the Magistrate had recorded a sufficient reason and the procedure was not illegal. *Janardhanam v. Emperor.*

32 Cr. L. J. 221 :

129 I. C. 74 : 1930 M. W. N. 985 :

I. R. 1931 Mad. 218 :

A. I. R. 1930 Mad. 977.

———S. 256—Cross-examination of witnesses—Right of accused—Magistrate refusing to summon witnesses for cross-examination without payment of expenses.

Inasmuch as an accused person has the right to cross-examine the witnesses for the prosecution before the charge is framed, and under S. 256, Cr. P. C., he has the right to cross-examine these witnesses after the charge is framed, a Magistrate acts illegally who, upon an application by an accused to summon or re-summon the prosecution witnesses for cross-examination, calls upon the accused to deposit a sum of money before his application would be granted, and on his failing to make such deposit, disallows the application. An application to summon the prosecution witnesses for cross-examination can be disallowed only if it is frivolous or vexatious and its object is to defeat the ends of justice. *Ramyad Singh v. Emperor.*

21 Cr. L. J. 814 :

58 I. C. 686 : 1920 Pat. 65 : 5 P. L. J. 94 :

1 P. L. T. 112 : A. I. R. 1920 Pat. 147.

———S. 256—Cross-examination—Omission regarding cross-examination of prosecution witnesses—Omission to offer prosecution witnesses for cross-examination—Validity of trial.

The right of cross-examination is important and it cannot be said where the witnesses for the prosecution already examined are not offered for cross-examination after the framing of the charge that the accused has not thereby suffered any substantial injury in

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the course of the trial. *Ram Sunder v. Emperor.*

31 Cr. L. J. 14 :

120 I. C. 208 : A. I. R. 1929 All. 904.

———S. 256—Cross-examination—Expenses of witnesses.

S. 256, Cr. P. C., gives the accused an absolute right to re-call prosecution witnesses for cross-examination at the expense of the prosecution, and it is not open to the Magistrate to order the accused to pay costs for re-calling those witnesses. *Taqi Shah v. Emperor.*

22 Cr. L. J. 112 :

59 I. C. 416.

———S. 256—Cross-examination—Prosecution witnesses coming from Native State—Accused, whether can be asked forthwith about cross-examination.

The fact that the prosecution witnesses come from a Native State and it would take a long time to again secure their attendance, is a sufficient reason under S. 256, Cr. P. C., for requiring the accused to state forthwith whether he wishes to cross-examine any of the witnesses. *Kura v. Emperor.*

27 Cr. L. J. 720 :

94 I. C. 912 : A. I. R. 1926 Lah. 434.

———S. 256—Cross-examination—Recall of witness for admission of letter.

Where after the completion of the evidence of some of the prosecution witnesses, the accused presented a petition to the Magistrate requesting him to admit a letter alleged to have been written by the prosecution witnesses which would falsify their evidence, and both the trying Magistrate and the Sessions Judge, on appeal, refused to entertain the prayer: Held, that the accused were entitled to re-call the prosecution witnesses and examine them with reference to the letter.

In re : Krishnaswami Udayan.

11 Cr. L. J. 520 :

7 I. C. 712.

———S. 256—Cross-examination—Re-calling prosecution witnesses—Discretion.

The Magistrate refused to grant the accused's application for re-calling all the prosecution witnesses under S. 256, Cr. P. C., for cross-examination on the ground that the accused had the fullest opportunity of cross-examination and apparently did not want to elicit anything new: Held, setting aside the conviction and ordering a new trial, that the section gave the Magistrate no discretion in the matter and the fact that there had been some cross-examination before the charge was drawn up did not effect the privilege of the accused. *Nga Pya v. Emperor.*

14 Cr. L. J. 388 :

20 I. C. 212 : 6 Bur. L. T. 67.

———S. 256—Cross-examination, reserving of—Right of accused.

The Court has discretion for sufficient reason to allow the cross-examination of the defence or prosecution witnesses to be reserved until the examination-in-chief of all of them is over, but where charge is framed, the defence has the right under S. 256, Cr. P. C.,

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to recall and cross-examine any of the prosecution witnesses. *In re: Asadulla Hussain Khan.*

41 C. 1043; 6 M. L. T. 259.
11 Cr. L. J. 156 (a);

S. 256—Cross-examination—Right of accused.

S. 256 gives an accused person the right to have the witnesses for the prosecution cross-examined after charge has been framed, and that right is not in any way affected by the provisions contained in Chapter XL.

P. G. Dombrai v. Someswar Choudhary.

36 Cr. L. J. 239;
152 I. C. 1005 (b); 38 C. W. N. 673;

59 C. L. J. 377; 61 Cal. 824;
7 R. C. 341; A. I. R. 1934 Cal. 698.

S. 256—Cross-examination—Right of accused—Nature of.

It is illegal not to give an opportunity to an accused person for recalling prosecution witnesses for cross-examination. *Dad v. Emperor.*

7 Cr. L. J. 230;
2 P. W. R. Cr. 88.

S. 256—Cross-examination—Right of accused—Nature of.

A statement by the counsel of the accused after cross-examining the prosecution witnesses but before the framing of the charge, that he no longer requires their attendance, does not take away the right of the accused to further cross-examination under S. 256, Cr. P. C., which accrues only after the charge is framed. *Ramchandra Modok v. Emperor.*

27 Cr. L. J. 499;
93 I. C. 693; 5 Pat. 110;
7 P. L. T. 304; A. I. R. 1926 Pat. 214.

S. 256—Cross-examination—Summons case tried together with warrant case—Procedure to be followed—Warrant case dismissed during trial—Summons case proceeded with—Right of accused to recall and cross-examine prosecution witnesses—Right to recall and cross-examine.

Where a summons case is tried together with a warrant case, the procedure to be followed is that of a warrant case. A summons case and a warrant case were tried together. During the trial the charge of the warrant case was dismissed and the charge of the summons case was proceeded with. The Magistrate refused to allow the accused to recall and further examine the prosecution witnesses. *Held*, that the refusal was illegal. *In re: Ballabandi Sobhanadri.*

16 Cr. L. J. 540;
29 I. C. 668; 2 L. W. 574;
18 M. L. T. 92; 1915 M. W. N. 546;

A. I. R. 1915 Mad. 1200.

S. 256—Cross-examination—Right of accused—Transfer to some Magistrate other than the trying Magistrate—Judgment, passed by trying Magistrate—Trial, de novo.

The accused in a criminal case has a right under S. 256 of the Cr. P. C., to have the witnesses for the prosecution recalled and cross-examined after charge. Where a Magistrate declined to give the accused such an opportunity to recall and cross-examine the

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witnesses for the prosecution and proceeded to judgment in the case against the accused; *Held*, that the conviction should be set aside and the trial held de novo by some other Magistrate of competent jurisdiction. *Gopal Shekh v. Emperor.*

7 Cr. L. J. 313;
7 C. L. J. 240.

S. 256—Cross-examination—Right of accused.

When an accused is deprived of the right of cross-examining the prosecution witnesses after the charge is framed, there is an illegality which vitiates the trial, and the conviction and sentence must be set aside. *Chagpal Narainji v. Emperor.*

118 I. C. 200; I. R. 1929 Sind 168;
A. I. R. 1929 Sind 151.
30 Cr. L. J. 880;
3 Cr. L. J. 880;
S. 256, 537—Cross-examination—Charge framed under S. 253—Accused misrepresented by Vakil—Accused required to state forthwith which of the prosecution witnesses whose evidence has been taken. If the accused is asked to do so forthwith, the Magistrate should record his reasons in writing. If an accused person is not represented by a Vakil, reason must be shown for not postponing the question to the next hearing. Where an accused person is not represented by a Vakil and the Magistrate requires the accused forthwith without recording any reasons to state if he wishes to cross-examine the prosecution witnesses, the irregularity is one that cannot be cured by S. 537, Cr. P. C. When the Legislature specially amplifies by an amendment a mandatory section, there is no rule of construction which will allow the Court to treat it as directory. Contravention of an express provision as to a mode of trial is not a mere irregularity. S. 256, Cr. P. C., is applicable to summary trials also. *In re: Raju Achari.*

28 Cr. L. J. 12;
99 I. C. 44; 24 L. W. 649;
51 M. L. J. 687; 38 M. L. T. 141;
50 Mad. 740; A. I. R. 1927 Mad. 78.

Ss. 256, 537—Cross-examination—Failure to record reasons for asking accused on day of framing charge for cross-examination, effect of.

A Magistrate's failure to record reasons for requiring an accused to state forthwith on the day of framing the charge whether he wants to cross-examine any of the prosecution witnesses is an irregularity cured by S. 537, Cr. P. C., unless it has occasioned a failure of justice. *Ghasli v. Emperor.*

27 Cr. L. J. 408;
93 I. C. 72; 6 L. W. 554;
27 P. L. R. 85; A. I. R. 1926 L. W. 155.
Ss. 256, 257—Cross-examination—Prosecution witnesses re-called for cross-

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examination—Case postponed to suit convenience of Court—Accused not liable for expenses of witnesses—Accused when to be called to enter on his defence.

Where an accused person seeks to exercise the right given by S. 256, Cr. P. C., of re-calling prosecution witnesses for cross-examination, he cannot legally be required to deposit the expenses likely to be incurred by the witnesses who attend for such cross-examination. Where, in order to suit the convenience of the Court or for reasons connected with discharge of public business, the witnesses for the prosecution are allowed to leave before a charge is framed or the right conferred by S. 256 exercised, they must be required to attend again and ordinarily any expenses which may be allowed them on this score should be paid by Government in warrant cases. In warrant-cases, hearing should be continued from day to day until the prosecution witnesses have been cross-examined by the accused; and the witnesses should not be discharged until the Court has ascertained whether their cross-examination after the charge is desired. An accused person should not be called on to enter on his defence before he has cross-examined the witnesses for the prosecution who are in attendance. *Birdhichand v. Lakhmichand.*

13 Cr. L. J. 554 :
15 I. C. 970 : 8 N. L. R. 65.

—Ss. 256, 257—Cross-examination—Right of accused—Witness going abroad after framing of charge—Evidence, admissibility of—Evidence Act S. 33—Omission to record reasons—Mere irregularity.

After a charge has been framed, unless the accused pleads guilty, the Magistrate is bound to ask the accused whether he wishes to cross-examine any, and if so, which of the witnesses for the prosecution whose evidence has been taken, and the Magistrate is bound to procure the attendance of those witnesses. But where a witness who has been examined and cross-examined before the framing of the charge goes abroad, a Magistrate can admit his evidence under S. 33, Evidence Act, if he considers that the evidence of the witness cannot be obtained without an unreasonable amount of delay or expense. The omission of a Magistrate to record at the proper stage the reasons for admitting such evidence, is a mere irregularity curable under S. 537, Cr. P. C. Every failure to comply with the mandatory provisions of the Cr. P. C. does not amount to an illegality vitiating the trial. *Nga Ba On v. Emperor.*

28 Cr. L. J. 861 ;
104 I. C. 637 : 6 Bur. L. J. 114 :
A. I. R. 1927 Rang. 248.

—Ss. 256, 257—Cross-examination of the charge—Expense of witnesses.

Where an accused after the framing of the charge demands the re-call of prosecution witnesses for further cross-examination, the complainant cannot be made to bear their expenses. Where a complainant failed to produce his witnesses for cross-examination by the

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accused after the framing of the charge and the Magistrate ordered the complainant to deposit the process fee and to pay the accused a certain sum of money as costs : *Held*, that the order of the Magistrate directing the complainant to pay costs to the accused was illegal. *Faiz Mohammad v. Nabu.*

29 Cr. L. J. 20 :
106 I. C. 430 : A. I. R. 1928 Lah. 175.

—Ss. 256, 257—Cross-examination after charge—Expenses of witnesses—Prosecution witness—Re-call for cross-examination—Accused, whether bound to pay expenses.

An accused at whose instance witnesses for prosecution have been re-called for cross-examination must bear the expenses of re-calling them. *Jairam Kunbi v. Emperor.*

28 Cr. L. J. 425 :
101 I. C. 457 : A. I. R. 1927 Nag. 240.

—S. 256, 537—Cross-examination after charge—Opportunity to accused to make up his mind, refusal of—Reasons not recorded—Irregularity—Prejudice.

By S. 256, Cr. P. C. the Legislature has conferred upon an accused person the privilege that ordinarily, after being charged with an offence, he shall have a period of not less than 24 hours to consider the method in which he will meet the charge, and if the Magistrate trying the accused person, without assigning any reasons for departing from the normal procedure and probably because he overlooks or is unaware of the change in law, does not allow that privilege to the accused, it is difficult to say that the accused has not been prejudiced. Where an accused person is not defended by Counsel, he is more in need of the privilege designed by the Legislature to be granted ordinarily to all accused persons than he would be if his case were in the hands of a Pleader. *Phuman Singh v. Emperor.*

26 Cr. L. J. 1158 :
88 I. C. 518 : 7 L. L. J. 114 :
A. I. R. 1925 Lah. 339.

—Ss. 256, 537—Cross-examination—Summary trial—Failure to ask accused whether he wishes to further cross-examine—Irregularity.

The mere fact that there is an omission on the part of a Magistrate trying a case summarily to ask the accused before he is called upon to enter on his defence whether he wishes to re-call any of the prosecution witnesses for further cross-examination, is not a sufficient ground for holding that the proceedings and trial are vitiated by illegality. Such an omission is at the most an irregularity which falls within the purview of S. 537, Cr. P. C. *Umaji Krishnaji Sonavani v. Emperor.*

27 Cr. L. J. 431 :
93 I. C. 159 : 28 Bom. L. R. 95 :
A. I. R. 1926 Bom. 226.

—Ss. 256, 257—Cross-examination of prosecution witnesses—Right of accused.

Where the charges framed are complicated and the accused are ignorant persons, a reasonable time should be given to the accused to get proper legal advice and assistance before they are called upon to cross-examine the prosecution witnesses. It is not giving an

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accused person reasonable opportunity to ask him immediately, after the charge is framed, to cross-examine witnesses. *In re: Rangasami Padayachi.*
31 I. C. 642: A. I. R. 1916 Mad. 933.
16 Cr. L. J. 786: 188 I. C. 419: 13 R. Pesh. 1: A. I. R. 1940 Pesh. 9.

According to S. 256, Cr. P. C., the accused cannot enter upon his defence until and unless all the prosecution evidence has been exhausted and the further cross-examination of the prosecution witnesses is completed. The Court, therefore, acts illegally in ordering further cross-examination of the prosecution witnesses and the production of the defence evidence on the same day. It should fix a date for further cross-examination of the accused for the production of his defence or waived, it should give another date to the accused for the production of his defence. It is consequently bound to send for the defence witnesses of the accused under S. 257, Cr. P. C., and cannot strike out the defence of the accused merely because the accused had not asked the Court to summon his witnesses for the day on which the accused had to further cross-examine the prosecution witnesses. *Abdul Ghafur Abdul Hamid v. Emperor.*

_____Ss. 256, 257—Cross-examination of prosecution witnesses and production of defence evidence cannot be ordered on same day.
_____S. 256, 342—Defence—Magistrate asking accused to produce defence witnesses before examination of all prosecution witnesses and arguments, on date of judgment—Effect—Proper time of examining accused and calling upon them to produce witnesses.
The accused are not bound to summon their witnesses or to produce them until they themselves have been examined. They cannot be called upon to produce defence witnesses until the case for the prosecution has been completed. The Court must examine the accused at the end of the case for the prosecution and before he is called upon for his defence. Where the Magistrate calls upon the accused to produce some of the prosecution witnesses are to be examined and on their failure to do so on that date, adjourns the case for arguments and after hearing the arguments adjourns the case for judgment. Cr. P. C. on the day he delivers a considered judgment, the whole trial is vitiated. In such a case, there is a danger that the Magistrate must have made up his mind in the case before examining the accused. *Perore Kazu v. Emperor.*
41 Cr. L. J. 267: 186 I. C. 227: 6 B. R. 307: 21 P. L. T. 731: 12 R. P. 477: A. I. R. 1940 Pat. 295.

_____S. 256—Defence evidence, stage for summoning—Cross-examination after charge—adjournment.
It is improper for a Magistrate to require the person accused to summon his witnesses—

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ses in defence until it has been ascertained whether further cross-examination of the witnesses for the prosecution is necessary. In a criminal trial, prosecution witnesses were examined on a certain date. The statement of the accused was taken on the same day and a charge was framed, read out and explained to the accused. The accused pleaded not guilty. The Magistrate then adjourned the case to the next day for the express and sole purpose of asking the accused whether he wished to cross-examine the prosecution witnesses: *Held*, that the procedure was strictly in accordance with S. 256, Cr. P. C. The proceedings on the adjourned date were 'hearing' even though no other action was to be taken on that day. *Bhajiya v. Emperor.*
40 Cr. L. J. 549: 181 I. C. 537: 1939 A. L. J. 81: 11 R. A. 573: 1939 A. W. R. 1: A. I. R. 1939 All. 238.

_____S. 256 (1)—Evidence—Further prosecution evidence after charge.

Under S. 252 (2) the complainant is required to give in a list of prosecution witnesses. Under S. 254 the Magistrate may examine all those witnesses and then frame a charge-sheet or he may frame a charge-sheet before he has examined all those witnesses. If he adopts the latter course and certain witnesses remain from the list who have not been examined, then those witnesses are the remaining witnesses under S. 256 (1) and the complainant has a right to produce them after the cross-examination of those witnesses who have been previously examined. But if the Magistrate has examined all the witnesses for the prosecution in the list under S. 252 (2) and has then framed a charge-sheet, there are no witnesses remaining who could come under the description in S. 256 (1). Consequently the complainant cannot produce a further new witness after this stage. *Raghunath Sahai v. Wali Hussein Khan.*
38 Cr. L. J. 394: 167 I. C. 522: 1936 A. L. J. 1115: 9 R. A. 549: 1936 A. W. R. 886: A. I. R. 1937 All. 189.

_____S. 256—Evidence—Prosecution witnesses not named originally, whether can be examined after charge and after statement of accused.

The words "any remaining witnesses for the prosecution" in S. 256 do not necessarily refer only to those witnesses who, as required by Cl. 2 of S. 252, have been named by the complainant and summoned by the Magistrate before the charge has been framed and the accused has pleaded not guilty. The words are wide enough to include any witness who, according to the prosecution, is able to support its case, though he has not been summoned, provided that he is not sprung upon the defence all of a sudden and sufficient opportunity is given to the latter to prepare

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for the cross-examination of the witness.
Emperor v. Percy Henry Burn.

10 Cr. L. J. 530 :

4 I. C. 268 : 11 Bom. L. R. 1153.

———S. 256, 342—*Examination of accused—Accused, absence of explanation by, of incriminatory evidence—Presumption.*

An accused person is always entitled to hold his tongue, but, where the only alternative theory to his guilt is a remote possibility, which, if correct, he is in a position to explain, the absence of any explanation must be considered in determining whether the possibility should be disregarded or taken into account.
Smith v. Emperor.

19 Cr. L. J. 189 :

43 I. C. 605 : A. I. R. 1918 Mad. 111.

———Ss. 256, 257, 342—*Examination of accused—Charge framed after close of prosecution case—Witnesses re-called for cross-examination—Accused not examined—Trial, whether vitiated.*

S. 256, Cr. P. C. is concerned only with cases in which charge is framed before all the witnesses for the prosecution have been examined in-chief, and S. 257 of the Code refers to a stage when the prosecution closes its case after examining all its witnesses. A trial is not vitiated if an accused is not further examined under S. 342, Cr. P. C., after the witnesses are further cross-examined under S. 257, Cr. P. C., after the charge is framed at the close of the entire prosecution evidence.
Gangadhar v. Bhangī Rao.

25 Cr. L. J. 1152 :

81 I. C. 976 : A. I. R. 1925 Nag. 147.

———Ss. 256, 342, 537—*Examination of accused—Asking accused forthwith to cross-examine prosecution witnesses without recording reasons, whether vitiates trial—Examination of accused—Failure to examine accused for charge, effect of.*

The omission of a Magistrate to record reasons as required by S. 256, Cr. P. C., for examining an accused person forthwith after the framing of the charge is a mere irregularity curable by S. 537 when no prejudice has been caused. If the accused is examined after the evidence for the prosecution is completely closed and before he is called on for his defence, it does not make any difference whether the examination takes place before or after the charge and if there has been a proper examination before the charge; S. 342, does not require any further examination. *Vishram Narayan Devli v. Emperor.*

31 Cr. L. J. 743 :

124 I. C. 810 : 32 Bom. L. R. 596 :

A. I. R. 1930 Bom. 241.

———S. 256, 342, 537—*Examination of accused—Further cross-examination of prosecution witnesses—Omission to examine accused—Illegality.*

The examination of witness cannot be regarded as contemplated under the last stage at which the law authorizes its continuance has been passed; that is to say, until any supplementary cross-examination which the Court may allow is over. So that under S. 342, Cr. P. C., an accused person has a right to be examined and to state his case after the further cross-

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examination of prosecution witnesses, even though he has already been examined before the charge was framed and he has called on for his defence. This right is fundamental and an omission to so examine the accused is an illegality which vitiates the trial and not a mere error or irregularity which can be cured by S. 537 of the Code. *Ah Khaung v. Emperor.*

27 Cr. L. J. 336 :

92 I. C. 752 : 4 Bur. L. J. 143 :

A. I. R. 1926 Rang. 363.

———S. 256—*Non-compliance, effect of.*

A non-compliance with the provisions of S. 256 of the Cr. P. C. is at any rate an irregularity which, if a failure of justice has resulted therefrom, would furnish a good ground for remanding the case for a trial. *Shrawan Mahar. v. Rajeshwar Khandopant Page.*

29 Cr. L. J. 384 :

108 I. C. 439 : A. I. R. 1928 Nag. 135.

———S. 256—*Non-compliance, effect of.*

Failure to comply with provisions—Possibility of injury to accused—Conviction, should be set aside and re-trial ordered. *Ghanshamdas v. Emperor.*

35 Cr. L. J. 516 :

147 I. C. 802 : 6 R. S. 169 :

A. I. R. 1933 Sind 135.

———S. 256—*Non-compliance, effect of.*

Omission on the part of the Magistrate to comply with the provisions of S. 256, Cr. P. C., vitiates the trial. *Ramchandra Modak v. Emperor.*

27 Cr. L. J. 499 :

93 I. C. 693 : 5 Pat. 110 : 1926 Pat. 304 :

A. I. R. 1926 Pat. 214.

———S. 256—*Non-compliance, effect of—Procedure to be followed in appeal—Wrong procedure followed—Successor, whether entitled to review predecessor's order—Reference to High Court, necessity of.*

It would depend on the facts of each case whether the contravention of S. 256, Cr. P. C. amounts to a mere irregularity of procedure or to an illegality vitiating the trial. Where S. 256, has not been complied with by a Magistrate, there are two courses open to the Sessions Judge on appeal, namely, either to set aside the conviction and sentence and order the Magistrate to commence from the point where the illegality occurred or to order a *de novo* trial. It is not open to the Sessions Judge to keep the appeal pending and direct the Magistrate to record the cross-examination of the witnesses and forward the record to him. If a Sessions Judge wrongly directs the Magistrate to record the cross-examination and forward the record to him, his successor cannot, however, review his order and send the case back to the Magistrate to record a judgment after taking the further evidence of the witnesses into consideration. The proper procedure to be followed by him in such a case is to make a reference to the High Court under S. 438, Cr. P. C., invoking the revisional power of this Court to correct the error which was committed by his predecessor. *Emperor v. Lakshman Ramshet Alwe.*

31 Cr. L. J. 309 :

121 I. C. 588 : 31 Bom. L. R. 593 :

53 Bom. 578 : A. I. R. 1929 Bom. 309.

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S. 256—Non-compliance, effect of.

Provisions in S. 256 are merely directory. Non-compliance is only an irregularity curable under S. 537. *Gokhtran v. Emperor*.
 33 Cr. L. J. 506 : 137 I. C. 684 : 9 O. W. N. 334 : I. R. 1932 Oudh 257 : A. I. R. 1932 Oudh 242.

S. 256—Non-compliance, effect of.

The provisions of S. 256, Cr. P. C., are imperative and the failure to ask an accused person, after a charge has been framed against him, whether he desires to re-call any of the prosecution witnesses for cross-examination, involves a re-trial of the case from the point of drawing up of the charge. *Mahan Singh v. Emperor*.
 24 Cr. L. J. 371 : 72 I. C. 371 : 9 P. W. R. 1923 Cr. : A. I. R. 1924 Lah. 215.

S. 256—Non-compliance, right to object.

Persons not taking part in proceedings cannot take exception to procedure of the Code. *Sachchidanand v. Emperor*.
 32 Cr. L. J. 330 : 129 I. C. 166 : 7 O. W. N. 1048 : I. R. 1931 Oudh 86 : A. I. R. 1931 Oudh 73.

S. 256—Omission to call accused to enter upon defence, effect of.

If an accused person is not called upon to enter upon his defence and produce his evidence as required by S. 256, Cr. P. C., the proceedings are liable to be quashed. *Charag Din v. Emperor*.
 28 Cr. L. J. 425 : 101 I. C. 457.

S. 256—Prejudice—Burden and proof.

The privilege conferred by S. 256, Cr. P. C., is a substantive one and when denied, it is for the prosecution to show that the accused was not prejudiced by the denial. *In re : Ralla-bandi Sobhanadri*.
 16 Cr. L. J. 540 : 29 I. C. 668 : 2 L. W. 574 : 18 M. L. J. 92 : 1915 M. W. N. 546 : A. I. R. 1915 Mad. 1200.

Ss. 256, 537 (a)—Procedure—Warrant

case—Accused, right of, to state his case before and after framing of charge—Irrregularity—Witness, examination of, when completed.
 Where in a warrant-case the accused is examined only before the charge is framed, and not also after the prosecution witnesses have been recalled for further cross-examination under S. 256, Cr. P. C., the procedure cannot be regarded as a mere error, omission or irregularity such as is contemplated in S. 537 (a) of that Code, because the accused is entitled to an opportunity of stating his case both before and after the charge is framed. The examination of a witness cannot be regarded as completed until the last stage at which the law authorises its continuance has been passed. *In re : Marudam Mahan Vanniam*.
 24 Cr. L. J. 124 : 71 I. C. 252 : 16 L. W. 420 : 43 M. L. J. 402 : 1922 M. W. N. 601 : 45 Mad. 820 : A. I. R. 1922 Mad. 512.

S. 256—Recall, meaning of—Procedure—Practice—Cross-examination—Witnesses.
 The word "recall" in S. 256, Cr. P. C.,

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does not mean "resumption." Cross-examination is intended for the purpose of testing the accuracy and credibility of the witnesses, not for building up a case for the defence, and the witnesses should after cross and re-examination be then and there discharged. The moment the stage in the trial has been reached when there is ground for presuming that an accused has committed an offence triable under Chap. XXI, the examination of the accused should be taken and the charge-sheet drawn up. Then should follow the evidence of the remaining witnesses for the prosecution who should then and there be cross-examined and re-examined and discharged. After this, the accused should be required to enter upon his defence and produce his evidence. *Milna v. Sheoraj Singh*.
 12 Cr. L. J. 471 : 11 I. C. 1007 : 8 A. L. J. 707.

S. 256—Recall, meaning of.
 The word "recall" in S. 256, Cr. P. C., does not mean re-summon. *Bagtided v. Emperor*.
 31 Cr. L. J. 764 : 125 I. C. 32 : A. I. R. 1930 All. 495.

S. 256 (1)—"Remaining witnesses, meaning of"—"Remaining witnesses, not in attendance"—Complainant's right to claim postponement—"Reasonable cause" for demand—Postponement discretionary.

The witnesses whom prosecutor may wish to examine, after the cross-examination and re-examination of prosecution witnesses already examined, are "remaining witnesses" within the meaning of S. 256 (1), Cr. P. C. If the "remaining witnesses" are not in attendance, the complainant has no right to insist on a postponement for their examination. Even when there is a "reasonable cause," it is discretionary with the Court to postpone or adjourn a case. Therefore, a Magistrate is within his discretion if (being of the opinion that the complainant is unnecessarily wasting time and protracting proceedings) he refuses to postpone a case for the examination of "remaining witnesses." *Ali Sher v. Mir Muhammad*.
 26 Cr. L. J. 958 : 87 I. C. 110 : A. I. R. 1925 Sind 315.

S. 256—Scope.

S. 256 applies to proceedings under S. 110 of the Code. *Chandran v. Emperor*.
 31 Cr. L. J. 627 : 124 I. C. 40 : 1930 A. L. J. 389 : A. I. R. 1930 All. 274.

S. 256—Scope of—Refusal by accused to cross-examine or cite defence witnesses.

Once the requirements of Ss. 256 or 257 have been complied with and the accused refuses to state that he wishes to cross-examine witnesses or cite defence witnesses, there is no provision requiring the Magistrate to offer an opportunity to the accused to have

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his witnesses summoned. *Vaithinatha Iyer v. Kuppu Thevan*. 13 Cr. L. J. 828 : 17 I. C. 572 : 1912 M. W. N. 1121.

———S. 256—*Scope of*.

S. 256 applies to proceedings under S. 110. *Emperor v. Lansha*. 12 Cr. L. J. 89 (a) : 9 I. C. 468 : 4 Bur. L. T. 24.

———S. 256—*Scope of*.

S. 256, Cr. P. C. which gives the accused the right of re-calling witnesses implies that there must be a charge framed in the first instance for the right to come into existence. *Umaji Krishnaji Sonavni v. Emperor*.

27 Cr. L. J. 431 : 93 I. C. 159 : 28 Bom. L. R. 95 : A. I. R. 1926 Bom. 226.

———S. 256—*Scope of*—*Trial held on Sunday—Conviction, whether legal*—‘Recording reasons’. meaning of—*Accused called upon to cross-examine immediately after charge is framed*—*Reasons inadequate—Procedure, whether legal*.

A conviction of a person, whose trial was commenced and finished on a Sunday is liable to be set aside on the ground of irregularity in procedure, which has prejudiced the accused as he cannot be said to have had a fair opportunity of defending himself by engaging a lawyer. It is not so much the recording of the reasons, as the adequacy thereof, which should count in the determination of the question, whether the provisions of S. 256, Cr. P. C., have been complied with. If no good reasons are forthcoming, merely recording them in writing by the Magistrate will not save a trial from the taint of an incurable irregularity, if it results in a prejudice to the accused. Under S. 256 sufficient time must be given to the accused to consider whether he wishes to cross-examine any of the prosecution witnesses after the framing of the charge and it is only in special cases that the Magistrate can require him to state forthwith if he so wishes. *Girdhari v. Emperor*.

31 Cr. L. J. 705 : 124 I. C. 619 : A. I. R. 1930 Nag. 255.

———S. 256—*Scope of*—*Written statement by accused, whether to be allowed*.

The Cr. P. C. does not provide for filing written statements by the accused. Such statements are entirely irresponsible and should not be allowed to be filed. *Deputy Legal Remembrancer, Behar and Orissa v. Matukdhari Singh*.

17 Cr. L. J. 9 : 32 I. C. 137 : 20 C. W. N. 128 : A. I. R. 1917 Cal. 687.

———S. 257.

See also (i) Cr. P. C., 1898, Ss. 107, 110, 117 (2), 203, 231, 256.

———S. 257.

———Applicability.

———Application for Witnesses.

———Application to Cross-examine at later stage.

———Cross-examination.

———Defence.

———Defence Evidence.

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———Defence Witnesses.

———Expenses of Witnesses.

———Interference by District Magistrate.

———Non-compliance by trial Court.

———Power of Magistrate.

———Right of Accused.

———Scope of.

———Vexatious. meaning of.

———Witnesses.

———S. 257—*Applicability—Summons cases*—*Cross-examination—Right of accused*.

The only object of re-calling a prosecution witness as a defence witness under S. 257, Cr. P. C., is to secure an opportunity to the accused for further cross-examination. Once a summons has been issued to a prosecution witness under S. 257 and the witness is before the Court, there is no jurisdiction in the Court to dictate to the accused the terms upon which the examination of the witness shall be conducted. If the accused wishes to put questions in cross-examination, the Magistrate is bound to allow it. The principle of S. 257 applies to summons cases also. *Rameshwar Sahu v. Emperor*.

29 Cr. L. J. 308 : 107 I. C. 846 : A. I. R. 1928 Pat. 253.

———S. 257—*Application for witnesses—Duty of Magistrate*.

When an accused has made an application for summoning witnesses, the Magistrate must deal with the application and pass an order either granting the prayer or refusing it. *Kundanlal v. Emperor*.

36 Cr. L. J. 889 : 156 I. C. 258 : 29 S. L. R. 64 : 7 R. A. 237 : A. I. R. 1935 Sind 89.

———S. 257—*Application to cross-examine at late stage*.

Application to cross-examine filed at late stage, disallowed—Discretion properly exercised—Objection not taken in grounds of appeal to Sessions Judge—High Court will not entertain objection in revision. *Mohammad Rafi v. Emperor*.

35 Cr. L. J. 95 : 146 I. C. 580 : 6 R. P. 276 : A. I. R. 1933 Pat. 598.

———S. 257—*Cross-examination—Expenses of witnesses—Witnesses summoned at Government expenses—Court's power to refuse to allow their cross-examination unless accused paid expenses*.

Under S. 257, Cr. P. C., when the accused has cross-examined or had the opportunity to cross-examine the prosecution witnesses after the charge is framed, their attendance shall not be compelled unless the Magistrate is satisfied that it is necessary for the purposes of justice and the Court is also competent to require the accused to deposit in Court reasonable expenses of the witnesses to be thus summoned. But where the witnesses have in fact been summoned at Government expense and they are present in Court, the Magistrate should not refuse to allow them to be cross-examined by the accused unless

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he paid their expenses. *Emperor v. Sadhu Singh.*

115 I. C. 76 : I. R. 1929 Lab. 332 : 30 Cr. L. J. 380 : A. I. R. 1929 Lab. 578.

S. 257—Cross-examination—Refusal, grounds for.

S. 257, Cr. P. C., is imperative in its terms, and the only ground in which a Magistrate can refuse to grant an application to re-call witnesses for cross-examination, is that it is made for the purpose of vexation or delay, or defeating the ends of justice; and such ground must be recorded by him in writing. *Emperor v. Madud.*

10 Cr. L. J. 207 : 1 I. C. 937 : 3 S. L. R. 5.

S. 257—Cross-examination—Refusal to re-call witness.

While a Magistrate is bound under S. 257 (1), Cr. P. C., to issue process on the application of an accused person who has entered on his defence for compelling the attendance of a witness for the purpose of examination or cross-examination, the proviso to that section definitely prohibits the Magistrate from issuing such process if the accused has cross-examined or had the opportunity of cross-examining the witness after the charge was framed, unless the Magistrate is satisfied that such attendance is necessary for the purpose of justice, that is to say, unless he is convinced of the existence of the strongest possible ground for disregarding the prohibition. The exception to the prohibition must not be read as swallowing up the prohibition or the whole proviso in enjoining that the Magistrate shall issue process if he is not satisfied that the attendance of the witness is unnecessary for the ends of justice, or if he is not satisfied that the application is made for vexation or delay or for defeating the ends of justice. On the contrary the prohibition may not be disregarded unless in the opinion of the Magistrate the purposes of justice not merely warrant but demand such disregard. It is not incumbent upon the Magistrate to record in writing his reasons for not being satisfied that the attendance of a witness is necessary for the purposes of justice. *Ajo Milan v. Emperor.*

27 Cr. L. J. 3 : 92 I. C. 865 : 6 P. L. T. 626 : A. I. R. 1925 Pat. 696.

S. 257—Cross-examination—Refusal to summon witnesses—Prejudice to accused—Revol-

ution.

Where a Magistrate does not record his grounds for rejecting an application for summoning witnesses under S. 257, Cr. P. C., and direct a re-hearing if it is of opinion that the accused has been prejudiced in his defence, *Abdul Jabbar v. Emperor.*

25 Cr. L. J. 310 : 76 I. C. 1030 : A. I. R. 1925 Cal. 80.

S. 257—Cross-examination—Refusal to summon witnesses—Effect of.

Under S. 257, Cr. P. C., a Magistrate has

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discretion to refuse, on the grounds recorded in writing, an application to summon the prosecution witnesses for cross-examination and if the application is refused without the requirements of the section having been sufficiently complied with, the accused is prejudiced by no opportunity of cross-examining the witnesses being given to him. *Biseshwar Singh v. Emperor.*

22 Cr. L. J. 572 : 62 I. C. 588.

S. 257—Cross-examination—Right of accused after entering as defence.

The accused, even after he has entered upon his defence, is entitled to have the prosecution witnesses summoned for cross-examination, unless the Magistrate considers that such application should be refused on the ground that it was made for the purpose of vexation or delay or for defeating the ends of justice. The failure of the Magistrate to record his reasons in writing for refusing the application of the accused to re-summon the witnesses is an illegality which vitiates the trial. *Manomohan Dasidhar v. Bankim Bhari Chowdhury.*

26 Cr. L. J. 384 : 84 I. C. 864 : 51 Cal. 1041 : A. I. R. 1925 Cal. 411.

S. 257—Cross-examination—Right of accused to call for prosecution evidence, whether can be exercised before framing of charge—Warrant case.

Where in a case of criminal breach of trust, the Magistrate allowed the application of the complainant's possession after the examination-in-chief of the witnesses for the prosecution had concluded but before the charge had been framed : *Held*, that the Magistrate should not have entertained the application at that stage of the case but should have informed the accused that he was at liberty to renew it if the charge was framed against him. The accused's right to call evidence, either witnesses or documents, does not arise until after the charge has been framed and read to him. The right is given by S. 257 and is subject to the limitations enjoined by that section. The Magistrate should satisfy himself that the documents called for have some bearing on the issues in the case and are relevant before granting a summons for their production. *Tahitram Lalaram v. Pitambar Das Valadad.*

28 I. C. 101 : 8 S. L. R. 267 : 16 Cr. L. J. 245 : A. I. R. 1914 Sind 135.

Ss. 257, 537—Defence—Duty of Magistrate to examine accused's witnesses—Omission to examine—Illegality.

Where an accused person has entered upon his defence, he ought to be allowed every reasonable facility in establishing his defence and the Magistrate is bound to issue any process for enforcing the attendance of a witness required by the accused person, unless the Magistrate is convinced that the accused wants that witness not in the interest of

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justice but for the purpose of vexation and delay or for defeating the ends of justice. Refusal of a Magistrate to issue process to a witness named by the accused when such refusal in regard to any particular witness is not based on any grounds mentioned in S. 257, Cr. P. C., is an illegality which cannot be cured by S. 537 of the Code. *Parbhu v. Emperor*.

30 Cr. L. J. 1155 :
120 I. C. 123 : I. R. 1930 All. 11 :
1930 A. L. J. 226 :
A. I. R. 1929 All. 914.

—S. 257—Defence—Duty of Magistrate to summon witnesses.

The provision of S. 257, Cr. P. C., that a Magistrate shall, save in exceptional circumstances, issue process on the defence witnesses is mandatory. The exception arises when the Magistrate considers that the application should be refused on the ground that it is made for the purpose of vexation or delay or for defeating the ends of justice and such ground must be recorded in writing. *Debi Singh v. Emperor*.

24 Cr. L. J. 831 :
74 I. C. 863 : 5 P. L. T. 112 :
2 P. L. R. 73 Cr. : A. I. R. 1924 Pat. 142.

—S. 257 — Defence evidence — Accused, right of.

In a warrant case, the accused is entitled, under S. 257, Cr. P. C., to obtain the process of the Court for the attendance of a defence witness. *Jhabboo v. Emperor*.

21 Cr. L. J. 340 :
55 I. C. 676 : A. I. R. 1920 All. 59.

—S. 257—Defence evidence—Cross-examination by accused.

Prosecution witnesses summoned as defence witnesses under S. 257, Cr. P. C., do not change their character and may be cross-examined by the accused. *Venku Reddy v. Emperor*.

23 Cr. L. J. 192 :
65 I. C. 768 : 1922 M. W. N. 120 :
16 L. W. 196 : A. I. R. 1922 Mad. 32.

—S. 257—Defence evidence, expense of.

In warrant cases, the usual rule is that the costs of causing the attendance of the witnesses of an accused person are to be borne by the Crown, and without assigning adequate reasons, a departure from this rule is not permissible. While the Court is fully justified in declining to accede to a request which would amount to an abuse of the process of the Court, it should, at the same time, be careful not to do any act which might hamper the accused in his defence. *Habib v. Mehdi Hussain*.

29 Cr. L. J. 459 :
108 I. C. 907.

—S. 257—Defence evidence—Magistrate's refusal to summon—Effect of.

An order refusing to summon defence witnesses is not justified under S. 257 when the Magistrate has not given any of the reasons given in cl. 1 of that section which alone will justify him in making the refusal. *Bakhsha v. Emperor*.

35 Cr. L. J. 396 (2) :
147 I. C. 398 : 6 R. L. 390 :
[A. I. R. 1933 Lah. 1020.

Cr. P. CODE (1898), S. 257**—S. 257—Defence evidence—Refusal to examine, effect of—Evidence of witnesses considered unnecessary.**

After an accused person was called upon to open his defence, he named thirteen witnesses, eight of whom were examined by the Magistrate and as to the remaining five, the Magistrate recorded: "All these people repeat the defence story, I shall dispense with their evidence as unnecessary." Held, that the refusal of the Magistrate to examine the remaining witnesses was not justified; unless he had declined to issue process for the attendance of the defence witnesses under S. 257, Cr. P. C., he was not competent to decline to examine them on the ground that their evidence was unnecessary. *Emperor v. Nanabasappa*.

13 Cr. L. J. 523 :
15 I. C. 795 : 14 Bom. L. R. 360.

—S. 257—Defence evidence — Right of accused to summon witnesses.

In a warrant case tried summarily, a Magistrate is bound under S. 257 to summon the witnesses of the accused, unless he could have refused to do so on the ground that application for such process was made for the purpose of vexation or delay or for defeating the ends of justice. Where the Magistrate refused to grant an adjournment to the accused for the purpose of calling their witnesses, the conviction was set aside as bad in law. *Ameer Batcha v. Emperor*.

9 Cr. L. J. 583 :
2 I. C. 365 : 5 L. B. R. 20.

—S. 257—Defence evidence — Summons, issue of—Witness, absence of—Court, whether justified in dispensing with witness.

When once a Court has issued a summons to a witness under S. 257, Cr. P. C., and the witness fails to appear, it is not justified in dispensing with the evidence of the witnesses on the ground that, at the most, he would support accused in his statement. *Sohara v. Emperor*.

22 Cr. L. J. 501 :
62 I. C. 325 : A. I. R. 1922 Lah. 143.

—S. 257, 526—Defence evidence—Right of accused to summon trying Magistrate—Transfer of case.

As the law now stands, an accused person can enforce the appearance as a witness even of the trying Magistrate, under the provisions of S. 257, Cr. P. C., unless the Magistrate considers that the application should be refused on the ground that it is made for the purpose of vexation, &c. Therefore where the accused alleges that he requires to examine the trying Magistrate as a witness, it is inexpedient to place the Magistrate in the awkward position of rejecting the accused's application as vexatious and the case ought to be transferred to the file of some other Magistrate. *Emperor v. Abdul Latif*.

1 Cr. L. J. 338 :
24 A. W. N. 94 : I. L. R. 26 All. 536.

—S. 257—Defence witnesses—Court, duty of.

In a criminal trial the Court ought to give such opportunities as are necessary, and issue such process as are required, to enable the

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accused person to produce and examine his witnesses. The Court is not relieved of this duty by the mere fact that processes have once been issued and the witnesses have failed to appear. *Pontriam Joab v. Emperor*.
25 Cr. L. J. 293 :
76 I. C. 965 : 38 C. L. J. 285 :
A. I. R. 1924 Cal. 126.

S. 257 — Defence witnesses, limiting number of.

There is no provision by which Magistrate can limit number of defence witnesses. Having summoned them, they must be heard or reasons recorded for not hearing them. On failure to do so proceedings are vitiated. *Tek Chand v. Emperor*.
36 Cr. L. J. 1142 :
157 I. C. 413 : 1935 A. L. J. 1069 :
8 R. A. 187 : 1935 A. W. R. 795 :
A. I. R. 1935 All. 638.

S. 257—Defence witnesses — Process issued—Witnesses, not examined—Magistrate, whether can refuse to re-summon witnesses.

When a list of witnesses for the defence is put in and comes up before a Magistrate for orders, he can say : "this application is vexatious, or made too late or made for the purposes of defeating the ends of justice and I will not issue process unless expenses for the attendance of witnesses are deposited by the accused in Court." But if the Magistrate has once allowed witnesses to be summoned and has not exercised on that occasion the discretion which he could have exercised if he had so chosen under S. 257, and if by any chance the witnesses summoned for a particular date have not been examined on that date, he has no power afterwards to say that shall not be summoned except on the payment of their expenses by the accused. *Kishen Lal v. Emperor*.
22 Cr. L. J. 711 :
63 I. C. 871.

S. 257—Defence witnesses—Refusal to summon—Prejudice to accused.
Ordinarily once a Magistrate has given orders that a certain witness should be called, he should take such steps as may be necessary or possible to enforce the attendance of the witness. It cannot, however, be laid down that in no case is it possible for the Magistrate, if he comes to the conclusion that the attendance of the witness is not really necessary, to dispense with his attendance. A prosecution witness was cross-examined at length before and after charge. Subsequently the accused made an application that the witness may be summoned and examined as a defence witness. The Magistrate acceded to this request and granted two adjournments for the purpose of summoning the witness, who, however, could not attend and eventually the Magistrate dispensed with the attendance of the witness on the ground that as he had been cross-examined at length, his examination as defence witness was not necessary : *Held*, that in the absence of any prejudice to the accused as the result of the refusal of the Magistrate to summon the witness, it could not be said that

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the Magistrate had acted entirely without jurisdiction. *Ramsakal Rai v. Emperor*.
26 Cr. L. J. 1627 :
90 I. C. 925 : A. I. R. 1926 Pat. 139.

S. 257—Defence witnesses—Summon issued—Non-service—Procedure.
Where an order has been made for the issue of summonses on the witnesses of accused that order must be carried out and if the order is not carried out owing to the default of some officer of the Court and the accused is convicted without his evidence being recorded, he has a good ground for complaint that he has not been afforded an opportunity to produce his witnesses before the Court and the conviction cannot be upheld. *Upendra Nath Jana v. Gogendra Nath Mania*.
27 Cr. L. J. 841 :
95 I. C. 761 : A. I. R. 1926 Cal. 1088.

S. 257—Defence witness unable to attend on account of illness—Examination on commission—Procedure.
One of the two persons stated by the prosecution to be the ring-leaders of an affray which was the subject of the trial pleaded *alibi* and asked permission to call a certain witness to prove it. This witness wrote to the Court stating his inability to attend on account of ill-health and sent medical certificate to that effect. On the date of the hearing the accused applied to the Court for the issue of a commission to examine this witness at his house. The Magistrate was of opinion that the case being important, the witness should be examined in Court and as it was not known when the witness would be well enough to attend the Court, he dismissed the application : *Held*, (1) that some effort should have been made to ascertain as to whether it would, within a reasonable time, be possible for the witness to come to Court and if not, then to take the evidence on Commission ; (2) that the Magistrate, therefore, should now take this evidence, if possible, and re-consider in the light of this evidence the case of all the accused before him. *Jamuna Singh v. Emperor*.
25 Cr. L. J. 1255 :
82 I. C. 263 : 3 Pat. 591 :
A. I. R. 1925 Pat. 55.

Ss. 257, 537—Defence witnesses—Magistrate, whether can refuse to summon—Refusal, grounds of—Witnesses not served or not in attendance.
When an accused person has entered upon his defence and has asked for any witness to be summoned on his behalf, the Magistrate cannot refuse to summon them, except where vexation and delay, in which case he must

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record a finding to that effect when refusing to summon the witnesses. Once a Magistrate has summoned the witnesses, and they are either not in attendance or have not been served, he has no right to refuse to re-summon them on the ground that their evidence would be superfluous or unnecessary. A refusal by a Magistrate to summon witnesses for the accused in the foregoing circumstances amounts to an illegality not curable by S. 537. *Muhammad Din v. Emperor*. 22 Cr. L. J. 497 : 62 I. C. 321 : A. I. R. 1922 Lah. 71.

—Ss. 257, 537—*Defence witnesses—Refusal to summon.*

S. 257, Cr. P. C. is neither imperative nor exhaustive. It is a sufficient compliance with S. 257 (2) if a Magistrate in rejecting an application for summoning the defence witnesses states the fact which lead him to the conclusion that the application involved, vexation, delay or defeating the ends of justice, although the Magistrate has not expressly recorded his reasons for the refusal in the words of the section, and in any case such a failure does not amount to an illegality vitiating the trial but is merely an irregularity curable by S. 537, Cr. P. C. *In re : Narayana Menon*.

25 Cr. L. J. 401 : 77 I. C. 481 : A. I. R. 1925 Mad. 106.

—S. 257 (1)—*Defence witnesses—Refusal to summon—Reasons.*

It is a sufficient compliance with the requirements of S. 257 (1), if a Magistrate while rejecting an application for summoning further defence witnesses states facts which have led him irresistibly to the conclusion that the application was for no other purpose than that of vexation or delay or defeating the ends of justice, although he does not say expressly that the application was for that purpose. *Wahid Ali v. Emperor*.

6 Cr. L. J. 1 : 11 C. W. N. 789.

—S. 257—*Expenses of witnesses.*

In warrant cases the usual rule is that the cost of causing the attendance of the witnesses of accused is to be borne by the Crown, and without assigning adequate reasons a departure from this rule is not permissible. Where the order of the Magistrate does not assign any reasons, why the accused should be required to deposit the process fee and diet money of all the defence witnesses, it cannot be upheld. *Kushi Muhammad v. Abdullah Khan*.

38 Cr. L. J. 941 : 170 I. C. 539 : 39 P. L. R. 137 : 10 R. L. 132 : A. I. R. 1937 Lah. 458.

—S. 257—*Expenses of witnesses—Lahore High Court Rules and Orders, Vol. II, Chap. VI, para. 67—Warrant case—Accused's witnesses—Duty of Magistrate to issue process at Government expense—Vexatious applications.*

As a rule of practice in warrant cases, the costs of causing the attendance of accused's necessary witnesses is usually borne by Government, and though a Magistrate has power to depart from this usual practice, he

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should do so only when there are strong and cogent reasons for making the departure. A Magistrate has power under Sub-s. (1) of S. 257, Cr. P. C., to decline to compel attendance of all the accused's witnesses if he considers that the application to summon them was made for the purpose of vexation or delay or for defeating the ends of justice. He should, however, issue processes at Government expense to such of them as are necessary witnesses. *Sayad Habib v. Emperor*.

30 Cr. L. J. 814 : 117 I. C. 667 : I. R. 1929 Lah. 683 : A. I. R. 1929 Lah. 23.

—S. 257—*Expenses of witnesses—Number of witnesses large and coming from many parts—Their expenses, whether reasonable charge on Government.*

In a case where the number of witnesses is large and they come from many parts of the country, their expenses cannot be said to be a reasonable charge on Government and the Magistrate in such a case is perfectly entitled to hold that these expenses cannot reasonably be incurred by Government under S. 544, Cr. P. C., and is, therefore, correct in requiring that the expenses should be deposited prior to the issue of summons in accordance with S. 257 (2), Cr. P. C. *Mahtab Singh v. Emperor*.

40 Cr. L. J. 257 : 179 I. C. 773 : 1938 A. L. J. 1082 : 11 R. A. 385 : I. L. R. 1939 All. 57 : 1938 A. W. R. 780 : A. I. R. 1939 All. 101.

—S. 257 (2)—*Expenses of witnesses.*

S. 257 (2), Cr. P. C. fully empowers a Magistrate trying a case to order that the reasonable expenses required for the attendance of a witness shall be deposited in Court by the person applying for his attendance before the witness is summoned. *Ganpat Rai v. Emperor*.

24 Cr. L. J. 686 : 73 I. C. 702 : A. I. R. 1923 Lah. 420.

—S. 257 (2)—*Expenses of witnesses.*

The Cr. P. C. gives a Magistrate a discretion to pass an order under S. 257 (2), and his discretion is subject to S. 544 and the rules passed by the Local Government under that section, that is a Magistrate cannot pay from Government the expenses of witnesses attending if he is not authorized to do so by the rules of the Local Government. The provisions regarding deposit of expenses of witnesses applies not only in summons cases but also in warrant cases. There is no provision in the Province of Agra that the ordinary procedure in a warrant case is for the Government to bear the costs of the accused's necessary witnesses, and the matter is left entirely to the discretion of the Magistrate. *Mahtab Singh v. Emperor*.

40 Cr. L. J. 257 : 179 I. C. 773 : 1938 A. L. J. 1082 : 11 R. A. 385 : I. L. R. 1939 All. 57 : 1938 A. W. R. 780 : A. I. R. 1939 All. 101 :

—S. 257—*Interference by District Magistrate.*

Accused charged with trespassing into outhouse of District Magistrate—Order to

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S. 242—Non-compliance. Omission to state particulars in accordance with S. 242 not accompanied by failure of justice is cured by Ss. 535 and 537. *Lahani v. Khushal* 33 Cr. L. J. 938 : 140 I. C. 113 (2) : 28 N. L. R. 163 : I. R. 1932 Nag. 134 : A. I. R. 1932 Nag. 127. Ss. 242, 535—Non-compliance with S. 242—Omission to state particulars of offence, effect of—Charge, absence of, whether curable. An omission by a Magistrate to state the particulars of the offence to the accused as required by S. 242, Cr. P. C. is an irregularity curable under S. 535 of the Code where there has been no failure of justice resulting from such omission. The absence of a charge does not necessarily render a trial invalid. *Dandoo v. Harba*. 28 Cr. L. J. 511 : 101 I. C. 895 : 8 A. I. R. 175 : A. I. R. 1927 Nag. 210. S. 242—Plea of guilty. The mere fact that the accused shows his willingness or preparedness to execute a bond is not enough to act as a plea of guilty under S. 242. *Sadhu Singh v. Emperor*. 36 Cr. L. J. 1212 : 157 I. C. 755 : 8 R. Pesh. 33 : A. I. R. 1935 Pesh. 755. S. 242—Procedure—Complainant's refusal to be examined—Duty of Magistrate to examine witnesses. Even if a complainant declines to be examined, it is the duty of the Magistrate to proceed to take the evidence of his other witnesses under S. 242 of the Cr. P. C. before dismissing the complaint, although in any event, a strong preliminary presumption against the truth of the complainant's case will arise from his refusal to allow himself to be examined. *Dandoo v. Harba*. 28 Cr. L. J. 511 : 101 I. C. 895 : A. I. R. 1927 Nag. 210.

S. 241. See Conviction. S. 242. See also (i) Assam Labour and Emigration Act, 1901, Ss. 164, 213. (ii) Cr. P. C., 1898, Ss. 205, 233, 252, 342. S. 242—Non-compliance—Effect—Duty of Court. Non-compliance with the provisions of S. 242, Cr. P. C., vitiates the trial. The Magistrate ought to indicate that both parts of S. 242 are complied with although a detailed note of the proceedings is not required to be recorded in the order-sheet showing that the first portion of the provisions of S. 242, as well as the second portion are complied with. He must explain the substance of the charge to the accused and also ask him whether he pleads guilty or not and should indicate in his order-sheet that he has done so. *Bhuheshwar Prasad v. Emperor*. 38 Cr. L. J. 22 : 164 I. C. 844 : 17 P. L. T. 609 : 3 B. R. 88 (2) : 9 R. P. 223 : A. I. R. 1936 Pat. 501. S. 242—Non-compliance—Effect—Legality of trial—Summons case—S. 242, not complied with. In a summons case, omission to explain the particulars of an offence to the accused under S. 242, Cr. P. C., and to ask him to show cause at that stage is not in cases in which the accused is defended and pleads not guilty) an illegality vitiating the trial, provided, of course, that no prejudice can be shown to have been caused to the accused and the accused has, in due course, been examined under S. 342. *Sukhdeo Prasad Thawat v. Emperor*. 39 Cr. L. J. 321 : 173 I. C. 189 : 18 P. L. T. 370 : 16 Pat. 97 : 4 B. R. 240 : 10 R. P. 384 : A. I. R. 1938 Pat. 55.

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summon witnesses including District Magistrate—District Magistrate sending note to trial Court to suspend summons to himself and others—Trial Court ordering notice not to be issued—Interference by District Magistrate, is not proper—This justifies transfer. *Samuel v. Emperor*. 35 Cr. L. J. 411 :

147 I. C. 289 : 6 R. N. 126 :

A. I. R. 1934 Nag. 39.

—————**S. 257—Non-compliance by trial Court—Power of Appellate Court to order re-trial.**

Where the trial Court has failed to comply with the provisions of S. 257, Cr. P. C., the Appellate Court is not bound to order a re-trial. It may direct the trial Court to summon the witness and record his statement and submit the same to the Appellate Court. *Parbhu v. Emperor*. 30 Cr. L. J. 1155 :

120 I. C. 123 : I. R. 1930 All. 11 :

1930 A. L. J. 226 : A. I. R. 1929 All. 914.

—————**S. 257—Power of Magistrate.**

Magistrate has discretion to grant or refuse application under S. 257. *Zamin v. Emperor*. 34 Cr. L. J. 468 :

142 I. C. 752 : I. R. 1933 Rang. 52 :

A. I. R. 1933 Rang. 29.

—————**S. 257—Power of Magistrate to refuse to summon witnesses.**

A Magistrate has no right arbitrarily to limit the number of witnesses called by an accused in his defence. He can only do so on the ground that the application for summoning is made for the purpose of vexation or delay or for defeating the ends of justice. *Yusuf Ali v. Emperor*. 27 Cr. L. J. 543 :

93 I. C. 1039 : A. I. R. 1926 Lah. 454.

—————**S. 257—Right of accused.**

Magistrate acts unreasonably when he refuses an adjournment for cross-examination of prosecution witness when defence counsel is absent. *Chamru v. Emperor*. 33 Cr. L. J. 731 (1) :

138 I. C. 700 : I. R. 1932 Nag. 87 :

A. I. R. 1932 Nag. 71.

—————**S. 257—Scope.**

S. 257 neither controls nor imposes any limitations on the power of a Court to exercise its discretion in using the machinery provided by S. 94. *Muhammad Rahim v. Emperor*. 36 Cr. L. J. 581 :

154 I. C. 762 : 29 S. L. R. 92 :

7 R. S. 167 : A. I. R. 1935 Sind 13.

—————**S. 257—Scope of—Discretion of Magistrate to refuse to summon witnesses, extent of.**

The language of S. 257, Cr. P. C., is imperative, and a Magistrate has no discretion to refuse to issue process to compel the attendance of any witness merely because he thinks that no useful purpose will be served by summoning him as a witness to attend the Court. The person who applies for their attendance is the best Judge of the matter and it is not for the Magistrate to say which witnesses shall and which shall not be of any use to him. The only grounds upon which an application for the summoning of witnesses can be refused are

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those enumerated in Cl. (1) of S. 257 and a Magistrate is not entitled to refuse the application on any other ground. *Ganpat Rai v. Emperor*. 24 Cr. L. J. 686 :

73 I. C. 702 : A. I. R. 1923 Lah. 420.

—————**S. 257—Proviso—Scope of.**

Prosecution witnesses, if present can be allowed to be cross-examined at defence stage. *Ramchandra Wadhi v. Emperor*. 33 Cr. L. J. 940 (1) :

140 I. C. 117 (2) : 28 N. L. R. 254 :

I. R. 1932 Nag. 133 :

A. I. R. 1932 Nag. 137 (1).

—————**S. 257—'Vexatious', meaning of.**

Whether an application deserves the epithet "vexatious" or not, is a matter for the Judge to decide, and if he decides that the evidence of a witness to be summoned is not going to be of any use in the matter of helping him to decide the case, he, in effect, if not in words, is deciding that the application is vexatious. If the Magistrate is not satisfied that the evidence of a witness is material, he will be justified in law in dismissing the application as put in for the purpose of vexation or delay. *In re : Narayan Menon*. 25 Cr. L. J. 401 :

77 I. C. 481 : A. I. R. 1925 Mad. 106.

—————**S. 257—Scope of.**

The provisions of S. 257, are mandatory. *Bhuneshwari Pershad v. Emperor*. 32 Cr. L. J. 1176 (2) :

134 I. C. 467 : 8 O. W. N. 791 :

I. R. 1931 Oudh 380 :

A. I. R. 1931 Oudh 386.

—————**S. 357—Witnesses, attendance of—Accused, right of—Duty of Court.**

There is no reason why, within all reasonable limits, an accused person should not be entitled to obtain the assistance of the Court in bringing before it all such persons as he may think are necessary in order to protect himself against the accusation and charge which has been brought against him in connection with any criminal offence. Mere technicalities as to whether he applies to the Court for enforcing the attendance of his witnesses at one moment or a little later should not deprive him of his right. It does not matter in the least to the Tribunal or to the administration of justice, whether there is or is not a trifling delay in the operation and conduct of proceedings. The only important thing from a fundamental point of view is that the Tribunal should ascertain what is the truth of the accusation which has been brought against the accused. *Beni v. Emperor*. 24 Cr. L. J. 835 :

74 I. C. 947 : 1 P. L. R. 117 Cr. :

5 P. L. T. 46 : A. I. R. 1923 Pat. 536.

—————**S. 257—Witnesses, compelling attendance of.**

Magistrate issuing process for witness—It is his duty to compel his attendance subject to S. 257 (2). *Dwarka Singh v. Emperor*. 32 Cr. L. J. 613 :

130 I. C. 799 : I. R. 1931 Pat. 207 :

12 P. L. T. 372 :

A. I. R. 1931 Pat. 207.

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—S. 257—*Witnesses—Expert witness—Fee to be fixed by Court.*

In warrant cases Magistrate should fix fees of expert witness. If he declines to give evidence on reasonable fee fixed by Magistrate, he can be compelled to do so. *Ram Narain v. Emperor.*

33 Cr. L. J. 761 :
139 I. C. 508 : 33 P. L. R. 811 :
I. R. 1932 Lah. 581 :
A. I. R. 1932 Lah. 481.

—Ss. 257, 537—*Witnesses—Refusal to summon witness, effect of.*

The refusal of a Magistrate to issue process to witnesses named by the accused, when such refusal, in regard to any particular witness, is not based on any of the grounds mentioned in S. 257, Cr. P. C. is an illegality which cannot be cured by S. 537 of the Code. A conviction under such circumstances is illegal and will be set aside. *Narayan Mudaly v. Emperor.*

7 Cr. L. J. 425 :
31 Mad. 131.

—S. 257—*Witness, refusal to summon—Reasons.*

If a Magistrate considers it proper to refuse issuing process to witness, he should do it by recording his reasons. *Dwarka Singh v. Emperor.*

32 Cr. L. J. 613 :
130 I. C. 799 : 12 P. L. T. 372 :
I. R. 1931 Pat. 207 :
A. I. R. 1931 Pat. 207.

—S. 257—*Witness—Right of accused to summon prosecution witnesses for cross-examination—Process, issue of, at accused's instance to persons already examined as prosecution witnesses—Magistrate, power of, to refuse to allow cross-examination.*

S. 257, Cr. P. C., allows an accused to summon witnesses for the purpose of cross-examination and the accused is not bound to state in his application for process whether he wants the witnesses for examination or for cross-examination. It is for the Magistrate to enquire into the accused's purpose, if he thinks the application is vexatious. Where a Magistrate has issued such process at the instance of the accused, he is not afterwards entitled to refuse to allow cross-examination by the accused. *In re : Kalle Lakshmayya.*

23 Cr. L. J. 32 :
99 I. C. 64 : 24 L. W. 751 :
A. I. R. 1927 Mad. 129.

—S. 257—*Witnesses, summoning of—Discretion of Magistrate.*

S. 257, Cr. P. C., confers a large discretion on the Magistrate and by the mere fact that a Magistrate has once subpoenaed witnesses under the section, he is not bound to compel their attendance if he is satisfied that it is unnecessary for the purposes of justice. *In re : Sadayan Chetty.*

31 Cr. L. J. 720 :
124 I. C. 606 : A. I. R. 1930 Mad. 632.

—S. 257—*Witnesses, summoning of—Duty of Magistrate—Expense, no ground for refusing to summon.*

It is not the province of the Magistrate to decide before the statements of witnesses have been taken whether the witnesses

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would or would not be unnecessary. All that he has to decide is whether they are expected to give evidence on matters which would be relevant to the trial, and if they are relevant to the trial, he is bound to summon and examine the witnesses unless he considers that they have been named for the purpose of vexation or delay or for defeating the ends of justice. The question of expense by itself is no ground for not summoning a witness named by the accused. *Brahm Dall v. Emperor.*

I. R. 1932 Lah. 663 (2).

—S. 257.

Witness summoned with a view to cause vexation and delay—Magistrate should not allow the application. *Joly Parshad v. Amba Parshad.*

36 Cr. L. J. 559 :
154 I. C. 467 (a) : 7 R. L. 577 (1) :
A. I. R. 1934 Lah. 136 (1).

—S. 258 (1)—*Absence of complainant—Procedure—"Not guilty," meaning of.*

If the complainant and his witnesses absent themselves on the day of hearing after the framing of the charge, the Magistrate can either adjourn the case or find the accused 'not guilty' and acquit him under S. 258 (1), Cr. P. C. He cannot pass an order of discharge under S. 259. The finding "not guilty" is a technical expression and not necessarily equivalent to a finding that the accused did not commit the acts charged. *Emperor v. Nazir Husain.*

32 Cr. L. J. 366 :
129 I. C. 262 : 1931 A. L. J. 3 :
I. R. 1931 All. 134 : A. I. R. 1930 All. 795.

—S. 258—*Absence of complainant and witness—Acquittal, not proper.*

In a warrant case the Magistrate cannot acquit the accused, if on the date fixed for cross-examination of the complainant and his witnesses, they are absent. *Har Kishan Das v. Emperor.*

38 Cr. L. J. 361 :
167 I. C. 236 (2) : 9 R. A. 517 :
1936 A. W. R. 1273 : A. I. R. 1937 All. 127.

—S. 258 — *Absence of complainant—Charge—Acquittal, not proper.*

An order of acquittal is justified under S. 258, only after the Court has recorded a finding that the accused is not guilty. Therefore where a charge had been framed against the accused who pleaded not guilty and entered upon their defence and the complainant did not appear on an adjourned hearing : *Held*, that the accused could not be acquitted owing to the absence of the complainant. *Ram Bakhsh v. Jairam Das.*

26 Cr. L. J. 264 :
84 I. C. 328 : 27 O. C. 316 : 1 O. W. N. 613 :
A. I. R. 1925 Oudh 306.

—S. 258—*Acquittal without delivering judgment—Irregularity.*

Magistrate acquitting accused without delivering any judgment is irregular—Defect is cured by S. 537 if miscarriage of justice is not caused. *Dhondha Kandoo v. Sitaram.*

34 Cr. L. J. 1036 :
145 I. C. 664 : 1933 A. L. J. 1244 :
55 All. 886 : 6 R. A. 139 :
A. I. R. 1933 All. 660.

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———Ss. 258, 259—*Applicability—Accused not found not guilty—Proper procedure.*

After a charge is framed, the provisions of S. 259, Cr. P. C., will not apply, and to apply the provisions of S. 258 of the Code, the Magistrate must find the accused not guilty. Where the accused has not been found, not guilty, the proper procedure is for the Magistrate to get the accused arrested under a warrant and then decide whether he is guilty or not. *Emperor v. Godhan.*

26 Cr. L. J. 400 :
1 W. N. 586 : 84 I. C. 944 :
A. I. R. 1925 Oudh 314.

———S. 258—*Order of acquittal.*

Whole procedure showing order to be one of acquittal—Inadvertently mentioning S. 253 instead of S. 258—Order is one of acquittal. *Raza Husain v. Emperor.*

36 Cr. L. J. 912 :
156 I. C. 186 : 1935 A. L. J. 1022 :
7 R. A. 1057 : A. I. R. 1935 All. 834.

———Ss. 258, 436—*Order of acquittal—Jurisdiction of Sessions Judge to order committal or further enquiry for offence under S. 467, I. P. C., where accused was acquitted of offence under S. 465—Discharge, meaning of.*

Where a person accused of forging a document is charged with an offence under S. 465, Cr. P. C., and is acquitted by a First Class Magistrate under S. 258, Cr. P. C., the Sessions Judge has no power to direct his committal or to order a further inquiry under S. 436, Cr. P. C., on the ground that the offence alleged falls under S. 467, I. P. C., as it relates to a document which is a valuable security. The acquittal of such a person on a charge under S. 465, I. P. C., cannot be construed as an order of discharge in respect of the alleged offence under S. 467. An order of discharge under the provisions of the Cr. P. C., should precede the framing of a charge, though there might be cases in which an accused can be discharged otherwise than under the specific provisions relating to discharge in this Code. *Abdul Hakim Khan v. Bazruk Ali Khan.*

18 Cr. L. J. 834 :
41 I. C. 658 : 26 C. L. J. 210 :
22 C. W. N. 107 : A. I. R. 1918 Cal. 943.

———Ss. 258, 439 — *Revision — Acquittal, when can be set aside—Transfer of case.*

A Magistrate fails to deal with a case before him with judicial care and impartiality if he lays great stress on all considerations that might affect the credibility of the several prosecution witnesses and omits to take into consideration what might be advanced in their favour, e. g., fails to appreciate or even to correctly cite in his judgment the evidence of an important witness. Such circumstances fully justify a High Court to set aside an order of acquittal passed by the Magistrate and transfer the case to another district. *Bazu v. Raika Singh.*

15 Cr. L. J. 722 :
26 I. C. 170 : 18 C. W. N. 1244 :
A. I. R. 1915 Cal. 235.

———S. 258—*Scope of.*

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Warrant case—Framing of charge—Absence of accused and complainant on adjourned date—Order under S. 258 cannot be passed. *Nutbhari Sarkar v. Saroda Preshad Chaudhry.*

34 Cr. L. J. 498 (1) :
143 I. C. 83 : 37 C. W. N. 712 :
I. R. 1933 Cal. 332 :
A. I. R. 1933 Cal. 358 (1).

———S. 258 (1)—*Scope of.*

S. 258 (1), Cr. P. C., must be read in the light of S. 350, Cr. P. C. *Tuka Ram v. Emperor.*

37 Cr. L. J. 983 :
164 I. C. 744 : I. L. R. 1936 Nag. 92 :
9 R. N. 28 : A. I. R. 1936 Nag. 153.

———S. 259.

See also (i), Cr. P. C., 1898, Ss. 203, 247, 251, 439.

———S. 259—*Absence of complainant — Discharge.*

A Magistrate in exercising his discretion in discharging an accused under S. 259, Cr. P. C., in complainant's absence is bound to regard the evidence and to consider whether there is a *prima facie* case against the accused or not. The absence of the complainant raises a presumption that he does not wish to proceed with the prosecution. Where a Magistrate discharged an accused under S. 259, the complainant being prevented from appearing by floods, the order of discharge was set aside and further inquiry directed, *Harun v. Abdul Satar.*

12 Cr. L. J. 184 :
9 I. C. 1007 :

———S. 259 — *Absence of complainant—Discharge.*

The discharge of an accused person in the absence of the complainant can only be made under S. 259, Cr. P. C., and that only in the case of compoundable offence. It cannot be made under S. 253. *Alexander v. Connors.*

17 Cr. L. J. 193 :
34 I. C. 305 : 20 C. W. N. 698 :
A. I. R. 1917 Cal. 525.

———S. 259—*Absence of complainant—Discharge of accused—Further inquiry, — Notice to accused.*

Accused was discharged under S. 259, Cr. P. C. owing to the absence of complainant. The District Magistrate set aside the order of discharge under S. 437 of the Code without giving notice to the accused : *Held*, that the accused should have been given an opportunity to show why the order should not be set aside. *Mahendra Nath v. Milkhi Ram.*

25 Cr. L. J. 523 :
77 I. C. 987 : A. I. R. 1923 Lah. 689.

———S. 259—*Absence of Complainant—Dismissal and acquittal, legality of.*

It is no part of a complainant's duty to call any witness for cross-examination or any other purpose of the defence once a charge is framed, and S. 259, Cr. P. C. gives no power to the Court to dismiss a warrant case in default after a charge has been framed. An acquittal can-

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not be based on a dismissal in default. *Rai-Singh Chamar v. Patia Chamar*.

20 Cr. L. J. 763 (a) :

53 I. C. 491 : A. I. R. 1918 Nag. 76.

———S. 259—*Duty of Court—Absence of Complainant.*

No Section of the Cr. P. C. allows a Court to pass an order of acquittal after a charge has been framed, except upon a finding on the merits of not guilty. Where a charge has been framed, it is the duty of the Trial Court to proceed with the trial in the absence of the complainant and to convict or acquit on the merits. *Narain Das v. Meva Singh*. 22 Cr. L. J. 312 : 60 I. C. 1000 : 3 U. P. L. R. (L.) 39.

———S. 259—*Absence of Complainant—Procedure—Adjournment—Costs, liability of complainant to pay.*

A Magistrate is bound to proceed with the trial of a non-compoundable warrant case after the framing of the charge and to conclude it regardless of the fact whether the complainant does or does not attend. After the framing of a charge in such a case, the position of the complainant is reduced to that of a witness, and he cannot be ordered to pay the costs of an adjournment occasioned by his failure to attend on any particular date of hearing. *Nabi Baksh v. Emperor*. 25 Cr. L. J. 87 : 76 I. C. 23 : 1924 A. I. R. Lah. 627.

———S. 259—*Absence of Complainant and witnesses—Acquittal, legality of—Refusal of adjournment application and acquittal, legality of—Date fixed for cross-examination of prosecution witnesses after charge—Complainant's failure to attend with witnesses.*

Where a charge was framed and date fixed for attendance of complainant with witnesses for cross-examination and on failure of the latter to appear, the Special Magistrate acquitted the accused refusing to adjourn the case in spite of an application for adjournment for a short time: *Held*, that the Court acted quite irregularly in refusing to grant such an application and this was especially the case where the Court was the Court of a Special Magistrate where there are no fixed hours. *Har Kishan Dass v. Emperor*. 38 Cr. L. J. 361 : 167 I. C. 236 (2) : 9 R. A. 517 : A. I. R. 1937 All. 127.

———S. 259—*Death of Complainant—Abatement.*

There is no general principle that private complaints abate on the death of the complainant. *In re : Narayana Naick*. 33 Cr. L. J. 14 :

134 I. C. 990 (a) : 34 L. W. 42 :

1931 M. W. N. 767 : 61 M. L. J. 125 :

54 Mad. 768 : I. R. 1931 Mad. 878 (1) :

A. I. R. 1931 Mad. 772 (1).

———Ss. 259, 439—*Death of Complainant—Magistrate refusing to discharge accused—Interference in revision.*

It is discretionary with a Magistrate to discharge an accused in a non-cognizable case instituted on a complaint when the complainant is absent on a day fixed for hearing. Therefore, where in a non-cognizable but a non-

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compoundable case, the complainant died after he had been examined and cross-examined and the Magistrate refused to discharge the accused, the High Court refused to interfere with the order of the Magistrate. *U Mo Gaung v. U Po Sin*. 30 Cr. L. J. 345 :

114 I. C. 681 : 6 Rang. 664 :

I. R. 1929 Rang. 73 : A. I. R. 1929 Rang. 14.

———S. 259—*De novo trial.*

Framing of charge—Change in constitution of Bench—*De novo* trial of accused—Discharge of accused under S. 259 due to absence of complainant—Fresh trial on fresh complaint is not barred. *Abdul Hakim v. Haji Abdul Aziz*. 35 Cr. L. J. 170 :

146 I. C. 443 : 6 R. Pesh. 18 :

A. I. R. 1933 Pesh. 78.

———S. 259—*De novo trial, necessity of—Discharge of accused on account of non-appearance of complainant—Non-appearance, excuse of.*

If a Magistrate discharges an accused person because of the non-appearance of the complainant, under S. 259, Cr. P. C. and subsequently excuses that non-appearance, he must proceed *de novo*. But where no evidence was recorded in the first trial and the only irregularity lay in the Magistrate failing to take a fresh sworn statement, the proceedings cannot be regarded as illegal. *Venkatarama Iyer v. Soundaraja Iyyengar*. 30 Cr. L. J. 403 :

115 I. C. 64 : 1929 M. W. N. 184 :

I. R. 1929 Mad. 384 :

A. I. R. 1929 Mad. 260.

———S. 259—*Discharge—Fresh complaint.*

A Magistrate who has discharged an accused person under S. 259, Cr. P. C. can re-entertain a fresh complaint on the same facts. *In re : Rudra Goud*. 8 Cr. L. J. 208 : 4 M. L. T. 140 : 18 M. L. J. 561.

———S. 259—*Discharge—Fresh complaint.*

Where a complainant is absent when a case is taken up and the Magistrate discharges the accused under S. 259, Cr. P. C. it is competent to the Magistrate to entertain a fresh complaint or restore the old complaint on satisfactory cause being shown by the complainant for his absence. *In re : Akula Venkana*. 28 Cr. L. J. 304 : 100 I. C. 384 : A. I. R. 1927 Mad. 503.

———S. 259 — *Discharge — Fresh complaint, effect of.*

Accused discharged for non-appearance of complainant—Fresh complaint under same facts, is not barred. *Ramprasad v. Ganpatrao*. 36 Cr. L. J. 57 :

152 I. C. 223 : 31 N. L. R. 93 :

7 R. N. 86 : A. I. R. 1934 Nag. 275.

———Ss. 259, 203, 204—*Discharge—Fresh complaint.*

It is not open to a Magistrate to entertain a complaint when a similar complaint has been dismissed by another Magistrate of co-ordinate jurisdiction and the dismissal has not been set aside by higher authority. If

Cr. P. CODE (1898), S. 259

the complainant is aggrieved by the dismissal of his complaint and the discharge of the accused under S. 259, it is open to him to move the Sessions Court to order further inquiry under S. 436, because that section is now amended and relates not only to a dismissal of complaint under S. 203, or under Sub-s. (3) of S. 204, but to any case where persons accused of an offence have been discharged. *Chellomal v. Kewalmal Jeramdas*.

40 Cr. L. J. 287 :
179 I. C. 898 : 11 R. S. 164 :
1939 Kar. 228 : A. I. R. 1939 Sind 38.

—S. 259—Discharge, when competent.

S. 259 only empowers the discharge of an accused person prior to the framing of a charge, *Abdul Hakim v. Haji Abdul Aziz*.

35 Cr. L. J. 170 :
146 I. C. 443 : 6 R. Pesh. 18 :
A. I. R. 1933 Pesh. 78.

—S. 259—Discretion.

S. 259, Cr. P. C. does not make it compulsory upon the Magistrate to dismiss a complaint or application. He may, in his discretion do so. *Banke Lal v. Maiku*.

35 Cr. L. J. 121 :
146 I. C. 638 : 10 O. W. N. 1037 :
6 R. O. 150 (2) : A. I. R. 1933 Oudh 430.

—S. 259—Dismissal—Fresh complaint.

Dismissal of complaint under S. 259, Cr. P. C. is not a sufficient ground to refuse to entertain a second complaint and dismiss it under S. 203, Cr. P. C. *Bulchand Tahilram v. Ghandhoomal Ramrakhiamal*. 16 Cr. L. J. 174 :
27 I. C. 558 : 8 S. L. R. 196 :
A. I. R. 1914 Sind 44.

—S. 259.—Dismissal for non-appearance of prosecutor—Case sent up by Police—Offence non-compoundable.

A case which has been sent up for trial by the Police and which involves offences which are not compoundable cannot be dismissed by a Magistrate under S. 259, Cr. P. C., for non-appearance of the Officer in-charge of the prosecution. *Emperor v. Munni Singh*.

28 Cr. L. J. 816 :
104 I. C. 256 : 1 Luck. Cas. 337 :
A. I. R. 1927 Oudh 352.

—S. 259—Dismissal of complaint—Fresh complaint, whether entertainable.

A complaint dismissed under S. 259, can be revived on a fresh complaint as the dismissal does not amount to an acquittal. The fresh complaint need not be filed before the same Magistrate who dismissed the previous complaint but may be entertained by any other Magistrate having jurisdiction to entertain it. *Aslugar Ali v. Akbar Ali*.

26 Cr. L. J. 1040 :
87 I. C. 928 : A. I. R. 1925 Nag. 432.

—S. 259—Judgment—Order of dismissal in default.

Order dismissing a complaint for default made under Ss. 203, or 259 is not a judgment. *Harhai v. Raya Premji* (F. B.)

40 Cr. L. J. 745 :
183 I. C. 283 : 12 R. S. 44 :
1940 Kar. 74 : A. I. R. 1939 Sind 193.

Cr. P. CODE (1898), S. 260**—S. 260.**

See also (i) Cr. P. C., 1898, Ss. 191, 530.

(ii) Penal Code, 1860, S. 147.

(iii) Railways Act, 1890, S. 126
(a).

(iv) Summary trial.

—S. 260—Cattle lifting—Summary trial.

Cattle lifting is a serious offence and should not be tried summarily. *Emperor v. Allahrakhia*.

13 Cr. L. J. 780 :
17 I. C. 412 : 6 S. L. R. 101.

—S. 260 —Excise offences—Summary trial.

An offence under S. 60, Excise Act, being punishable with imprisonment for one year, cannot be tried summarily, and if it is so tried, the proceedings are void. *Bhikha v. Emperor*.

26 Cr. L. J. 800 :
86 I. C. 423 : 28 O. C. 123 :
A. I. R. 1925 Oudh 627.

—S. 260—House-breaking and assault—Summary trial—Charge with regard to assault ignored—Acquittal on charge of house-breaking—Irregularity—Re-trial.

Complainant made a report to the Police in which he stated that during his absence from his house the previous night, the accused had entered his house and on being questioned by his wife as to why he had come, he had caught the complainant's wife by the neck, but on the woman's crying out and the complainant and other persons coming into house the accused ran away. The case was entered in the Station Diary as one under S. 456, Penal Code but on investigation the Police sent up charges under Ss. 457 and 354, Penal Code. The Magistrate ignored the charge under S. 354 and tried the case summarily in respect on the charge under S. 457 and acquitted the accused. On appeal by the Crown: *Held*, that no case having been originally entered under S. 354, Penal Code, and the complainant having made no express allegation that the modesty of his wife had been outraged, the Magistrate was entitled to ignore the charge sent up by the Police under S. 354 and to proceed to try the charge under S. 457 summarily. *Graham, J.*, contra—That the Magistrate having disbelieved the prosecution story with regard to the charge under S. 457, the charge under S. 354 necessarily fell to the ground and no re-trial was necessary. *Government of Assam v. Kantila Chutia*.

23 Cr. L. J. 697 :
103 I. C. 553 : 31 C. W. N. 583 :
A. I. R. 1927 Cal. 505.

—S. 260—Previous conviction—Summary trial.

When an accused is also charged with having been previously convicted of an offence, he cannot be tried summarily as the subsequent offence becomes a different offence from the act when standing alone. *Krishnaswami Pillay v. Government of Mysore*.

9 Cr. L. J. 562 :
13 M. C. C. R. 132.

Cr. P. CODE (1898), S. 260**—S. 260—Public nuisance—Summary trial.**

An important case of a public nuisance under S. 290, Penal Code, ought not to be tried summarily specially where the accused desires it to be tried in a regular manner. *Emperor v. Rustonji Mancharji*. 23 Cr. L. J. 21 : 64 I. C. 501 : 23 Bom. L. R. 984.

—S. 260—Public servants — Summary trial.

There is no law forbidding the summary trial of public servants for petty offences. *Sukhpal Lal v. Emperor*. 26 Cr. L. J. 1452 : 89 I. C. 972 : A. I. R. 1926 Oudh 63.

—S. 260—Serious offences — Summary trial.

Summary procedure in cases of serious offences, even though legal, is inappropriate. *Dipchand v. Emperor*. 19 Cr. L. J. 1003 : 48 I. C. 343 : 14 N. L. R. 190 : A. I. R. 1918 Nag. 150.

—S. 260—Serious offence — Summary trial—Summary procedure, when to be adopted.

The procedure of summary trial should not be resorted to even though it could legally be adopted, where the case is a grave one and requires a full hearing and record. *Emperor v. Bashir*. 30 Cr. L. J. 505 : 115 I. C. 614 : I. R. 1929 All. 390 : A. I. R. 1929 All. 267.

—S. 260—Summary trial—Adoption of, in middle of regular trial—Prejudice to accused.

A Magistrate cannot, after examining the prosecution witnesses-in-chief in the regular manner, change his procedure to that allowed for summary trials, if such procedure prejudices the accused. *Gosto Behary Basu v. Baistom Das Denre*. 24 Cr. L. J. 157 : 71 I. C. 509 : 26 C. W. N. 831 : 37 C. L. J. 105 : A. I. R. 1923 Cal. 105.

—S. 260—Summary trial.

There are certain offences which a Magistrate may try summarily under the provisions of S. 260. If he does so try them, he is not required to make any memorandum of the evidence at all. *Mohammad Rafiq Ahmad v. Emperor*. 37 Cr. L. J. 73 : 162 I. C. 758 : 1186 All. 274 : 1936 A. W. R. 375 : 8 R. A. 901 : A. I. R. 1936 All. 319.

—S. 260—Summary trial—Case falling within S. 261 (b)—Notes of evidence, whether should form part of record.

Even if rough notes of evidence are taken by a Magistrate in a case under S. 261 (b) of the Code, they need not form part of the record under S. 264 (2) of the Code. *Chimantal Maneklal v. Emperor*. 28 Cr. L. J. 537 : 102 I. C. 345 : 29 Bom. L. R. 710 : A. I. R. 1927 Bom. 426.

—S. 260—Summary trial—Destruction of notes of evidence, whether vitiates trial.**Cr. P. CODE (1898), S. 260**

A Magistrate's action in destroying his notes of a summary trial is not an illegality vitiating the trial. *Ismail v. Emperor*. 28 Cr. L. J. 442 : 100 I. C. 474 : 26 A. L. J. 346 : 49 All. 562 : A. I. R. 1927 All. 480.

—S. 260—Summary trial—Judgment, contents of.

Summary trial—Acquittal—No mention of prosecution evidence in Judgment—Judgment and acquittal must be set aside. *Emperor v. Akbar Ali*. 85 Cr. L. J. 677 (1) : 141 I. C. 430 : 11 O. W. N. 487 : 6 R. O. 393 (1) : A. I. R. 1934 Oudh 177 (2).

—S. 260—Summary trial—Large number of accused and witnesses—Procedure.

Where a large number of witnesses and accused are involved in a case, the case should not be tried summarily. *Ghasita Mal v. Emperor*. 22 Cr. L. J. 145 : 59 I. C. 849 : A. I. R. 1921 Lah. 236.

—S. 260—Summary trial—Magistrate, whether bound to record notes of evidence or statement of accused persons.

There is nothing in the Cr. P. C., which requires a Magistrate in a summary case to place upon the record the notes of the evidence or a full statement of the examination of the accused persons. *Bhawani Bhik v. Emperor*. 28 Cr. L. J. 76 : 99 I. C. 108 : 3 O. W. N. 946 : A. I. R. 1927 Oudh 42.

—S. 260—Summary trial—Non-appealable sentence—Judgment, contents of.

In a summary trial, where a non-appealable sentence is passed, the Magistrate need only record a finding and his reasons thereof. *Bhola Nath v. Emperor*. 21 Cr. L. J. 442 : 56 I. C. 234 : A. I. R. 1920 All. 79.

—S. 260—Summary trial—Offences of—Receiving stolen property—Statement as to value of property—Magistrate, duty of.

Before a Magistrate can assume jurisdiction to try an offence under S. 411, Penal Code, in a summary form, he has to satisfy himself that the property in respect of which he is trying the accused is less than Rs. 50 in value and must record the fact in the form prescribed in S. 263, Cr. P. C. Where there is no such reference in the record of the case, the conviction cannot stand. *Brij Nandan v. Emperor*. 25 Cr. L. J. 545 : 81 I. C. 33 : 6 P. L. T. 114 : A. I. R. 1922 Pat. 227.

—S. 260—Summary trial—Record of evidence in case of conviction.

Where a Magistrate, invested with powers under S. 260 is trying a case summarily, it is desirable that he should set out in the column reserved for that purpose so much of the reasons that have influenced him as to satisfy the accused that the Magistrate has considered each of the ingredients necessary in law for the conviction to which the Magistrate has proceeded, and that while this should be recorded with brevity, the brevity should

Cr. P. CODE (1898), S. 260

not be such as to tend to obscurity. These safeguards are essential so that in case of revision the High Court may have sufficient materials on the record before it for arriving at the conclusion as to whether the order of the Magistrate is right or wrong. *Baijoo v. Emperor*.

40 Cr. L. J. 141 :

178 I. C. 722 : 1938 O. W. N. 1130 :

1938 O. L. R. 512 : 11 R. O. 125 :

14 Luck. 325 : A. I. R. 1930 Oudh 37.

—————S. 260—Summary trial—Several accused.

The mere fact of there being a large number of accused does not appear to be a conclusive reason against trying a case in the summary method. *Naubal v. Emperor*.

28 Cr. L. J. 140 :

99 I. C. 348 : A. I. R. 1927 All. 136.

—————S. 260 (d)—Theft by landlord of paddy in tenant's possession before division—Summary trial.

Where a landlord was charged with theft for having cut and carried away some paddy in his tenant's possession valued at Rs. 88 and the Magistrate tried the accused summarily because the value of the tenant's share was less than Rs. 50 ; *Held*, that, as the tenant was entitled to exclusive possession of the whole produce till division under S. 71, Bengal Tenancy Act, the case should not have been tried summarily. *Habboo v. Kariman*.

17 Cr. L. J. 473 :

26 I. C. 153 : A. I. R. 1916 Pat. 197.

—————S. 260—Theft charge—Summary trial.

Cl. (i) of S. 260 (1), Cr. P. C. must be read with Cl. (d), which only permits a summary trial for theft under S. 380, Penal Code, where the value of the property stolen does not exceed Rs. 50. *Dipchand v. Emperor*.

19 Cr. L. J. 1003 :

48 I. C. 343 : 14 N. L. R. 290 :

A. I. R. 1918 Nag. 150.

—————S. 260—Summary trial—When competent.

A case involving the decision of a question of title and the production of documentary evidence should not be tried summarily. *Emperor v. Tirithdas*.

13 Cr. L. J. 771 :

17 I. C. 493 : 6 S. L. R. 121.

—————S. 260—Summary trial—When competent—Question of right and title involved.

A Magistrate exercises his discretion wrongly where he adopts the summary procedure for the trial of a case in which, from the nature of the dispute and the plea taken by the accused, it is apparent that complicated questions of right and title are involved; and in such a case the High Court will interfere with the exercise of his discretion. *Bhim Bahadur Singh v. Emperor*.

21 Cr. L. J. 374 :

55 I. C. 854 : 1 P. L. T. 121 :

2 U. P. L. R. Pat. 53 :

A. I. R. 1922 Pat. 265.

—————S. 260—Summary trial—When competent.

Chalan under S. 147-332, Penal Code—Prosecution establishing the same offence—Sum-

Cr. P. CODE (1898), S. 260

mary trial under S. 151, Penal Code, is illegal. *Muhammad Abdullah v. Emperor*.

35 Cr. L. J. 1094 :

150 I. C. 24 : 15 Lah. 610 : 6 R. L. 835 :

A. I. R. 1934 Lah. 243.

—————S. 260—Summary trial—When competent.

Held, that a Magistrate acts ill gally and without jurisdiction if he tries summarily under S. 260, Cr. P. C., a case in which the complaint and the statement on solemn affirmation of the complainant disclose an offence, for which he cannot hold a summary trial, by altering the same to one of the offences falling under the same section of the Cr. P. C. *Barkat Khan v. Emperor*.

5 Cr. L. J. 21 :

1 P. W. R. Cr. 41 : 8 P. L. R. 67.

—————S. 260—Summary trial—When competent—Question of title.

The mere fact that a case involves a question of title is not a sufficient ground for holding that the case is too complicated for summary trial. *Sukhpat Lal v. Emperor*.

26 Cr. L. J. 1452 :

89 I. C. 972 : A. I. R. 1926 Oudh 63.

—————S. 260—Summary trial—When competent.

The offence of house-breaking by night under S. 457, Penal Code, accompanied by a theft of property worth more than fifty rupees, cannot legally be tried summarily under S. 260, Cr. P. C. *Dip Chand v. Emperor*.

19 Cr. L. J. 1003 :

48 I. C. 343 : 14 N. L. R. 190 :

A. I. 1918 Nag. 150.

—————S. 260—Summary trial—When competent—Trial of a deaf and dumb man.

Where the accused is deaf and dumb, it is inconvenient to try him summarily. In such a case, attempt should be found out whether the accused has any friends or relatives who are accustomed to communicate with him. The Magistrate should make inquiries about his antecedents and ordinary mode of life and the manner in which he has communicated within the ordinary affairs of life. *In re : A Deaf and Dumb Man*.

4 Cr. L. J. 444 :

8 Bom. L. R. 849.

—————S. 260—Summary trial—When competent.

When a complaint discloses or alleges the commission by the accused or by any of them of an offence under S. 144, Penal Code, the case cannot be tried summarily. *Chandra Mohan Das v. Emperor*.

25 Cr. L. J. 528 :

77 I. C. 992 : 27 C. W. N. 148.

—————S. 260—Summary trial—When competent.

Where owing to the bulk of evidence or the complication of the matters or owing to the difficult nature of points at issue, it is not possible for the Magistrate to keep in his mind without making exhaustive notes the evidence of important facts, then, even though the offence may be technical and be punishable only with a slight sentence, the

Cr. P. CODE (1898), S. 262

Magistrate is not acting properly if he applies the summary procedure to such a trial and should he in so important a case apply the summary procedure, then, no doubt, the appellate or revisional Court will re-direct the re-trial of the case in a more appropriate form. *Rahimtullah Ibrahim v. Emperor*.

26 Cr. L. J. 1026 :

87 I. C. 914 : A. I. R. 1925 Sind 284.

————S. 261.

See also (i) Cr. P. C., Ss. 12, 15, 36, 37, 261, 562.

(ii) Summary trial.

————S. 262 (2).

See Penal Code, 1860, S. 411.

————S. 262—Charge, necessity of.

In a summary trial whether it be appealable or otherwise, a formal charge in writing need not be framed. *Emperor v. Saligram*.

27 Cr. L. J. 639 :

94 I. C. 415 : 8 Lah. L. J. 140 :

7 Lah. 303 : 27 P. L. R. 265 :

A. I. R. 1926 Lah. 301.

————S. 262—Procedure—Summary trial of warrant-cases—Procedure.

In summary trials the procedure prescribed for warrant-cases should be followed in warrant-cases, and in such a case, the accused is entitled to have process issued for compelling the attendance of the prosecution witnesses for cross-examination. *Nepal Bagdi v. Emperor*.

22 Cr. L. J. 271 :

60 I. C. 671.

————S. 262 (2)—Scope.

The limit placed by S. 262 (2), Cr. P. C., applies only to a substantive sentence of imprisonment. *The King v. Po Hwa*.

41 Cr. L. J. 768 :

189 I. C. 627 : 1940 Rang. 323 :

13 R. Rang. 53 : A. I. R. 1940 Rang. 171.

————S. 262 (2)—Sentence permissible.

S. 262 (2) does not render illegal a sentence of imprisonment in default of payment of fine if otherwise legal, merely by reason of the fact that the aggregate of the terms of substantive sentence of imprisonment and of the sentence of imprisonment in default of payment of fine exceeds three months or by reason of the Magistrate having passed a substantive sentence of imprisonment for the maximum term allowed by that section. *The King v. Po Hwa*.

41 Cr. L. J. 768 :

189 I. C. 627 :

1940 Rang. 323 : 13 R. Rang. 53 :

A. I. R. 1940 Rang. 171.

————S. 262 (2)—Sentence—Summary trial.

A sentence of imprisonment exceeding three months passed in the case of a conviction at a summary trial is illegal having regard to the provisions contained in S. 262 (2). *Nga San Ba v. Emperor*.

25 Cr. L. J. 240 :

76 I. C. 704 : 2 Bur. L. J. 150.

————S. 262—Sentence.

Summary Trial—Conviction of accused for

Cr. P. CODE (1898), S. 263

more than one offence—Imprisonment, must not exceed period of three months in aggregate. *Nura v. Emperor*.

35 Cr. L. J. 1366 :

151 I. C. 741 (a) : 7 R. L. 191 :

A. I. R. 1934 Lah. 227.

————S. 262—Sentence—Summary trial.

Under S. 262 (2) separate sentence to the extent of three months may be passed for each separate conviction. *Chetumal Rekumal v. Emperor*.

36 Cr. L. J. 608 :

154 I. C. 937 : 28 S. L. R. 336 :

7 R. S. 178 : A. I. R. 1934 Sind 185.

————S. 262, 264—Summary trial—Judgment, contents of—Record—Appealable sentence at summary trial—Judgment in summary trial—Substance of evidence.

When an appealable sentence is passed at a summary trial, the record must be such as to enable the Appellate Court to form its own opinion on the evidence. *Po Ka v. Emperor*.

9 Cr. L. J. 23 :

4 L. B. R. 338.

————S. 262—Summary trial—Record.

In a summary trial judgment and judgment alone, embodying as it does, the substance of the evidence, and the particulars mentioned in S. 263, Cr. P. C., is the self-contained record of the case and apart from this record, there is no other and, what is more, there is no document which can be defined or described as a portion of a record. *Emperor v. Salig Ram*.

27 Cr. L. J. 639 :

94 I. C. 415 : 8 L. L. J. 140 :

7 Lah. 303 : 27 P. L. R. 265 :

A. I. R. 1926 Lah. 301.

————S. 262 (2)—Theft—Summary trial.

When offence under S. 379, Penal Code, is tried summarily and case is forwarded to the District Magistrate under S. 349, Cr. P. C., the District Magistrate should try the case anew. *Gopal v. Emperor*.

33 Cr. L. J. 472 (1) :

137 I. C. 208 (1) : I. R. 1932 All. 320 (2) :

A. I. R. 1932 All. 507.

————S. 262—Trespass, offence of—Summary trial—Criminal trespass—Absence of evidence as to actual offence intended—Summary trial, legality of.

Where neither the complaint nor the evidence adduced in a case of criminal trespass shows the actual offence which the accused intended to commit, and the only finding which could be arrived at is that the accused intended to commit an offence punishable with imprisonment, the conviction of the accused in a summary trial cannot be held to be illegal on the ground that the intention of the accused might have been to commit an offence which cannot be tried summarily. *Madhab Chandra Saha v. Emperor*.

27 Cr. L. J. 1295 :

98 I. C. 191 : 53 Cal. 738 :

A. I. R. 1926 Cal. 1202.

————S. 263.

See also (i) Charges under Ss. 121-A, 123, Penal Code.

(ii) Cr. P. C., 1898, Ss. 260, 342.

Cr. P. CODE (1898), S. 263

- _____S. 263.
- _____Date of offence.
- _____Evidence.
- _____Examination of accused.
- _____Examination of witnesses.
- _____‘If any,’ meaning of.
- _____Judgment.
- _____Misjoinder of charges.
- _____Offence, proof of.
- _____Plea of accused.
- _____Scope.
- _____Summary trial.

_____S. 263 (b)—Date of offence not recorded
 —Date of offence on prescribed form whether
 vitiates trial.

Failure of the Magistrate to enter the date of the commission of offence in a prescribed form as required by S. 263 (b), in a summary trial, does not vitiate the trial and the defect is cured by S. 537, Cr. P. C., if such failure has not led to any prejudice or failure of justice. *Mohsin v. Emperor*.

41 Cr. L. J. 283 :
 186 I. C. 312 : 6 B. R. 337 : 12 R. P. 503 :
 A. I. R. 1940 Pat. 272.

_____S. 263—Evidence—Record of.

In a case tried summarily and in which no appeal lies, it is not incumbent on the trying Magistrate to “put on record sufficient evidence to justify his order.” *Emperor v. Someshar Dass*.

2 Cr. L. J. 336 :
 25 A. W. N. 143:

_____S. 263—Evidence—Record of.

In cases to which Ss. 263 and 264, Cr. P. C. are applicable, a Magistrate is perfectly free to take such notes of the evidence as he pleases, or if he prefers, to take none at all, and whether he takes notes or whether he does not, whatever notes he makes are his private property which he can treat exactly as he pleases. *Mantoo Tewari v. Emperor*.

28 Cr. L. J. 97 :
 99 I. C. 225 : 49 All. 261 : 25 A. L. J. 140 :
 A. I. R. 1927 All. 124.

_____S. 263—Evidence, record of—Judgment whether sole record of case—Sworn statement and complaint whether can be referred to by Appellate Court.

The record of a case tried summarily under S. 264, Cr. P. C., is only the judgment embodying the substance and other particulars mentioned in S. 263. The Appellate Court will not, therefore, be justified in referring to the complaint and sworn statement in deciding an appeal from a case tried summarily. *Chokalingam Pandaram v. Emperor*.

29 Cr. L. J. 625 :
 109 I. C. 897 : 55 M. L. J. 117 : 28 L. W. 394 :
 A. I. R. 1928 Mad. 597.

_____S. 263—Evidence, record of.

S. 263 must be read as an exception to the general provision contained in S. 355 (1). Moreover, even if it be assumed that this does not save the Magistrate from making a memorandum of the substance of the evidence of each witness, the failure of the Magistrate merely to sign his memorandum in a summary trial of a warrant case cannot be regarded in the absence of prejudice to the accused

Cr. P. CODE (1898), S. 263

as sufficient by itself, to vitiate the conviction. *Mohsin v. Emperor*.

41 Cr. L. J. 283 :
 186 I. C. 312 : 6 B. R. 337 : 12 R. P. 503 :
 A. I. R. 1940 Pat. 272.

_____S. 263—Evidence, record of—Memorandum of substance of statement of each witness, nature of—Magistrate, power of, to destroy memorandum.

Where a Magistrate, in the trial of a summons-case, records a memorandum containing the substance of the examination of each witness, such memorandum becomes part of the record of the case, and the Magistrate has no authority to destroy it, the fact that a non-appealable sentence is passed upon the accused is no justification for destroying the memorandum. *Salish Chandra Mitra v. Mammotha Nath Mitra*.

22 Cr. L. J. 462 :
 61 I. C. 846 : 32 C. L. J. 451 :
 48 Cal. 280 : A. I. R. 1921 Cal. 165.

_____S. 263—Evidence—Rough notes taken at trial—Notes destroyed and copies placed on record—Irregularity—Illegality—Facts of another case introduced into case, effect of.

In a summary trial a Magistrate made rough notes of the evidence, which he subsequently copied and placed on the record and destroyed the original notes. He also introduced into the case the facts of another case which he tried at the same time: *Held*, that the procedure adopted by the Magistrate was irregular and illegal, that the destruction of the original notes was tantamount to destroying the original record, with the result that there was no legal evidence on the record which an Appellate Court could go into. *Jagdish Prasad Lal v. Emperor*.

21 Cr. L. J. 229 :
 55 I. C. 101 : 1 P. L. T. 63 :
 1920 Pat. 96 : 2 U. P. L. R. Pat. 62 :
 A. I. R. 1920 Pat. 654.

_____S. 263—Examination of accused.

In all warrant cases, there must be an examination of the accused as laid down in S. 340, Cr. P. C. S. 263 does not give the Magistrate any discretion whether he will examine the accused or not. The words “if any” in S. 263, Cl. (g), do not apply to warrant cases. *Mahomed Hossain v. Emperor*.

15 Cr. L. J. 190 :
 22 I. C. 766 : 18 C. W. N. 1247 :
 41 Cal. 743 : A. I. R. 1914 Cal. 663.

_____S. 263—Examination of accused.

It is the duty of the Magistrate to record not only the plea of the accused, but also his examination, if any. *Sia Ram v. Emperor*.

36 Cr. L. J. 1290 :
 155 I. C. 129 : 1935 A. L. J. 257 :
 57 All. 666 : 1935 A. W. R. 125 :
 A. I. R. 1935 All. 217.

_____S. 263—Examination of accused—Summary trial—Interpretation of Statutes.

The provisions of S. 342, as to examination of an accused person are mandatory and apply even to Summons Cases and the words “if any” in S. 263 do not limit the obligation imposed on Courts by S. 342 or render it inappli-

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cable to summary trials, they merely have reference to those cases in which, owing to the admission and plea of the accused, or owing to the weaknesses of the evidence called in support of the prosecution, the accused can either be convicted on his own plea without the taking of evidence, or acquitted on the evidence without the examination referred to in S. 342. *Emperor v. Nabu*.

26 Cr. L. J. 1554 :
90 I. C. 434 : A. I. R. 1926 Sind 1.

—S. 263—*Examination of accused.*

The words "if any" in S. 263, do not limit the obligation imposed on Courts by S. 342 or render it inapplicable to summary trial. The examination of the accused is an essential part of the procedure. Such examination need not be taken with all the formalities prescribed by S. 364. *Devijimal v. Emperor*.

36 Cr. L. J. 1484 :
158 I. C. 923 : 8 R. S. 57 (2) ;
A. I. R. 1935 Sind 193.

—S. 263—*Examination of witnesses—Summary trial—Refusal by Magistrate to take evidence, if legal—Recording evidence not same as hearing evidence.*

S. 263 does not excuse a Magistrate from hearing the evidence of all witnesses. It only excuses him from recording the evidence of any of the witnesses. Recording evidence is not the same as hearing evidence. In all criminal trials, if the accused denies the charge, the complainant and such witnesses as he must produce must be examined and the case may be decided upon the effect of their evidence. *Jabar Sheikh v. Tomiz Sheikh*.

13 Cr. L. J. 759 :
17 I. C. 71 : 16 C. W. N. 984 :
39 Cal. 931.

—S. 268 (g)—*'If any,' meaning of.*

The words "if any" in Cl. (g) of S. 263, Cr. P. C., do not leave the Magistrate any discretion as the words are intended merely to cover cases in which owing to the admission or plea of the accused or the weakness of the prosecution evidence, the accused can either be convicted on his own plea or can be acquitted on the evidence without an examination of the accused. *Bhagwan v. Emperor*.

27 Cr. L. J. 632 :
94 I. C. 408 : 9 N. L. J. 43 :
22 N. L. R. 65 :
A. I. R. 1926 Nag. 300.

—S. 263—*Judgment—No reasons given—Conviction illegal.*

Where no reasons whatever are given in support of a conviction, there is no compliance with the provisions of S. 263, Cr. P. C., and the conviction should be set aside. *Emperor v. Mian Jan*.

23 Cr. L. J. 427 :
67 I. C. 587 : 24 O. C. 293.

—S. 263 (h)—*Judgment of Honorary Magistrate—Omission to record reasons—Irregularity, if curable.*

Under S. 263 (h), Cr. P. C., Honorary Magistrates are bound to record in their judgment reasons for conviction. In cases

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where imprisonment is inflicted, S. 370 also imposes on them as Presidency Magistrates, the same obligation. *In re : Thurman*.

25 Cr. L. J. 1084 :
81 I. C. 908 : 20 L. W. 330 :
A. I. R. 1924 Mad. 799.

—S. 265 (h)—*Judgment—Omission to record reasons—Illegality.*

Failure to record the reasons for a conviction as required by S. 263 (h), Cr. P. C., renders the conviction illegal. This defect is fundamental and goes to the root of the trial and is not curable under S. 537, Cr. P. C. *Nisarali v. Secretary, Municipal Committee, Nagpur*.

28 Cr. L. J. 495 (a) :
101 I. C. 671 : A. I. R. 1927 Nag. 250.

—Ss. 263 (h), 367—*Judgment in summary trial, contents of.*

The law requires that a Magistrate or a Bench of Magistrates in a summary trial should give a brief statement of the reasons for their finding. A judgment in a single line is not a judgment in accordance with the law. *Jankey Rai v. Emperor*.

20 Cr. L. J. 431 :
51 I. C. 207 : A. I. R. 1919 Pat. 253.

—S. 263—*Judgment, contents of.*

An objection was raised that the Magistrate failed to comply with the provisions of S. 264, Cr. P. C., in that he did not record a judgment embodying the substance of the evidence. Apparently the case came under S. 263 : *Held*, that if it had come within that section, there would have been no error in the Magistrate writing as his order merely the word "Acquitted," as Cl. (b) of S. 263 requires a brief statement of the reasons for the finding only, when the accused has been convicted, and there is nothing to compel a Magistrate to give his reasons, when he acquits.

It was argued that S. 264, which requires a judgment embodying the substance of the evidence in an appealable case, should have been followed: because the Local Government has an appeal against any order of acquittal, and consequently, the case was an appealable case : *Held*, that to adopt such an interpretation would stultify S. 263, which must be read, as if the words "by a convicted person" followed after the words "in cases where no appeal lies." *Narayansawmy v. A. Blake*.

3 Cr. L. J. 433 :
12 Bur. L. R. 59.

—S. 263—*Judgment, contents of.*

In passing judgment under S. 263, it is incumbent on the Magistrate to record his finding, and "a brief statement of the reasons therefor." The reasons so recorded should be sufficient to show that the Magistrate has considered each of the ingredients necessary for a conviction, and also sufficient to enable the Court of revision to judge whether there are sufficient materials to justify the conviction and sentence. *Imperator v. Dino*.

10 Cr. L. J. 216 :
2 S. L. R. 3.

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—S. 242—Procedure.

Magistrate need not record what he stated to accused in explaining the offence. *Jaganath Singh v. Emperor*. 36 Cr. L. J. 361 : 153 I. C. 427 : 31 N. L. R. 139 : 7 R. N. 139 ; A. I. R. 1934 Nag. 258.

—S. 242—Omission to examine accused—Admission by Counsel—Conviction, whether legal.

A conviction based on an admission by the Counsel for the accused in a summons case, without examining the accused or recording any evidence, is illegal and cannot be sustained. *Municipal Board v. Tulsiram and Sons*. 26 Cr. L. J. 179 : 83 I. C. 883 :

1 O. W. N. 495 ; A. I. R. 1925 Oudh 305.

—S. 242—Procedure—Strict compliance with, necessity of.

The law enjoins, and that for a very good reason, that the admission shall be recorded as nearly as possible in the words used by the accused. Omission to comply with the law in this respect cannot be countenanced as it invariably leads to complications. *Lalji Ram v. Emperor*.

Date of decision 18-9-24 :
A. I. R. 1928 Cal. 243.

—Ss. 242, 537—Procedure—Summons case—Omission to state particulars of offence to accused—Trial, legality of.

Omission to comply with S. 242, which requires that in summons cases the particulars of the offence shall be stated to an accused when he is brought before a Magistrate, is an illegality which vitiates the trial and not a mere irregularity which can be cured by S. 537. *Gopal Krishna Saha v. Mati Lal Singh*. 28 Cr. L. J. 155 : 99 I. C. 411 : 31 C. W. N. 167 : 44 C. L. J. 575 : 54 Cal. 359 : A. I. R. 1927 Cal. 196.

—Ss. 243.

See also (i) Conviction.
(ii) Cr. P. C., 1898, Ss. 112, 252, 283.

—S. 243—Admission of offence.

Admission of allegations against him by the accused does not amount to an admission of the offence. *Kanhayalal v. Emperor*.

32 Cr. L. J. 1132 :
134 I. C. 261 : 14 N. L. J. 39 :
I. R. 1931 Nag. 133 :
A. I. R. 1931 Nag. 100.

—S. 243—Admission—Power of Magistrate.

Accused admitting guilt—Magistrate can convict under S. 243 without proceeding to hear complainant and taking evidence—Accused need not be examined under S. 342. *Karam Din v. Emperor*. 35 Cr. L. J. 1394 : 151 I. C. 748 : 15 Lah. 60 : 35 P. L. R. 295 : 7 R. L. 188 : A. I. R. 1934 Lah. 96.

—S. 243—Construction.

Accused pleading guilty—Statement to be

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looked as a whole and liberal construction to be put. *Emperor v. Homnarain Sukhailal Kachhi*. 35 Cr. L. J. 696 : 148 I. C. 541 : 6 R. N. 186 : A. I. R. 1934 Nag. 65.

—S. 243—Plea of guilty.

Provided it is clear from the record that there was a plea of guilty which has been acted on, the mere fact of recording some evidence would not have the effect of nullifying that plea. *Emperor v. Janardan Kashinath Abhyankar*. 32 Cr. L. J. 719 :

131 I. C. 473 : I. R. 1931 Bom. 297 :
33 Bom. L. R. 34 :
A. I. R. 1931 Bom. 195.

—S. 243—Plea of guilty.

Where evidence is not taken and a conviction purports to be based on a plea of guilty which is not recorded in accordance with the provisions of S. 243 and the accused makes a denial of having pleaded guilty, the conviction cannot be upheld. *Ganesh Chandra Khan and Sons v. Corporation of Calcutta*.

34 Cr. L. J. 250 (2) :
141 I. C. 864 : 36 C. W. N. 132 :
I. R. 1933 Cal. 207 :
A. I. R. 1933 Cal. 117.

—Ss. 243, 244—Plea of guilty—Discretion of Court.

Under S. 243 Court has discretion to accept or not to accused's plea of guilty—Where Court accepts plea and proceeds to hear evidence, and the evidence does not prove the facts of the charge, he cannot go back and convict. *Emperor v. Janardan Kashinath Abhyankar*.

32 Cr. L. J. 719 :
131 I. C. 473 : 33 Bom. L. R. 34 :
I. R. 1931 Bom. 297 :
A. I. R. 1931 Bom. 195.

—S. 244—Examination of witnesses—Summons case—Examination of witnesses in absence of complainant, effect of.

S. 247, Cr. P. C., gives power to a Magistrate to adjourn a summons case for sufficient reason when the complainant does not appear and the fact that some witnesses are examined in the absence of the complainant would not vitiate the trial, unless it is shown that the accused was in some way prejudiced. The fact that he cross-examined the prosecution witnesses and examined witnesses in his defence would show that he was not prejudiced in any way. *Amir Miu v. Sarafdi Hazi*.

21 Cr. L. J. 252 :
55 I. C. 204 : 24 C. W. N. 199 :
A. I. R. 1920 Cal. 68.

—S. 244—Plea of guilty—No admission of guilt—Procedure.

Where a Magistrate adopts the procedure prescribed by S. 244 on the footing that there was no admission of guilt on the part of the accused person, he is not competent to take a further plea from the accused person of guilty and relieve himself of the duty of examining other prosecution witnesses. *Lalji Ram v. Emperor*.

(Date of decision 18-9-24) :
A. I. R. 1928 Cal. 243.

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S. 263—Judgment, contents of.

Even in a summary trial the statement of reasons for a conviction which the Magistrate is bound to record under S. 263-H, Cr. P. C., should present a clear statement of the facts constituting the offence and should show that each of the ingredients necessary for a conviction has been considered and held proved by the Magistrate. *Dayaram Saloonval v. Emperor*.

37 Cr. L. J. 715 (a) :
162 I. C. 281 : 8 R. S. 170 :
A. I. R. 1935 Sind 144.

S. 263 (h)—Judgment, contents of.

Magistrate must give reasons for convictions.
33 Cr. L. J. 342 :
136 I. C. 641 : 8 O. W. N. 1376 :
I. R. 1932 Oudh 129 :
A. I. R. 1932 Oudh 98.

S. 263 (h)—Judgment, contents of.

S. 263, cl. (h), Cr. P. C., enjoins that a brief statement of reasons for the order should be given by the Magistrate. *Dal Chand v. Emperor*.
41 Cr. L. J. 498 :
187 I. C. 642 : 1940 A. L. J. 154 :
12 R. A. 574 : 1940 A. W. R. 206 :
A. I. R. 1940 All. 195.

S. 263 (h)—Judgment, contents of—

Summary trial—Duty of Magistrate to record clear statement of facts—Statement should show that each of the ingredients for conviction has been considered. *Dayaram Saloonval v. Emperor*.
37 Cr. L. J. 715 (1) :
162 I. C. 281 : 8 R. S. 170 :
A. I. R. 1935 Sind 144.

Ss. 263 (h)—Judgment, contents of.

Where in a non-appealable case there is clear evidence to justify the conviction, the omission on the part of the Court to comply with the provisions of cl. (h) of S. 263, Cr. P. C., merely amounts to an irregularity which can be cured under S. 537. *Nandoo v. Emperor*.

26 Cr. L. J. 466 :
85 I. C. 146 : 26 Bom. L. R. 1236 :
A. I. R. 1925 Bom. 138.

S. 263 (h), (i)—Judgment, contents

In a summary trial, S. 263 (h), (i), Cr. P. C. requires only the reason for the finding to be stated and not the reasons for the sentence. *Provincial Government v. Bhirum*.
41 Cr. L. J. 544 :
188 I. C. 80 : 1940 N. L. J. 242 :
12 R. N. 332 : A. I. R. 1940 Nag. 264.

S. 263—Judgment—Reasons for conviction.

Although a Magistrate is not required in law to record the evidence in a summary trial, yet he is bound to record his reasons for the conviction and that, too, in such a manner as to put a superior Court in a position to judge whether there were sufficient materials to support the conviction. *Jagan Nath v. Emperor*.
14 Cr. L. J. 594 :
21 I. C. 466 : 16 O. C. 357.

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S. 263—Judgment—Reasons for conviction should be stated.

Even in cases tried summarily, where there is a conviction, there must be a brief statement of the reasons for it. *Dakkamurti Kamayya v. Vadali Venkatesan*.
38 Cr. L. J. 581 (a) :
168 I. C. 703 : 1937 M. W. N. 323 : 45 L. W. 471 :
9 R. M. 62 : A. I. R. 1937 Mad. 480.

S. 263 (a)—Judgment—Reasons for conviction.

The finding and the reasons required to be recorded under S. 263 (h), Cr. P. C., should be so stated that the High Court in revision may judge whether there was sufficient material before the Magistrate to support the conviction. *Anandidas v. Raghunath Lal*.
19 Cr. L. J. 719 :
46 I. C. 303 : A. I. R. 1918 Pat. 484.

S. 263—Judgment—Reasons for conviction.

Under S. 263 a Magistrate must give the reasons, though briefly, for justifying the conviction. Convictions are reversible by the Superior Court, and the Superior Court will always insist on having materials before it so that it may be in a position to say whether the conviction is proper or not. *Dannodar Das v. Emperor*.
23 Cr. L. J. 94 :
65 I. C. 446 : 3 P. L. T. 499.

S. 263 (h)—Judgment—Reasons for conviction.

Under S. 263 (h), Cr. P. C., a brief statement of reasons for conviction must be given. These reasons should amount to showing that there is evidence to prove the existence of the ingredients necessary to complete the offence. *Brijbasi Lal v. Emperor*.
13 Cr. L. J. 708 :
16 I. C. 516 : 10 A. L. J. 251.

S. 263 (h)—Judgment—Reasons for conviction.

Failure to give a brief statement of the reasons for the findings as required by Cl. (h) of the said section, vitiate the trial. *Mural Singh v. Emperor*.
29 Cr. L. J. 265 (a) :
107 I. C. 592 : 26 A. L. J. 109 :
A. I. R. 1928 All 266.

S. 263 (h)—Judgment—Reasons for conviction.

In cases tried summarily under S. 260, the statement of reasons for a conviction which the Magistrate is bound to record under S. 263 (h), should present a clear statement of the facts constituting the offence and should show also that each of the ingredients for a conviction has been considered and held proved by the Magistrate. *Ram Harakh v. Emperor*.
16 Cr. L. J. 713 :
30 I. C. 1001 : 9 S. L. R. 89 :
A. I. R. 1915 Sind 53.

S. 263 (h)—Judgment—Reasons for conviction—Judgment, writing of—Duty of Magistrate, pointed out.

If a Magistrate thinks that all that is necessary for him to say by way of judgment is that he sentences the accused to imprisonment

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or fine, then he is not doing his duty properly. Cases have to go to the higher Court when persons are convicted and the Magistrates should understand that it is their duty to write their judgments carefully. They may be concise and they need not be elaborate, but they should show on the face of them that the cases of both parties have been carefully and properly considered. *Dal Chand v. Emperor.*

41 Cr. L. J. 498 :
187 I. C. 642 : 1940 A. L. J. 154 :
12 R. A. 574 : 1940 A. W. R. 206 :
A. I. R. 1940 All. 195.

———S. 263 (h)—*Judgments—Reasons for finding, absence of, effect of.*

Where in a summary trial a brief statement of the reasons for the finding is not entered as required by Cl. (h) of S. 263, Cr. P. C. the conviction is illegal and is liable to be set aside. *Maqsood Alam v. Emperor.*

21 Cr. L. J. 656 (b) :
57 I. C. 672 : 1 P. L. T. 716 :
A. I. R. 1920 Pat. 138.

———S. 263—*Misjoinder of charges.*

In a summary trial, misjoinder of charges cannot be made without remedy. The same rules of law as apply to charges in warrant cases must apply to the particulars set out in S. 263 in a summary record. *Jharu Sheikh v. Emperor.*

13 Cr. L. J. 224 :
14 I. C. 320 : 16 C. W. N. 696.

———S. 263—*Offence, proof of.*

Description of offence by mere reference to section is not sufficient. *Abdul Rahman v. Emperor.*

35 Cr. L. J. 1464 :
151 I. C. 999 : 34 Lah. 596 :
15 Lah. 277 : 36 P. L. R. 310 : 7 R. L. 234 :
A. I. R. 1934 Lah. 596.

———S. 263 (g)—*Plea of accused.*

Omission by a Magistrate, in a summary trial, to record the plea of the accused and his examination as required by Cl. (g) of S. 263, Cr. P. C. *Murat Singh v. Emperor.*

29 Cr. L. J. 265 (a) :
107 I. C. 592 : 26 A. L. J. 109 :
A. I. R. 1928 All. 266.

———S. 263—*Scope.*

In summary proceedings a certain expedition is intended and indeed is most desirable. But the summary procedure laid down in the Cr. P. C., must not be made yet more summary. *Choithram Menghraj v. Emperor.*

39 Cr. L. J. 474 :
174 I. C. 685 : 10 R. S. 259 : 32 S. L. R. 684 :
A. I. R. 1938 Sind 70.

———S. 263—*Scope.*

While S. 263 dispenses with the formality of recording evidence, it does not dispense with the necessity of hearing evidence or of following the procedure set out in Chap. XXII, Cr. P. C., for summary trials. Nor does it dispense with the necessity of complying with the provisions of S. 342, the examination of the accused after the case for the prosecution is closed. *Choithram Menghraj v. Emperor.*

39 Cr. L. J. 474 :
174 I. C. 685 : 10 R. S. 259 : 32 S. L. R. 684 :
A. I. R. 1938 Sind 70.

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———S. 263—*Scope.*

S. 263, Cr. P. C., lays down the minimum requirements of the law. *Choithram Menghraj v. Emperor.*

39 Cr. L. J. 474 :
174 I. C. 685 : 10 R. S. 259 : 32 S. L. R. 684 :
A. I. R. 1938 Sind 70.

———S. 263—*Scope.*

S. 263 merely relieves the Court of the burden of recording evidence. *Choithram Menghraj v. Emperor.*

39 Cr. L. J. 474 :
174 I. C. 685 : 10 R. S. 259 : 32 S. L. R. 684 :
A. I. R. 1938 Sind 70.

———S. 263—*Scope—Summary trial of appealable case—Charge not framed—Conviction, legality of.*

S. 263, Cr. P. C. is restricted in its application to cases in which no appeal lies and exempts a Magistrate from framing a charge in such cases. But in a case tried summarily in which the sentence passed is appealable, there is no such exemption. *Natabar Khan v. Emperor.*

25 Cr. L. J. 1270 :
82 I. C. 278 : 27 C. W. N. 923 ;
A. I. R. 1924 Cal. 63.

———S. 263—*Scope.*

The provisions of these sections are not controlled by S. 355. *Mantoo Tewari v. Emperor.*

28 Cr. L. J. 97 :
99 I. C. 225 : 49 All. 261 : 25 A. L. J. 140 :
A. I. R. 1927 All. 124.

———S. 263 (f)—*Summary trial—Offence of receiving stolen property—Value.*

A Magistrate ought to comply with the requirements of Cl. (f) of S. 263. But where he has the first information report, etc., in the case before him, it is impossible to assume that there is a real defect of jurisdiction by reason of the property alleged to have been stolen exceeding Rs. 50 in value, and the mere failure to enter the value in the form does not suffice to raise any question of possible or probable prejudice or failure of justice, the governing factor in S. 537, Cr. P. C. *Mohsin v. Emperor.*

41 Cr. L. J. 283 :
186 I. C. 312 : 6 B. R. 337 : 12 R. P. 503 :
A. I. R. 1940 Pat. 272.

———S. 263—*Summary trial—Record, contents of.*

S. 263, Cr. P. C. requires that the Magistrate's record under that section shall state the offence complained of and the offence, if any, proved, the plea of the accused and his examination, if any, the finding and in case of a conviction, a brief statement of the reasons therefor. These particulars should be specified in different columns of the register and should not be lumped together in one column. *Ghulam Mohammad v. Emperor.*

23 Cr. L. J. 161 :
65 I. C. 625.

———S. 263—*Summary trial—Record.*

If a Magistrate or Bench of Magistrates in summary trial elect to take notes or make a memorandum of the testimony of the witnesses, such notes or memoranda are not to

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be included either in the main file or in the process file of the record of the case. *Emperor v. Maung Po Saw*. 36 Cr. L. J. 892 :

156 I. C. 183 : 13 Rang. 225 :

7 R. Rang. 386 : A. I. R. 1935 Rang. 106.

—S. 263—Summary trial—Record.

If a Magistrate tries a case summarily he must at least take care to see that the record shows that the necessary ingredients of the offence are established. If the record is incomplete, the benefit of the doubt arising therefrom must go to the accused. *Bali Ram v. Emperor*. 32 Cr. L. J. 532 :

130 I. C. 425 : 32 P. L. R. 52 :

I. R. 1931 Lah. 297.

A. I. R. 1931 Lah. 33.

—S. 263—Summary trial—Record—Duty of Court.

In the case of a summary trial, the provisions of S. 263, Cr. P. C. must be fully and strictly complied with, in this sense, that the records must be sufficiently exact and sufficiently full to enable the Judges of the Revisional Court to say whether the law has been complied with or not on the points to be recorded. *Khosh Mahomed v. Emperor*. 3 Cr. L. J. 178 :

2 C. L. J. 565 : 10 C. W. N. 79.

—S. 263—Summary trial—Record.

Procedure should be fully complied with and record must be sufficiently exact and full to enable Revisional Court to know whether law has been complied with. *Abdul Rahman v. Emperor*. 35 Cr. L. J. 1464 :

151 I. C. 999 : 15 Lah. 277 :

36 P. L. R. 310 : 7 R. L. 234 :

A. I. R. 1934 Lah. 596.

—S. 263—Summary trial—Record.

Section 263 does not prevent a Magistrate who tries a case in a summary way from recording evidence; it merely says that he need not but if he does, it cannot, by reason of S. 264, form part of the record and the evidence so recorded does not come within the meaning of S. 350. *Emperor v. Hemandas Devan Singh*. 37 Cr. L. J. 455 :

161 I. C. 267 : 8 R. S. 134 :

A. I. R. 1936 Sind 40.

—S. 263—Summary trial—Record.

The Magistrate is not bound to make notes in any part of the record. *Mantoo Tewari v. Emperor*. 28 Cr. L. J. 97 :

99 I. C. 225 : 49 All. 261 : 25 A. L. J. 140 :

A. I. R. 1927 All. 124.

—S. 263—Summary trial—Record—Duty of Court.

The three things required under S. 263, Cr. P. C. to be recorded, namely, the offence charged, the offence, if any, proved, and the reasons for convicting, must be recorded and recorded in such a way as to enable the Court of Revision to say, aye or no, from within the four corners of the record itself, whether the offence charged is an offence in point of law, whether the offence proved is an offence in point of law, and whether the reasons for

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the conviction are good and sufficient reasons. *Khosh Mahomed v. Empress*. 3 Cr. L. J. 178 : 2 C. L. J. 565 : 10 C. W. N. 79.

—S. 263—Summary trial—Record—Duty of Court.

When the offence charged is one under S. 29, Act V of 1861, and the case is tried summarily, it is not sufficient to state that it consisted in absence from special constables' parade on certain dates without permission and that the accused is guilty of wilful neglect of duty in absence from the parade, but it is necessary to state the act consisted of a breach of duty lawfully imposed and to specify, how the duty was created and in what act or omission, the breach consisted. *Khosh Mahomed v. Emperor*. 3 Cr. L. J. 178 :

2 C. L. J. 565 : 10 C. W. N. 79.

—S. 263—Summary trial—When competent.

Held, that, as a complainant's allegation was that the accused had abused him and whipped him with a carriage whip and the Magistrate had power, under S. 446, Cr. P. C. to sentence any European British subject to imprisonment which may extend to three months, and to a fine which may extend to Rs. 1,000, and as the offence complained of, even if committed, would certainly not have called for a sentence or sentences exceeding the above limits, the case was manifestly one for the adoption of the summary procedure and for disposal with despatch. *Naraynswamy v. A. Blake*. 3 Cr. L. J. 433 :

12 Bur. L. R. 59.

—S. 264.

See also (i) Cr. P. C., 1898, Ss. 260, 261, 263, 264.

—S. 264—Appellate Court, power of.

An Appellate Court, in order to test the substance of the evidence forming part of the judgment in a summary case under S. 264, Cr. P. C., cannot call for such material as may exist outside the record, such as notes of evidence taken by the trial Magistrate inasmuch as under S. 264 the judgment shall be the only record in such cases. *Nagoor Kanni v. Sithu Naick*. 28 Cr. L. J. 138 :

99 I. C. 346 : 52 M. L. J. 32 :

1927 M. W. N. 40 :

25 L. W. 43 : 38 M. L. T. 35 :

A. I. R. 1927 Mad. 298.

—S. 264—Applicability.

The accused claimed to be tried as a European British subject and there was no question as to his being such; consequently the Magistrate could only try him under Chap. 33 of the Code, and it must be taken that, as the Magistrate was, under S. 443, competent to try him, he did try him under that chapter: *Held*, that assuming that if the Magistrate convicted the accused, he would have sentenced him to at most a fine of some amount under Rs. 200, still the accused would have had an appeal under S. 408, for

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S. 416 enacts that S. 414, which prevents an appeal in such a case when the convicted person is not a European British subject, does not apply to a case in which sentence is passed under Chap. 33 on any European British subject: *Held*, also that under any view, the case was an appealable case and that S. 264 of the Code applied and that it was not complied with. *Narayanasamy v. A. Blake*.
3 Cr. L. J. 433 :
12 Bur. L. R. 59.

————S. 264 — Charge — Summary trial — Appealable case—Charge and notes of evidence, whether necessary.

In a case tried summarily by a Magistrate in which an appeal lies, a charge need not be framed and notes of the evidence of the witnesses need not be taken. Under S. 264, Cr. P. C., all that is necessary in such a case is a judgment embodying the substance of evidence and containing the particulars mentioned under S. 263. *Kallu Bari v. Emperor*.
26 Cr. L. J. 1334 :

89 I. C. 310 ; A. I. R. 1925 Oudh 722.

————S. 264—Judgment—Substance of evidence not fully recorded in judgment—Legality of conviction.

Under S. 264, Cr. P. C., a Magistrate is bound to record the substance of the evidence in such a manner that a superior Court acting in appeal or revision may be in a position to judge that there were sufficient materials before the Magistrate to support the conviction. But a judgment which contains the substance of the evidence sufficient to decide the case, cannot be held to be illegal merely because the evidence has not been summarised fully. *Jamna Prasad v. Emperor*.
30 Cr. L. J. 557 :

116 I. C. 57 : 6 O. W. N. 45 :

I. R. 1929 Oudh 297 :

A. I. R. 1929 Oudh 151.

————S. 264—Judgment, contents of.

Merely stating that the prosecution witnesses support the statement of the complainant, and that the defence evidence is very conflicting and cannot be believed, is not a sufficient compliance with the requirement of the law, and the conviction and sentence are liable to be set aside by the High Court in revision. *Salim v. Emperor*.
24 Cr. L. J. 484 :
72 I. C. 948.

————S. 264—Judgment, contents of—Omission to record substance of evidence in judgment—Effect.

Under S. 264, Cr. P. C., the Court is bound in a summary trial to record in its judgment the substance of the evidence adduced and omission to do so is not a mere irregularity within S. 537, Cr. P. C., *Nurudin Sheikh Adam v. Emperor*.
29 Cr. L. J. 1005 :

112 I. C. 221 : 30 Bom. L. R. 954 :

A. I. R. 1928 Bom. 433.

————S. 264—Judgment, contents of.

Where in a summary trial under S. 264,

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Cr. P. C., the Magistrate passes a sentence upon the accused which is appealable, the judgment ought to embody the substance of the evidence on both sides. *Salim v. Emperor*,
24 Cr. L. J. 484 :
72 I. C. 948 :

————S. 264—Record—Summary trial—Note of evidence, whether part of the record.

Under S. 264, Cr. P. C., the judgment is the one and the only record in cases which are tried summarily and in which appeal lies and the rough and incomplete notes of evidence taken by the Magistrate cannot and should not be transcribed and attached to the record. *Rahimnullah Ibrahim v. Emperor*.
26 Cr. L. J. 1026 :

87 I. C. 914 : A. I. R. 1925 Sind 284.

————S. 264 (1)—Substance of evidence.

Whether the substance of the evidence referred to in S. 264 (1) must be such a complete summary of the evidence as to afford material for appeal or merely a statement of the evidence which the Court thinks substantial is a matter that rests with the Court. *Subramania Maistry v. Nachiar Ammal*.
32 Cr. L. J. 689 (1) :

131 I. C. 174 (1) : 33 L. W. 311 :

1931 M. W. N. 118 :

I. R. 1931 Mad. 510 :

A. I. R. 1931 Mad. 233 (1).

————S. 265—Judgment—Omission to sign.

Under the new Cr. P. C., omission to sign a judgment duly is not a mere irregularity but an illegality which vitiates the order. *In re : Velivalli Brahmaiah*.
32 Cr. L. J. 430 :

129 I. C. 633 : 32 L. W. 280 :

1930 M. W. N. 787 :

59 M. L. J. 674 :

54 Mad. 252 : 60 M. L. J. 692 :

I. R. 1931 Mad. 297 :

A. I. R. 1930 Mad. 867.

————S. 265—Judgment—Signatures.

A judgment of a Bench of Magistrates has to be signed as required by law. The requirements of public policy necessitate the writing of the full name of the Magistrate that signs the judgment and the mere putting in of the initials is not a sufficient compliance with the mandatory provisions of S. 265, Cr. P. C. *In re : Velivalli Brahmaiah*.
32 Cr. L. J. 430 :

129 I. C. 633 : 32 L. W. 280 :

1930 M. W. N. 787 :

59 M. L. J. 674 :

54 Mad. 692 : I. R. 1931 Mad. 297 :

A. I. R. 1930 Mad. 867.

————S. 265 (2)—Judgment—Signatures.

Under S. 265, Cl. (2), Cr. P. C., in the trial of a criminal case by a Bench of Magistrates, if the record or judgment is prepared by a member of the Bench, and not by the Presiding Officer, it shall have to be signed by each member of the Bench taking part in the proceedings. But where the Presiding Officer himself prepares the record or judgment, it is not necessary that the

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other members of the Bench should sign it.
Sreeram Ramakottiah v. Chintalapudi Subba Rao.

29 Cr. L. J. 973 :
112 I. C. 61 : 28 L. W. 498 :
55 M. L. J. 576 :
1928 M. W. N. 785 : 52 Mad. 237 :
A. I. R. 1928 Mad. 1172.

S. 266.

See also (i) Cr. P. C., 1898, Ss. 202, 266.

(ii) Oudh Criminal Digest, paragraph 49.

S. 266—High Court—Judicial Commissioner—Whether High Court—Judge of that Court sitting in its Sessions jurisdiction, whether has power to direct special jury to be empanelled under Cl. (b), Proviso 3 to S. 276—Procedure to be followed in the matter—Judicial Commissioner's Court is Court of Session following procedure of High Court.

The Judicial Commissioner's Court is a High Court within the meaning of Proviso 3 to S. 276, Cr. P. C., and a Judge of that Court sitting in its Sessions Court jurisdiction has power to direct a special jury to be empanelled under Cl. (b) of that Proviso. In a matter which affects the summoning and empanelling of a jury, the procedure of a High Court should be followed by the Judicial Commissioner's Court exercising its original criminal jurisdiction. So far as the Judicial Commissioner's Court is concerned, Proviso 3 to S. 276, refers to that Court in the exercise of its original criminal jurisdiction, and S. 276 in S. 266 must be read as referring to the section itself and not to the Provisos. The Judicial Commissioner's Court is a Court of Session following the procedure of a High Court, such as the Bombay High Court, in criminal sessions. *Shevaram Jethanand Shivdasani v. Emperor.*

41 Cr. L. J. 28 :
184 I. C. 474 : 1940 Kar. 249 :
12 R. S. 107 : A. I. R. 1939 Sind 209.

S. 266—High Court—Judicial Commissioner—Whether High Court—Sessions trial by Judicial Commissioner—Appeal, whether lies.

An appeal lies from the decision of a Judge of the Court of the Judicial Commissioner of Sind, holding a Sessions trial where the Judge has accepted the finding of the Jury. For the purposes of appeal such trial continues to be a trial by a Sessions Court notwithstanding the amendment of S. 266. *Khudabux v. Emperor.*

26 Cr. L. J. 562 :
85 I. C. 706 : A. I. R. 1925 Sind 249.

S. 266—High Court—Judicial Commissioner—Whether High Court—Judge of Judicial Commissioner's Court sitting in Sessions—Power to refer to High Court.

The words "except in Ss. 376 and 307" in S. 266, Cr. P. C., do not extend the power of a Judge of the Court of the Judicial Commissioner of Sind to refer. On the contrary the provisions of S. 305 direct the Trial Judge, except under special circumstances, to give effect to the verdict of the Jury. *Emperor v. Mithoo.*

25 Cr. L. J. 428 :
77 I. C. 604 : A. I. R. 1925 Sind 34.

Cr. P. CODE (1898), S. 269**S. 269.**

See also (i) Cr. P. C., 1898, Ss. 227, 238.

S. 269 (3)—Appeal—Accused charged at "same trial" with offences some of which are triable by Jury and some by Judge—'At the same trial', meaning of—Appeal, whether lies—Sessions Judge, duty of—Charge, alteration in.

The word "same trial" in S. 269, Sub-s. (3), Cr. P. C., cannot be read as taking away the right of appeal given by S. 410. The section uses the words in a distributive sense. The word 'trial' in S. 269, Cr. P. C., has two meanings. In a case where a person is tried by a Jury and there is also another charge tried by the Judge, the right of appeal from the judgment of the Sessions Judge is retained in spite of the use of the words 'same trial' in that section. *Karrupa Gounden v. Emperor.*

18 Cr. L. J. 346 :
38 I. C. 730 : A. I. R. 1918 Mad. 821.

S. 269—Applicability—Offences of murder and conspiracy to murder—Joint trial.

Where in a case one accused was charged with conspiracy to murder, a charge triable by assessors and other accused were charged with murder, a charge triable by Jury and only two charges were framed, no accused being charged with more than one offence and a joint trial was held : *Held*, that S. 269 (3), Cr. P. C., did not apply to the case and the joint trial was erroneous. *Ram Gobinda Ghose v. Emperor.*

39 Cr. L. J. 625 :
175 I. C. 529 : 42 C. W. N. 781 :
10 R. C. 802 :
A. I. R. 1938 Cal. 364.

S. 269 (3)—Applicability.

The plain meaning of the language used in S. 269 (3), Cr. P. C., is that the procedure indicated in the section is applicable when the accused are charged with more than one offence, and when these offences are not all triable by Jury. *Ram Gobinda Ghose v. Emperor.*

39 Cr. L. J. 625 :
175 I. C. 529 : 42 C. W. N. 781 :
10 R. C. 802 :
A. I. R. 1938 Cal. 364.

S. 269—Interpretation.

The plain words of S. 269, Cr. P. C., are that any particular class of offences before a Court of Session may be directed to be tried by a jury. This implies that the offences must be before the Court of Session and cannot derogate from the power otherwise given to prescribe which offences should not come before that Court. *Emperor v. Prithivinath.*

39 Cr. L. J. 660 :
175 I. C. 935 : 20 N. L. J. 151 :
I. L. R. 1938 Nag. 248 :
11 R. N. 18 : A. I. R. 1938 Nag. 56.

S. 269 (3)—Scope—Joint trial.

In cases triable by a Judge with the aid of Jurors and of Assessors, respectively, a joint trial for different offences is not illegal under S. 269 (3). *In re : Sennimalai Goundan.*

16 Cr. L. J. 717 :
30 I. C. 1005 : 2 L. W. 933 :
A. I. R. 1916 Mad. 762.

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———S. 269—*Jury, trial by.*

Trial by Jury is more advantageous to the accused than one with assessors. *Emperor v. Lakshman Chanji Naragikar.*

32 Cr. L. J. 1147 :
134 I. C. 347 : 33 Bom. L. R. 675 :
55 Bom. 576 :
I. R. 1931 Bom. 459 :
A. I. R. 1931 Bom. 313.

———S. 269—*Meaning of words—"Trial shall be by Jury in any district", meaning of.*

In S. 269, Cr. P. C., the words "trial.....shall be by Jury in any district" mean that the trial shall be by Jury in any district when so ordered by a notification and not that trial shall be by Jury of offences 'committed' in any district. *Emperor v. Jumo.*

18 Cr. L. J. 51 :
37 I. C. 35 : 10 S. L. R. 54 :
A. I. R. 1917 Sind 42.

———S. 269 (1)—*Notification by Bengal Government—Anomaly resulting from, pointed out.*

Notifications under S. 269 (1), Cr. P. C., as now issued by the Bengal Government give rise to an anomaly, inasmuch as, whereas certain offences are made triable by Jury, a mere conspiracy to commit any of them is not made so triable. *Nural Amin v. Emperor.*

40 Cr. L. J. 667 :
182 I. C. 386 : I. L. R. 1939 Cal. 511 :
12 R. C. 51 : A. I. R. 1939 Cal. 335.

———S. 269—*Scope—Power of Local Government.*

S. 209 cannot be read with S. 29 so as to hold that the Local Government may direct that all or any class of offences not punishable with death shall be tried by Jury before the Sessions Court, and not by Magistrates invested with powers under S. 30. *Emperor v. Prithvinath.*

39 Cr. L. J. 660 :
175 I. C. 935 : 20 N. L. J. 151 :
I. L. R. 1938 Nag. 248 :
11 R. N. 18 : A. I. R. 1938 Nag. 56.

———S. 269—*Procedure—Joint trial of Jury and non-Jury cases—Assessors selected for the non-Jury case from out of the Jury—Illegality.*

Accused were charged under Ss. 147 and 395, Penal Code. Five gentlemen were selected to form a Jury to try the charge under S. 395. Two of these were chosen as assessors to help the Judge in the trial of the non-Jury case. The trial of the accused on the charges was joint. The Jury acquitted the accused of the charge under S. 395, Penal Code. The Judge, differing from the Jury, convicted them of rioting : *Held*, that the procedure adopted was illegal and that the Judge was bound to constitute all the members of the Jury as assessors for trying the non-Jury offence. *Panjari Pakeerappa v. Emperor.*

12 Cr. L. J. 239 :
10 I. C. 281 : 21 M. L. J. 520 :
10 M. L. T. 22.

———S. 269—*Procedure—Some offences triable by Jury—Some offences triable with the aid of*

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Jurors as assessors—All offences tried by Jury.

Where the accused persons were charged at the same trial with several offences of which some were triable by Jury and the rest with the aid of the Jurors as assessors, but the Judge charged the Jury on the case as a whole directing them to give a verdict on each of the charges, and not taking their opinions as assessors on the minor charges, which were not triable by Jury : *Held*, that the trial of all offences was trial by Jury. The law makes no distinction as to the procedure at the trial between a trial by Jury and one with the aid of assessors, except as to the summing up in the case of the former and the manner in which the verdict in the former and the opinions of the assessors in the latter are respectively taken. It is at this latter point that there is a departure of ways and if the accused, who is tried, does not intervene at that crucial point and get the procedure applicable to trials with the aid of assessors enforced, he cannot be heard to complain. *Mausing Bechar v. Emperor.*

10 Cr. L. J. 30 ;
2 I. C. 480 : 11 Bom. L. R. 350.

———S. 269—*Same trial.*

Accused charged with Ss. 302, 201, Penal Code (Act XLV of 1860)—Judge accepting jury's verdict on murder charge and acquitting accused—On charge under S. 201, Judge disagreeing and convicting : *Held*, his action was right. *Mhasku Malu Kudale v. Emperor.*

37 Cr. L. J. 26 :
158 I. C. 1090 : 37 Bom. L. R. 109 ;
8 R. B. 159 : A. I. R. 1935 Bom. 165.

———S. 269—*Transfer.*

The trial for an offence which would, in the ordinary course be by jury in a particular district, may be transferred to another district. Where it would be held with the aid of assessors only. *Emperor v. Hari.*

36 Cr. L. J. 1161 (2) :
157 I. C. 697 : 28 S. L. R. 397 :
A. I. R. 1935 Sind 145.

———S. 271.

See also (i) Cr. P. C., 1898, S. 537.
(ii) Evidence Act, S. 30.

———S. 271—*Charge—One charge against several accused, legality of.*

In a trial under S. 401, Penal Code, although a number of independent charge-sheets were originally filed, there is nothing objectionable if in the Sessions Court only one charge has been framed against all the accused, when all the accused are in fact members of a gang, for, all the members can be tried together for the offence of being members of the gang. It matters not how and when they were arrested. In such a case, the proof of the association of the accused outside British India for the purposes of committing crimes is not barred under S. 188, Cr. P. C., read with S. 4, Penal Code, for the Court is not concerned with the trial of a person for an offence committed outside British India, but with the fact that the accused committed offences outside British India, which affords

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evidence that the accused associated together for the purpose of committing crime. *Arunugam v. Emperor*.

40 Cr. L. J. 355 :
180 I. C. 431 : 1938 M. W. N. 595 :
48 L. W. 639 : 11 R. M. 700 :
A. I. R. 1938 Mad. 858.

—Ss. 271, 537—Charge, absence of, from record, effect of.

On the record of a trial by a Court of Session, there should be the charge, which under S. 271 has been read over and explained to the accused, and where this is not so, the record should contain an explanation of its absence. The fact that this is an omission covered by S. 537 of the Code is not a sufficient answer. *Jagdeo Parshad v. Emperor*.

21 Cr. L. J. 410 :
56 I. C. 58 : 18 A. L. J. 442 :
A. I. R. 1920 All. 72.

—S. 271—Commencement of trial.

The trial of an accused person in the Court of Session begins when he appears in the Court and after the Assessors or Jurors have been chosen. *Emperor v. Fitzmaurice*.

27 Cr. L. J. 421 :
93 I. C. 149 : 2 L. Cas. 21 :
6 Lah. 262 : A. I. R. 1926 Lah. 446.

—S. 271—Commencement of trial.

The trial commences with the arraignment of the accused, that is to say, when the charge is read out to the accused and is called upon to plead to it. *Emperor v. John Mc. Iver*. (F. B.)

37 Cr. L. J. 637 :
162 I. C. 592 (2) : 1936 M. W. N. 281 :
43 L. W. 548 : 70 M. L. J. 635 :
8 R. M. 1000 :
A. I. R. 1936 Mad. 353.

—S. 271—Plea of guilty—Accused's right to resile in enhancement of sentence proceedings.

An accused person, when called upon to show cause why his sentence should not be enhanced, has the right to show cause against his conviction even where he has been convicted on his own plea of guilty. *Superintendent and Remembrancer of Legal Affairs, Bengal v. Jnanendra Nath Ghose*.

30 Cr. L. J. 1038 :
119 I. C. 304 : 49 C. L. J. 432 :
33 C. W. N. 599 : I. R. 1929 Cal. 781 :
56 Cal. 1145 : A. I. R. 1929 Cal. 747.

—S. 271—Plea of guilty by one accused—Procedure.

When a plea of guilty is entered by one of several co-accused who are to be tried jointly, a Judge has, under S. 271, Cr. P. C., a discretion to decide either that the accused be convicted on such plea or that he should be put on his trial in spite of his plea of guilty. The proper procedure to follow in such cases is that if the Judge convicts the accused on his plea of guilty, he should be removed from the dock, in which case he can be called as a witness against the other accused; or the Judge should put it on record that he decides to put the accused

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on his trial in spite of his plea of guilty. *Kesho Singh v. Emperor*. 18 Cr. L. J. 742 :
40 I. C. 742 : 20 O. C. 136 :
A. I. R. 1917 Oudh 362.

—S. 271—Plea of guilty—Conviction—Discretion.

S. 271, Cr. P. C., though it directs that a plea of guilty shall be recorded, does not direct that the accused shall be convicted thereon, but only that he may be so convicted, that is to say, it is left to the discretion of the presiding Judge in each particular case to determine whether in spite of the plea it is or is not desirable to enter upon the evidence. *Laxmya Shiddappa v. Emperor*.

18 Cr. L. J. 699 :
40 I. C. 699 : 19 Bom. L. R. 356 :
A. I. R. 1917 Bom. 220.

—S. 271—Plea of guilty—Conviction.

If a Court is not absolutely satisfied that an accused, who pleads guilty when the charge is read to him, fully grasps the serious nature of his admission, his plea should be recorded but the Court should proceed to try him. *Emperor v. Woman Behni Bechar*.

3 Cr. L. J. 317.

—S. 271—Plea of guilty—Conviction.

Under S. 271 (2), Cr. P. C., it is not obligatory on the Court to convict an accused who pleads guilty. *Shanker v. Emperor*.

27 Cr. L. J. 449 :
93 I. C. 241 : 24 A. L. J. 318 :
A. I. R. 1926 All. 318.

—S. 271—Plea of guilty—Discretion of Court, nature of.

The expression "by the Court" in S. 271 and a "Court of Session" in S. 412 obviously mean the "Judge" only, who, in his discretion, may convict on the plea of guilty. Once he has exercised his discretion under S. 271 (2), no considerations can be adduced to show that that discretion was not properly exercised so as to affect the provisions of S. 412 by which the appeal is restricted to question of sentence only. *Shyama Charan v. Emperor*.

35 Cr. L. J. 1322 :
151 I. C. 393 : 7 R. P. 85 (2) :
A. I. R. 1934 Pat. 330.

—S. 271—Plea of guilty—Discretion of Court.

S. 271, Cr. P. C., does not direct that the accused shall be convicted where he pleads guilty but leaves it to the discretion of the Judge in each particular case to determine whether in spite of the plea, it is or is not desirable to enter upon the evidence. *Hasranddin Mohammed v. Emperor*.

30 Cr. L. J. 508 :
115 I. C. 582 : I. R. 1929 Cal. 406.
A. I. R. 1928 Cal. 775.

—S. 271—Plea of guilty in murder cases.

In case of murder it has long been the practice of the Allahbad High Court not to accept the plea of guilty. Murder is a mixed question of fact and law and unless the Court is perfectly satisfied that the accused knew exactly what

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was necessarily implied by his plea of guilty, the case should be tried. *Dalli v. Emperor*.

23 Cr. L. J. 286 :
66 I. C. 427 : 20 A. L. J. 326 :
A. I. R. 1922 All. 233 (1).

—————S. 271—*Plea of guilty in murder cases.*

In cases under S. 302, Penal Code, it is undesirable and not in accordance with the usual practice to accept a plea of guilty and bring the trial to an end thereon. *Hasaruddin Mohammad v. Emperor*.

30 Cr. L. J. 508 :
115 I. C. 582 : I. R. 1929 Cal. 406 :
A. I. R. 1928 Cal. 775.

—————S. 271—*Plea of guilty in offence punishable with death.*

It is not in accordance with the usual practice to accept a plea of guilty in a case where the natural sequence would be a sentence of death. *Laxmija Shiddappa v. Emperor*.

18 Cr. L. J. 699 :
40 I. C. 699 : 19 Bom. L. R. 356 :
A. I. R. 1917 Bom. 220.

—————S. 271—*Plea of guilty—Innate, trial of—Procedure—Guilty, plea of, not to be accepted in capital offences.*

The accused confessed having killed his wife, and pleaded guilty at his trial for committing the offence of murder. The Sessions Judge recorded briefly the evidence of two prosecution witnesses to determine whether the offence committed was or was not culpable homicide amounting to murder. He found that the offence was murder and sentenced the accused to transportation for life on the ground that the accused 'without being actually insane so as not to be aware of what he was doing, appears to be decidedly a man of weak intellect.' On appeal it was urged that the accused was insane or at any rate incapable of understanding the charge against him. The Chief Court set aside the conviction and ordered re-trial and enquiry under S. 465, Cr. P. C. *Pala Singh v. Emperor*.

3 Cr. L. J. 80 :
6 P. L. R. 584 : 54 P. R. Cr. 1905.

—————S. 271—*Plea of guilty—Murder case—Conviction.*

A conviction merely on a plea of guilty in a murder case is not illegal though in each case the circumstances must be examined to see whether the plea of guilty is one which should be acted on. *Manjoo v. Emperor*.

24 Cr. L. J. 570 :
73 I. C. 266 : A. I. R. 1923 Nag. 251.

—————S. 271—*Plea of guilty—Murder case.*

Under S. 271 if an accused person pleads guilty he may be convicted upon his own plea. But where the crime on the face of it appears to have been murder, the evidence should be taken. *Achar Singh v. Emperor*.

36 Cr. L. J. 324 :
153 I. C. 288 : 28 S. L. R. 327 :
7 R. S. 126 : A. I. R. 1934 Sind 204.

—————S. 271—*Plea of guilty—Murder, charge of.*

Murder is a mixed question of fact and law, and unless the Court is perfectly satisfied that a person on his trial on a charge of murder

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knew exactly what was necessarily implied by his plea of guilty, the case should be tried on evidence and the Court should come to a conclusion on the evidence as to the nature of the offence committed by the accused. *Lahori v. Emperor*.

26 Cr. L. J. 1316 :
89 I. C. 260 : 23 A. L. J. 587 :
A. I. R. 1925 All. 647.

—————S. 271—*Plea of guilty—Procedure.*

After plea of guilty, there is nothing in issue to be tried between the crown and the prisoner. When a person has pleaded guilty, he *ipso facto* ceases to be an accused person. *Muhammad Yusuf v. Emperor*.

32 Cr. L. J. 667 :
131 I. C. 142 : 35 C. W. N. 490 :
58 Cal. 1214 : A. I. R. 1931 Cal. 341.

—————S. 271—*Plea of guilty—Procedure.*

It is, however, not illegal for the Court to proceed with the trial of an accused who has pleaded guilty without previously placing upon record its reasons for doing so. *Kesho Singh v. Emperor*.

18 Cr. L. J. 742 :
40 I. C. 742 : 20 O. C. 136 :
A. I. R. 1917 Oudh 362.

—————S. 271—*Plea of guilty—Procedure.*

The trial of an accused does not necessarily come to an end as soon as he offers a plea of guilty and where a Judge does not convict on such a plea, the only other course open to him is to proceed with the trial of the accused. *Kesho Singh v. Emperor*.

18 Cr. L. J. 742 :
40 I. C. 742 : 20 O. C. 136 ;
A. I. R. 1917 Oudh 362.

—————S. 271—*Plea of guilty—Procedure.*

There is no implication that when an accused in the course of the trial withdraws his claim to be tried and pleads guilty, the Court is not entitled to record the plea and either accept it or continue the trial. *Shyama Charan Bharthuar v. Emperor*.

35 Cr. L. J. 1322 :
151 I. C. 393 : 7 R. P. 85 (2) :
A. I. R. 1934 Pat. 330.

—————S. 271—*Plea of guilty—Rambling statement—Duty of Court.*

In cases where an accused person when called upon to plead to a charge before a Court of Session, instead of pleading guilty, makes a long rambling statement more or less admitting guilt, it would be much safer if the Judge recorded a formal plea of "not guilty" and proceeded to try the case in the ordinary way, recording the evidence. *Emperor v. Deoki*.

7 Cr. L. J. 295 :
28 A. W. N. 54 : 5 A. L. J. 157.

—————S. 271—*Plea of guilty—Right of accused to resile from in revision for enhancement of sentence.*

Where an accused person has been convicted on his own plea of guilty, he is not entitled, on notice being issued to him, under S. 439 (2), Cr. P. C., for showing cause against enhancement of sentence, to go behind the plea of guilty as a confession of the facts charged or to withdraw his plea. *Superintendent and Re-*

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membraneer of Legal Affairs, Bengal v. Jhanendra Nath Ghose.

30 Cr. L. J. 1038 :
119 I. C. 304 : 49 C. L. J. 432 :
33 C. W. N. 599 : 1 R. 1929 Cal. 781 :
56 Cal. 1145 : A. I. R. 1929 Cal. 747.

—S. 271—Plea of guilty—Sentence.

Plea of guilty to cut short the trial and in the hope of lenient sentence is not a ground for departing from ordinary tariff of punishment for the offence. *Shyama Charan v. Emperor.*

35 Cr. L. J. 1322 :
151 I. C. 393 : 7 R. P. 85 (2) :
A. I. R. 1934 Pat. 330.

—S. 271—Plea of guilty—Trial.

When a Sessions Judge is of opinion that the accused's plea does not amount to a plea of guilty and the trial should therefore proceed, the trial ought to proceed in the usual way and the verdict of the Jury ought to be taken upon the evidence and not upon the Judge's view of the strength of the evidence. *Emperor v. Mahmud Ismail.*

1 Cr. L. J. 772 :
6 Bom. L. R. 671.

—S. 271—Plea of guilty, whether confession.

A plea of guilty under S. 271 (2) is not a confession such as is dealt with in the Evidence Act in respect of relevancy or irrelevancy. *Shyama Charan v. Emperor.*

35 Cr. L. J. 1322 :
151 I. C. 393 : 7 R. P. 85 (2) :
A. I. R. 1934 Pat. 330.

—S. 271—Plea of guilty—Use against co-accused.

If the Court does not convict an accused person on his plea of guilty, his trial does not terminate with his plea and, therefore, a confession by him may be taken into consideration under S. 30 of the Evidence Act as against any other person who had been jointly tried with him of the same offence. *Shanker v. Emperor.*

27 Cr. L. J. 449 :
93 I. C. 241 : 24 A. L. J. 318 :
A. I. R. 1926 All. 318.

—S. 271—Plea of guilty, use of, against co-accused.

Where the Court accepts the plea of guilty and convicts the accused on his plea of guilty, his confession should not be used as evidence against his co-accused because he ceases to be tried jointly along with them. *Shanker v. Emperor.*

27 Cr. L. J. 449 :
93 I. C. 241 : 24 A. L. J. 318 :
A. I. R. 1926 All. 318.

—Ss. 271, 272—Plea of guilty—Discretion of Court.

Court has discretion when accused pleads guilty to accept it or not. Where accused pleads guilty, the Court need not necessarily record a conviction against him. His plea shall be recorded, and in a suitable case, Court may leave the matter there and discharge him. He cannot then be tried. *Muhammad Yusuf v. Emperor.*

32 Cr. L. J. 667 :
131 I. C. 142 : 58 Cal. 1214 :
A. I. R. 1931 Cal. 341.

Cr. P. CODE (1898), S. 274**—S. 271—Procedure—Charge, reading of—Plea of guilty—Duty of Court.**

The Judge is bound to read and explain the charge to the accused and he ought to satisfy himself by interrogation of the accused, if necessary, that he fully understands the responsibility which he assumes in making a plea of guilty. Having done so, the Judge is then in a position to exercise properly the discretion which the law allows and to put upon record the reasons which guide his discretion. *Kesho Singh v. Emperor.*

18 Cr. L. J. 742 :
40 I. C. 742 : 20 O. C. 136 :
A. I. R. 1917 Oudh 362.

—S. 272.

See Cr. P. C., S. 272.

—S. 272—Scope—Simultaneous trials by same jury.

There is no provision for two cases being heard at the same time before the same Jurors. *Rajatulla Paikar v. Khudia Karigar.*

32 Cr. L. J. 1233 (1) :
135 I. C. 896 (a) : 54 C. L. J. 146 :
I. R. 1931 Cal. 896 (1) :
A. I. R. 1931 Cal. 709.

—S. 272—Proviso—Scope.

Under S. 272, there is no objection to the same Jury trying any number of accused one after the other, subject to the right of the accused to object. *Rajatullya Paikar v. Khudia Karigar.*

32 Cr. L. J. 1233 (1) :
134 I. C. 896 (a) : 54 C. L. J. 146 :
I. R. 1931 Cal. 896 (1) :
A. I. R. 1931 Cal. 709.

—S. 273.

See also (i) Cr. P. C., 1898, Ss. 215, 403.

—S. 274—Jury—Number of Jurors to be summoned and chosen.

The provision contained in S. 274, Cr. P. C. that where an accused person is charged with an offence punishable with death, the Jury shall consist of nine persons, if practicable, is not in any way less mandatory than the provision that it shall consist of not less than seven. The only difference is that the provision as to the nine persons only becomes operative on fulfilment of the condition that it is practicable to have that number : whereas the provision as to not less than seven persons is absolute in character. *Amir Khan v. Emperor.*

31 Cr. L. J. 425 :
122 I. C. 557 : 33 C. W. N. 1053 :
51 C. L. J. 574.

—S. 274—Jury, proper constitution of.

Where a Sessions Judge summoned 12 Jurors for the trial of an offence punishable with death, eight persons appeared in accordance with the summons, and seven were chosen from amongst them to act as the Jury : *Held*, that the Tribunal was not properly constituted in view of the provisions of Ss. 274 and 326 of

Cr. P. CODE (1898), S. 274

the Cr. P. C. and that the proceedings were illegal. *Serajul Islam v. Emperor*.

29 Cr. L. J. 927 :
111 I. C. 735 : 55 Cal. 794 :
A. I. R. 1928 Cal. 645.

—S. 274—Jury, proper constitution of.

Where in a charge for an offence under S. 302, Penal Code, fourteen persons were summoned, nine appeared and out of them seven were chosen to form the Jury : *Held*, that the Jury was not legally constituted and the trial was illegal. *Amir Khan v. Emperor*.

31 Cr. L. J. 425 :
122 I. C. 557 : 33 C. W. N. 1053 :
51 C. L. J. 574.

—S. 274—Number of jurors.

A trial held by a jury consisting of a larger number of men than that directed by the Local Government under S. 274 (2) is a nullity as not having been held by a properly constituted Tribunal. *Emperor v. George Booth*.

1 Cr. L. J. 43 :
24 A. W. N. 1 : I. L. R. 26 All. 211.

—S. 274—Number of jurors.

18 jurors summoned in murder case—8 present—7 selected and trial with their aid—Trial held valid. *Mukanda Murari Pal v. Emperor*.

36 Cr. L. J. 803 :
155 I. C. 599 : 61 Cal. 190 :
A. I. R. 1934 Cal. 10.

—S. 274—Number of jurors.

Eighteen jurors summoned—Only seven jurors present—Impracticability of obtaining full number—Trial with seven jurors, held valid. *Emperor v. Benett Pramanik*. (S.B.)

36 Cr. L. J. 944 :
156 I. C. 481 : 39 C. W. N. 954 :
468 I. C. 900 : 62 Cal. 900 :
A. I. R. 1935 Cal. 407.

—S. 374—Number of jurors.

If the judge proceeds with seven jurors, it must be assumed in the absence of anything on the record to satisfy the Appeal Court that it was practicable to have more than seven jurors, that S. 274 had been complied with. *Alsbar v. Emperor*.

41 Cr. L. J. 871 :
190 I. C. 233 : 1940 M. W. N. 1112 :
52 L. W. 662 : 7 B. R. 118 :
1940 A. L. J. 778 :

13 R. P. C. 83 P. C. : A. I. R. 1940 P. C. 176.

—S. 274—Number of jurors.

In a murder case where the number of jurors summoned is fourteen, nine of whom appear and are chosen by lot, the trial is not bad by reason of the fact that only 14 jurors have been summoned in contravention of the provisions of Ss. 274 and 326, Cr. P. C. *Emperor v. Erman Ali*. (F.B.)

31 Cr. L. J. 536 :
123 I. C. 664 : 34 C. W. N. 296 :
54 C. L. J. 171 : A. I. R. 1930 Cal. 212.

—S. 274—Number of jurors.

In a trial for murder, it is the duty of the judge to consider whether it is practicable to have nine jurors, and as the objection touches

Cr. P. CODE (1898), S. 275

the very constitution of the Court, the onus is not upon the accused to show that the Court did not consider the practicability of having nine jurors. *Sheheb Ali v. Emperor*.

33 Cr. L. J. 129 :
135 I. C. 435 : 58 Cal. 1272 :
35 C. W. N. 711 : 54 C. L. J. 307 :
I. R. 1932 Cal. 115 : A. I. R. 1931 Cal. 793.

—S. 274—Number of jurors.

No complaint by accused as to insufficiency of jurors—Objection by prosecution as to the number of mode of selection of jurors cannot be allowed at end of trial. *Superintendent and Remembrancer of Legal Affairs, Bengal v. Ajit Munshi*.

33 Cr. L. J. 869 :
140 I. C. 18 : I. R. 1932 Cal. 683 :
A. I. R. 1932 Cal. 750 (2).

—S. 274—Number of jury.

Where it cannot be said that it is not practicable to empanel a jury of nine as required by S. 274, Cr. P. C., and there is a breach of this statutory provision, the jury is illegally constituted and the conviction is illegal. *Dwarika Malo v. Emperor*.

31 Cr. L. J. 377 :
122 I. C. 219 : 33 C. W. N. 692 :
56 Cal. 1154 : A. I. R. 1930 Cal. 60.

—S. 275.

See Cr. P. C., 1898, S. 528-A.

—S. 275—European—Proof.

‘European’ must satisfy that he is a European British-subject. *Guthrie v. Emperor*.

35 Cr. L. J. 827 :
148 I. C. 933 : 15 P. L. T. 82 :
13 Pat. 177 : A. I. R. 1934 Pat. 200.

—S. 275—European, what is.

Quaere—Whether every European British-subject is European within S. 275. *Guthrie v. Emperor*.

35 Cr. L. J. 827 :
148 I. C. 933 : 15 P. L. T. 82 :
13 Pat. 177 : A. I. R. 1934 Pat. 200.

—S. 275—Jury trial—Claim by accused—Duty of Magistrate.

When an accused person claims that he should be tried under Ch. XXXIII, Cr. P. C., the duty of the Magistrate inquiring into or trying the case is to satisfy himself that the complainant and the accused person are respectively European and Indian British subjects, or *vice versa* and that in view of such status of the accused and the complainant, respectively, it is expedient in the interests of justice that the case should be tried under the provisions of that Chapter. When the Magistrate is so satisfied, the trial must take place under the provisions of S. 446 of the Code, i. e., the accused must be tried by a Jury, the majority of whom shall, if the accused so requires, be of the category within which the accused himself comes. But when the trial before the Court of Sessions would, in the ordinary course, be with the aid of Assessors, the accused has the right under Proviso to S. 446 of the Code to be tried with the aid of Assessors all of whom shall be Europeans or Americans

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———**S. 244—Scope—Non-examination of complainant—Effect of.**

The non-examination of a complainant under S. 244, Cr. P. C., in a summons case does not vitiate the whole of the proceedings, as that section merely enjoins that he shall be heard and does not say that he is to be examined, and S. 247 of the Code would not apply because it does not deal with the examination of the complainant but with his appearance. *Amir Mia v. Sarafdi Hazi*. 21 Cr. L. J. 252 : 55 I. C. 204 : 24 C. W. N. 199 : A. I. R. 1920 Cal. 68.

———**S. 244—Stay of criminal proceedings—Charge of criminal misappropriation—Declaratory suit by accused—Stay of criminal proceedings.**

A person against whom criminal proceedings are instituted cannot claim as a matter of course that such proceedings shall be stayed pending the result of civil proceedings; in each case discretion must be exercised and the particular circumstances of the case duly considered. Where, therefore, the petitioner was on the 3rd October charged with criminal misappropriation in respect of a necklace and on the 4th filed a civil suit for a declaration that the necklace belonged to him making all other claimants defendants, and on the 7th, applied for postponement of the criminal proceedings: *Held*, that as the civil suit had been instituted without any unnecessary delay, and as all the claimants to the property had been made defendants in the suit, the petitioner was entitled to the relief claimed and the criminal proceedings should be stayed. *Nir Din v. Emperor*. 17 Cr. L. J. 205 : 34 I. C. 317 : 8 P. W. R. 1916 Cr. : A. I. R. 1916 Lah. 137.

———**S. 244—Summoning of witnesses.**

S. 244 does not give any discretionary power in summons cases to refuse to compel the attendance of a witness on whom the Court has already issued process. *Ajab Lal Rai v. Bhagawan Sahn*. 34 Cr. L. J. 1203 : 146 I. C. 54 : 14 P. L. T. 453 : 6 R. P. 232 : A. I. R. 1933 Pat. 494.

———**S. 244—Summoning of witnesses—Duty of Court.**

No doubt, under S. 244, Cr. P. C., the Magistrate has the discretion to refuse to summon defence witnesses, but an application made by the accused for summoning his witnesses cannot be completely ignored. Although in failing to consider the application, the Magistrate acts incorrectly, it is not an illegality. *Vidya Parkash v. Emperor*. 41 Cr. L. J. 340 : 186 I. C. 575 : 41 P. L. R. 804 : 12 R. L. 422 : A. I. R. 1940 Lah. 58.

———**S. 244 (2)—Summoning witness—Witness, refusal of, to appear—Magistrate, power of, to compel attendance.**

Under Sub-s. (2) of S. 244, Cr. P. C., the Court cannot compel a witness to appear before it, if the witness refuses to appear. In such a case, the witness may be liable for

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disobedience of the summons but a complainant or accused is not entitled to ask the Court, as a matter of right to compel attendance of a witness, who does not care to attend in obedience to a summons. A Magistrate, therefore, is not bound to re-issue the summons in such a case. It is in his discretion to issue a fresh summons if he likes, but the Code does not compel him to do so. *Selvamuthu v. Chin-nappan Chettiar*. 27 Cr. L. J. 76 : 91 I. C. 252 : A. I. R. 1926 Mad. 361.

———**S. 244 (2)—Summoning of witnesses—Discretion of Court.**

Under S. 244 (2), Cr. P. C., a Magistrate is under no obligation to issue process in a summons case to compel the attendance of a witness on the application of either side. *Jhabbu v. Emperor*. 21 Cr. L. J. 385 (b) : 55 I. C. 993 : A. I. R. 1920 Lah. 330.

———**S. 245.**

See Conviction.

———**S. 245—Acquittal.**

Acquittal without examining complainant or his witnesses is not legal. *Emperor v. Varadarajulu Naidu*. 33 Cr. L. J. 274 (1) : 136 I. C. 314 (2) : 1931 M. W. N. 1050 : 35 L. W. 140 : I. R. 1932 Mad. 282 (2) : A. I. R. 1932 Mad. 25 (2).

———**S. 245—Acquittal—Revision.**

A criminal revision against an order of acquittal is not generally entertained but it may be entertained at the instance of one towards whom the accused acted most arbitrarily and in a most high-handed manner. *Sabapathi Mudali v. Kuppusami Mudali*. 2 Cr. L. J. 382 : 15 M. L. J. 225.

———**Ss. 245, 253, 437—Acquittal—Summons case tried as Warrant-Case—Discharge of accused, effect of.**

If a Magistrate trying a Summons case, whatever procedure he adopts, finds no case made out against the accused, and lets him go unconditionally, he acquits him, though he styles his order an order of discharge and takes on to it the number of some section of the Code which deals with discharges. Under such circumstances, the Sessions Judge has no power to take action under S. 437, Cr. P. C., on the Magistrate's order. *Sessions Judge of Tinnevely v. Venkatarama Aiyar*. 11 Cr. L. J. 353 : 61 C. 385.

———**S. 245 (2)—Enhancement of sentence.**

The High Court will enhance the sentence only where the punishment appears to be so grossly and entirely inadequate as to involve failure of justice. *Emperor v. Kalla*. 35 Cr. L. J. 760 : 148 I. C. 884 (1) : 16 N. L. J. 194 : 6 R. N. 222 (1) : A. I. R. 1934 Nag. 117 (1).

———**S. 246.**

See Conviction.

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or Indians according to the category within which the accused comes. *Bray v. Emperor*.

26 Cr. L. J. 540 :
85 I. C. 380 : 5 Lah. 515 :
A. I. R. 1925 Lah. 236.

-----S. 275—Jury trial—Right, when to be claimed.

To enable an accused person who is an Indian British-subject to claim to be tried by a Jury consisting of majority of his countrymen, it is a condition precedent that he should have claimed that right before the Committing Magistrate who is then to enquire into the matter and give his finding thereon, which, if adverse to the accused, may be challenged in subsequent proceedings. An accused person is debarred from setting up such a plea for the first time at any subsequent stage. *Emperor v. Soomar Abdulla*.

29 Cr. L. J. 721 :
110 I. C. 577 : 22 S. L. R. 472 :
A. I. R. 1929 Sind 23.

-----S. 275—Nationality of jurors.

Persons tried under Ch. 33—Only two out of five persons Europeans—Conviction be set aside. *Guthrie v. Emperor*.

35 Cr. L. J. 847 :
148 I. C. 933 : 13 Pat. 177 :
15 P. L. T. 82 : A. I. R. 1934 Pat. 200.

-----S. 275—Scope.

Merely because an accused person is tried in accordance with the provisions of S. 275, it does not follow that the accused was tried under Chap. XXXIII. H. IV. *Scott v. Emperor*.

36 Cr. L. J. 595 :
13 Rang. 104 : 7 R. Rang. 318 :
154 I. C. 837 : A. I. R. 1935 Rang. 67.

-----S. 276.

See Cr. P. C., 1898, S. 274.

-----S. 276—Attendance of jury—Duty of Court.

There is no provision in the Code by which the Court is to ascertain beforehand how many of the persons summoned to serve as jurors have attended. *Lala v. Emperor*.

35 Cr. L. J. 668 :
148 I. C. 339 : 1933 A. L. J. 1446 :
56 All. 210 : 6 R. A. 683 :
A. I. R. 1933 All. 941.

-----S. 276—Chosen—Meaning of.

“Chosen” in proviso 2 to S. 276 only means “selected.” *Lala v. Emperor*.

35 Cr. L. J. 668 :
148 I. C. 339 : 1933 A. L. J. 1446 :
56 All. 210 : 6 R. A. 683 :
A. I. R. 1933 All. 941.

-----S. 276—Constitution of “chosen” in Provisos 3 and 4 to S. 276, meaning of.

In the absence of words in the context to the contrary, “chosen” in Proviso 3 and also in Proviso 4 to S. 276, Cr. P. C., must mean chosen by lot, as in the subst-

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active part of the section. *Shewaram Jethanand Shivdasani v. Emperor*.

41 Cr. L. J. 28 :
184 I. C. 474 : 1940 Kar. 249 :
12 R. S. 107 : A. I. R. 1939 Sind 209.

-----S. 276—Construction of.

The first part of S. 276, Cr. P. C., which provides that the Jury shall be chosen by lot is mandatory and governs the second portion, and the second portion of the section cannot be construed so as to whittle down the plain meaning of the first part. *Akbar Ali v. Emperor*.

28 Cr. L. J. 881 :
104 I. C. 897 : 8 P. L. T. 800 :
7 Pat. 61 : A. I. R. 1928 Pat. 1.

-----S. 276—Jurors, choosing of—Common and special juries—Procedure.

Both the substantive part of S. 276 and Proviso 2 to that section govern both common and special juries, and proceedings in High Courts and Sessions Courts. When the trial of the case has not been begun, S. 276, Proviso 2, would apply. A juror can only be chosen from the persons present. Persons even qualified cannot be called from outside the precincts of the Court. Ss. 276 and 279 contemplate that the choosing of the jury shall be a continuous process at the beginning of the trial, and from the persons summoned to appear and present in Court at the commencement of the proceedings. A deficiency is only apparent after the names of all those summoned and present have been exhausted by the chances of the lottery and challenge and Ss. 276 and 279 do not contemplate that a deficiency shall be recognized and then obviated by the summoning of fresh jurors, so that the jury can be summoned and chosen in three instalments. It is the actual presence of the potential juror in the Court which is the condition of his eligibility. That is the safeguard that even in this case there shall be an element of chance which is present in the choosing by lot of the other jurors. The fact then that the person subsequently summoned may be on the special jury list is no substitute for the fact that he was not present. *Shewaram Jethanand Shivdasani v. Emperor*.

41 Cr. L. J. 28 :
184 I. C. 474 : 1940 Kar. 249 :
12 R. S. 107 : A. I. R. 1939 Sind 209.

-----S. 276—Jurors, choosing of—Deficiency, meaning of.

The word ‘deficiency in S. 276 (2) refers to the deficiency in the number by which the number of persons answering their names and empannelled falls short of the number of persons of which the Jury should consist. The practice followed in the Mofussil Courts of ascertaining beforehand how many of the persons summoned to serve as Jurors have attended and of thus determining the deficiency to be supplied is erroneous. *Kidar Nath Mahato v. Emperor*.

29 Cr. L. J. 437 :
108 I. C. 577 : 47 C. L. J. 43 :
32 C. W. N. 221 : I. L. T. 40 Cal 1 :
55 Cal. 371 : A. I. R. 1928 Cal. 83.

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—S. 276—*Jurors, choosing of—Irregularity, effect of.*

In a Sessions trial before a Judge of the Judicial Commissioner's Court, sitting in its Sessions Court jurisdiction, in the first instance, thirty persons were called to serve as jurors from the special jury list prepared in accordance with Ss. 313 and 314, Cr. P. C. and of these eleven were unserved and nineteen were present in Court. After the parties had exercised their right of challenge under S. 277, only eight jurors out of the nine required under S. 274 (1) had been secured. The Judge directed the Clerk of the Crown in accordance with the rules framed by the Court, to issue fresh summonses and two more persons were summoned. Of these one S arrived and was chosen. He was not chosen by lot, and then one juror, R. already chosen, asked, on the ground of urgent business, to be excused, and he was allowed to go and S took his place. Still one juror was wanted and then the Clerk of the Crown ordered summonses on four other persons from the special jury list to be issued and out of those four persons summoned two appeared. Of these two, one M was chosen by lot: *Held*, that there were irregularities in empanelling the jury and the trial was vitiated as the jury was not properly constituted. There was an irregularity when S was chosen as one juror when he appeared in answer to a summons because he was not chosen by lot or from among the persons summoned before a deficiency appeared, nor could he be deemed to have been added to the jury in place of R under the provisions of S. 282. There was also an irregularity in choosing the last juror. So far as R. 18 of the Rules of the Judicial Commissioner's Court authorized the procedure followed by the Judge, it was *ultra vires*. *Shewaram Jethanand Shivdasani v. Emperor.*

41 Cr. L. J. 28 :

184 I. C. 474 : 1940 Kar. 249 :

12 R. S. 107 : A. I. R. 1939 Sind 209.

—S. 276—*Jurors, choosing of—Irregularity, effect of.*

Where, of the Jurors summoned, nine were present and out of them three were discharged and six were elected to sit and another person whose name was on the special Jurors' list was requisitioned from a local school to sit as the seventh: *Held*, that the procedure followed was entirely unauthorised and the trial was illegal. *Abidali Fakir v. Emperor.*

31 Cr. L. J. 281 :

121 I. C. 569 : 33 C. W. N. 722 :

56 Cal. 835 : A. I. R. 1929 Cal 728.

—S. 276—*Jurors, choosing of—Jurors not chosen by lot, effect of—illegality.*

S. 276, requires that the Jurors must be chosen by lot where, therefore, out of the Jurors summoned only as many attend as are necessary to form the quorum under the section, the proper course for the Judge to follow is to choose some other persons who are present as Jurors, to add their names to those of the Jurors who have attended and from the whole body to choose the necessary quorum by lot to act as the Jury in the case. Where out of twelve Jurors summoned in a case only five

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attended and those were empanelled and the Court proceeded to hear and decide the case: *Held*, that the provisions of S. 276 were not complied with and that the trial was vitiated irrespective of the fact whether any prejudice had or had not been caused to the accused. *Bhola Nath Hazra v. Emperor.*

28 Cr. L. J. 194 (a) :

99 I. C. 930 : 44 C. L. J. 541 :

A. I. R. 1927 Cal. 242.

—S. 276—*Jurors, choosing of—Number not sufficient to form Jury—Selection by lot, whether necessary—'Deficiency', 'number of Jurors required', 'chosen', meanings of.*

The provision of choosing Juror by lot is applicable only when the person summoned to act as Juror are present in such number as to make it possible to choose them by lot, and when such number is not present, the number of Jurors required may be chosen from such persons as may be present in Court. *Rahamat Sheikh v. Emperor.*

28 Cr. L. J. 615 :

102 I. C. 903 : 31 C. W. N. 711 : 54 Cal. 1026 :

A. I. R. 1927 Cal. 593.

—S. 276—*Jurors, choosing of.*

S. 276, Cr. P. C. provides, in the first instance, for a ballot among the persons summoned under S. 326, all of whom may or may not be present. When their names have been exhausted, if a Jury has not yet been empanelled, the Court may, in its discretion, allow the number requisite to complete the Jury to be chosen from among the by-standers or may adjourn the case for a fresh Jury to be summoned. As each name is drawn and called aloud, if the person summoned answers, or as each Juror is chosen from among the by-standers, should that point have been reached, and that course be permitted, the accused shall be asked if he objects to be tried by such Juror. Should the objection be allowed, the Court should proceed as laid down in S. 279 (2) adopting the course prescribed according as there are or are not persons left from among those summoned whose names have not been drawn. *Kedar Nath Mahato v. Emperor.*

29 Cr. L. J. 437 :

108 I. C. 577 : 47 C. L. J. 43 : 32 C. W. N. 221 :

I. L. T. 40 Cal. 1 : 55 Cal. 371 :

A. I. R. 1928 Cal. 83.

—S. 276—*Jurors—Deficiency in—Persons not present in Court asked to come to Court and chosen as Jurors—Legality of trial.*

Persons who are not present in Court cannot be asked to come to the Court for the purpose of being called to serve as Jurors and then chosen to serve as Jurors. Four out of 10 persons summoned as Jurors attended Court. Two out of the four were objected to. The Judge thereupon, asked certain persons who were not present in Court to come to Court for the purpose of being called to serve as Jurors and chose them as Jurors: *Held*, that the trial was illegal as the Jury was not empanelled in accordance with law. *Sadarat Sheikh v. Emperor.*

30 Cr. L. J. 136 :

113 I. C. 328 : 48 C. L. J. 479 :

I. R. 1929 Cal. 125.

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S. 276—Jurors.

Deficiency in jurors—Procedure provided for making up deficiency applies to special jurors. *Manir Sheikh v. Emperor*. 34 Cr. L. J. 1098 : 145 I. C. 889 : 60 Cal. 725 : 6 R. C. 163 : A. I. R. 1933 Cal. 638.

S. 276, pro. (2)—Jurors, meaning of. *Empanelling of Jury*.

The word "jurors" in proviso 2 to S. 276, Cr. P. C., is a general term meaning both special and common jurors and S. 276 and the following Ss. 277, 278 and 279 must be read together as prescribing the procedure of empanelling jurors. *Saheb Ali v. Emperor*.

33 Cr. L. J. 129 :
135 I. C. 435 : 58 Cal. 1272 : 35 C. W. N. 711 :
54 C. L. J. 307 : I. R. 1932 Cal. 115 :
A. I. R. 1931 Cal. 793.

S. 276—Jurors, selection of—"Chosen," meaning of.

The word 'chosen' in the said proviso means 'chosen by lot', and a deficiency of persons summoned to attend as Jurors cannot be supplemented otherwise than by lottery from those persons present in Court. *Rosonali v. Emperor*.

28 Cr. L. J. 889 :
104 I. C. 905 : 46 C. L. J. 160 :
31 C. W. N. 1102 : A. I. R. 1927 Cal. 787.

S. 276—Jurors, selection of—Deficiency how to be made up.

There is nothing in S. 276, Cr. P. C. which requires that in case of a deficiency in the number of persons summoned to serve as Jurors, the deficient Jurors should be chosen by lot or from among persons who are on the Jury list. *Government of Bengal v. Muchu Khan*.

26 Cr. L. J. 819 :
86 I. C. 467 : 29 C. W. N. 652 :
A. I. R. 1925 Cal. 798.

S. 276—Jurors, selection of—Requisition of persons not present in Court, legality of.

In empanelling a Jury, selection has to be made from Jurors attending in obedience to summons and chosen in the manner provided by S. 276, Cr. P. C. or if there is no such other Juror present then any other person present in the Court, whose name is on the list of Jurors or whom the Court considers a proper person to serve on the Jury may be selected. There is no provision for requisition of Jurors from the persons not present in Court. *Abidali Fakir v. Emperor*.

31 Cr. L. J. 281
121 I. C. 569 : 33 C. W. N. 722 : 56 Cal. 835 :
A. I. R. 1929 Cal. 728.

S. 276—Jury, constitution of—Guiding principle.

The guiding principle underlying the sections of the Cr. P. C. relating to the constitution of a Jury is to secure an impartial trial by rendering impossible any intentional selection of Jurors to try a particular case, and an accused person has a right to claim to be tried by a Jury chosen with strict regard to all the safeguards provided in the Code to secure perfect impartiality. *Rosonali v. Emperor*.

28 Cr. L. J. 889 :
104 I. C. 905 : 46 C. L. J. 160 :
31 C. W. N. 1102 : A. I. R. 1927 Cal. 787.

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S. 276—Jury—Deficiency in number—Procedure.

In the case of a deficiency in the required number of Jurors, the Court may under proviso (2) of S. 276, Cr. P. C., empanel other persons present in the Court to fill up the vacancy; but it has no power to send for persons who are not present in Court to fill up the vacancy. *Muhammad Sagiruddin v. Emperor*.

30 Cr. L. J. 120 :
113 I. C. 280 : I. R. 1929 Cal. 123 :
A. I. R. 1928 Cal. 551.

S. 276—Jury not constituted by lot—Conviction, illegal.

Jurors are judges of fact, and in the absence of a properly constituted jury, conviction is illegal. A violation of the imperative procedure laid down in S. 276, Cr. P. C. is such as cannot be cured by the provisions of S. 537. *Bradshaw v. Emperor*.

12 Cr. L. J. 46 (b) :
9 I. C. 278 : 8 A. L. J. 182 : 33 All. 385.

S. 276—Jury, proper constitution of.

Where five persons are required to constitute a Jury and the choice is made from five persons only, there cannot be, under any circumstances, a choice by lot. *Akbar Ali v. Emperor*.

28 Cr. L. J. 881 :
104 I. C. 897 : 8 P. L. T. 800 : 7 Pat. 61 :
A. I. R. 1928 Pat. 1.

S. 276—Jury, proper constitution of.

Where only five Jurors were present in Court though ten were summoned and the Court chose those five persons by drawing the lot from the names of the Jurors summoned including those Jurors who were absent, and these five Jurors constituted the Jury without any objection by the accused: *Held*, that there was no irregularity in the constitution of the Jury, that even if there was an irregularity, it was cured by S. 537, Cr. P. C. *Akbar Ali v. Emperor*.

28 Cr. L. J. 881 :
104 I. C. 897 : 8 P. L. T. 800 : 7 Pat. 61 :
A. I. R. 1928 Pat. 1.

S. 276—Jury, proper constitution of.

Where, out of the Jurors summoned, only the requisite number appear and they constitute the Jury, the Jury is not properly constituted inasmuch as Jurors must be selected by lot under the provision of S. 276, Cr. P. C. *Tajali Mian v. Emperor*.

28 Cr. L. J. 843 :
104 I. C. 459 : 9 P. L. T. 57 :
I. L. T. 40 Pat. 50 : 7 Pat. 50 :
A. I. R. 1928 Pat. 31.

S. 276—Empanelling of jury—Meaning of words—"Deficiency" and "chosen", meanings of.

The words 'deficiency' and the 'number of Jurors required' in the second proviso to S. 276, Cr. P. C., mean deficiency in the number of Jurors required to make up the Jury and not to make up a sufficient number for purpose of selection by lot and the word 'chosen' in the same proviso does

Cr. P. CODE (1898), S. 278

not mean chosen for purposes of a lottery but chosen to sit. *Rahamat Sheikh v. Emperor.*

28 Cr. L. J. 615 :

102 I. C. 903 : 31 C. W. N. 711 :

54 Cal. 1026 : A. I. R. 1927 Cal. 593.

————S. 276—*Meaning of words—Deficiency, meaning of.*

The deficiency referred to in S. 276 refers to the number required to form the quorum and the number of jurors required, means the number required to make up the quorum. *Lala v. Emperor.*

35 Cr. L. J. 668 :

148 I. C. 339 : 1933 A. L. J. 1446 :

56 All. 210 : 6 R. A. 683 :

A. I. R. 1933 All. 941.

————S. 276—*Number of Jurors—“Required”, meaning of.*

The word ‘required’ in proviso (2) to S. 276, Cr. P. C. does not mean required to constitute the quorum for a Jury or to make up the minimum number of Jurors which will render a choice of Jurors by lot possible, but refers to the words immediately preceding, namely, ‘in case of a deficiency of persons summoned’, and means required to make up the minimum number of Jurors summoned to attend under S. 326. *Rosonali v. Emperor.*

28 Cr. L. J. 889 :

104 I. C. 905 : 46 C. L. J. 160 :

31 C. W. N. 1102 :

A. I. R. 1927 Cal. 787.

————S. 276—*Scope.*

Ss. 277 to 279, must be read together as prescribing one continuous procedure for the empanelling of juries according to circumstances. *Lala v. Emperor.*

35 Cr. L. J. 668 :

148 I. C. 339 : 1933 A. L. J. 1446 :

56 All. 210 : 6 R. A. 683 :

A. I. R. 1933 All. 941.

————S. 276—*Special jury—Sedition trial—Desirability of.*

Though the matter is one of discretion, it is desirable that a trial for sedition under S. 124-A, Penal Code, should ordinarily be by a Special Jury. *Emperor v. Phillip Spratt.*

29 Cr. L. J. 411 :

108 I. C. 509 : 30 Bom. L. R. 313 :

A. I. R. 1928 Bom. 74.

————S. 278.

See Cr. P. C., 1896, S. 274.

————S. 278—*Juror—Absence of objection.*

Objection not taken—Cause of objection not known to accused at the time of trial, verict given—Court should give effect to objection in proper case. *Ras Behari Lal v. Emperor.*

34 Cr. L. J. 843 (2) :

144 I. C. 911 : 1933 A. L. J. 893 :

14 P. L. T. 641 : 65 M. L. J. 513 :

38 L. W. 646 : 1933 M. W. N. 1025 :

35 Bom. L. R. 1087 : 12 Pat. 811 :

58 C. L. J. 300 : 38 C. W. N. 11 :

6 R. P. C. 4 (P. C.) :

A. I. R. 1933 P. C. 208.

————S. 278—*Juror, incompetency of—Proof.*

Juror incompetent to understand proceedings

Cr. P. CODE (1898), S. 278

—Defect can be proved by evidence of the juror himself. *Ras Behari Lal v. Emperor.*

34 Cr. L. J. 843 (2) :

144 I. C. 911 : 1933 A. L. J. 893 :

14 P. L. T. 641 : 65 M. L. J. 513 :

38 L. W. 646 : 1933 M. W. N. 1025 :

35 Bom. L. R. 1087 : 12 Pat. 811 :

58 C. L. J. 300 : 38 C. W. N. 11 :

6 R. P. C. 4 (P. C.) : A. I. R. 1933 P. C. 208.

————S. 278—*Juror—Misconduct—Enquiry.*

A Sessions Judge has jurisdiction to hold an inquiry into the alleged misconduct of a juror but the question whether the Judge should or should not hold an inquiry is a matter within his discretion. He is not bound by any rule of procedure to hold the inquiry as prayed. *Bideshi v. Emperor.*

37 Cr. L. J. 749 :

162 I. C. 705 : 1936 O. W. N. 457 :

1936 O. L. R. 287 : 8 R. O. 395 :

A. I. R. 1936 Oudh 268.

————S. 278—*Juror—Misconduct—Enquiry.*

Jury trial—Allegation of misconduct against jurors—Discretion of Judge to hold inquiry—Vague allegations unsupported by affidavit—Contents of, application found not true—Refusal to hold inquiry—Exercise of discretion, held proper. *Bideshi v. Emperor.*

37 Cr. L. J. 749 :

162 I. C. 705 : 1936 O. W. N. 457 :

1936 O. L. R. 287 : 8 R. O. 395 :

A. I. R. 1936 Oudh 268.

————S. 278—*Juror—Objection—Enquiry.*

Where the application submitted to the Judge making allegations against a juror is vague in its language and is not supported by any affidavit and the contents of the application are found to be not true, it is quite unnecessary to order an inquiry into the truth of the facts stated in the application and the Judge cannot be held to have exercised a wrong discretion in refusing to hold an inquiry into the truth of vague allegations made in the eleventh hour and unsupported by affidavit. *Bideshi v. Emperor.*

37 Cr. L. J. 749 :

162 I. C. 705 : 1936 O. W. N. 457 :

1936 O. L. R. 287 : 8 R. O. 395 :

A. I. R. 1936 Oudh 268.

————S. 278 (g)—*Juror, incompetency of—Effect.*

Juror not knowing sufficient English to understand English evidence and charge by Judge—Trial is vitiated. *Ras Behari Lal v. Emperor.*

34 Cr. L. J. 843 (2) :

144 I. C. 911 : 1933 A. L. J. 893 :

14 P. L. T. 641 : 65 M. L. J. 513 :

38 L. W. 646 : 1933 M. W. N. 1025 :

35 Bom. L. R. 1087 :

12 Pat. 811 : 58 C. L. J. 300 :

38 C. W. N. 11 : 6 R. P. C. 4 (P. C.) :

A. I. R. 1933 P. C. 208.

————S. 278—*Jury, proper constitution of.*

Where jury is chosen by lottery, the mere fact that the jurors are chosen from amongst those who could read English, to which accused's counsel consented, as there were in the case documents in English, there is nothing

Cr. P. CODE (1898), S. 279

irregular or illegal in construction of Jury.
Mohinuddin v. Emperor. 32 Cr. L. J. 455 :

129 I. C. 834 : 51 C. L. J. 352 :

I. R. 1931 Cal. 274 :

A. I. R. 1930 Cal. 437.

————S. 278 (h)—Jury—Mixed Jury on communal basis.

The Law does not provide for a mixed Jury on a communal basis and an accused person is not entitled to ask for such a Jury.
Jessarat v. Emperor. 26 Cr. L. J. 1009 :

87 I. C. 833 : 29 C. W. N. 526 :

A. I. R. 1925 Cal. 729.

————S. 278—Objection to jury—Duty of Court.

A Court is bound to allow an objection taken by an accused to a Juror where there are reasonable grounds to presume partiality in that Juror. *Tajali Mian v. Emperor.*

28 Cr. L. J. 843 :

104 I. C. 459 : 9 P. L. T. 57 :

I. L. T. 40 Pat. 50 : 7 Pat. 50 :

A. I. R. 1928 Pat. 31.

————S. 278—Verdict, legality of.

Verdict given in presence of all jurors—Presumption of assent does not affect legality of trial—Test is whether juror was competent to assent. *Ras Behari Lal v. Emperor.*

34 Cr. L. J. 843 (2) :

144 I. C. 911 : 1933 A. L. J. 893 :

14 P. L. T. 641 : 65 M. L. J. 513 :

38 L. W. 646 : 1933 M. W. N. 1025 :

35 Bom. L. R. 1087 :

12 Pat. 811 : 58 C. L. J. 300 :

38 C. W. N. 11 : 6 R. P. C. 4 (P. C.) :

A. I. R. 1933 P. C. 208.

————S. 279.

See also (i) Cr. P. C., Ss. 276, 278, 279, 288, 326, 537.

————S. 279—Power of Court—Discharge of Juror.

A Judge has inherent power to exempt a particular Juror on good cause shown. *Sonia Kashfi v. Emperor.* 28 Cr. L. J. 177 :

99 I. C. 849 : A. I. R. 1927 Nag. 117.

————S. 279—Decision of objection—Whether final—Juror—Objection—Finality of decision.

In the matter of disposing of objection to Jurors, the Judge has a wide discretion and his decision is final. *Government of Bengal v. Muchu Khan.* 26 Cr. L. J. 819 :

86 I. C. 467 : 29 C. W. N. 652 :

A. I. R. 1925 Cal. 798.

————S. 279—Juror—Competency, question of—Decision by Court, finality of.

Where on the day of the trial of the accused who claimed to be tried as a European British subject, a deficiency of one juror arises because of the objection by the accused to a number of them and the Judge summons a person who happens to be in the Court varandah and whose name is on the jurors' list, and includes him in the jury and the accused having taken an objection that such person is not a European British subject, the Judge examines such

Cr. P. CODE (1898), S. 282

person and decides that he is so, the decision of the Judge is final under S. 279 (2), Cr. P. C., and the jury is properly constituted. *In re : Surajpal Singh.* 39 Cr. L. J. 818 :

176 I. C. 853 : 1938 N. L. J. 185 :

I. L. R. 1938 Nag. 516 : 11 R. N. 81 :

A. I. R. 1938 Nag. 328.

————S. 279—Jury, constitution of—Selection of Jurors from persons in Court, not by lot.

S. 279 (2), Cr. P. C. indicates that the manner of choosing by lot provided by S. 276 applies only to Jurors attending in obedience to summons, and not to persons chosen from those present in Court. *In re : Anipe Palladu.*

18 Cr. L. J. 15 :

36 I. C. 847 : 1917 M. W. N. 1 :

5 L. W. 327 : A. I. R. 1917 Mad. 770.

————S. 279 (1)—Objection to selected juror—Decision of Court on, if appealable.

Where the Court decides that no presumed or actual partiality in the juror has been made out, that decision is absolutely final and cannot be challenged in appeal. If, however, a Court were to find that some presumed or actual partiality in the juror had been made out, but in spite of this finding were to overrule the objection, the decision of the Court overruling the objection might perhaps be challenged in appeal. *Yawar Bakht Chowdhury v. Emperor.* 41 Cr. L. J. 719 :

189 I. C. 173 : I. L. R. 1940 1 Cal. 531 :

71 C. L. J. 181 : 44 C. W. N. 474 :

13 R. C. 73 : A. I. R. 1940 Cal. 277.

————S. 282.

See also (i), Cr. P. C., 1898, Ss. 172, 276.

————S. 282—Discharge of juror during trial—New Juror empanelled—Statements of witnesses previously examined read over and their admission secured—No proper trial.

In a trial by Jury after the first two witnesses for the prosecution had been examined, it was discovered that one of the Jurors was deaf and had not followed the trial at all. He was discharged and another Juror was added. But the Sessions Judge, instead of commencing the trial anew, called up the two witnesses again and had their statements read out to them and they admitted that their evidence which they had heard was correct : *Held*, that the trial was illegal. *Emperor v. Narain.* 15 Cr. L. J. 538 :

24 I. C. 946 : 12 A. L. J. 802 :

36 All. 481 : A. I. R. 1914 All. 91.

————Ss. 282, 283—Discharging of jury during trial—Sessions Judge's power of discharge—Duty of High Court.

While the Cr. P. C. does not provide for discharging a jury during the continuance of a trial except in the circumstances mentioned in Ss. 282 and 283, Cr. P. C., yet where the question of misconduct on the part of the jury or other similar cause arises, the Sessions Judge has inherent power to discharge a jury and empanel another. This inherent power of a Sessions Judge to discharge a jury is not confined to cases of misconduct, but plainly extends to cases where the Judge finds reason

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for doubting the impartiality of the jury. And in any case even if an order discharging a jury in the exercise of the inherent power of a Sessions Judge were to be found unjustified, the only relief that the High Court could give would be to order a fresh trial before another jury. *Bipat Gope v. Emperor*.

38 Cr. L. J. 777 :
169 I. C. 495 : 16 Pat. 8 :
3 B. R. 584 : 10 R. P. 19 :
A. I. R. 1937 Pat. 369.

————S. 282—*Discharge of Juror—Inherent power of Court—Selection of fresh Juror.*

A Judge has inherent power to discharge a juror for misconduct. Where a juror is discharged for misconduct, either a new juror should be added or the whole Jury discharged and a fresh Jury empanelled. A new juror may be taken from the persons present in the Court-room if none of the summoned jurors are present. *Rebati Mohan Chakrabarti v. Emperor*.

30 Cr. L. J. 435 :
115 I. C. 258 : 32 C. W. N. 945 :
I. R. 1929 Cal. 338 : 56 Cal. 150 :
A. I. R. 1929 Cal. 57.

————S. 282—*Discharge of Jurors—Re-summoning, propriety of.*

It is improper and inconvenient for persons to be re-summoned who have been released from their oath as Jurors by an order of discharge, and who, therefore, have been perfectly entitled in the interim to discuss the matter either with the accused or other persons. *Emperor v. Monmotha Nath Miter*.

28 Cr. L. J. 141 :
99 I. C. 349 : 31 C. W. N. 144 :
A. I. R. 1927 Cal. 109.

————S. 282—*Discharge of Jury—Duty of Court.*

It is a serious matter to discharge a Jury and a Judge before taking so important a step, should make a full and careful enquiry. *Abdur Rashid v. Emperor*.

31 Cr. L. J. 366 :
122 I. C. 194 : 56 Cal. 1032 :
33 C. W. N. 425 :
A. I. R. 1929 Cal. 343.

————S. 282—*Discharge of Jury—Duty of Court.*

Where a Judge discovers that there are good grounds for suspecting the impartiality of some of the Jurors, it is not only discretionary on his part but is incumbent on him to discharge the Jury in order to give the trial a look of fairness. *Abdur Rashid v. Emperor*.

31 Cr. L. J. 366 :
122 I. C. 194 : 56 Cal. 1032 :
33 C. W. N. 425 :
A. I. R. 1929 Cal. 343.

————S. 282—*Discharge of Jury—Grounds of.*

Suspicion in the mind of a Public Prosecutor is not and can never be recognised

Cr. P. CODE (1898), S. 282

as a good or valid ground for discharging a Jury. *Abdur Rashid v. Emperor*.

31 Cr. L. J. 366 :
122 I. C. 194 : 56 Cal. 1032 :
33 C. W. N. 425 :
A. I. R. 1929 Cal. 343.

————S. 282—*Discharge of Jury—Powers of Court.*

Though the Cr. P. C. has not specifically conferred any right on the Judge to discharge a Jury on the ground of misconduct, every Judge has an inherent power to discharge a Jury when he is satisfied by such enquiry as in the circumstances he can adopt, that reasonable grounds exist for exercising the discretion vested in him to discharge a Jury on suspicion. *Abdur Rashid v. Emperor*.

31 Cr. L. J. 366 :
122 I. C. 194 : 56 Cal. 1032 :
33 C. W. N. 425 :
A. I. R. 1929 Cal. 343.

————S. 282—*Discharge of Jury—Recall.*

A Jury having once been discharged should not be recalled to do duty as Jurors in the same case. *Abdur Rashid v. Emperor*.

31 Cr. L. J. 366 :
122 I. C. 194 : 56 Cal. 1032 :
33 C. W. N. 425 : A. I. R. 1929 Cal. 343.

————S. 282—*Discharge of Jury—Revision.*

It is competent to the High Court in revision to enquire into the validity of the reasons for discharging a Jury. *Abdur Rashid v. Emperor*.

31 Cr. L. J. 366 :
122 I. C. 194 : 56 Cal. 1032 :
33 C. W. N. 425 :
A. I. R. 1929 Cal. 343.

————S. 282—*Juror, illness of—Procedure.*

Where a Juror is prevented from attending throughout a trial by illness, the Judge has, under S. 282, a discretion either to postpone the trial to a date on which the Juror would be able to attend or to discharge the Jury or to have another Juror. If a Juror is going to be able to attend in a very short time, it is a wrong exercise of discretion to discharge the Jury. *Emperor v. Monmotha Nath Miter*.

28 Cr. L. J. 141 :
99 I. C. 349 : 31 C. W. N. 144 :
A. I. R. 1927 Cal. 109.

————Ss. 282, 284—*Scope—Trial with aid of Assessors—Language of Court—Hindi—Hindi-knowing Assessors, whether competent—Evidence given in Hindi but taken down in English—Effect.*

Where the language of the Court is Hindi, Hindi-knowing Jurors and Assessors are competent to take part in the trial of cases in which the evidence, arguments and summing-up are given in Hindi, even though evidence is taken down in English. There is a provision in S. 282, Cr. P. C. for the case in which in the course of a trial it appears that any Juror is unable to understand the language in which evidence is given, or, when such evidence is interpreted, the language in which it is interpreted ; in such a case, a new Juror has to be added, or the Jury has to be discharged and the trial must commence anew. There

Cr. P. CODE (1898), S. 284

is no similar provision with regard to assessors; but assuming that the principle applies, the fact that an assessor does not understand English will not invalidate a trial unless there had been a failure to interpret in Hindi evidence which had been given in English. Where some of the documents are in English, it may be less convenient to have an assessor who does not know the language of the documents thereby necessitating loss of time in interpreting, etc., but the matter does not go to the competency of the assessor or the lawful constitution of the Court. *Ram Babu Jadav v. Emperor*.

39 Cr. L. J. 302 :
173 I. C. 418 : 18 P. L. T. 964 :
4 B. R. 266 : 10 R. P. 402 :
A. I. R. 1938 Pat. 60.

———S. 282 (2)—*Scope*—S. 282 (2)—*Contemplates addition of juror after trial has begun and not before*.

S. 282 (2) contemplates the addition of a juror after the trial of the case has begun and not before. The Legislature intended to limit this section to cases where a jury had been properly empanelled at the outset and one or more of those casualties which are bound to occur at some time in human lives has in fact occurred. *Shevaram Jethanand Shivdasani v. Emperor*.

41 Cr. L. J. 28 :
184 I. C. 474 : 1940 Kar. 249 :
12. R. S. 107 : A. I. R. 1939 Sind 209.

———S. 283.

See Cr. P. C., 1898, S. 282.

———S. 283—*Discharge of jury—Misconduct*.

The Court has inherent jurisdiction to discharge a Jury on the ground of misconduct or necessity which must be established in fact; but a vague allegation unsupported by any affidavit alleging that a Juror has told an outsider that he has already formed an opinion regarding the case, without giving any details, is not such a ground on which the Court ought to act. *Jessaral v. Emperor*.

26 Cr. L. J. 1009 :
87 I. C. 833 : 29 C. W. N. 526 :
A. I. R. 1925 Cal. 729.

———S. 284—*Assessors, choosing of—Objection, whether can be taken*.

S. 284 empowers a Sessions Judge to choose such assessors as he thinks fit from the persons summoned to act as such and there is no express provision for objecting to the selection of an assessor. But there is no reason why an objection of presumed or actual partiality should not be allowed, particularly when it is urged at the time of the selection of the assessor. *Shivadhin Singh v. Emperor*.

22 Cr. L. J. 262 :
60 I. C. 662 : 3 P. L. T. 32.

———S. 284—*Assessors, number of*.

A trial by a Court of Session with the aid of two assessors, one of whom only was summoned for the particular sessions, is illegal. *Man Singh v. Emperor*.

14 Cr. L. J. 654 :
21 I. C. 894 : 11 A. L. J. 930 : 35 All. 570.

———Ss. 284, 285—*Assessors, number of*.

The trial of an accused person was fixed for

Cr. P. CODE (1898), S. 284

a certain date when only one duly qualified assessor was present in Court and capable of acting as such, whereupon the Judge ordered another person who happened to be present in Court but who was not on the official list of assessor: *Held*, (1) that having regard to the provisions of S. 284 of the Cr. P. C., the trial was illegal: (2) that S. 285 of the Code was inapplicable to the case, inasmuch as the trial started with only one duly qualified assessor and was altogether abortive and contrary to law. *Balak Singh v. Emperor*.

19 Cr. L. J. 363 :
44 I. C. 587 : 3 P. L. J. 141 : 5 P. L. W. 16 :
A. I. R. 1918 Pat. 420.

———Ss. 284, 537—*Assessor, number of*.

Where a Sessions trial is commenced and held throughout with less than the minimum number of assessors prescribed by law, the Court is not properly constituted and the trial is void, S. 537 of the Cr. P. C., does not apply to such a case. *Ram Narain v. Emperor*.

26 Cr. L. J. 359 :
84 I. C. 711 : 27 O. C. 213 :
A. I. R. 1925 Oudh 110 (2).

———S. 284—*Assessors, selection of*.

S. 284 does not prescribe that the assessors are to be chosen by lot. In fact, it does not say that they ought to be chosen in any particular manner. The use of the word "chosen" does not necessarily imply that there ought to be a selection from a larger number. *Ram Babu Jadav v. Emperor*.

39 Cr. L. J. 302 :
173 I. C. 418 : 18 P. L. T. 964 :
4 B. R. 266 : 10 R. P. 402 :
A. I. R. 1938 Pat. 60.

———S. 284—*Assessors, selection of*.

Where a criminal case is triable with the aid of assessors, and the trial is substantially held with the aid of assessors but those assessors are not chosen according to law, the trial must be held to be illegal and the defect is not cured by S. 537. *Sheopal v. Emperor*.

34 Cr. L. J. 1093 :
145 I. C. 803 : 10 O. W. N. 619 :
6 R. O. 69 : A. I. R. 1933 Oudh 351.

———S. 284—*Assessors—Trial with aid of 3 instead of 4 assessors, legality of*.

Under S. 284 it is necessary that, if practicable, four Assessors should be chosen to aid at a Sessions trial and where four Assessors are not chosen, it is proper that the Court should give reasons in the order-sheet to explain the impracticability of choosing four. A trial, however, with the aid of three Assessors and without recording reasons for not choosing four, is not irregular but is still according to law and does not offend against the provisions of S. 284. *Jamal Momim v. Emperor*.

26 Cr. L. J. 713 :
86 I. C. 153 : 1925 Pat. 29 : 7 P. L. T. 14 :
A. I. R. 1925 Pat. 381.

———S. 284—*Trial by assessors—Summoning of Assessors for particular date—Selection on another date, legality of—Procedure—Trial, if valid*.

A person was summoned to serve as an Assessor on the 14th of June 1915, in a particu-

Cr. P. CODE (1898), S. 286

lar case. He failed to appear in Court on that date, but appeared on the 17th *idem* when another trial had to commence. He was selected to act as one of the Assessors in that trial: *Held*, that his selection was not improper and the trial in which he took part was not invalid. *Chutta v. Emperor*. 17 Cr. L. J. 17 : 32 I. C. 145 : A. I. R. 1916 All. 54.

—S. 285 (a).

See Cr. P. C. 1898, S. 275.

—S. 285-A—*Accused's right to Jury of his countrymen—Choice once made whether can be exercised again.*

Words in S. 285-A, Cr. P. C., "and is so tried" mean "if he is in fact so tried" or "if he is eventually so tried." A, B and C were being tried jointly. When accused appeared before Sessions Court, A claimed to be tried as a European British subject but B and C stated that they did not claim an Indian majority in the jury but wished to be tried jointly with A. The Judge without reading out charges and asking the accused whether they pleaded guilty or claimed trial decided not to proceed with the case owing to the want of sufficient European jurors and the case was transferred to other place by the order of the High Court. Before the Judge at the new place C claimed to be tried separately but the Judge held that he had already made his choice and must adhere to it. Revision from this order was rejected by the High Court and he was jointly tried: *Held*, that C having applied in revision against the order, it was final and could not contest in appeal the validity of the High Court's order rejecting his claim for separate trial: *Held*, further, that the joint trial was legal. *In re : Surajpal Singh*. 39 Cr. L. J. 818 : 176 I. C. 853 : 1938 N. L. J. 185 : I. L. R. 1938 Nag. 516 : 11 R. N. 81 : A. I. R. 1938 Nag. 328.

—S. 286.

See also (i) Cr. P. C., 1898, S. 271.

(ii) Criminal trial.

—S. 286—Retraction.

Evidence taken before the Committing Court and transferred to the Sessions file under S. 288, Cr. P. C., cannot be accepted as proper corroboration of a confession made to a Magistrate and subsequently retracted. *Pirithi v. Emperor*. 18 Cr. L. J. 703 : 40 I. C. 703 : 19 P. W. R. 1917 Cr. : 37 P. R. 1917 Cr. : A. I. R. 1917 Lah. 331.

—S. 286 (2)—*Right of accused—Examination of witnesses—Public Prosecutor's right not to examine witnesses examined before Committing Court—Accused's right to cross-examine such witnesses.*

It is open to the Public Prosecutor to decline to examine at the Sessions trial any of the witnesses who had been examined for the prosecution before the Committing Magistrate. But if the cross-examination of any witness was reserved by the defence before the Committing Magistrate and the defence desires to cross-examine that witness at the Sessions

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trial, it is the duty of the Public Prosecutor, in the interests of justice, to tender that witness for cross-examination. If the Public Prosecutor declines to do so, the Court ought to call the witness. *Mavsangh Bhavan v. Emperor*. 10 Cr. L. J. 538 : 4 I. C. 273 : 11 Bom. L. R. 1262.

—S. 286—Procedure.

Accused in a murder case made a confession which was duly recorded under S. 164, Cr. P. C. Before Committing Magistrate they pleaded "guilty", but in Court of Session they pleaded "not guilty." Upon this the Sessions Judge proceeded to take in evidence the previous statements made by the accused before the Committing Magistrate. He then almost cross-examined the accused upon their confessions and thereafter recorded the prosecution evidence : *Held*, that the Sessions Judge acted in contravention of the provisions of S. 286 and S. 342 does not supersede provisions of S. 286. *Sukhia v. Emperor*. 24 Cr. L. J. 609 : 73 I. C. 497 : 20 A. L. J. 669 : A. I. R. 1922 All. 266.

—S. 287.

See also (i) Cr. P. C., 1898, S. 430.

(ii) Evidence Act, 1872, S. 54.

—S. 287—*Examination of accused—Examination of accused regarding confession made under improper inducement, admissibility of.*

An accused person made a confession under improper inducement by the police. The Committing Magistrate admitted the confession in evidence and examined the accused with regard to it. The accused admitted it: *Held*, that the confession being inadmissible, the Magistrate should not have questioned the accused upon it. The examination of the accused, so far as it concerned the confession, could not be said to have been duly recorded, and, therefore, neither the confession, nor the answers to the Magistrate's questions regarding it were admissible in evidence in the Court of Session. *Gaung Gyi v. Emperor*. 8 Cr. L. J. 62 : 4 L. B. R. 244 : 14 Bur. L. R. 233.

—S. 288.

See also (i) Evidence.

(ii) Evidence Act, Ss. 154, 155, 157.

—S. 288—*Admissibility of transferred statement.*

The statement of a witness made in the absence of the accused is not admissible in evidence under S. 288. *Emperor v. Golabu*. 14 Cr. L. J. 211 : 191 I. C. 307 : 11 A. L. J. 286 : 35 All. 260.

—S. 288—Amendment, effect of.

S. 288 as amended, lets in evidence recorded before the Committing Magistrate for all purposes and allows it to be treated as substantive evidence and removes all doubts as to the powers of the Judge to treat it as such. *Emperor v. Shankar*. 35 Cr. L. J. 894 : 149 I. C. 69 : 11 O. W. N. 636 : 6 R. O. 514 : A. I. R. 1934 Oudh 222.

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————S. 288—*Applicability—Witness not produced in Court of Session.*

S. 288 has no application to the evidence of a witness not produced and examined in a Court of Session. *Ajodhi v. Emperor.*

21 Cr. L. J. 486 :
56 I. C. 582 : 16 N. L. R. 30 :
A. I. R. 1920 Nag. 170.

————S. 288—*Approver—Evidence before Committing Magistrate retracted at trial—Admissibility of evidence.*

Evidence given by an approver in the Committing Magistrate's Court and tendered under S. 288 can be taken into consideration at the trial along with the other evidence even if the approver has resiled from the evidence in the Sessions Court. *Bhikari Pati v. Emperor.*

32 Cr. L. J. 66 :
128 I. C. 114 : 9 Pat. 592 :
11 P. L. T. 787 :
I. R. 1931 Pat. 2 :
A. I. R. 1930 Pat. 545.

————S. 288—*Corroboration of statement.*

Previous statements recorded under S. 164 are admissible to corroborate evidence under S. 288. *Mathura Tewary v. Emperor.*

30 Cr. L. J. 1136 :
120 I. C. 37 : 8 Pat. 625 :
10 P. L. T. 177 : I. R. 1929 Pat. 677 :
A. I. R. 1929 Pat. 343.

————S. 288—*Discretion—Discretion of Judge to put in evidence.*

Per *Rankin, C. J.*—The discretion to let in evidence recorded in the Court of the committing Magistrate under S. 288 is one that must be carefully exercised. *Khadem v. Emperor.*

32 Cr. L. J. 180 :
128 I. C. 801 : 57 Cal. 940 :
I. R. 1931 Cal. 97 :
A. I. R. 1930 Cal. 706.

————S. 288—*Discretion—Statement made before Committing Magistrate—Transfer to Sessions record—Public Prosecutor's duty to produce all witnesses.*

The Sessions Court has absolute discretion to allow the statement of a witness made before the Committing Magistrate to be transferred to its own record under S. 288 but it should not allow the statement to be read out to the witness before the defence has had an opportunity of cross-examining him. A Public Prosecutor is not bound to produce witnesses whom he considers to be false and the Court should not allow him to cross-examine prosecution witnesses immediately they are produced. *Narain Das v. Emperor.*

23 Cr. L. J. 513 :
68 I. C. 118 : 4 L. L. J. 91 :
3 Lah. 144 : 9 P. W. R. 1922 Cr :
A. I. R. 1922 Lah. 1.

————S. 288—*Magistrate.*

Where a Tahsildar, having the powers of a Magistrate of third class, and being invested by the Local Government with powers to take cognizance of offences upon complaint or upon Police report, conducts an inquiry on information received in the shape of a com-

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plaint, he must be deemed to have conducted the inquiry as a Magistrate. *Emperor v. Gulabn.*

14 Cr. L. J. 211 :
19 I. C. 307 : 35 All. 260 :
11 A. L. J. 286.

————S. 288—*Object and Scope.*

The object and effect of S. 288 is to place the deposition in the committal inquiry on exactly the same footing as the deposition in the Sessions Court. *Velliah Kone v. Emperor.*

24 Cr. L. J. 417 :
72 I. C. 529 : 16 L. W. 239 :
43 M. L. J. 222 :
1922 M. W. N. 506 :
31 M. L. T. 175 : 45 Mad. 766 :
A. I. R. 1923 Mad. 20.

————S. 288—*Procedure and decision of transferred statement.*

Unless the attention of a witness is expressly directed to any particular statement previously made by him, by reading it to him or allowing him to read it from the original deposition, or an authenticated copy of it, any previous statement cannot be admitted in evidence in contradiction as to the statement that he has subsequently made. *Emperor v. Zawar Rahman.*

1 Cr. L. J. 86 :
I. L. R. 31 Cal. 142.

————S. 288—*Procedure—Defence tendering depositions of witnesses taken before Committing Magistrate—Right of prosecution to reply.*

The depositions of witnesses taken before the Committing Magistrate when tendered by the accused cannot be said to be evidence adduced by the accused, after the case for the prosecution is closed, and the prosecution are not, therefore, entitled to reply. *Emperor v. Robert Stewart.*

1 Cr. L. J. 451 :
8 C. W. N. 528 :
I. L. R. 31 Cal. 1050.

————S. 288—*Procedure—Sessions trial—Evidence given by witness in Committing Magistrate's Court not put in during trial—Sessions Judge referring to such evidence in charging Jury—Legality of trial.*

In a dacoity case a witness who was examined as P. W. No. 13 gave evidence before the Committing Magistrate and, in the course of that evidence, as recorded, he stated, among other things, that, on a particular night, he saw 18 or 19 persons coming out of the *barhi* of the accused Bhuta. When the case was tried in the Sessions Court, this piece of evidence which, if true, was extremely important, was not thought of such importance by the prosecution that they were minded to examine this witness before the Jury at all. He was tendered merely for cross-examination. The learned Judge, however, in his charge to the Jury said: "P. W. No. 13 says that he saw 18 or 19 persons coming out of Bhuta's *barhi* on Saturday evening. Of course he did not say he recognised the men: *Held*, that the conviction of the accused could not be upheld as a very damaging piece of evidence which

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was not on the record had been treated as being in evidence: *Held, further*, that even if the Sessions Judge had put in the evidence under S. 281, Cr. P. C., he would have exercised his discretion improperly. *Khadam v. Emperor*.

32 Cr. L. J. 180 :
128 I. C. 801 : 57 Cal. 940 :
I. R. 1931 Cal. 97 :
A. I. R. 1930 Cal. 706.

———S. 288—*Procedure—Use of transferred statement.*

In order that the statement of a witness examined in the Court of the Committing Magistrate and admitted by the Sessions Judge under S. 288 may be used against the accused, the Judge must inform the accused as also the prosecution that he is going to treat it as evidence against him under that section so as to give an opportunity to cross-examine the witness with reference to such statement. Under S. 288 the whole of the previous statement is to be treated as evidence and not only portions of it. It is, therefore, essential that the whole of such statement should be put to the witness and merely portions of it for the purpose of contradiction and then after notice to the prosecution and the accused, it can be brought on record. *Musa v. Emperor*.

30 Cr. L. J. 333 :
14 I. C. 609 : I. R. 1929 Nag. 8 :
A. I. R. 1929 Nag. 233.

———S. 288—*Procedure—Use of transferred statement.*

Statements of witnesses recorded by a Committing Magistrate cannot be used in evidence in a Sessions trial under S. 288 without the attention of the witness being drawn to the portion which it is desired to use. *Lachmi Lal v. Emperor*.

23 Cr. L. J. 218 :
65 I. C. 1002 : 1922 Pat. 159 :
3 P. L. T. 338 :
A. I. R. 1922 Pat. 40.

———S. 288—*Retraction—Evidence Act (I of 1872), S. 157—Admissibility of evidence not taken in the presence of accused before Committing Magistrate, but taken before District Magistrate in absence of the accused and before commitment—Corroboration.*

An approver, on pardon being offered to him, made a certain statement before the District Magistrate in the absence of the accused, which he subsequently retracted in part before the Committing Magistrate: *Held*, that the approver's statement before the District Magistrate could not be brought on to the record and treated as evidence against the accused by the Sessions Judge under S. 288 nor is it admissible under S. 157, Evidence Act, to corroborate the statement made before the Committing Magistrate. *Pathana v. Emperor*.

1 Cr. L. J. 499 :
3 P. R. Cr. of 1904.

———S. 288—*Retraction—Evidence of accomplice, admission of.*

One of the accused in a dacoity case confessed, retracted his confession, and subsequently confirmed it. He was tendered a pardon and gave evidence as an approver before

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the Committing Magistrate. In the Sessions Court he withdrew his confession and went back upon his evidence. The Additional Sessions Judge admitted his evidence before the Committing Magistrate: *Held*, that the action of the Additional Sessions Judge was justified by the terms of S. 288. In view of the corroborative evidence, conviction upheld and appeal dismissed. *Shree Hnil v. Emperor*.

1 Cr. L. J. 488 :
2 L. B. R. 214.

———S. 288—*Retraction—Evidence retracted in Sessions Court—Charge to Jury—Duty of Court.*

Witnesses who retract in the Sessions Court their statements made before the Committing Magistrate are lying witnesses, as they must have spoken falsehood either before the Committing Magistrate or in the Sessions Court. In their case, the Sessions Judge must tell the Jury in his charge that their evidence should be regarded with great caution. The Jurors ordinarily are not men who are used to weighing evidence and it is, therefore, necessary that all help should be given to them in estimating the evidence in the light of the observations made by the learned Judge in deciding cases. Where instead of cautioning the Jury as to placing reliance on the evidence of witnesses who have retracted their statements made before the Committing Magistrate, the Judge expresses his opinion in his charge with a certain degree of assertion in the words: "It seems clear to me that these witnesses have decided to go as far as they possibly can towards altering their evidence in such a way as shall secure the acquittal of the accused," the charge is vitiated, although the Judge also tells the Jury "it is for you to say whether you feel convinced as to the truth of the Magisterial depositions to an extent which would warrant you as prudent men in acting upon them." *Abdul Gani Bhuya v. Emperor*.

26 Cr. L. J. 1577 :
90 I. C. 537 : 42 C. L. J. 205 :
53 Cal. 181 : A. I. R. 1926 Cal. 235.

———S. 288—*Retraction—Governing principle—Probative value.*

Where witnesses have retracted in the Sessions Court their statements before the Committing Court, the proper test is, are there reasonable grounds sufficient to satisfy the judicial mind for holding that the former statements are false and the latter true. Such grounds might be corroboration by other witnesses but need not necessarily be so. Each case must rest on its own evidence. Unless the Sessions Court is satisfied that there are judicial grounds for holding that the retraction in the Sessions Court is false testimony and that the statements in the Committing Court are true testimony, it ought not to admit on behalf of the prosecution these latter statements under S. 288 at all. *In re: Bachala Peda Somudu*.

25 Cr. L. J. 715 :
81 I. C. 203 : 18 L. W. 705 :
45 M. L. J. 602 :
33 M. L. T. 159 : 47 Mad. 232 :
A. I. R. 1924 Mad. 379.

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———S. 246—*Alteration of charge.*

Charge for offence under S. 121, Railways Proceedings converted into warrant case and charge framed for offence under S. 323, Penal Code—Procedure is illegal. *In re: Rajarathnam Pillai.*

37 Cr. L. J. 501 :
161 I. C. 846 : 59 Mad. 442 :
1936 M. W. N. 181 :
70 M. L. J. 340 :
43 L. W. 367 : 8 R. M. 880 :
A. I. R. 1936 Mad. 341.

———S. 246—*Alteration of charge—City of Bombay Police Act, S. 122—Penal Code, S. 352—Charge; alteration of—Absence of complaint—Legality.*

Where an accused is sent up for trial by the Police for an offence under S. 122, City of Bombay Police Act, the Magistrate is competent to alter the charge and convict him under S. 352, Penal Code. Even if a complaint by the complainant be considered necessary in the above case, the evidence of the complainant which evinces a desire on his part that the accused should be proceeded against, may be treated as a complaint. *Framji Bomanji Banaji v. Emperor.*

27 Cr. L. J. 496 :
93 I. C. 896 : 28 Bom. L. R. 291 :
A. I. R. 1926 Bom. 255.

———S. 246—*Alteration of charge—Magistrate finding that another offence has been proved against accused—Procedure.*

On a plain construction of S. 246, Cr. P. C., the Magistrate is not bound when he thinks that another offence has been proved to reopen the trial and follow the procedure of Ss. 243 and 244. The view that he is so bound would necessitate a re-hearing of all the evidence in the same trial, and is clearly opposed to the manifest intention of the Legislature. *The King v. Mi Nge Soe.*

41 Cr. L. J. 541 :
188 I. C. 72 : 1940 Rang. 219 :
12 R. Rang. 363 :
A. I. R. 1940 Rang. 109.

———S. 246—*Alteration of charge.*

Once a Magistrate has taken cognizance of a case as a summons case, he cannot convict the accused for anything but an offence triable as a summons-case. *In re: Rajarathnam Pillai.*

37 Cr. L. J. 501 :
161 I. C. 846 : 59 Mad. 442 :
1936 M. W. N. 181 :
70 M. L. J. 340 : 43 L. W. 367 :
8 R. M. 880 : A. I. R. 1936 Mad. 341.

———S. 246—*Scope—Accused, whether can be convicted of offence committed on date to which no reference is made in complaint.*

S. 246, Cr. P. C., does not mean that an accused in a summons-case can be convicted of an offence alleged to have been committed on a date to which no reference has been made in the complaint or summons. *C. N. R. Sarkar v. Howrah Municipality.*

22 Cr. L. J. 559 :
62 I. C. 575.

———S. 247.

See also (i) Autrefois acquit.

(ii) Cr. P. C., 1898, S. 203.

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(iii) Criminal trial.

(iv) Penal Code, 1860, S. 21.

Applicability of.

(v) Workman's Breach of Contract Act, 1859, S. 1, enquiry under.

———S. 247.

———Absence of Complainant.
———Acquittal.
———Applicability.
———Day fixed for hearing.
———Duty of Magistrate.
———Procedure.
———Revision.
———Scope.
———Scope and object of.
———Trial.

———S. 247—*Absence of complaint—Acquittal—Order of Magistrate, whether necessary.*

S. 247, Cr. P. C., gives the Magistrate a discretion to acquit the accused in the absence of the complainant but the absence of the complainant in a summons-case cannot result in the acquittal of the accused without the Magistrate passing any order in the exercise of that discretion. *Shermull v. Corporation of Calcutta.*

25 Cr. L. J. 492 :
77 I. C. 892 A. I. R. 1923 Cal. 725.

———S. 247—*Absence of complainant—Acquittal—Power of Magistrate.*

The word "hearing" which is not defined in the Cr. P. C., has not been used in S. 247, in limited technical sense to mean an investigation of a controversy. Dismissal of the complaint under S. 247 if the complainant is absent and acquittal of the accused is the rule but the Court is given a discretion to adjourn the case for some reason if it thinks fit. *Emperor v. Laxmi Prasad.*

41 Cr. L. J. 919 :
190 I. C. 467 : 1940 N. L. J. 399 :
13 R. N. 111 : A. I. R. 1940 Nag. 357.

———S. 247—*Absence of complainant—Adjournment of case.*

S. 247 gives power to Magistrate to adjourn a summons-case for sufficient reasons when the complainant does not appear. *Amir Mia v. Tarfodi Hazi.*

21 Cr. L. J. 252 :
55 I. C. 204 : 24 C. W. N. 199 :
A. I. R. 1920 Cal. 68.

———S. 247—*Absence of complainant.*

Applicant exempted from appearance till further orders—On the day of evidence both the applicant and her Pleader absent, the former because of confinement and the latter because he missed motor connection—Order under S. 247—Order should be set aside and fresh inquiry started. *Fatima v. Abdul Hamid.*

35 Cr. L. J. 1504 :
151 I. C. 1096 : 7 R. L. 244 (1) :
A. I. R. 1934 Lah. 195.

———S. 247—*Absence of complainant—Case fixed for judgment—Complainant not directed to be present—Acquittal, legality of.*

Where on the conclusion of a trial, the case is adjourned to a subsequent date for delivery of judgment, without any express direction to the complainant to appear on the adjourned

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—S. 288—Retraction—Value of previous statement.

Statements before Committing Magistrate—Witness examined in Sessions—Previous statement becomes substantive evidence—Statement modified or resiled in Sessions—Conviction on previous statement is unsafe, unless circumstances indicate truth of statement—Mere repetition of statement is no test of reliability. *Emperor v. Lajji Rai*.
37 Cr. L. J. 235 : 160 I. C. 181 : 16 P. L. T. 730 : 2 B. R. 180 : 8 R. P. 344 : A. I. R. 1936 Pat. 11.

—S. 288—Retraction—Witness withholding in Sessions Court part of evidence before Committing Magistrate—Former evidence to be accepted in Sessions Court.
If a witness for the prosecution, who has given evidence before the Committing Magistrate, appears to withhold part of such evidence before the Sessions Court, S. 154, Evidence Act, provides for the method in which he may be dealt with, and S. 288 provides for the record of the witness' evidence before the Committing Magistrate being treated as evidence in the Sessions Court. *Shree Han v. Emperor*.
1 Cr. L. J. 184 : 10 Bur. L. R. 29 : 2 L. B. R. 125 : S. 288—Retraction—Words "for all purposes subject to the provisions of Evidence Act," purpose of—Retracted statement of witness transferred to Trial Court's record—Value.

The words "for all purposes subject to the provisions of the Evidence Act," are introduced in S. 288, for the purpose of removing any doubts as to the right of the Court to treat the evidence given before the Committing Magistrate as substantive evidence in the trial, when such evidence has been transferred to the Court's record. Therefore, where a witness after corroborating the statement of an approver before the Committing Magistrate goes upon his statement before the Sessions Judge, and the latter transfers, under S. 288, to his own record the statement of the witness made before the Committing Magistrate, the statement so transferred may be used as substantive evidence in the case precisely as if it had been made before the Sessions Judge himself. There is nothing to restrict the use of such statement only to corroborate or contradict the evidence given before the Sessions Judge. *Amir Zaman v. Emperor*.
26 Cr. L. J. 1245 : 88 I. C. 861 : 6 Lab. 199 : A. I. R. 1925 Lah. 452.

—S. 288—Scope.
Deposition of witness before Committing Magistrate is transferred under S. 288 to Sessions Record. Statement admitted by not substantive evidence in the case. *In re : Karuppana Pillai*.
28 Cr. L. J. 279 : 100 I. C. 359 : A. I. R. 1927 Mad. 1112.

The words "subject to the provisions of S. 288—Scope."
S. 288—Transfer of statement before Magistrate, when proper.
Evidence Act, 1872 in S. 288, are intended to prevent the admission of irrelevant evidence in the Sessions Court merely on the ground that it had been recorded by the Committing Magistrate. *Bahadur v. Emperor*.
26 Cr. L. J. 1063 : 88 I. C. 7 : A. I. R. 1925 Sind 289.
—S. 288—Scope.
There is nothing in S. 288 itself to show that there need be corroboration of evidence recorded under Chap. XVIII. *Narayan Singh v. Emperor*.
37 Cr. L. J. 567 : 162 I. C. 379 : 17 Lab. 419 : 38 P. L. R. 820 : 8 R. L. 890 : A. I. R. 1936 Lah. 357.
—S. 288—Scope and use of—Minor discrepancies between statements—Whether justified use of S. 288.
S. 288, Cr. P. C. is not to be used as a matter of course but in the discretion of the Judge, and the fact that the whole statement is to be brought on the record and used as substantive evidence suggests that the proper occasion to use it is when the Judge is satisfied that the statement made before him is substantially false and the statement made before the Committing Magistrate is substantially true. The existence of minor discrepancies between statements made in the Sessions Court and the Committing Magistrate's Court and the Sessions Court is not sufficient to justify the bringing bodily on to the record of the statement of a witness under S. 288, Cr. P. C. The provisions of Ss. 145, 154, 155 and 157, Evidence Act, may, in such circumstances, be more appropriately used. *Manghan Khan v. Emperor*.
38 Cr. L. J. 487 : 167 I. C. 943 : 30 S. L. R. 238 : 9 R. S. 213 : A. I. R. 1937 Sind 61.
—S. 288—Transfer of portion of statement.
Where a Sessions Judge wants to rely upon the statement made by a witness before Committing Magistrate, the whole of it should be filed and it would then be open to the Court to come to a conclusion after weighing the evidence. It is irregular to mark only portions of the statement made before the Magistrate and to use such portions for the purpose of contradicting the statement made before the Judge by the witness. *In re : Alayperunni Pillai*.
27 Cr. L. J. 18 : 91 I. C. 50 : 1925 M. W. N. 519 : 22 L. W. 405 : A. I. R. 1925 Mad. 879.
—S. 288—Transfer of statement.
Statement made before Committing Magistrate can be transferred to record of Sessions Judge only if he is examined before the latter. When not examined, unless Judge finds under S. 33, Evidence Act, that he is incapable of giving evidence the statement cannot be admitted. *Emperor v. Nalwa Singh*.
35 Cr. L. J. 349 : 147 I. C. 234 : 35 P. L. R. 75 : 6 R. L. 361 : A. I. R. 1934 Lah. 212.
—S. 288—Transfer of statement before Magistrate, when proper.

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Unless a witness has been asked to explain the discrepancy in his statement before the Committing Magistrate and that before the Sessions Court, it is not proper to transfer his previous statement before the Committing Magistrate to the record of the Sessions Court, and if a satisfactory explanation of the discrepancy is not forthcoming, the existence of only one discrepancy will not justify the use of S. 288. *Sadar Din v. Emperor*.

29 Cr. L. J. 1047 :
112 I. C. 471 : 10 L. L. J. 460 :
A. I. R. 1929 Lah. 111.

———S. 288—Value of deposition made before Committing Magistrate.

Where the deposition of a witness before a Committing Magistrate is transferred to the Sessions record under S. 288 of the Cr. P. C. the Court of Session is entitled to treat such deposition as substantive evidence at the trial. Where, however, at the Sessions trial a witness repudiates the statement made by him before the Committing Magistrate, very little reliance can be placed upon the latter statement. *Rakha v. Emperor*.

27 Cr. L. J. 438 :
93 I. C. 230 : 2 Lah. Cas. 62 :
6 Lah. 171 : A. I. R. 1925 Lah. 399.

———S. 288—Value of—Evidence before Committing Magistrate.

Evidence of a witness taken before a Committing Magistrate may, under S. 288, be used as substantive evidence in the case at trial in the Sessions Court, where, for the purposes of justice, the adoption of such a course is found necessary by the Judge. *Bahadur v. Emperor*.

26 Cr. L. J. 1063 :
88 I. C. 7 : A. I. R. 1925 Sind 289.

———S. 288—Value of—Evidence in Committing Court.

Evidence before Committing Magistrate and Sessions Judge quite contrary—Evidence before Committing Magistrate can be read as substantive evidence under S. 288—But there must be independent corroboration to base conviction thereon. *Pahalwan Singh v. Emperor*.

35 Cr. L. J. 797 :
148 I. C. 937 : 11 O. W. N. 508 :
6 R. O. 467 : A. I. R. 1934 Oudh 182.

———S. 288—Value of—Evidence recorded by Committing Court.

There is no special procedure laid down in Ch. XVIII for recording evidence, and any evidence recorded by a Magistrate before commitment, whether recorded with a view to commitment or in the ordinary course of trial, is evidence recorded in the presence of the accused under Chap. XVIII, for the purposes of S. 288, Cr. P. C. The evidence recorded by the Committing Magistrate, if admitted under S. 288, Cr. P. C., must be treated as evidence for all purposes even as the basis of a finding or verdict and on a par with any other evidence before the Sessions Court or as a substantive evidence on which

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the verdict of the Jury or judgment of the Judge can be based. *Bhuya Abdul Gani v. Emperor*.

26 Cr. L. J. 1577 :
90 I. C. 537 : 42 C. L. J. 205 :
53 Cal. 181 : A. I. R. 1926 Cal. 235.

———S. 288—Value of—Evidence transferred to Session.

Evidence brought on to the Sessions record, under S. 288, must be treated as substantive evidence and there is nothing illegal in basing a conviction on such evidence, but it would not be safe to do so without any other evidence to support it, and no responsible Tribunal would permit the conviction of a person upon such evidence if it stood by itself. *Pirithi v. Emperor*.

18 Cr. L. J. 703 :
40 I. C. 703 : 19 P. W. R. 1917 Cr. :
37 P. R. 1917 Cr. :
A. I. R. 1917 Lah. 331.

———S. 288—Value of statement before Committing Magistrate.

Evidence given before Magistrate can be utilised in support of conviction—Independent corroboration is not necessary. *Ra'a Ram v. Emperor*.

36 Cr. L. J. 823 :
155 I. C. 657 : 1935 A. L. J. 668 :
1935 A. W. R. 696 : 7 R. A. 967 (2) :
A. I. R. 1935 All. 691.

———S. 288—Value of—Statements before Committing Magistrate—Governing principal regarding admission.

Once a Court has admitted, on behalf of the prosecution, evidence under S. 288, the depositions so admitted are just as much evidence for the prosecution in the case as the depositions recorded for the prosecution in the Sessions Court. There is nothing in S. 288 which indicates that there is any difference in the probative value of the former when compared with the latter. In admitting in evidence under S. 288, the depositions given in the Committing Court, the principle to be observed is that where witnesses are so careless of the truth as to abandon readily on oath what they had previously sworn on oath, their statements on any point should not be accepted without great caution and sound judicial reasons. *In re : Bachala Peda Somudu*.

25 Cr. L. J. 715 :
81 I. C. 203 : 18 L. W. 705 :
45 M. L. J. 602 : 33 M. L. T. 159 :
47 Mad. 232 : A. I. R. 1924 Mad. 379.

———S. 288—Value of—Statements before Committing Magistrate—Retracted in Session.

A riot having taken place, both sides were challaned, the accused in one case being mostly prosecution witnesses in the other. The witnesses in both the cases partly resided in the Sessions Court from their statements made before the Committing Magistrate and expressed their inability to identify any of the accused. The Sessions Judge, therefore, admitted in the evidence the statements of these witnesses made before the Committing Magistrate and convicted the accused on the basis of these statements; *Held*, that the Sessions Judge was perfectly justified in relying on

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these statements under S. 288, and that the conviction was not bad in law. *Bachala Peda Somudu*.

25 Cr. L. J. 715 :

81 I. C. 203 : 18 L. W. 705 :

45 M. L. J. 602 : 33 M. L. T. 159 :

47 Mad. 232 : A. I. R. 1924 Mad. 379.

—S. 288—*Value of—Statements made before Police and Committing Magistrate.*

The previous statements of witnesses made to the Police and the Committing Magistrate can be used, no doubt, to impeach their credit, under S. 155, Evidence Act, if they are subsequently changed; but S. 288 goes further and makes such statement "evidence in the case," i. e., substantive evidence of the facts therein deposed to. However, before such evidence in substituted under S. 288, it is necessary that there should be some reason why it should be preferred. This is a matter of prudence and not of law. *Maruti Joti Shinde v. Emperor*.

22 Cr. L. J. 636 :

63 I. C. 332 : 23 Bom. L. R. 820 :

A. I. R. 1922 Bom. 108.

—S. 288—*Value of—Statements recorded before Monegar—Corroborative of substantive evidence.*

A statement made by a person before the monegar of a village shortly after the commission of a crime cannot be used as substantive evidence against an accused person tried for such offence as it is not a statement recorded on oath in the presence of the accused by a Magistrate empowered to take down evidence. The only use of such statements is to corroborate or contradict statements made on oath at the trial. *Malaya Goundan v. Emperor*.

23 Cr. L. J. 262 :

66 I. C. 326 : 14 L. W. 612 :

1921 M. W. N. 872 : 42 M. L. J. 278 :

A. I. R. 1922 Mad. 303.

—S. 288—*Value of transferred statement.*

A conviction based solely on evidence given by the witnesses before the Committing Magistrate and retracted by them at the trial is unsustainable. *Sher Dil v. Emperor*.

20 Cr. L. J. 792 :

53 I. C. 696 : 17 P. R. 1919 Cr. :

A. I. R. 1919 Lah. 238.

—S. 288—*Value of transferred statements—Evidence—Statements before Committing Magistrate resiled from before Court of Sessions—Admissibility.*

In a capital case, certain witnesses, who had stated before the Committing Magistrate that they had seen the accused striking the deceased, withdrew their statements before the Court of Sessions and gave evidence exculpating the accused. The Sessions Judge considering the evidence given before him by these witnesses to be untrue, and acting under S. 288 of the Code of Criminal Procedure, admitted in evidence the statements of these witnesses made before the Committing Magistrate: *Held*, that such statements were rightly admitted, and when admitted, were on the same footing as the other evidence on the record. *Dwarka Prasad v. Emperor*.

4 Cr. L. J. 61 :

26 A. W. N. 187 : 3 A. L. J. 852 :

I. L. R. 28 All. 683.

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—S. 288—*Value of transferred statements—Evidence of prosecution taken in accused's presence—Accused unable to cross-examine—Subsequent cross-examination—Transfer to Sessions Court—Evidence, whether admissible.*

In an enquiry before commitment, the witnesses for the prosecution were examined in a Hospital where the accused was lying. The accused declined to cross-examine the witnesses on the ground that he was unwell. The witnesses were again tendered for cross-examination and were cross-examined by the accused but the witnesses went back on their previous statements and supported the accused's statement: *Held*, that the statements made by the witnesses on the first hearing were duly recorded within the meaning of S. 228 and such of them as were transferred to the record of the Sessions Judge could be treated as evidence in the trial. *Muhammad Aslam v. Emperor*.

28 Cr. L. J. 33 :

99 I. C. 65 : 27 P. L. R. 469 :

9 L. L. J. 45 : A. I. R. 1926 Lah. 590.

—S. 288—*Value of transferred statement.*

It is not illegal to treat as substantive evidence the statement of a witness recorded by the Committing Magistrate and transferred to the Sessions Court record under S. 288. *Ala Singh v. Emperor*.

29 Cr. L. J. 73 :

106 I. C. 585.

—S. 288—*Value of transferred statement.*

Previous statements of witnesses made before the Committing Magistrate are admissible in evidence, and if the High Court is satisfied that they are true while the statements made subsequently before the Sessions Judge are false, it is open to the Court to rely upon the previous statements for the purpose of upholding the conviction. *Tulli v. Emperor*.

26 Cr. L. J. 450 :

85 I. C. 130 : 22 A. L. J. 1075 :

47 All. 276 : A. I. R. 1925 All. 185.

—S. 288—*Value of transferred statement.*

Previous statements of witnesses are only ordinarily admissible to corroborate or contradict the witnesses who have made statements at the trial or by virtue of S. 288. The latter section should only be employed when there is reason to believe that a witness at the trial is deliberately departing from the evidence which he gave before the Magistrate on record as substantive evidence. As to corroborating a witness, it is unnecessary for the prosecution to corroborate their witnesses by previous statements until the statement made at the trial has been, in one way or another, challenged. As to contradicting a witness, it is not in accordance with law to use his statement made on a previous occasion, until the particular statement by means of which it is desired to contradict the witness, is put to him and he is asked what explanation he can give. In neither of these two latter cases is the previous statement itself substantive evidence. *Abdul Jalil Khan v. Emperor*.

32 Cr. L. J. 152 :

128 I. C. 593 : 1930 A. L. J. 1105 :

I. R. 1931 All. 65 :

A. I. R. 1930 All. 746.

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—S. 288—*Value of transferred statement.*

S. 288 makes the previous evidence of a witness taken before a Committing Magistrate, evidence admissible at the trial and the limitation imposed to such admission by the words 'subject to the provisions of the Evidence Act' merely means, that such evidence can be used at the trial for all purposes so long as the evidence within the meaning of the Evidence Act. Unless there is clearly present, besides the evidence given before the Magistrate, evidence which will show that the evidence given before the Magistrate should be preferred to and substituted for that given before the Sessions Judge, the evidence given before the Magistrate cannot be effectively utilized in support of the conviction. *Bigna Kumhar v. Emperor.*

27 Cr. L. J. 594 :
94 I. C. 258 : 1926 Pat. 167 :
A. I. R. 1926 Pat. 440.

—S. 288—*Value of transferred statement.*

Statements of a witness made before a Committing Magistrate can, if such witness is produced and examined, be used as evidence for all purposes and not only for purposes of corroboration or contradiction. *Behari v. Emperor.*

27 Cr. L. J. 1365 :
98 I. C. 485 : 25 A. L. J. 126.

—S. 288—*Value of transferred statement.*

Statement of witness before Committing Magistrate and transferred to Sessions Court under S. 288 can be acted upon precisely as if that evidence had been deposited to before Sessions Judge. *Pooran Singh v. Emperor.*

35 Cr. L. J. 1005 :
149 I. C. 476 : 15 Lah. 765 :
6 R. L. 685 : A. I. R. 1934 Lah. 743 (2),

—S. 288—*Value of transferred statement*
—"Subject to provisions of Evidence Act," meaning of.

The deposition of a witness before the Committing Magistrate when put in the Sessions Court under S. 288, becomes substantive evidence and is used as such. The meaning of the words "subject to the provisions of the Indian Evidence Act" in the section is not that the deposition must be admissible under some section of the Evidence Act. They simply mean that it cannot be used as substantive, if for any reason it is irrelevant under the Evidence Act. *Fazruddin v. Emperor.*

26 Cr. L. J. 1553 :
90 I. C. 433 : 42 C. L. J. 111 :
A. I. R. 1926 Cal. 105.

—S. 288—*Value of transferred statement.*

Under S. 288, Sessions Court is not restricted to admitting the evidence of a witness duly taken before Committing Magistrate merely for the purpose of contradicting that witness when giving evidence in the Sessions Court. The section enables the Court to read the previous evidence as substantive evidence at the trial where, for the purposes of justice, the adoption of such a course is found necessary by the Judge. It is, however, a matter for the discretion of the Judge whether he thinks that such evidence should be used in the interest

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of justice, for many cases may arise in which it would be dangerous to rely upon such evidence where witnesses have proved themselves before the Sessions Judge altogether unworthy of credit. *Gansa Oraon v. Emperor.*

24 Cr. L. J. 641 :
73 I. C. 561 : 4 P. L. T. 462 :
1 P. L. R. 178 Cr. : 2 Pat. 517 :
A. I. R. 1923 Pat. 550.

—S. 288—*Value of transferred statement.*

Under S. 288 subject to the provisions of the Evidence Act, the Sessions Judge has the discretion to treat as substantive evidence, the evidence of a witness duly recorded by the Committing Magistrate. *Nga Nyein v. Emperor.*

34 Cr. L. J. 286 :
142 I. C. 87 : 11 Rang. 4 : I. R. 1933 Rang. 29 :
A. I. R. 1933 Rang. 57.

—S. 288—*Value of transferred statement.*

When the deposition of a witness before the Committing Magistrate is admitted as evidence at the trial, under S. 288, it is wrong to say that it can only be used for the purpose of cross-examination within provisions of S. 155, Evidence Act, in view of the express provision of S. 288 that it is to be treated as evidence in the case for all purposes; the words "subject to the provisions of the Evidence Act, 1872," cannot be read so as to limit the purposes for which it may be used. *Fakira v. Emperor.*

38 Cr. L. J. 498 :
167 I. C. 790 : 1937 O. W. N. 412 :
39 P. L. R. 334 : 1937 O. L. R. 216 :
9 R. P. C. 231 : 3 B. R. 426 : 41 C. W. N. 741 :
1937 M. W. N. 546 : 46 L. W. 134 :
1937 2 M. L. J. 323 : 39 Bom. L. R. 966 :
I. L. R. 1937 Bom. 711 : 64 I. A. 148 :
1937 A. L. J. 1055 (C. J.) : A. I. R. 1937 P. C. 119.

—S. 288—*Value of transferred statement.*

Where a witness in a Court of Sessions resiles from a statement made by him in a Committing Court, his evidence should not be relied on in the absence of corroboration although it may be treated as substantive evidence under S. 288. *In re : Kataru Chinnu Papiiah.*

41 Cr. L. J. 323 :
186 I. C. 434 : 1939 M. W. N. 1134 :
50 L. W. 742 : 1940 2 M. L. J. 35 :
12 R. M. 663 : A. I. R. 1940 Mad. 136.

—S. 288—*Value of transferred statement.*

Where a witness in the Sessions Court resiles from his statement made before the Committing Magistrate his statement before the Committing Magistrate when corroborated, may be used for all purposes in the case. *Nebti Mandal v. Emperor.*

41 Cr. L. J. 910 :
190 I. C. 457 : 19 Pat. 369 : 7 B. R. 59 :
13 R. P. 220 : A. I. R. 1940 Pat. 289.

—S. 288—*Value of transferred statement.*

Where the statement of a witness made before a Committing Magistrate is brought on the record of a Sessions case, under S. 288, the Judge must scrutinize the statement in the same way as any other evidence which is tendered, he must strike out what on one ground or another is inadmissible according to the Law of Evidence, and consider whether

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that part which is admissible can be believed or not, always having regard to the fact that the witness before him has contradicted the statement. Subject to this, however, the statement can be treated as substantive evidence in the case "for all purposes" and is, therefore, evidence for the purpose of determining the guilt or innocence of the accused. Such evidence must be accepted with more caution than the evidence of a witness who adheres in the Sessions Court to what he deposed before the Committing Magistrate. *Basappa Rudrappa Dhamangi v. Emperor*. 26 Cr. L. J. 705 :

86 I. C. 145 : 27 Bom. L. R. 113 :
A. I. R. 1925 Bom. 266.

————S. 289.

See also (i) Cr. P. C., 1898, Ss. 213, 288, 289.

————S. 289—Charge of jury—Misdirection.

In a Jury trial the record of the heads of the charge to the Jury began thus—"Matters of law laid down for the guidance of the Jury, the definition of hurt and grievous hurt and the applicability of sections concerning right of private defence." Then followed a statement of the case for the prosecution and of the case for the defence. The charge then concluded: "You will have to consider whether the absurdities, contradictions and discrepancies in the prosecution evidence are such as would arise naturally or are due to the fact that that story is a fabrication." *Held*, that there was no proper charge to the Jury. *Gangadhar Goala v. Reed*.

23 Cr. L. J. 41 :
64 I. C. 665 : 25 C. W. N. 609 : 33 C. L. J. 503.

————S. 289—Charge to Jury—Duty of Judge.

It is not the business of a Judge charging a Jury to assume the part of the Counsel. His duty is to place the evidence before the Jury as he finds it and though the inference left to be drawn about a particular piece of evidence is that it would be unsafe to accept the evidence, it is open to the Jury to believe that evidence and to accept it, if they chose to do so. *Samiuddin v. Emperor*. 29 Cr. L. J. 497 :
109 I. C. 225 : 32 C. W. N. 616 :
A. I. R. 1928 Cal. 500.

————S. 289—Charge to Jury—Unreliability of evidence—Direction to Jury—Error of law.

Where there is evidence against an accused, it is for the Jury and not for the Judge to say that that evidence is such that no reliance should be placed on it. A Judge commits an error of law if he directs the Jury to return a verdict of non-guilty because he holds that there is "no evidence worth the name" against an accused. No evidence worth the name" is under the law a very different thing from "no evidence." *Raham Ali Howladar v. Emperor*. 26 Cr. L. J. 1151 :
88 I. C. 463 : A. I. R. 1925 Cal. 1055.

————Ss. 289, 537—Defence—Omission to call upon accused to enter on his defence—Irregularity.

The omission to call upon an accused to

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enter on his defence is an irregularity covered by S. 537, provided the accused has not in any way been prejudiced by it. *Premgir v. Emperor*. 19 Cr. L. J. 209 (b) :
43 I. C. 785 : 16 A. L. J. 41 :
A. I. R. 1918 All. 298.

————S. 289 (3)—Evidence—Conviction of accused solely on the evidence adduced by co-accused—Illegality.

An accused person cannot be convicted solely on the evidence adduced by his co-accused, when there is no evidence for the prosecution that he committed the offence with which he is charged. *In re : Ragharaju*. 10 Cr. L. J. 68 :
5 M. L. T. 75 : 2 I. C. 525 (1).

————S. 289—Examination of accused—Section should be read in conjunction with S. 342.

The questioning of the accused referred to in the section as not meant to be a lengthy cross-examination as regards all evidence produced by the prosecution. *S. H. Jhabwala v. Emperor*. 34 Cr. L. J. 967 :

145 I. C. 481 : 1933 A. L. J. 799 :
6 R. A. 65 : A. I. R. 1933 All. 690.

————S. 289—Jury Trial—Evidence insufficient—Duty of Judge—Misdirection.

In a trial by jury the Judge in discussing the evidence against the accused in his summing-up to the jury pointed out that one fact, even if believed, had very little weight, that another fact, if believed, did not show that accused took part in the offence, and that a third fact amounted to nothing in itself: *Held*, that although the Judge clearly invited the jury to acquit, yet he ought to have gone further and told the jury there was no evidence against the accused, and his omission to do so amounted to a misdirection sufficient to entitle the accused to an acquittal. *Asimuddin Sardar v. Emperor*. 22 Cr. L. J. 60 :
59 I. C. 204 : 32 C. L. J. 89.

————S. 289 (2)—Jury trial—Direction of Judge whether binding on Jury.

The expression "direct" in S. 289 (2), leaves no room for doubt that the intention of the Legislature was that the jury was bound to accept the opinion of the Judge, whether they agreed with that view or not. It therefore follows that the direction of the Judge that there is no evidence that the accused committed an offence is binding on the jury and must be followed by them, and the jury cannot return a verdict of guilty on such a direction. The question of absence of evidence is a question of law and not a mere question of fact. *Emperor v. Qudrat*. 41 Cr. L. J. 142 :
185 I. C. 271 : 1939 A. L. J. 980 :
I. L. R. 1939 All. 871 : 12 R. A. 310 :
1939 A. W. R. 693 : A. I. R. 1939 All. 708.

————S. 289 (2)—Jury trial—Quantum and nature of evidence necessary for leaving matter to jury—Verdict of jury against evidence.

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Although a scintilla of evidence would not justify the Judge in leaving a case to the jury and there must be evidence on which they might reasonably and properly conclude the fact to be established, it is not correct to say that a matter can be left to the jury only if the evidence relating to it is satisfactory, trustworthy and conclusive. *Ramcharitar Singh v. Emperor*. 28 Cr. L. J. 692 :

103 I. C. 548 : 8 P. L. T. 691 :
7 Pat. 15 : A. I. R. 1927 Pat. 370.

—S. 289—Scope.

The expression "there is no evidence" in S. 289, does not mean absence of reliable or conclusive evidence but means absence of evidence which, if believed to be true, would warrant a conviction. *Emperor v. Nawal Kishore Missir*. 30 Cr. L. J. 519 :

115 I. C. 692 : 10 P. L. T. 101 :
I. R. 1929 Pat. 244 : A. I. R. 1929 Pat. 121.

—S. 289—Scope.

S. 289, Cl. (4) only means that if the accused calls no witnesses, he or his Pleader is to make his final address to the Court. *In re : Thoppa*. 37 Cr. L. J. 45 :

159 I. C. 30 : 1935 M. W. N. 1091 (2) :
8 R. M. 467 : A. I. R. 1936 Mad. 82.

—S. 290—Several accused.

S. 290, contemplates that, where there are more accused than one, their Counsel should all be heard after the conclusion of the whole of the defence evidence. *Mohinder Singh v. Emperor*. 33 Cr. L. J. 97 :

135 I. C. 209 : I. R. 1932 Lah. 81 :
A. I. R. 1932 Lah. 103.

—S. 291.

See Cr. P. C., 1898, S. 211.

—S. 291—Defence—Discharged witness—Accused's right of, to examine.

The fact that a witness cited by an accused person is discharged before the examination, is no bar to his being examined as a witness if he is in attendance, and the accused insists on his evidence being recorded. *Nageshwar v. Emperor*. 24 Cr. L. J. 518 :

73 I. C. 54 :
A. I. R. 1923 Oudh 142.

—S. 291—Defence—Material evidence—Application to be allowed.

Where the application for summoning witnesses is made about two months before the trial, and the witnesses are all local witnesses and their evidence is material to the defence, and there is nothing on the record to show that the application is made for any ulterior motives, the application should be allowed. *Hote v. Emperor*. 37 Cr. L. J. 108 :

159 I. C. 587 : 29 S. L. R. 302 :
8 R. S. 87 : A. I. R. 1935 Sind 216.

—S. 291—Defence—Refusal to summon witnesses—Discretion of Court.

An accused person cannot ask as of right

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that newly-named witnesses shall be summoned for his defence; but his prayer should not ordinarily be refused, if there is time to secure the attendance of the witness before the conclusion of the trial. *Ramcharitar Sahu v. Emperor*. A. I. R. 1933 Pat. 559.

—S. 291—Defence—Refusal to summon witnesses.

Although an accused person may not as of right ask the Court to summon his witnesses, if he has not availed himself of the opportunity afforded to him under S. 211, the Session Judge is not justified in refusing to exercise his discretion to summon defence witnesses merely and solely on that ground. *Hote v. Emperor*. 37 Cr. L. J. 108 :

159 I. C. 587 : 29 S. L. R. 302 :
8 R. S. 87 : A. I. R. 1935 Sind 216.

—S. 292.

See Cr. P. C., S. 288.

—S. 292—Adducing of evidence—Accused putting in papers through prosecution witnesses in cross-examination whether amounts to "adducing any evidence"—Prosecutor's right of reply.

Nothing which the accused can fairly get into his own advantage by the legitimate employment of cross-examination, while the case is in the hands of the prosecution, deprives him of his right to the last word, and his mere putting in papers through a witness for the prosecution, in the course of ordinary cross-examination, is not "adducing any evidence" within the meaning of S. 292 and does not give the prosecution the right of reply. *Emperor v. Abdulali Sharfali*. 9 Cr. L. J. 284 :

1 I. C. 280 : 11 Bom. L. R. 177.

—S. 292—Adducing evidence—Defence putting in a document during cross-examination—Prosecutor's right to reply.

In the course of the cross-examination of a prosecution witness in a Sessions trial, the witness was asked whether or not he was indebted to the accused, and upon his denying the fact, a bond, alleged to have been executed by the witness in favour of the accused, was produced by the Counsel for defence. But the witness not admitting even the bond, an expert was summoned, at the instance of the defence, to give his opinion as to the thumb mark on the deed. The Court allowed the expert to be examined as a prosecution witness: *Held*, on these facts that the defence had adduced evidence within the meaning of S. 292, Cr. P. C., and that the Prosecutor was entitled to reply. *Emperor v. Mahana Singh*. 12 Cr. L. J. 73 :

9 I. C. 436 : 63 P. L. R. 1911 :

—S. 292—Adducing evidence.

Obiter.—The mere putting in of the bond to impeach the credit of the witness would have amounted to adducing evidence by the defence within the meaning of S. 292. *Emperor v. Mahana Singh*. 12 Cr. L. J. 73 :

9 I. C. 436 : 63 P. L. R. 1911.

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———S. 292—*Interpretation of Statutes—Literal construction without regard to context, absurdity of.*

Taking each word of a section of an Act literally, without any regard to the context or the general scope and scheme of the sections in which it stands and to which it belongs, frequently may, sometimes must, lead to absurdity. Where the meaning is unmistakably plain through the slovenly expressions, a Judge should not hesitate to give effect to the meaning and give the go-by to the letter. *Emperor v. Abdulali Sharfali.*

9 Cr. L. J. 284 :
1 I. C. 280 : 11 Bom. L. R. 177.

———S. 292—*Right to reply by Prosecution—Tendering of evidence by the defence.*

Where the defence puts in documents while the case for the prosecution is going on, the prosecution is entitled to reply. *Emperor v. Bhaskar.*

4 Cr. L. J. 1 :
8 Bom. L. R. 421 : I. L. R. 30 Bom. 421.

———S. 292—*Right to reply—Documents put into evidence for defence in cross-examination of prosecution witnesses—Right of reply—Practice.*

The defence does not lose its right to the last word, that is to say, the prosecutor does not get the right of reply, merely because in the course of the cross-examination of the prosecution witnesses, certain documents are put into evidence on behalf of the defence. *Emperor v. J. S. Birch.*

15 Cr. L. J. 241 :
23 I. C. 193 : 7 L. B. R. 84.

———S. 292—*Right to reply—Evidence adduced through prosecution witnesses—Right of reply.*

Where the defence leads evidence in formal exercise of its rights under S. 289, S. 292, has a direct application and confers an unquestionable right of reply on the prosecution. But where the defence only elicits facts from or puts in evidence documents through the prosecution witnesses in support of its case, it is for the court to decide whether the evidence so adduced is such as to take the prosecution by surprise and to assign the right of reply accordingly. In assigning the right of reply in such instance, the Court will exercise its discretion cautiously and sparingly, and in determining whether the prosecution was taken by surprise or not, the Court will presume that the prosecution had notice of all relevant facts within the knowledge of its own witnesses. *Emperor v. Bhuro.*

8 Cr. L. J. 215 :
1 S. L. R. 91.

———S. 292—*Right to reply, when accused merely tenders as evidence documents identified by prosecution witnesses in cross-examination.*

S. 292 must be read in connection with S. 289 and must be construed accordingly. When so read, the right to reply which is given by S. 292 arises only if the accused or any of the accused takes advantage of the right to adduce evidence at the time and in the manner specified by the Act, viz., after

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the case for the prosecution is concluded. The prosecution has not a right of reply when the accused does not adduce evidence in the sense above-mentioned but confines himself to getting in certain facts or documents by the legitimate employment of the cross-examination of the witnesses for the prosecution. *Emperor v. Sreenath Mahapatra.*

17 Cr. L. J. 423 :
35 I. C. 983 : 43 Cal. 426 :
20 C. W. N. 976 :
A. I. R. 1917 Cal. 524.

———S. 292, 289—*Right to reply—Prosecutor's right of—Document put in evidence by defence during cross-examination of prosecution witness—Evidence adduced by accused.*

In a sessions trial before the Chief Court, a copy of a newspaper was handed for reference to one of the prosecution witnesses during cross-examination by the Counsel for the defence, and was thereupon admitted in evidence : *Held*, that the Prosecutor was entitled to reply under S. 292. *Emperor v. H. Mannel.*

6 Cr. L. J. 115 :
4 L. B. R. 5.

———S. 292 (a)—*Right of reply—Erroneous—Effect.*

Erroneous decision as to right of reply is not such irregularity as to vitiate the whole proceedings and order retrial. *Kundan Singh v. Emperor.*

32 Cr. L. J. 944 :
132 I. C. 692 : 32 P. L. R. 435 :
I. R. 1931 Lah. 660 : A. I. R. 1931 Lah. 534.

———Ss. 293, 309 (2)—*View of place of occurrence of offence by Judge and Assessors—Notice to parties.*

If during a trial the Sessions Judge is of opinion that the Assessors should view the place of occurrence of the offence under trial, he should make an order under S. 293, and may himself accompany the Assessors. But once the latter have given their opinion and the trial has concluded, it only remains for the Judge to give judgment under S. 309 (2), and it is not competent for him to go and view the spot alone. *Deiya v. Emperor.*

17 Cr. L. J. 500 :
36 I. C. 468 : 9 Bur. L. T. 133 :
A. I. R. 1918 L. Bur. 22.

———S. 294.

See Cr. P. C., 1898, S. 309.

———S. 297.

———Abduction.

———Appeal.

———Charge.

———Charge to Jury.

———Cheating.

———Confession.

———Contents of charge to jury.

———Dacoity.

———Direction.

———Evidence.

———Jury trial.

———Misdirection.

———Murder.

———Murder case.

———Non-direction.

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————Procedure.
 ————Re-trial.
 ————Riot case.
 ————Rioting.
 ————Robbery.
 ————Setting aside conviction.
 ————Sexual offences.
 ————Summing up.
 ————Supplementary trial.
 ————Verdict.

———S. 297.

See also (i) Cr. P. C., 1898, Ss. 4, 162.

(ii) Criminal trial.

(iii) Evidence act, 1872, S. 154.

(iv) Penal Code, 1860, Ss. 147, 411, 414.

———S. 297—Abduction—Proper charge to Jury.

The proper way to charge a Jury in a case under S. 368, Penal Code, is to place before the Jury the direct evidence of the knowledge of the accused as to the abduction, to point out the strength and weakness of that evidence, to tell the Jury that this is the only evidence relating to knowledge and then to place before them the circumstances, if any, which might raise an inference of knowledge on the part of the accused of the abduction, and lastly, to ask the Jury to draw their own conclusion on the question. *Gadadhar Sarkar v. Emperor*.

36 Cr. L. J. 1021:

87 I. C. 845 : A. I. R. 1926 Cal. 226.

———Ss. 297, 537—Appeal—Objection regarding defect in charge to jury.

Omission by Govt. to take a ground that the Sessions Judge omitted to explain the law to the jury, would not debar the prosecution from urging it in the appeal. *Emperor v. Jhina Soma*.

41 Cr. L. J. 176 :

185 I. C. 382 : 41 Bom L. R. 965 :

I. L. R. 1939 Bom. 648 : 12 R. B. 248 :

A. I. R. 1939 Bom 457.

———S. 297—Charge—Essentials of—Dacoity case.

Judge should tell the Jury that hurt and wrongful restraint must be committed for that end and that it must be committed in order to the committing of robbery or in committing robbery. *Duraiswami Naicker v. Emperor*.

32 Cr. L. J. 973 :

133 I. C. 7 : 34 L. W. 849 :

1930 M. W. N. 1142 : I. R. 1931 Mad. 695 :

A. I. R. 1931 Mad. 481.

———S. 297—Charge, essentials of.

In a charge to the Jury, it is not enough for the Judge to simply detail chronologically the evidence given by the witnesses for the prosecution without sifting or analysing it and without directing the Jury in any way upon the value or weight which ought to be or might be attached to it. *Nalabar Halidar v. Emperor*.

31 Cr. L. J. 572 :

123 I. C. 751 : 50 C. L. J. 476 :

34 C. Z. N. 223 : A. I. R. 1930 Cal. 136.

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———S. 297—Charge—Omission to read material evidence.

An objection that in delivering his charge to the Jury, the Sessions Judge did not read material portions of the evidence is not in itself sufficient for the reversal of the verdict of the Jury. In each case it must be a question whether the omission to read the material portion of the evidence was such as to mislead the Jury and the Court of Appeal will not interfere if it has not prejudiced the accused. *Rahimbeg v. Emperor*.

27 Cr. L. J. 217 :

92 I. C. 169 : 7 N. L. J. 208 :

A. I. R. 1925 Nag. 157.

———S. 297—Charge to Jury—Accused unrepresented—Duty of Judge to refer to arguments in favour of accused.

In certain cases where the accused are represented, the Court may, having regard to the elaboration and skill with which rival contentions are placed before the Jury by Counsel of both sides, make the charge not so elaborate but direct the Jury to take the arguments into consideration. But where in a Sessions Court an accused person is unrepresented, it is particularly necessary that the Judge while charging the Jury should bring to their notice the arguments which would have been used if he had been represented by a Pleader. *Mahomed Khan v. Emperor*.

32 Cr. L. J. 172 :

128 I. C. 673 : I. R. 1931 Sind 1 :

A. I. R. 1930 Sind 308.

———S. 297—Charge to Jury—Appreciation of Evidence—Duty of Court—Judge, if can give his own appreciation of evidence.

The Judge is fully entitled to indicate his estimate of the evidence. A charge which avoids any expression of opinion amounts to a most unhelpful direction. Opinion even when it is couched in somewhat dogmatic and assertive language will not vitiate the charge if the Judge cautions the jury, as regards their duty as to the question of fact and their right to disregard his remarks. *Bapurao v. Emperor*.

41 Cr. L. J. 894 :

190 I. C. 283 : 1940 N. L. J. 264 :

13 R. N. 99 : A. I. R. 1940 Nag. 221.

———S. 297—Charge to jury—Benefit of doubt to be given to accused—Omission by Judge to give his direction to jury—Whether a misdirection in law.

It is usual and most proper direction for a Judge to instruct the Jury that if they entertain reasonable doubt as to the guilt of any one of the accused, the Jury should give him the benefit of the doubt and acquit him, and that it ought, as a matter of practice, to be given in every case though the omission to give it may not, in every case, constitute a misdirection of such a character as to render conviction invalid. *Para Thandan v. Para Sena Moonji*.

4 Cr. L. J. 502 :

1 M. L. T. 352.

**Cr. P. CODE (1898), S. 297****—S. 297—Charge to Jury.**

Charge of a dacoity—Charge against named persons—Sometimes verdict of acquittal of some and conviction of rest making number of convicted below five—Jury must be warned of this and its consequent effect. *In re : Rawan Karowan.* 32 Cr. L. J. 1212 :

134 I. C. 801 : 33 L. W. 414 :
1931 M. W. N. 652 : 54 Mad. 588 :
I. R. 1931 Mad. 849 :
A. I. R. 1931 Mad. 427.

—S. 297—Charge to Jury.

Charge showing that Judge has warned jury that burden of proof is on prosecution—Omission to refer in express terms to presumption of innocence of accused and burden of proof does not constitute misdirection. *Aziz Khan v. Emperor.* 36 Cr. L. J. 612 :

154 I. C. 1019 : 4 A. W. R. 1419 :
7 R. A. 850 : A. I. R. 1935 All. 103.

—S. 297—Charge to Jury.

Charge under S. 395, I. P. C.—In charging Jury, Court making reference to Ss. 448 and 323, I. P. C.—Conviction under latter section without charge—Such conviction is bad in law. *Mehar Sheikh v. Emperor.*

32 Cr. L. J. 892 :
132 I. C. 254 : 35 C. W. N. 945 :
I. R. 1931 Cal. 574 : A. I. R. 1931 Cal. 414.

—S. 297—Charge to Jury—Common object of riot, omission to mention, whether vitiates trial—Rioting—Unlawful assembly.

In cases of riot it is essentially necessary for a Judge to mention, in his charge to the Jury, what an unlawful assembly is. Where a Judge in his charge to the Jury said: "The offences of rioting, culpable homicide, voluntarily causing grievous hurt and the provisions of Ss. 34, 149, Penal Code, are explained," and there was nothing to show that the Jury were told that a rioting can only take place when there is an unlawful assembly consisting of at least five men with one of the common objects mentioned in S. 141, Penal Code: *Held*, that the charge was most inadequate. *Abdul Sheikh v. Emperor.* 17 Cr. L. J. 92 :

32 I. C. 684 : A. I. R. 1916 Cal. 355.

—S. 297—Charge to Jury, contents of—Duty of Judge.

A charge to the Jury, in order to comply with the provisions of S. 297 must sum up the evidence for the prosecution and lay down the law by which the Jury are to be guided. It is defective if it states that the law on the subject has already been presented to the Jury by the Public Prosecutor and that in the opinion of the Sessions Judge no difficult point of law arises in the case. *Ram Prasad v. Emperor.* 26 Cr. L. J. 1090 :

88 I. C. 178 : A. I. R. 1926 Nag. 53.

—S. 297—Charge to Jury, contents of.

Charge to jury should aim at impartial presentation of essentials of the case. *Emperor v. Kameshwar Lal.* 34 Cr. L. J. 828 :

144 I. C. 872 : 6 R. P. 12 :
A. I. R. 1933 Pat. 481.

Cr. P. CODE (1898), S. 297**—S. 297—Charge to jury, contents of—Defective defence—Remedy.**

A grave omission to direct the Jury on a cardinal matter in the case cannot be made good merely by Counsel's calling attention to it at the termination of the summing-up; it is one thing to indicate agreement with a submission made by Counsel; it is another to direct the Jury effectively. A grave defect in the conduct of the defence case, caused by defective cross-examination by the Counsel for defence, cannot be remedied except by a re-trial if such re-trial is permissible under the law. Putting the accused's case to the Jury cannot possibly mean putting to the Jury every argument and comment of the Counsel for the defence. A charge to the Jury must be read as a whole and also in the light of the questions raised by Counsel during the conduct of the trial. *Emperor v. Barendra Kumar Ghose.*

25 Cr. L. J. 817 :
81 I. C. 353 : 38 C. L. J. 411 :
28 C. W. N. 170 : A. I. R. 1924 Cal. 257.

—S. 297—Charge to Jury, contents of—Earliest version of occurrence, importance of.

The earliest version of an occurrence as given by an informant or prosecutor who is the principal witness to the occurrence, and on whose testimony practically the whole case depends, must always be placed before the Jury in order to enable them to judge of the truth or falsity of the prosecution case. *Khajiruddin v. Emperor.* 27 Cr. L. J. 266 :

92 I. C. 442 : 42 C. L. J. 504 : 53 Cal. 372 :
A. I. R. 1926 Cal. 139.

—S. 297—Charge to Jury, contents of.

In the case of a trial by Jury, the Judge must put down sufficient in his heads of charge to the Jury for the High Court to ascertain whether he did or did not correctly explain the law to the Jury. A mere statement that the relevant sections have been read out and explained to the Jury is not enough and when the provisions of those sections are such that they require an explanation and it does not appear from the heads of charge what explanation of them was given to the Jury, the trial is vitiated. *E. St. Moss v. Emperor.*

28 Cr. L. J. 278 :
100 I. C. 358 : A. I. R. 1927 Cal. 460.

—S. 297—Charge to Jury, contents of.

It is an entirely wrong view to hold that it was the duty of the learned Sessions Judge to incorporate in his charge the evidence of witnesses who had already given their depositions before the Jury. His duty is to place before the Jury in a coherent manner the salient points arising on the evidence adduced before the Jury. It is no part of his duty to make a second speech on behalf of the defence. *Jati Mal v. Emperor.*

31 Cr. L. J. 857 :
125 I. C. 599 : 33 C. W. N. 918 :
57 Cal. 248 : A. I. R. 1929 Cal. 765.

—S. 297—Charge to Jury, contents of—Judge, duty of.

It is not sufficient for the Judge, who tries

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a Sessions case, to state in his record of the heads of charge that he referred to certain sections of the Penal Code and explained to the Jury the law with regard to the offence. The heads of charge should contain a record of the explanation of the law as the Sessions Judge gave it to the Jury, so that the High Court may be in a position to judge whether the elements constituting the particular offence in question have been properly and fully explained to the Jury. *Kasimuddin Nasya v. Emperor*.

21 Cr. L. J. 694 (b) :
57 I. C. 934 : 47 Cal. 795 :
A. I. R. 1920 Cal. 564 (1).

S. 297—Charge to Jury, contents of.

Prosecution not calling important witnesses—
Duty of Judge in charging Jury mentioned.
Emperor v. Kameshwar Lal.

34 Cr. L. J. 828 :
144 I. C. 872 : 6 R. P. 12 :
A. I. R. 1933 Pat. 481.

S. 297—Charge to Jury, contents of.

The jury must, for a proper understanding of the evidence and a due appreciation of its bearing on the offence charged, be told what the law is and what constitutes the offence charged and what matters must be proved to their satisfaction to constitute that offence. It is imperatively necessary for the presiding Judge to expound the law to them. *Briscoe Birch v. Emperor*.

11 Cr. L. J. 340 (b) :
5 I. C. 981 : 5 L. B. R. 149.

S. 297—Charge to Jury, contents of.

The record of the heads of charge to the Jury need not be meticulous or lengthy but it must give accurately the substance of what the Judge said to the Jury so that the High Court may be able to ascertain from the record whether the law and the facts relative to the case were fairly and properly put to the Jurors. A charge which states that certain sections of the Penal Code were read over and explained to the Jury is quite unsatisfactory and cannot be approved of. *Rupan Singh v. Emperor*.

27 Cr. L. J. 49 :
91 I. C. 225 : 4 Pat. 626 :
7 P. L. T. 239 :
A. I. R. 1925 Pat. 797.

S. 297—Charge to Jury—Defect.

Circumstantial evidence—Omission to explain principles relating to decision in such case is a most serious defect in charge. *Jahura Bibi v. Emperor*.

32 Cr. L. J. 418 :
129 I. C. 677 : 35 C. W. N. 169 :
52 C. L. J. 417 : A. I. R. 1931 Cal. 11.

S. 297—Charge to Jury—Defence evidence—Charge, if can deal with defence evidence when it has not been urged by defence Counsel.

The charge to the Jury should deal with the defence evidence if there is such evidence even though it is not urged by the defence Pleader. *Bapurao v. Emperor*.

41 Cr. L. J. 894 :
190 I. C. 283 : 1940 N. L. J. 264 :
13 R. N. 99 : A. I. R. 1940 Nag. 221.

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S. 297—Charge to Jury.

Direction about reasonable doubt should be at end of charge or in appropriate place—Sifting of evidence is necessary—Mere naming of witnesses without discussion of evidence is not enough. *Asanulla v. Emperor*.

36 Cr. L. J. 1246 :
157 I. C. 837 : 39 C. W. N. 924 :
62 Cal. 911 : 8 R. C. 127 :
A. I. R. 1935 Cal. 534.

S. 297—Charge to Jury—Duty of Court.

In a trial by Jury whether the evidence has been adequately criticised by the Judge in his charge to the Jury must depend upon the special circumstances of each case, such as the constitution of the Jury, their intelligence and education, the elaboration with which the case has been conducted on both sides, the skill of the defence and variety of other circumstances. *Gajo Singh v. Emperor*.

24 Cr. L. J. 495 :
72 I. C. 959 : 4 P. L. T. 265 :
1 P. L. R. 25 Cr. :
1923 Pat. 109 : A. I. R. 1923 Pat. 238.

S. 297—Charge to Jury—Duty of Court.

The fact that the Pleader for the accused did not urge any particular defence is no reason why the Judge should not place before the Jury any evidence whatever that might have been adduced in support of the defence. *Golap Ali v. Emperor*.

34 Cr. L. J. 1078 :
145 I. C. 821 : 37 C. W. N. 261 :
6 R. C. 144 : A. I. R. 1933 Cal. 656.

S. 297—Charge to Jury—Duty of Court.

The Jury cannot be required to make the presumption against an accused person that the particular statements of a particular witness are true; still less can it be required to make such a presumption as regards the prosecution witnesses as a body or the prosecution evidence as a whole. The Jury should be told that it is their duty to consider carefully and to say whether they are convicted by the prosecution evidence and that, if they are not convicted, there is no law which obliges them to convict. *Emperor v. Tazem Ali*. (S. B.)

33 Cr. L. J. 196 :
135 I. C. 727 : 58 Cal. 1092 :
I. R. 1932 Cal. 135 :
A. I. R. 1931 Cal. 796.

S. 297—Charge to Jury—Duty of Court.

Where a Jury informs the Judge that the law in a particular matter calling for a decision from them is not understood, it is clearly the duty of the Judge to explain the law to them. A person cannot be convicted of an offence of which the Jury have found him not guilty. *Palaresa Tevan v. Emperor*.

12 Cr. L. J. 140 :
9 I. C. 788 : 1911 2 M. W. N. 190 :
9 M. L. T. 345.

S. 297—Charge to Jury—Duty of Judge.

A Judge presiding at a trial by Jury should always be careful that he does not usurp the functions of an Advocate and that the evi-

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date, and the complainant fails to appear, the Magistrate is not justified in acquitting the accused under S. 247. *Emperor v. Jangusingh*.

24 Cr. L. J. 205 :
71 I. C. 669 : 6 N. L. J. 68 : 19 N. I. R. 48 :
A. I. R. 1923 Nag. 158.

———S. 247—*Absence of complainant—Courses before Magistrate—Magistrate not granting adjournment—Interference in revision.*

Under S. 247, Cr. P. C., the personal presence of a complainant is necessary in order that a summons case should proceed. The only exception made is for a public servant whose personal attendance is not required by the Magistrate. Where the complainant does not attend in person under the provisions of S. 247, there are only two courses open to the Magistrate. The more ordinary course is to acquit the accused. The exceptional course is to adjourn the hearing. When the Magistrate exercises his discretion not to grant an adjournment, the Magistrate cannot be said to have acted wrongly and there is no ground for interference in revision. *Pirag Lal v. Rustom Singh*.

37 Cr. L. J. 1028 :
164 I. C. 784 : 1936 A. L. J. 954 :
9 R. A. 203 : 1936 A. W. R. 843 :
A. I. R. 1936 All. 658.

———S. 247—*Absence of complainant on date of argument—Acquittal.*

A Magistrate may dismiss a complaint under S. 247, Cr. P. C., if the complainant does not appear on the day of which the hearing has been adjourned, even though the witnesses for the parties had been examined and the case was adjourned for argument. *Ranjiwan Rai v. Abilakh Barai*.

15 Cr. L. J. 163 :
22 I. C. 739 : 18 C. W. N. 584 :
A. I. R. 1914 Cal. 768.

———S. 247—*Absence of complainant on day fixed for judgment—Acquittal, illegal.*

S. 247, Cr. P. C., does not apply, when the entire evidence in the case has been concluded and the case has been adjourned only for judgment without the attendance of the complainant having been specially directed. The order of the Magistrate acquitting the accused after the conclusion of the case on the ground of the absence of the complainant cannot be sustained. *Muhammad Hayat Muhammad Yar v. Daulat Khan Saleh*.

39 Cr. L. J. 293 :
173 I. C. 306 : 39 P. L. R. 838 :
10 R. L. 433 : A. I. R. 1938 Lah. 121.

———S. 247—*Absence of complainant—Order of "struck off" by Magistrate—Second complaint—Order of acquittal and discharge—Practice and procedure.*

A summons case was, owing to the absence of the complainant, ordered to be struck off by the Magistrate, under S. 247, Cr. P. C. A fresh complaint was filed; but the Magistrate acceded to the argument that he could not entertain it as he had already once passed an order under S. 247 in the case and acquitted and discharged the accused: *Held*, that neither order was correct in form. The Magistrate was not entitled under S. 247 to record the order

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"struck off," nor was he in a case which he had had not tried, entitled to record the order of acquittal on the second complaint. The most he could do would be to record an order of discharge. *In re : S.E. Dubash*. 8 Cr. L. J. 139 :
10 Bom. L. R. 628.

———S. 247—*Absence of complainant owing to death—Acquittal.*

Where the complainant in a summons case dies pending the inquiry before the Magistrate, the Magistrate should acquit the accused and should not proceed further with inquiry. The clause beginning with the words "unless for some reason he thinks" in S. 247, Cr. P. C., does not apply to the case of a complainant who is dead. *In re : Bontu Appala Naidu*.

29 Cr. L. J. 257 :
107 I. C. 512 : 27 L. W. 85 :
51 Mad. 339 : 54 M. L. J. 714 :
A. I. R. 1928 Mad. 167.

———S. 247—*Absence of complainant owing to death—Duty of Magistrate.*

On the death of the complainant in a summons case, the Magistrate has discretion in proper case to allow the complaint to be continued by a proper and fit complainant. *Anand Rao v. Gadi*

33 Cr. L. J. 407 :
137 I. C. 91 : 28 N. L. R. 49 :
1 R. 1932 Nag. 50 :
A. I. R. 1932 Nag. 92.

———S. 247—*Absence of complainant—Procedure—Exempting complainant's absence.*

S. 247, Cr. P. C., does not authorise a Magistrate to dispense with the presence of a complainant in summons cases except when he is a public servant. Therefore, when a complainant who is not a public servant is absent in a summons case, the only course open to the Magistrate is either to acquit the accused or to adjourn the case in order to enable the complainant to appear. *Maula Bakhsh v. Marshall*.

27 Cr. L. J. 1022 :
96 I. C. 878 : A. I. R. 1926 Lah. 628.

———S. 247—*Absence of complainant—Procedure.*

S. 247, Cr. P. C., is intended to lay down a general principle that a person charged with a summons-case offence is entitled in law to an acquittal if the complainant is absent; and this right cannot be denied him simply because the Magistrate adopts a warrant-case procedure for the trial of a summons-case offence. *Venkatarama Aiyar v. Sundram Pillai*.

24 Cr. L. J. 469 :
72 I. C. 885 : 44 M. L. J. 119 :
17 L. W. 229 : A. I. R. 1923 Mad. 439.

———S. 247—*Absence of complainant on account of death—Acquittal.*

S. 247, Cr. P. C., applies primarily to the case of a complainant who is alive but does not apply, to the case of a complainant dying before trial. *Jitan Dusadhi v. Damoo Sahoo*.

18 Cr. L. J. 151 :
37 I. C. 519 : 1 P. L. J. 264 :
20 C. W. N. 862 : 2 P. L. W. 409 :
A. I. R. 1916 Pat. 152.

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dence in the case is presented to the Jury in as dispassionate and impartial a manner as is expected of the presiding officer. *Emperor v. Taribullah Sheikh*. 23 Cr. L. J. 244 : 66 I. C. 180 : 25 C. W. N. 682.

—S. 297—Charge to Jury—Duty of Judge.

A Judge who discusses the evidence and leaves it to Jury to decide what weight should be given to it acts properly and Jury is properly charged. *Trailokyanath Das v. Emperor*. 33 Cr. L. J. 441 : 137 I. C. 163 : 59 Cal. 136 : I. R. 1932 Cal. 275 : A. I. R. 1932 Cal. 293.

—S. 297—Charge to jury—Duty of Judge.

A Sessions Judge is bound to explain the law to the Jury with clearness and distinctness and the verdict of the Jury will be set aside in appeal if his omission to do so has prejudiced the trial. A Sessions Judge should not omit to state in his charge that if the Jury entertain a reasonable doubt as to the guilt of the accused, they are bound to return a verdict that the accused is not guilty. *Emperor v. Mohammad Israil*. 31 Cr. L. J. 33 : 120 I. C. 264 : 1929 A. L. J. 1261 : A. I. R. 1930 All. 24.

—S. 297—Charge to Jury—Duty of Judge.

A Sessions Judge should not take away the decision on facts out of the hands of a jury who alone are entitled to say what is the proper inference to be drawn from facts. *In re : Shivappa Higade*. 11 Cr. L. J. 334 (b) : 5 I. C. 935 : 7 M. L. T. 191.

—S. 297—Charge to Jury—Duty of Judge.

In a trial by Jury it is quite unnecessary to explain to the Jury, abstract principles of law. The Judge's duty is to apply these principles to concrete instances which arise in trials. It is his duty to deal with specific pieces of evidence, and tell the Jury whether or not they are evidence. He must explain those particular sections of the Penal Code which apply to the particular case which the Jury are trying, and he ought to set out in the copy of the charge his explanation in sufficient detail to enable the High Court to ascertain whether he has properly explained the law. *Caribulla Sheikh v. Emperor*. 34 Cr. L. J. 1231 : 146 I. C. 237 : 37 C. W. N. 1131 : 6 R. C. 190 (2) : A. I. R. 1933 Cal. 722.

—S. 297—Charge to Jury—Duty of Judge.

In his charge to the Jury a Judge should draw the attention of the Jury to the case set up by the defence and the non-production by the prosecution of witnesses who were present at the time of the alleged occurrence, pointing out to them that the non-production created a presumption under S. 114, Evidence Act, which did not help the prosecution case. *Abdul Sheikh v. Emperor*. 17 Cr. L. J. 92 : 32 I. C. 684 : A. I. R. 1916 Cal. 355.

—S. 297—Charge to Jury—Duty of Judge.**Cr. P. CODE (1898), S. 297**

It is mandatory upon the Judge to charge the Jury, and in so doing, to sum up the evidence for the prosecution and the defence and to lay down the law. *Puttan Hassan v. Emperor*. (F.B.).

37 Cr. L. J. 366 : 160 I. C. 1060 : 38 Bom. L. R. 19 : 8 R. B. 793 : A. I. R. 1936 Bom. 52.

—S. 297—Charge to Jury—Duty of Judge.

It is quite open to the Judge, and indeed it is his duty to assist the Jury with his advice and certainly with his criticism provided that he warns them that it is their duty to make up their minds and he states to them that they are not bound by his expressions of opinion. *Hary Lal v. Emperor*. 36 Cr. L. J. 1026 : 156 I. C. 921 : 14 Pat. 225 : 16 P. L. T. 380 : 8 R. P. 43 : A. I. R. 1935 Pat. 263.

—S. 297—Charge to Jury—Duty of Judge.

Per Kulwant Sahoy, J.—In a complicated case the Judge in his charge to the Jury ought not only to explain the law but should also draw the attention of the Jury to the evidence in the case and explain how they should apply the law as explained by him to the particular facts of the case. He should explain to them what are the points which they ought to take into consideration in arriving at their verdict. *Rupan Singh v. Emperor*. 27 Cr. L. J. 49 : 91 I. C. 225 : 4 Pat. 626 : 7 P. L. T. 239 : A. I. R. 1925 Pat. 797.

—S. 297—Charge to Jury—Duty of Judge to explain law and sum up evidence.

A charge to the Jury must be in such a form as to enable the Appellate Court to be satisfied that it was delivered with sufficient fullness as regards the evidence on the record. It should be such as to enable the Appellate Court to say for itself that all points of law and fact were clearly and correctly explained to the Jury having regard to the evidence adduced in the case. *Dwarika Das Bairagi v. Emperor*. 30 Cr. L. J. 912 : 118 I. C. 351 : 33 C. W. N. 84 : I. R. 1929 Cal. 639 : A. I. R. 1929 Cal. 170.

—S. 297—Several accused—Charge to Jury—Duty of Judge.

Where several accused persons are being jointly tried and the case as against all of them does not stand on the same footing and their defences are also different, the Judge must ask the Jury to consider the case as against each of the accused individually. The Judge's failure to do so is a very serious omission and is likely to prejudice the accused persons. *Khajiruddin v. Emperor*.

27 Cr. L. J. 266 : 92 I. C. 442 : 42 C. L. J. 504 : 53 Cal. 372 : A. I. R. 1926 Cal. 139.

—S. 297—Charge to Jury—Dying declaration.

When prosecution case is based on dying declaration, Judge should caution Jury as to weight of such declaration. *Sashi Kanta De v. Emperor*. 32 Cr. L. J. 324 : 129 I. C. 364 : I. R. 1931 Cal. 172 : 34 C. W. N. 792 : A. I. R. 1930 Cal. 754.

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———S. 297—*Charge to Jury, essentials of—Expression of opinion—Necessity of marshalling facts and sifting evidence.*

In a charge to the Jury it is not sufficient for the Judge merely to recount and repeat chronologically the evidence as it has been given in Court by the various witnesses. It is necessary to sift and weigh and value the evidence. Though the final weighing is, for the Jury, the Judge ought to see that all essential facts go into the scales of justice, and on the proper side of the balance. Further facts must be marshalled by the Judge under separate heads and in distinct compartments, as they affect each separate incident in the story, and the law should be stated in short and simple terms. A Judge, if he has got an opinion at all, ought to tell a Jury what it is, so long as he makes it clear that they are at liberty to regard or to disregard it as they pleased. A charge which succeeds in avoiding any expression of opinion must generally amount to a most colourless and unhelpful direction. *Nagendra Nath v. Emperor.*

31 Cr. L. J. 673 :

124 I. C. 492 : 34 C. W. N. 164 :
57 Cal. 740 : A. I. R. 1929 Cal. 742.

———S. 297—*Charge to Jury, essentials of.*

In charging the Jury, it is not necessary for the Judge on every occasion on which he expressed his opinion on a point of fact to tell the Jury that they were sole Judges of questions of fact. It is sufficient if he makes that statement quite clearly to the Jury at the end of the charge. *Sri Kishen v. Emperor.*

37 Cr. L. J. 173 :

159 I. C. 900 : 1935 A. W. R. 1086 :
8 R. A. 521 : A. I. R. 1938 All. 928.

———S. 297—*Charge to Jury, essentials of.*

It is essential that in the general observations which a Judge makes in the course of his charge to the Jury, he should be accurate within the limits of what has always been allowed from time to time in criminal trials. Though a Judge's charge to the Jury may be open to criticism, the verdict of the Jury ought not to be interfered with except where the charge taken as a whole cannot be supported. *Ambar Ali v. Emperor.*

30 Cr. L. J. 825 :

147 I. C. 684 : 48 C. L. J. 473 :
33 C. W. N. 55 : I. R. 1929 Cal. 572 :
A. I. R. 1928 Cal. 769.

———S. 297—*Charge to Jury, essentials of—Material omission—Misdirection.*

The failure of the Judge in a Sessions trial to present in his summing up to the Jury the First Information Report in its true perspective, which affects the complicity of the different accused persons to the offence, as also the credibility of the evidence given by some of the important witnesses in the case, constitutes a serious misdirection sufficient to vitiate the verdict of the Jury. The summing up contemplated by law is a fairly full and distinct statement of the evidence with such advice as to the legal bearing of that evidence and the weight which properly

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attaches to the several parts of it, as a sound judicial discretion would suggest. The Judge must formulate and specify simple issues for the consideration of the Jury, and collate the evidence *pro* and *con* bearing upon the issues in order to assist the Jury to arrive at a correct decision thereon. Merely summarising the evidence, examination-in-chief, cross-examination and re-examination of the different witnesses who have deposed at the trial and putting before the Jury all that has been said by the witnesses or by the lawyers appearing on the two sides, and huddling together important facts as well as trivial points without any attempt at discrimination instead of aiding the Jury only confuses them and does not comply with the object which the law has in view. Where there are several accused persons in a case, the strength or weakness of the evidence of the witnesses as against each accused individually should be pointed out to the Jury. *Jessarat v. Emperor.*

26 Cr. L. J. 1009 :

87 I. C. 833 : 29 C. W. N. 526 :
A. I. R. 1925 Cal. 729.

———S. 297—*Charge to Jury, essentials of.*

Omission to set out how the law was explained to Jury is not by itself ground for setting aside verdict. *Hafezali Haldar v. Emperor.*

32 Cr. L. J. 236 :

129 I. C. 109 : I. R. 1931 Cal. 125 :
A. I. R. 1930 Cal. 712.

———S. 297—*Charge to Jury.*

Expression of opinion is not wrong. But Judge should tell Jury that they are sole Judges of fact and need not accept his opinion. *Kamiraddi Sheikh v. Emperor.*

35 Cr. L. J. 483 :

147 I. C. 832 : 37 C. W. N. 1102 :
6 R. C. 369 : A. I. R. 1934 Cal. 77.

———S. 297—*Charge to jury—F. I. R. misdirection about—Failure to produce defence—Absconding—Proper charge.*

The first information is not evidence in the case. It is tendered by the Crown for such use as the defence may be able to make of it and to test the consistency of the prosecution evidence. The most use which a Judge can make of it is to say that although it gave a different account of the occurrence from that in the evidence, yet it can be reconciled with the evidence. It is misdirection on the part of the Judge to ask the jury to accept the statement in the first information in preference to the evidence in the case. Where the Judge thought it necessary to put the fact that no evidence was adduced for the defence prominently before the jury, he was bound to qualify it by pointing out to the jury that the defence was not bound to call any evidence, that they could rely on the prosecution evidence, as far as it could help them, and that they were entitled to the benefit. Where it was proved that after the alleged occurrence the accused and the villagers absconded, the Judge should point out to the jury that absconding is a matter which is equally consistent with

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innocence as with guilt and that it could only be considered in connection with the rest of the evidence and that it is in itself a circumstance of no weight. *Asfar Sheikh v. Emperor.* 11 Cr. L. J. 557 : 8 I. C. 52.

———S. 297—*Charge to Jury—Heads of charge, contents of—Failure to record how law was explained—Evidence—Description of witness in deposition, whether part of deposition.*

It is not sufficient for a Judge who tries a case to state in his record of the heads of charges to the Jury that he referred to certain sections of the Penal Code and explained to the Jury the law in regard to the offence. He should set out the directions which, in fact, he gave to them in respect of the law. But failure to record in the charge what actually the Judge's explanation of the law was would not vitiate a trial where it has not occasioned a failure of justice. A Court will not, therefore, order a re-trial on this ground if it is of opinion that if the Jury accepted the evidence of the prosecution, they were entitled to convict the accused of the offence charged. The name, parentage, age, residence and profession of a witness form part of the deposition on solemn affirmation and not part of the heading. *Chotan Singh v. Emperor.* 29 Cr. L. J. 804 :

111 I. C. 308 : 7 Pat. 361 :

10 P. L. T. 26 : A. I. R. 1928 Pat. 420.

———S. 297—*Charge to Jury—Heads of charge, contents of.*

The Judge is not required to make a verbal transcript of his summing up. It is only the heads of the charge that he is required to record. The heads of a charge should contain the customary caution to the Jury that if they feel any doubt whether the prosecution or the defence version is true, they should acquit the accused. *Dhiraji v. Akasi.* 27 Cr. L. J. 785 :

95 I. C. 385 : 24 A. L. J. 506 :

A. I. R. 1926 All. 429.

———S. 297—*Charge to Jury—Heads of charge, record of—Duty of Judge—Formulation of questions for Jury, whether proper.*

The object of the heads of charge is to inform the High Court, should occasion arise, of what direction the Judge gave in law to the Jury and the nature of his summing up of the evidence not only for the prosecution, but also for the defence. The heads of charge are not intended to be an exhaustive detail of every particular which the Judge may have addressed to the Jury. The Judge is not bound to address himself in every particular and in every detail to every suggestion put forward by the defence. It is the duty of the Judge fairly and candidly to point out the main and salient features of the case from the point of view of the prosecution and of the defence, respectively. In doing so he is entitled to take into consideration the speeches made upon both sides by the Crown and by the prisoner's Counsel in considering his presentation of

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the evidence to the Jury. The heads of charge should record in an intelligible form and with sufficient fulness the points of law and the directions given by the Judge to the Jury, and the record should represent with accuracy the substance of the charge by the Judge. Where a record of the heads of the charge to the Jury shows sufficient material to enable the High Court to Judge what the Sessions Judge told the Jury and there are serious omissions in directing the Jury on the facts and the law which may have occasioned a verdict different to that which would have been otherwise given, the verdict cannot be upheld in appeal. An appellant who seeks to set aside the result of a trial by Jury has a task of considerable magnitude and must, to be successful, present a case of real substance. In a complicated case the formulation of specific questions for the Jury's reply at the conclusion of the delivery of the Judge's charge is helpful to the Jury and is useful in deciding the legal effect of the Jury's findings; but the formulation of such questions requires great care and the questions should be confined within the narrowest possible compass. In a large number of cases such procedure is not requisite as a simple finding of guilty or not guilty serves all necessary purposes. *Rupan Singh v. Emperor.* 27 Cr. L. J. 49 :

91 I. C. 225 : 4 Pat. 626 :

7 P. L. T. 239 : A. I. R. 1925 Pat. 797.

———S. 297—*Charge to Jury.*

If the Judge disagrees with the verdict, he can proceed under S. 307, but he cannot again proceed to charge the jury and ask them to re-consider their verdict. The verdict subsequently delivered by the Jury is illegal and cannot be acted upon. *Dori v. Emperor.* 36 Cr. L. J. 1377 :

158 I. C. 438 : 1935 A. L. J. 1142 :

8 R. A. 306 : 1935 A. W. R. 1137 :

A. I. R. 1935 All. 1200.

———S. 297—*Charge to Jury.*

In a Sessions trial the Judge should charge the Jury as soon as possible after the case for the defence and the prosecutor's reply, if any, are concluded. It is undesirable that the Jury should separate prior to the charge. *Rupan Singh v. Emperor.* 27 Cr. L. J. 49 :

91 I. C. 225 : 4 Pat. 626 :

7 P. L. T. 239 :

A. I. R. 1925 Pat. 797.

———S. 297—*Charge to Jury.*

In offence of robbery, omission to explain the law is something more than a misdirection. It is a failure to comply with express provisions of law not curable by S. 537. Re-trial should be ordered. *Jagan v. Emperor.* 35 Cr. L. J. 570 :

147 I. C. 976 : 11 O. W. N. 200 :

6 R. O. 326.

———S. 297—*Charge to Jury in sexual offences.*

The Judge should warn the Jury that in

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cases arising out of sexual matters, when charges are made against a man by a woman, it is dangerous to convict upon her evidence alone and that they ought to require corroboration of her story before they bring in a verdict of "guilty." *Emperor v. Nur Ahmed*.

155 I. C. 584 :
38 C. W. N. 108 :
A. I. R. 1934 Cal. 7.

—S. 297—Charge to Jury.

It is a very improper way of dealing with the answer given by a witness in favour of the defence, to suggest to the Jury that the answer might have been given without properly understanding the question. If it is possible in any case that a witness might have misunderstood a question put to him, the facts which lead to the inference that the witness might have misunderstood it, should be placed on the record and should be placed before the Jury for their consideration. *Muhammad Sagiruddin v. Emperor*.

30 Cr. L. J. 120 :
113 I. C. 280 : I. R. 1929 Cal. 123 :
A. I. R. 1928 Cal. 551.

—S. 297—Charge to Jury.

It is impossible for a Judge to refer to every fact in his charge to the Jury. *Tofz Pramanik v. Emperor*.

31 Cr. L. J. 916 :
125 I. C. 743 : 50 C. L. J. 581 :
A. I. R. 1930 Cal. 228.

—S. 297—Charge to Jury.

It should be delivered extemporaneously immediately after final speeches of lawyers or of the evidence. *Asamulla v. Emperor*.

36 Cr. L. J. 1246 :
157 I. C. 837 : 39 C. W. N. 924 :
62 Cal. 911 : 8 R. C. 127 :
A. I. R. 1935 Cal. 534.

—S. 297—Charge to Jury.

Judge is entitled in not expressing his view of facts to Jury on disputable point. *Amode Ali Sikdar v. Emperor*. (F. B.)

33 Cr. L. J. 79 :
134 I. C. 896 (b) : 58 Cal. 1228 :
35 C. W. N. 573 :
I. R. 1931 Cal. 896 :
A. I. R. 1931 Cal. 757.

—S. 297—Charge to Jury.

Judge must set down in charge what he said to Jury about the law—Mere statement that sections were explained is not enough. *Kamiraddi Sheikh v. Emperor*.

35 Cr. L. J. 483 :
147 I. C. 832 : 37 C. W. N. 1102 :
6 R. C. 369 : A. I. R. 1934 Cal. 77.

—S. 297—Charge to Jury—Judge's own opinion.

It is open to a Judge in his charge to the Jury to express his own opinion of the evidence provided he cautions the Jury that they are not bound by that opinion. *Gajo Singh v. Emperor*.

24 Cr. L. J. 495 :
72 I. C. 959 : 4 P. L. T. 265 :
1 P. L. R. 25 Cr. :
1923 Pat. 109 :
A. I. R. 1923 Pat. 238.

Cr. P. CODE (1898), S. 297**—S. 297—Charge to Jury—Law to be explained.**

In the case of a trial by Jury it is the duty of the Judge to explain to the Jury the law applicable to the case and it is the duty of the Jury to accept the law as laid down by the Judge without any extraneous aid. If the Jury are unable to understand the law fully and clearly, it is the duty of the Judge to explain it to them afresh, but in doing so, he cannot place before them the Code or any legal treatise for the purpose of finding on the law ; if he does so, he fails in his duty. *Superintendent & Remembrancer, Legal Affairs v. Wilson*.

27 Cr. L. J. 926 :
96 I. C. 270 : 30 C. W. N. 693 :
43 C. L. J. 537 :
A. I. R. 1926 Cal. 895.

—S. 297—Charge to Jury—Misdirection—Duty of Judge.

All that a Judge can properly state to the Jury is, how the evidence stands, whether in his opinion, it is credible, pointing out at the same time the points which especially tell in favour of the defence. It is not his duty to say that they may neglect any portion of the evidence. That is clearly a misdirection and against the provisions of the law, which says that the Jury are to give their verdict upon the whole of the evidence recorded. It is absolutely his duty to give a narrative and history of the case, and to place the facts and evidence in a clear manner before the Jury so as to enable them to grasp the details and come to a right conclusion. *Emperor v. Mira Gajbar*.

1 Cr. L. J. 1 :
6 Bom. L. R. 32.

—S. 297—Murder case—Charge to Jury—Duty of Judge.

In a case of murder, the mere fact that the accused persons do not admit that they were present at the time of the occurrence and do not raise a case of provocation or passion or something of that sort, does not render it unnecessary for the Judge to give the Jury a proper direction as to the exceptions mentioned in S. 300, Penal Code. The question in such a case is whether on any reasonable view of the facts certain of the exceptions can matter. If they can matter and if a proper direction is not given to the Jury with respect to them, then it is not open to the High Court in appeal to guess and gamble as to whether or not the Jury's verdict would have been different if such direction had been given. *Jahur Sheikh v. Emperor*.

27 Cr. L. J. 1402 :
98 I. C. 714 : 30 C. W. N. 912 :
45 C. L. J. 20 :
A. I. R. 1926 Cal. 1107.

—S. 297—Charge to Jury.

Murder charge—Court should give indication of its opinion to Jury, when convinced about the sufficiency of evidence for conviction, telling Jury that it might regard his opinion and bring verdict of guilty. *Sali Sheikh v. Emperor*.

33 Cr. L. J. 85 :
134 I. C. 1191 : 54 C. L. J. 244 :
I. R. 1932 Cal. 71 :
A. I. R. 1931 Cal. 752.

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———S. 297—Charge to Jury.

Offence under S. 325, Penal Code—Nature of charge to be made—*Held*, charge was not inadequate. *Upendra Nath Za v. Emperor*.

23 Cr. L. J. 416 :
129 I. C. 676 : 52 C. L. J. 425.

———S. 297—Charge to Jury—Omissions.

Judge failing to elicit from Jury, opinion whether poison given to father-in-law and brother-in-law was probable consequence of its delivery with a view to be given to husband—Conviction under S. 302, I. P. C., read with S. 109 held not sustainable—Conviction under S. 115, I. P. C., held proper. *Anode Ali Sikdar v. Emperor*.

33 Cr. L. J. 79 :
134 I. C. 896 (b) : 58 Cal. 1227 :
35 C. W. N. 573 :
I. R. 1931 Cal. 896 :
A. I. R. 1931 Cal. 757.

———S. 297—Charge to Jury—Omission.

Omission of Court to inform Jury of their right of presumption against prosecution for failure to bring independent witness—This is insufficient direction. *Sali Sheikh v. Emperor*.

33 Cr. L. J. 85 :
134 I. C. 1191 : 54 C. L. J. 244 :
I. R. 1932 Cal. 71 :
A. I. R. 1931 Cal. 752.

———S. 297—Charge to Jury—Omission.

The test as to whether an omission in the summing up of the Judge to the Jury amounts to a misdirection or not is whether the omission is in the opinion of the Court of such importance as to have led to an erroneous verdict by the Jury. *Sila Ram v. Emperor*.

33 Cr. L. J. 167 :
135 I. C. 392 : 8 O. W. N. 1215 :
I. R. 1932 Oudh 40 :
A. I. R. 1932 Oudh 23.

———S. 297—Charge to Jury.

Charge to Jury—Omission to present case against accused strongly—No ground for reversal of verdict. *Suprintendent and Remembrancer of Legal Affairs, Bengal v. Purna Chandra Das* (S. B.)

32 Cr. L. J. 1101 :
134 I. C. 71 : I. R. 1931 Cal. 775 :
A. I. R. 1931 Cal. 533.

———S. 297—Charge to Jury.

No mention as to how sections were explained to Jury—No diligence about sections—Charge is not bad. *Hanif v. Emperor*.

34 Cr. L. J. 56 :
140 I. C. 723 : I. R. 1933 Cal. 29 :
A. I. R. 1932 Cal. 786.

———S. 297—Charge to Jury—Non-direction—Omission to draw attention to non-production of witnesses mentioned in first information.

Ordinarily the fact that the witnesses mentioned in the first information have not been produced by the prosecution and that no explanation has been offered therefor, should be brought to the notice of the Jury and their attention should be drawn to the prosecution

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which arises under the law against the prosecution. *Hari Charan Das v. Emperor*.

27 Cr. L. J. 398 :
93 I. C. 46 : A. I. R. 1926 Cal. 728.

———S. 297—Charge to Jury. On questions of fact Judge can only express his opinion and must leave decision to Jury.

Where he is satisfied that there is no legal evidence against any accused person, he is bound to tell the jury that there is no such evidence and that they should acquit the particular accused. *Bansi Dhar v. Emperor*.

36 Cr. L. J. 322 :
153 I. C. 364 : 1934 A. L. J. 1160 :
7 R. A. 481 : 4 A. W. R. 788 :
A. I. R. 1934 All. 1032.

———S. 297—Charge to Jury.

Per *Kulwant Sahay, J.*—Mere explanation of the section of the Penal Code to the Jury without reading out the sections is also undesirable. The sections must be read out to the Jury and then explained to them. *Chotan Singh v. Emperor*.

29 Cr. L. J. 804 :
111 I. C. 308 : 7 Pat. 361 :
10 P. L. T. 26 : A. I. R. 1928 Pat. 420.

———S. 297—Charge to Jury—Presumption of innocence of accused and veracity of witnesses.

A passage in a charge by the Judge to the Jury ran as follows :—As there is presumption of innocence in favour of the accused, so there is a presumption of truthfulness in favour of the witnesses. The presumption is rebutted if it is shown that the witness has told an untruth. But that would not justify you in rejecting his evidence *in toto*. You will have to carefully scrutinize his evidence and should accept it only to the extent to which it is supported by the evidence of other trustworthy witnesses and circumstances and probabilities of the case : *Held*, that the Judge should not have put together the presumption of innocence in favour of an accused and the presumption in favour of the veracity of testimony adduced in a Court of Justice. *Ambar Ali v. Emperor*

30 Cr. L. J. 825 :
117 I. C. 684 : 48 C. L. J. 473 :
33 C. W. N. 55 : I. R. 1929 Cal. 572 :
A. I. R. 1928 Cal. 769.

———S. 297—Charge to Jury—Proper time.

According to S. 297, the Judge can only charge the Jury after all the evidence on both sides has been taken and Counsel on both sides have concluded their addresses to the Jury. *Public Prosecutor v. Abdul Hameed*.

15 Cr. L. J. 197 :
22 I. C. 981 : 36 Mad. 585 :
A. I. R. 1914 Mad. 319.

———S. 297—Charge to Jury—Questions of fact—Jury sufficiently warned—Assertive and dogmatic assertions, effect of.

In a long charge to the Jury the Judge cannot be expected to pause always to assure the Jury that matters of fact are matters for them and where the Judge has abundantly cautioned the Jury that questions of fact are for them and that they are entitled to disregard what he says, his charge cannot be

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objected to simply because there are passages here and there in which he has expressed himself in the assertive and dogmatic fashion. *Emperor v. Panchu Sheikh*. 32 Cr. L. J. 190 : 128 I. C. 811 : 34 C. W. N. 1154 : I. R. 1931 Cal. 107 : A. I. R. 1931 Cal. 178.

S. 297—Charge to Jury—Report of Chemical Examiner—Absconding.

A Sessions Judge should warn the Jury that before using the report of a Chemical Examiner they must be satisfied on the evidence that the substances examined were in fact what they were said to be; and that even if the Jury believed that the accused did abscond, absconding is not necessary or invariably incompatible with innocence. *Ofel Molla v. Emperor*. 15 Cr. L. J. 147 : 22 I. C. 723 : 18 C. W. N. 180 : A. I. R. 1914 Cal. 549.

S. 297—Charge to Jury—Statement of accused, omission of.

Statement of accused under S. 342—Judge omitting to put such statement specifically to Jury, but fully explaining to them defence of accused and his reasons why Jury should disregard his retracted confession—Judge's omission held not harmful. *Baldeo Bin v. Emperor*. 34 Cr. L. J. 369 (2) : 142 I. C. 639 : I. R. 1933 Cal. 310 : A. I. R. 1933 Cal. 187.

S. 297—Charge to Jury—Test of proper charge.

The principal test which should be applied to determine the character of the charge is, whether or not the Judge directed the attention of the Jury to the essential points and the charge read as a whole is sound. *Bupurao v. Emperor*. 41 Cr. L. J. 894 : 190 I. C. 283 : 1940 N. L. J. 264 : 13 R. N. 99 : A. I. R. 1940 Nag. 221.

S. 297—Charge to Jury.

The use of language in a charge to Jury tending to divert the attention of the Jury from the main issue to a subsidiary point is to be deprecated. *Sachhidanand Prasad v. Emperor*. 34 Cr. L. J. 892 : 144 I. C. 936 : 14 P. L. T. 580 : 6 R. P. 130 : A. I. R. 1933 Pat. 488.

S. 297—Charge to Jury—Unlawful assembly—Common object—Prejudice.

A Judge's charge to a Jury in respect of the accused forming an unlawful assembly with the object of "disturbing the public peace and resisting, obstructing and overawing the Police by criminal force and of assaulting the Police," is not open to any real objection as to the way in which the common object is placed before the Jury. Nor does such a charge in the whole go beyond the common objects set out in S. 141, Penal Code, so as to be likely to prejudice the accused. *Abdul Gani v. Emperor*. 25 Cr. L. J. 1386 : 83 I. C. 346 : A. I. R. 1925 Cal. 494.

S. 297—Charge to Jury.

When a case is based on circumstantial evi-

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dence the Judge should point out to the Jury that the accused cannot be convicted unless the circumstances are such that there can be no reasonable possibility of the innocence of the accused. *Mahammad Sagiruddin v. Emperor*. 30 Cr. L. J. 120 : 113 I. C. 280 : I. R. 1929 Cal. 123 : A. I. R. 1928 Cal. 551.

S. 297—Charge to Jury.

Where a Judge expresses, in his charge to the Jury, his opinion but warns them that his opinion was not bound to be accepted by them, there cannot be said to be any misdirection in the charge. *Busuf Ali v. Emperor*. 34 Cr. L. J. 430 : 142 I. C. 653 : I. R. 1933 Cal. 312 : A. I. R. 1933 Cal. 190.

S. 297—Charge to Jury.

Where a Judge in putting a case before the Jury omits to place before them an important piece of evidence favourable to the accused, he commits an error of law. *Mamat Ali v. Emperor*. 28 Cr. L. J. 19 : 99 I. C. 51 : 44 C. L. J. 233.

S. 297—Charge to Jury.

Where the Jury was not made fully acquainted with the nature of the case for the prosecution and the nature of the case for the defence : Held, that the mode in which the case was placed before the Jury was defective and that the convictions of the accused in accordance with the verdict of the Jury and the sentences passed upon them should be set aside and the case re-tried by another Judge. It is not desirable that a Judge should resort to the services of the Public Prosecutor for the purpose of delivering his charge to the Jury. *Afruddi Chakdar v. Emperor*. 20 Cr. L. J. 661 : 52 I. C. 485 : 29 C. L. J. 71 : 28 C. W. N. 833 : A. I. R. 1919 Cal. 439.

Ss. 297, 298—Charge to the Jury—Misdirection—Charge, inordinate length and involved nature of—Miscarriage of justice—Law, explanation of.

The duty of a Judge in charging a Jury in a criminal case is to make up his mind as to what the law is, and to tell the Jury what it is, as succinctly and clearly as he can; but to cite to the Jury a large number of cases which the Jury cannot possibly understand is calculated to confuse them and to lead to a miscarriage of justice. The practice of delivering to the Jury charges of inordinate length and involved nature, and of citing to them a string of cases, specially upon questions of a civil nature, disapproved. *Shyama Charan Chakravarti v. Emperor*. 2 Cr. L. J. 157 : 1 C. L. J. 159.

Ss. 297, 298—Charge to Jury—Object—Duty of Judge.

The duty of the Judge is to help the Jury to arrive at a proper verdict of the facts, and with that in view, it is far better to use the plainest and simplest language; and, if he does express his opinion on the facts, he should do it in such a way as to make it quite clear to the Jurors that he is not in any way seeking to usurp

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their functions or to interfere in matters, the decision of which is exclusively within the competence of the Jury itself. *Monohar Mandal v. Emperor*. 31 Cr. L. J. 1115 :

126 I. C. 775 : A. I. R. 1930 Cal. 430.

—Ss. 297, 298—*Charge to Jury—Omission to draw attention to important facts, effect of.*

Where the Sessions Judge in his charge to the Jury did not give correct representation of facts appearing from the evidence and omitted to draw the attention of the Jury to important facts in favour of the defence in the deposition of the prosecution witnesses : *Held*, that the Sessions Judge's charge to the Jury was unsatisfactory and defective in such a manner as would justify in appeal the setting aside of the conviction and the verdict of the Jury. *Abdul Gafar v. Emperor*. 21 Cr. J. 670 :

57 I. C. 830 : A. I. R. 1920 Cal. 527.

—Ss. 297, 298, 307—*Charge to Jury—Duty of Judge—Judge disagreeing with verdict—Reference to High Court, when to be made.*

Three Muhammadans were placed on trial before a Sessions Court and a Jury, on charges of offences under Ss. 366 and 376, Penal Code, alleged to have been committed by them against a Hindu woman of no character. The Jury by a majority of four to one brought in a verdict of guilty and the Sessions Judge, though not agreeing with the verdict, accepted it on the ground that he was unable to say that it was perverse : *Held*, on a review of the evidence, (1) that the Judge's view of the case in favour of an acquittal was the better view and that it would have been well had he made a reference ; (2) that, as the Judge had made no reference, it must be considered whether there was any material misdirection in the charge to the Jury or whether, in a case in which three Muhammadans having been accused of sexual offences against a Hindu woman were placed on their trial before a Jury composed of 4 Hindus and 1 Muhammadan, the Judge gave the Jury sufficient assistance and guidance ; (3) that the Jury had not had the assistance which should have been given them by the Judge in such a case and that the accused must, therefore, be acquitted. *Ismail Sarkar v. Emperor*.

19 Cr. L. J. 830 :

46 I. C. 846.

—Ss. 297, 537—*Charge to Jury—"Laying down law by which Jury are to be guided," meaning of—Failure to do so, effect of.*

In a trial for dacoity under S. 395 of the Penal Code, the Sessions Judge in his charge to the Jury made the following observation : "The nature of the charge is no doubt familiar to you all. It must be proved that there was robbery committed by five people or more and also that each of the accused took part in that robbery." The Jury having given a unanimous verdict of guilty, the accused were convicted by the Sessions Judge and they appealed against the order : *Held*, (1) that the observation of the Sessions Judge did not in any sense amount to "laying down the law by which the Jury are to be guided" within the meaning of S. 207, Cr. P. C. (2)

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that the omission of the Judge to do so was not a mere irregularity which could be cured by S. 537 of the Code, but was a failure to comply with the express provision of the law and vitiated the trial. *Nawab Ali v. Emperor*.

25 Cr. L. J. 1129 :

81 I. C. 953 : 11 O. L. J. 315 :

A. I. R. 1924 Oudh 411.

—Ss. 297, 537—*Charge to Jury—Omission of Judge to explain to jury all essential elements of offence—Effect.*

Under S. 297, it is the duty of the Judge to explain to the Jury all the essential elements of the offences charged against the accused and to give directions on the law so as to make the law clear in relation to the facts of the case and the evidence adduced. Even the mere reading of the sections to the Jury does not amount to an explanation of the law. Nor can the Judge rely on the fact that Advocates on both sides had explained the law to the Jury. The Judge must lay down the law by which the Jury is to be guided. This provision is imperative. It is the clear duty of the Judge to explain what is law or the essential requisites of an offence and what must be proved to constitute that offence. An important non-direction to the Jury or an omission to direct them on an important point, amounts to misdirection ; but S. 297 must be read along with the provisions of S. 537. It is necessary, however, that the misdirection should be such as to occasion failure of justice, such failure of justice as would vitiate the trial or proceedings. There is no ground for broadly assuming that if even a mandatory provision of the Code is infringed, the result in all cases must be to vitiate the trial irrespective of whether it has or has not occasioned failure of justice. *Emperor v. Jhina Soma*.

41 Cr. L. J. 176 :

185 I. C. 382 : 41 Bom. L. R. 965 :

I. L. R. 1939 Bom. 648 : 12 R. B. 248 :

A. I. R. 1939 Bom. 457.

—Ss. 297, 423 (2)—*Cheating—Charge to Jury—Duty of Court.*

In a trial by Jury, it is the duty of the Judge to explain to the Jury the necessary ingredients which the prosecution has to prove before the charge can be held to be established. This is particularly necessary in a case where the main charges are of cheating. *Arnold Monteath Mathews v. Emperor*.

41 Cr. L. J. 482 :

187 I. C. 456 : 12 P. L. R. 492 :

A. I. R. 1940 Lah. 87.

—S. 297—*Confession, admissibility of.*

Admissibility or otherwise of confession on ground of its being made voluntarily, is to be decided by Judge. *Kasim Ali v. Emperor*.

36 Cr. L. J. 70 :

152 I. C. 234 : 38 C. W. N. 586 :

7 R. C. 256 : A. I. R. 1934 Cal. 651.

—S. 297—*Contents of charge to Jury.*

Charge to Jury—Essentials stated. *Emperor v. Ardali Mian*.

35 Cr. L. J. 56 :

146 I. C. 460 : 6 R. P. 263 :

A. I. R. 1933 Pat. 496.

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—S. 297—*Dacoity—Trial of five persons for dacoity—Charge to Jury—Omission to explain consequence of acquitting one or more of persons charged, effect of.*

Where five persons who are alleged to have taken part in a dacoity are committed for trial before the Sessions, the Sessions Judge should make clear to the Jury the possible consequence of acquitting any of the persons charged. He should point out to the Jury that they should proceed to consider in the event of any of the accused being found not guilty, whether the prosecution case that five persons took part in the offence was established or not, and if not, whether any persons less than five were concerned, in which case he should further point out that the offence committed by each of them would be not dacoity but robbery. Where the Jury found two of the accused guilty and the rest not guilty, and the Sessions Judge had omitted to point out this matter to the Jury: *Held*, that the trial was vitiated. *In re : Perumal Thevan*.

31 Cr. L. J. 451 :
122 I. C. 650 : 30 L. W. 720 :
1929 M. W. N. 788.

—S. 297—*Dacoity case—Charge to Jury—Misdirection.*

Where a Sessions Judge told the jury in a trial for dacoity, that there was no force in the argument that the accused may not have foreseen and may not have intended that a dacoity should take place: *Held*, that it amounted to a misdirection. *In re : Shivappa Higade*.

11 Cr. L. J. 334 (b) :
5 I. C. 935 : 7 M. L. T. 191.

—Ss. 297, 298—*Dacoity case—Charge to Jury—Misdirection—Judge defining dacoity as robbery committed by more than five persons—Misdirection.*

Where a Sessions Judge, in a trial for dacoity, in the course of his summing-up to the jury, told them that dacoity is robbery committed by more than five persons, instead of saying that it was robbery committed by five or more persons: *Held*, that it was a misdirection, but as it did not prejudice the accused but was favourable to them, their conviction was not liable to be quashed on that ground. *Sinna Tevan v. Emperor*.

9 Cr. L. J. 311 :
1 I. C. 546.

—S. 297—*Failure to explain offence of theft—Misdirection.*

Where the Sessions Judge did not explain in what the offence of theft with which the accused was charged consisted: *Held*, there was no want of direction. *In re : Ranga Ramudu*.

17 L. W. 236 :
A. I. R. 1923 Mad. 329.

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—S. 297—*Evidence—Case resting on circumstantial evidence—Duty of Jury.*

Where a case rests entirely on circumstantial evidence, before the jury can find the prisoner guilty, they have to be satisfied not only that those circumstances are consistent with his having committed the act but that the facts are such as to be inconsistent with any other rational conclusion than that the prisoner is the guilty person. Where in a criminal case there is a conflict between the presumption of innocence and any other presumption, the presumption of innocence prevails. The strength of this presumption varies according to the seriousness of the charge upon which an accused person is put on his trial. *Ashraf Ali v. Emperor*.

19 Cr. L. J. 81 :
43 I. C. 241 : 21 C. W. N. 1152 :
A. I. R. 1918 Cal. 314.

—S. 297—*Evidence—Confession—Jury, duty of.*

Although the Judge has to decide the question of the voluntariness of a confession in its bearing upon admissibility, still, after he has admitted it, the jury are entitled and must be allowed to consider for themselves the question of voluntariness in its bearing upon the truth of the confession. *Kishori Kishore Mishra v. Emperor*. 36 Cr. L. J. 921 :
156 I. C. 396 : 39 C. W. N. 986 :
7 R. C. 700 : A. I. R. 1935 Cal. 308.

—S. 297—*Evidence.*

Judge has to decide admissibility of a confession caused by inducement, threat or promise. If he considers it admissible, he must point out to Jury that admissibility of evidence does not mean that it is true and it is for Jury to accept or reject it. *Baldeo Bin v. Emperor*.

34 Cr. L. J. 369 (2) :
142 I. C. 639 : I. R. 1933 Cal. 310 :
A. I. R. 1933 Cal. 187.

—S. 297—*Evidence, defence case not adequately put—Evidence inadmissible, admission of, effect of.*

Where, however, the defence case is not adequately put before the Jury and evidence is admitted which should have been excluded, the verdict of the Jury cannot be maintained. *In re : Vellayan Ambalam*.

27 Cr. L. J. 176 :
91 I. C. 960 : 23 L. W. 90 :
A. I. R. 1926 Mad. 370.

—S. 297—*Evidence—Expert evidence, Jury, duty of.*

The question of reliability of the evidence of an expert in handwriting is clearly one for the Jury to decide. *Kishori Kishore Mishra v. Emperor*.

36 Cr. L. J. 921 :
156 I. C. 396 : 39 C. W. N. 986 :
7 R. C. 700 : A. I. R. 1935 Cal. 308.

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deposed to by the witnesses in the case, the Jury being at liberty to accept as true all or some only of the facts stated by the accused. But it is the duty of a Judge to explain to the Jury not only the law applicable to the facts as deposed to by the witnesses in the case, but also the law which is applicable to the facts as stated by the accused. *Nga Mya v. Emperor.*

17 Cr. L. J. 49 :

32 I. C. 641 : 8 Bur. L. T. 220 :

8 L. B. R. 306 : A. I. R. 1916 L. Bur. 114.

S. 297—Evidence.

It is enough if the Judge has emphasized all the important and essential features of the case and drawn the attention of the Jury to the important evidence and has not overlooked any piece of evidence which would have weighed heavily against the prosecution. *Aziz Khan v. Emperor.*

36 Cr. L. J. 612 :

154 I. C. 1019 : 4 A. W. R. 1419 :

A. I. R. 1935 All. 103.

S. 297—Evidence of child witness—Previous statements, relevancy of defective charge.

Where in referring to the evidence of a child witness, the Judge said : 'It is for you, however, to estimate the credit of a witness but, in my opinion to impeach the credit of a young child by seeking to contradict him by proof of former statements is merely taking an unfair advantage of his age. I leave that matter to you' : *Held*, that the charge was not correct as the statement of a child is a very relevant matter to consider in judging his evidence, but the error was not very material. *Emperor v. Panchu Shaikh.*

32 C. L. J. 190 :

128 I. C. 811 : 34 C. W. N. 1154 :

I. R. 1931 Cal. 107 : A. I. R. 1931 Cal. 178.

S. 297—Evidence—Prejudicial evidence admitted—Trial set aside.

In a Jury trial, evidence very prejudicial to the accused was wrongly admitted. The Judge in his charge to Jury told them to put the evidence out of their minds entirely and to discard it. The Jury returned a verdict of guilty : *Held*, that as it could not be properly predicated that the verdict of the Jury would have been the same, if no evidence had been wrongly admitted, the conviction and the sentence should be set aside. *Ramesh Chandra Das v. Emperor.*

20 Cr. L. J. 324 :

50 I. C. 660 : 23 C. W. N. 661 :

29 C. L. J. 513 : 46 Cal. 895 :

A. I. R. 1919 Cal. 514.

Ss. 297, 305—Evidence.

Scintilla of evidence—Judge's decision—Accused's case—Sudden and grave provocation, no charge as to—Evidence to go to Jury—Trial Court's proceedings. *Emperor v. Upendra Nath Das.* (F. B.)

16 Cr. L. J. 561 :

30 I. C. 113 : 19 C. W. N. 653 :

21 C. L. J. 377.

S. 297—Jury trial—Accomplice—Law to be explained.

Where in a trial by Jury in respect of an offence of dacoity, a witness is examined on behalf of the prosecution with regard to whom the case of the prosecution is that he was him-

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self probably concerned in the dacoity, the Jury must be directed not to accept the evidence of the witness without the most careful scrutiny. Such a witness may not actually be an accomplice but he is little better than an accomplice witness. Failure to direct the Jury in this behalf amounts to a serious misdirection. *Satya Charan Manna v. Emperor.*

26 Cr. L. J. 1155 :

88 I. C. 515 : 52 Cal. 223 :

A. I. R. 1925 Cal. 666.

S. 297—Jury trial—Admissibility of evidence—Duty of Judge.

One of the duties of a Judge in a trial held with the aid of a Jury is to prevent the production of inadmissible evidence whether it is or is not objected to by the parties. The fact that the accused puts forward some particular ground for holding that certain evidence is not admissible does not relieve the Judge of his duty to look into all the circumstances in order to judge whether the evidence is admissible or not. In dealing with the question of the admissibility of a confession, the Judge is not concerned with the truth or falsity of the confession ; that is a matter entirely for the Jury. The Judge is only concerned with the question as to whether the confession is admissible in evidence. If the confession is voluntary, it is admissible. If *prima facie* it is false, inconsistent, improper or absurd, that might suggest that it is not voluntary. Even if the Judge is satisfied as to the truth of a confession but doubts its voluntary character, he is bound to exclude it under the law. *Emperor v. Panchkari Dutt.*

26 Cr. L. J. 782 :

86 I. C. 414 : 29 C. W. N. 300 : 52 Cal. 67 :

A. I. R. 1925 Cal. 587.

S. 297—Jury trial—Charge—Duty of Judge—Charge confusing and rendering, no assistance to Jury—Verdict should be set aside.

It is the duty of a Judge to place the case before the Jury in such a way as to enable them to come to a reasonable and fair conclusion. Where in no part of the charge can one find a connected account of what the case for the prosecution is or what the defence case is, the Judge mixing up the arguments of the defence with the statement of the case for the prosecution and thus muddling the whole charge and rendering no assistance to the jury, this feature of the charge is sufficient for setting aside the verdict of the Jury. *Mohsena Khatun v. Emperor.*

40 Cr. L. J. 880 :

184 I. C. 222 : 43 C. W. N. 893 : 12 R. C. 214 :

A. I. R. 1939 Cal. 610.

S. 297—Jury trial—Charge to Jury. Judge, duty of.

In delivering a charge to a Jury, care should be taken to place the defence set up fairly before the Jury and to ensure that the Jury appreciate the issue or issues which they have to try. The charge should include the usual warning as to duty of the Jury to the prosecution on the one hand and to the prisoner on the other. *Afiruddi Chakdar v. Emperor.*

20 Cr. L. J. 661 :

52 I. C. 485 : 29 C. L. J. 71 : 28 C. W. N. 833 :

A. I. R. 1919 Cal. 439.

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———**S. 297—Jury trial—Omission to direct Jury to acquit if there is reasonable doubt.**

Where the evidence of the prosecution is not overwhelming, it is impossible to hold that an omission on the part of the Judge to give the usual direction to the Jury that, if they had any reasonable doubt in their minds as to the guilt of the accused, they should give the accused the benefit of the doubt, might not have affected the minds of the Jury. Where the Court is of opinion on the facts of the case that the Jury may possibly have been affected by such omission, the verdict of the Jury should be set aside. *Jagmohan Singh v. Emperor.*

30 Cr. L. J. 1146 :
120 I. C. 114 : I. R. 1930 All. 2 :
A. I. R. 1930 All. 28.

———**S. 297—Jury trial.**

Summing up of evidence, what constitutes—Misdirection, what is. *Dhiraji v. Akasi.*

27 Cr. L. J. 785 :
95 I. C. 385 : 84 A. L. J. 506 :
A. I. R. 1926 All. 429.

———**S. 297—Misdirection.**

A charge which places before the Jury, indiscriminately direct evidence as to the knowledge of the accused, the evidence as to suspicion having been aroused in the mind of the accused and evidence which shows that a suspicion should have arisen in the mind of the accused without making any distinction, is defective on a crucial point and is likely to vitiate the verdict. *Gadadhar Sarkar v. Emperor.*

26 Cr. L. J. 1021 :
87 I. C. 845 : A. I. R. 1926 Cal. 226.

———**S. 297—Misdirection.**

Charge—Judge discussing question of reasonable doubt and warning Jury that they were themselves to weigh evidence—Misdirection is not made out. *Harold H. Watson v. Emperor.*

37 Cr. L. J. 17 :
158 I. C. 172 : 8 R. L. 189.

———**S. 297—Misdirection—Charge in favour of defence—Verdict of guilty—Misdirection.**

Where a charge is, as a whole, distinctly favourable to the defence, it is a matter of great difficulty to say that there was any misdirection which has misled the Jury into giving a verdict of guilty. It is not enough for the purpose of establishing a misdirection to show that the Judge might have laid much more stress than he has laid on the defects in the prosecution case. *In re : Vallayan Ambalan.*

27 Cr. L. J. 176 :
91 I. C. 960 : 23 L. W. 90 :
A. I. R. 1926 Mad. 370.

———**S. 297—Misdirection.**

Charge to Jury—Judge failing to state what Jury had exactly to decide but stating charge in a misleading manner—It constitutes misdirection. *Rajendra Nath Laha v. Emperor.*

38 Cr. L. J. 129 :
166 I. C. 91 : 18 P. L. T. 210 : 3 B. R. 124 :
9 R. P. 249 : A. I. R. 1937 Pat. 191.

———**S. 297—Misdirection—Charge to Jury—Passage read from report.**

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There is no prohibition in law forbidding a Judge to read to a Jury in his charge from a judgment. In practice, it is not desirable to read from several Law Reports: as it may have the effect of confusing the minds of lay men. But in explaining the dividing line between murder, and culpable homicide not amounting to murder, Judges have frequently read, in their charges, passages from some well-known judgment as accurately illustrating the distinction. In so doing, they have always acted very properly and have not been guilty of any misdirection. *Emperor v. Nga Tin Gyi.*

28 Cr. L. J. 213 :
99 I. C. 1013 : 4 Rang. 488 : 5 Bur. L. J. 209 :
A. I. R. 1927 Rang. 68.

———**S. 297—Misdirection—Charge to Jury.**

Where the accused was tried for criminal breach of trust by a District Magistrate with the aid of a Jury and in summing up the District Magistrate did not expressly tell the Jury that the test they were to apply was whether the circumstances relied upon by the accused showed an intention of causing 'wrongful gain' or 'wrongful loss', nor were they told what those terms meant: *Held*, that there had not been sufficient compliance with S. 297 of the Cr. P. C. and that the verdict could not stand. *Browne, C. H. v. Emperor.*

15 Cr. L. J. 257 :
23 I. C. 465 : 7 Bur. L. T. 20 :
A. I. R. 1914 L. Bur. 34.

———**S. 297—Misdirection—Charge to Jury—Statement of experience of Judge whether misdirection—Misdirection not causing injustice, effect of.**

The verdict of a Jury cannot be set aside on the ground of a mere misdirection on a point of fact, if such misdirection has not in fact occasioned a failure of justice. Where a Judge indicated to the Jury in cautious language that from his experience a certain explanation offered by a party was not an impossible one and ought to be considered by the Jury: *Held*, that this did not amount to a misdirection. *Ramdas Rai v. Emperor.*

30 Cr. L. J. 721 :
117 I. C. 173 : 8 Pat. 344 :
10 P. L. T. 409 : I. R. 1929 Pat. 381 :
A. I. R. 1929 Pat. 313.

———**S. 297—Misdirection.**

Charges under Ss. 386 and 458, Penal Code—Vaccination and School Registers and horoscope produced to prove girl's age—Judge charging Jury that registers were no evidence as entries were not made by persons knowing age of girl: *Held*, misdirection is not sufficient to vitiate verdict. *Superintendent and Remembrancer of Legal Affairs, Bengal v. Forhead.*

36 Cr. L. J. 364 :
153 I. C. 493 : 7 R. C. 381 :
A. I. R. 1934 Cal. 766.

———**S. 297—Misdirection—Denial of witness, statement as to.**

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———S. 247—*Absence of complainant, what is.*

Where a Bench Magistrate summons a person to appear on a certain day at a stated hour and the party appears but the Bench does not sit till some hours thereafter and the party does not wait, it cannot be said there has been a failure to appear within the meaning of S. 247, Cr. P. C. *Ahmad Mcera Sahib v. Meeran Sahib.*

28 Cr. L. J. 208 :
99 I. C. 944 ; 25 L. W. 358 :
A. I. R. 1927 Mad. 393.

———Ss. 247, 403—*Absence of complainant—Accused present—Dismissal on first hearing—Acquittal—Bar to second trial.*

The trial of a criminal case within the meaning of S. 403 begins, if not from the time accused is served with summons, at least as soon as the accused appears in Court. The word "tried" in the section does not import any decision of the case on the merits, and if in a summons case the accused is present and the complainant is absent, the dismissal of the case in default of the complainant operates as an acquittal of the accused and the accused cannot be prosecuted again for the same offence. *Yashoda v. Banubai.*

28 Cr. L. J. 183 :
99 I. C. 855.

———S. 247, 403—*Absence of complainant—Acquittal—Presence of accused, whether necessary.*

The important matter for an order under S. 247, Cr. P. C., is the presence or absence of the complainant. It cannot be said that the accused must either be present or must have been summoned to Court. An order under S. 247 is a final order of acquittal which operates as a bar under S. 403 of the Code to the trial of the accused for the same offence. *Kiran Sarkar v. Emperor.*

24 Cr. L. J. 815 :
74 I. C. 719 ; 5 P. L. T. 15 :
2 P. L. R. 10 Cr. : A. I. R. 1924 Pat. 140.

———Ss. 247, 403—*Absence of complainant—Acquittal—Second trial, barred.*

The provision contained in S. 403 of the Cr. P. C. is imperative, and bars a second trial of a person who has once been acquitted whether it be under Ss. 247, 345 or 494 of the Code, no matter whether the order of acquittal is legal or illegal. *Ram Matho v. Emperor.*

22 Cr. L. J. 331 (b) :
61 I. C. 59 ; 2 P. L. T. 170 :
A. I. R. 1921 Pat. 311.

———Ss. 247, 259—*Absence of complainant—Discharge, whether amounts to acquittal—Penal Code (Act XLV of 1860), Ss. 352, 504.*

On the day fixed for the hearing of a complaint under Ss. 352 and 504, Penal Code, the complainant was absent and the Magistrate passed the following order : "complainant absent. Accused discharged." *Held*, that as there was only one case before the Court, the Magistrate must be deemed to have acted under S. 259, Cr. P. C., and that the order did not operate as an acquittal of the accused

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even in respect of the offence under S. 352, Penal Code. *Raghuwatu Naicker v. Singa Ram.*

19 Cr. L. J. 613 :
45 I. C. 517 ; 34 M. L. J. 369 :
7 L. W. 520 ; 41 Mad. 727 :
1918 M. W. N. 827 ; A. I. R. 1918 Mad. 371.

———Ss. 247, 259—*Absence of complainant owing to death—Duty of Magistrate.*

Even in the case of a non-cognizable offence, the death of the complainant does not necessarily abate the prosecution and the Trying Magistrate has discretion in proper cases to allow the complaint to continue by a proper and fit complainant if the latter is willing. *In re : Mahomed Azam.*

27 Cr. L. J. 491 :
93 I. C. 891 ; 28 Bom. L. R. 288 :
A. I. R. 1926 Bom. 178.

———Ss. 247, 439—*Absence of complainant—Dismissal of complaint—Order, whether of discharge or acquittal—Revision—Interference.*

An order dismissing a complaint in a summons case for default of appearance of the complainant under S. 247, Cr. P. C. amounts to an order of acquittal and not of discharge and the Magistrate in such a case has no jurisdiction to set aside the order even on good cause being shown for the complainant's non-appearance. An acquittal under that section does not stand on any different footing from an acquittal under other circumstances and the High Court, will not set aside the order of acquittal in revision except under very rare circumstances. It is a sound rule of practice not to interfere in revision when there is no error of law on the face of the record. *Devarakonda Lakshminarasimham v. Nalluri Bappanna.*

28 Cr. L. J. 270 :
100 I. C. 238 ; 52 M. L. J. 173 :
38 M. L. T. 203 ; 1927 M. W. N. 274 :
A. I. R. 1927 Mad. 473.

———S. 247—*Acquittal—Right of accused for acquittal—Absence of complainant when results in acquittal.*

An application or order for revival of a criminal case can only be made on the supposition that the case is over and not pending. A case which is pending cannot be revived. Under S. 247, Cr. P. C. the right to an order of acquittal accrues upon two conditions, and is dependent, firstly, on the absence of the plaintiff, and secondly, on the Court not adjourning the case. If a case is not taken up at all, it cannot be said that the second condition is fulfilled, for there is no knowing in what way the Court's discretion would have been exercised if the case had been taken up. *Rash Behary Karury v. Corporation of Calcutta.*

26 Cr. L. J. 1050 :
87 I. C. 970 ; A. I. R. 1926 Cal. 102.

———S. 247—*Acquittal of accused, legality of.*

Where the case was adjourned to a certain date on which two of the accused were bound to appear and the summons of the third accused was awaited, the date was not a mere nominal hearing, and if on such date the complainant was absent, the Magistrate was fully

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appeared before the Jury, it is for the latter to judge whether the demeanour of the witnesses was such as to discredit in any way the evidence which they had given. *Shamlal Singh v. Emperor*. 26 Cr. L. J. 572 :

85 I. C. 716 : A. I. R. 1925 Cal. 980.

—————**S. 297—Misdirection.**

Double rape in broad daylight—Presence of husband and brothers only 70 yards away and her calling for help must be brought to Jury's notice—Omission amounts to misdirection. *Abdul Aziz v. Emperor*. 35 Cr. L. J. 957 :

149 I. C. 447 : 30 N. L. R. 262 :

6 R. N. 229 :

A. I. R. 1934 Nag. 94.

—————**S. 297—Misdirection—Discrepancies not explained—Jury asked to return verdict on moral conviction.**

Merely telling the Jury that there are material discrepancies without setting out those discrepancies amounts to a misdirection. The Jury have not to return a verdict upon their moral belief of a case but upon the legal proof of the facts constituting the offence. Where, therefore, a Judge repeatedly tells the Jury that if they are "morally convinced" of the guilt of the accused, their verdict should be that of guilty, it amounts to a misdirection to the Jury. *Enayat Husain v. Emperor*. 28 Cr. L. J. 15 :

99 I. C. 47 : 49 All. 209 :

25 A. L. J. 33 :

A. I. R. 1926 All. 752.

—————**S. 297—Misdirection—Duty of Prosecution—Reading matters prejudicial to accused—Duty of Judge to warn Jury against acting on such matters.**

The accused was tried under S. 372, Penal Code, for the offence of selling a minor girl for immoral purposes and was acquitted. The accused was subsequently charged with having made use at the previous trial of a forged document showing that the girl was a minor. During this trial, the whole of the complaint which contained allegations of various matters highly prejudicial to the accused was read at the opening of the prosecution though the complaint was not subsequently filed in the case. The Judge did not caution the Jury against believing the allegations contained in the complaint. Further, evidence was adduced at the trial to show that in another litigation the girl's grandmother had in the presence of the present accused, given evidence as to the age of the girl and that the accused consequently knew that the girl was a minor. The Judge in referring to this evidence, said in the summing up that if the Jury were of opinion that the accused must have known that the girl was under 18, that would be a reason for concluding that he knew that the document was forged: *Held*, (1) that the Prosecution acted very unfairly in reading the whole of the complaint made at the previous trial and the omission of the Judge to caution the Jury against allowing their verdict to be influenced by the matters contained therein amounted

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to misdirection; (2) that it was not open to the Jury to conclude that the accused knew the document to be forged because he knew that the girl was under 18 or had heard a statement of her grandmother that, she was under 18, and the learned Judge's summing up on this point was a grave misdirection. *Padam Prosad v. Emperor*. 30 Cr. L. J. 993 :

119 I. C. 193 : 30 C. L. J. 106 :

33 C. W. N. 1121 :

I. R. 1929 Cal. 753 :

A. I. R. 1929 Cal. 617.

—————**S. 297—Misdirection—Error in summing up.**

The expression 'misdirection,' as used in the Cr. P. C., includes not only an error in laying down the law by which the Jury are to be guided, but also an error in summing up the evidence. *Imperator v. Minhwasayo*. 11 Cr. L. J. 13 :

4 I. C. 597 : 3 S. L. R. 102.

—————**S. 297—Misdirection—Failure to draw attention to statement of accomplice.**

Where on the evidence a strong suspicion is raised that a witness for the prosecution is an accomplice, the failure of the Judge to put it to the Jury to consider whether or not the witness is an accomplice and to caution the Jury against accepting his evidence without corroboration, in case they hold that he was an accomplice, amounts to a misdirection and vitiates the trial. *E. St. Moss v. Emperor*. 28 Cr. L. J. 278 :

100 I. C. 358 : A. I. R. 1927 Cal. 460.

—————**S. 297—Misdirection.**

Failure of Judge to instruct jury about the meagre evidentiary value of accused's confession against co-accused—Misdirection. 9 Cr. L. J. 308.

—————**S. 297—Misdirection—Failure of prosecution to examine material witness—Duty of Judge to direct Jury that they are entitled to make adverse inference—Omission to do so.**

In a charge to the Jury there should be a substantive direction on the part of the learned Judge as to the view of the prosecution which the Jury is entitled to adopt if they are not satisfied with the explanation offered for the absence of a witness who is material and the omission of the trial Judge to give such a direction as a non-direction amounting to a misdirection. *Nabab Ali v. Emperor*. 32 Cr. L. J. 228 (b) :

129 I. C. 99 : 34 C. W. N. 1151 :

I. R. 1931 Cal. 115 :

53 C. L. J. 54 : 58 Cal. 580 :

A. I. R. 1930 Cal. 708.

—————**S. 297—Misdirection—Failure to direct attention to salient points in evidence.**

Failure to direct the attention of the Jury to the salient points in the evidence of both sides amounts to misdirection to Jury. The Judge must sum the case intelligently and it is his duty to call the Jury's attention to any flagrant contradictions in the evidence and also any explanation of the

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contradiction which has been suggested. No duty is cast upon the Judge of recapitulating arguments used by the Counsel on either side though it is desirable that in the course of summing up he should remind the Jury of the main lines of attack and defence adopted by the Counsel. *Dhiraji v. Akasi*.

27 Cr. L. J. 785 :
95 I. C. 385 : 24 A. L. J. 506 :
A. I. R. 1926 All. 429.

———S. 297—*Misdirection—Failure to refer to material facts.*

Failure to refer in the charge to the Jury, matters which ought to have been placed before them amounts to misdirection of the Jury. *Ram Charilar Dubey v. Emperor*.

32 Cr. L. J. 186 :
128 I. C. 807 : 34 C. W. N. 954 :
I. R. 1931 Cal. 103 :
A. I. R. 1931 Cal. 10.

———S. 297—*Misdirection—Inadmissible evidence, omission to refer to, effect of.*

Where a statement, inadmissible in evidence, is brought to the notice of a Jury, an omission by the Judge to refer to it in the charge to a Jury is a misdirection in law and vitiates the trial. *Sumeshwar Jha v. Emperor*.

23 Cr. L. J. 91 :
65 I. C. 443 : 3 P. L. T. 101 :
4 U. P. L. R. Pat. 31 :
A. I. R. 1923 Pat. 103.

———S. 297—*Misdirection.*

In charge under S. 201, Penal Code, omission to point out the real meaning and significance of the section amounts to misdirection. *Nagendra Bhaka v. Emperor*.

53 Cr. L. J. 535 :
147 I. C. 1028 (1) :
37 C. W. N. 348 :
6 R. C. 389 : A. I. R. 1934 Cal. 144.

———S. 297—*Misdirection.*

Judge expressing his opinion on questions of fact in dogmatic terms—Misdirection is constituted—Guiding principles in summing up by Judge, stated. *Sumera v. Emperor*.

35 Cr. L. J. 688 :
148 I. C. 504 : 1933 A. L. J. 1634 : 6 R. A. 701 :
A. I. R. 1934 All. 326.

———S. 297—*Misdirection.*

Judge expressing his personal opinion as to evidence—Observation that Jury is not bound by his personal opinion—Misdirection is not constituted. *Hadi Hussain v. Emperor*.

35 Cr. L. J. 502 :
147 I. C. 911 : 11 O. W. N. 211 :
6 R. O. 333 : A. I. R. 1934 Oudh 122 (2).

———S. 297—*Misdirection—Judge's opinion expressed in dogmatic terms.*

Where the Sessions Judge informed the Jury that it was for them to weigh the evidence with care and caution, and that on questions of fact, they were not bound by any opinion of his, but he expressed his own opinion in terms too dogmatic and unqualified: *Held*,

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that there was misdirection. *Ofel Molla v. Emperor*.

15 Cr. L. J. 147 :
22 I. C. 723 : 18 C. W. N. 189 :
A. I. R. 1914 Cal. 542.

———S. 297—*Misdirection—Law of private defence not properly explained.*

Where the Judge told the Jury that the essence of the law of private defence was that the person exercising it must be possessed of reasonable fear either for his own safety or the safety of his property: *Held*, that exposition of the law on the right of private defence was not exhaustive, for, under S. 97, I. P. C., the right of private defence extends under the restrictions specified in that section not only to the defence of one's own body or property, but to the body or property of any other person as well. *Abdul Rezaak v. Emperor*.

A. I. R. 1928 Cal. 269.

———S. 297—*Misdirection—Miscarriage of Justice.*

A miscarriage of justice in this connection means that there must be reasonable ground for apprehending that the misdirection might have affected the Jury's verdict. *Jagmohan Singh v. Emperor*.

30 Cr. L. J. 1146 :
120 I. C. 114 : I. R. 1930 All. 2 :
A. I. R. 1930 All. 28.

———S. 297—*Misdirection—Omission to give direction as to benefit of doubt.*

Where in regard to one of the accused, the Judge after summing up the evidence in detail observed: "there only seem to be some vague suggestions that he might have been concerned in the offence. When we scrutinize the evidence it seems very weak and for the reasons I have pointed out to you, it seems to be wholly inconclusive": *Held*, that with regard to this accused, the omission by the Judge to give the above direction to the Jury amounted to a misdirection which prejudiced the accused, and he must, therefore, be acquitted. *Para Thandan v. Para Senna Moonji*.

4 Cr. L. J. 502 :
1 M. L. T. 350.

———S. 297—*Misdirection—Omission to give elaborate definition of offence.*

An omission on the part of a Magistrate to give the Jury a detailed definition of the offence charged, does not amount to a misdirection of the charge so as to justify a reversal of the verdict when it is clear that the nature of the offence had been described in detail to the Jury and its consistent factors fully understood by them. *Jindar Singh v. Emperor*.

25 Cr. L. J. 1032 :
81 I. C. 808 : 1 O. W. N. 332 :
A. I. R. 1925 Oudh 69.

———S. 297—*Misdirection.*

Rape, charge for—Accused not raising plea of consent—Direction that age or consent of girl need not be considered constitutes misdirection. *Abdul Khaleque v. Emperor*.

34 Cr. L. J. 1161 (1) :
145 I. C. 923 : 37 C. W. N. 484 :
6 R. C. 174 : A. I. R. 1933 Cal. 606 (1).

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———S. 297—*Misdirection.*

Rape—Complainant's story differing from time to time—Improbabilities in story. These facts should be brought to notice to Jury—Merely saying that Pleader has ably presented his case is not enough. *Abdul Aziz v. Emperor.*

35 Cr. L. J. 957 :
149 I. C. 447 : 30 N. L. R. 262 :
6 R. N. 229 : A. I. R. 1934 Nag. 94.

———S. 297—*Misdirection—Sessions Judge—Jury—Charge to Jury.*

The accused, ten in number, were tried for offences punishable under Ss. 148 and 302 of the Penal Code. In his charge to the Jury the Sessions Judge did not place before the Jury the special circumstances which, in his view, would have brought the offence within the definition of murder contained in S. 300 of the Penal Code. It was not put to the Jury in the charge, whether any of the intentions mentioned in the section were established as against any of the accused, and the exceptions 1, 2 and 4, were not explicitly explained to the Jury. The Sessions Judge directed the Jury to find that if the offence of robbing were established, all the accused were guilty of murder: *Held*, that this was a misdirection in the charge to the Jury. *Emperor v. Mohamad Khan.*

5 Cr. L. J. 168 :
9 Bom. L. R. 153.

———S. 297—*Misdirection.*

Statement made to Police brought in record by defence—Judge referring to them in charge with caution not to take them as substantive evidence—There is no misdirection. *Jasim-ud-din v. Emperor.*

32 Cr. L. J. 1245 ;
134 I. C. 763 : 35 C. W. N. 164 :
I. R. 1931 Cal. 875 : A. I. R. 1931 Cal. 622.

———S. 297—*Misdirection—Statement of a witness before investigating Magistrate—No evidence.*

A statement made by a witness to a Police Inspector or to an investigating Magistrate is no evidence against an accused, even though the statement before the investigating Magistrate is made in the presence of the accused ; and a direction to the Jury that such evidence is strong evidence against the accused is a serious misdirection. *In re : Sankappa Rai.*

7 Cr. L. J. 325 :
18 M. L. J. 66 : 31 Mad. 127 :
3 M. L. T. 270.

———S. 297—*Misdirection.*

Statement that evidence was corroborated by statements to Police—Judge acting in contravention of S. 162 statement constituted misdirection. *Ram Lal Ghose v. Emperor.*

36 Cr. L. J. 135 :
152 I. C. 681 : 7 R. C. 307 :
A. I. R. 1934 Cal. 757.

———S. 297—*Misdirection—Theft case.*

Judge not pointing out to Jury that theft becomes robbery when violence is used for

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committing theft. This is misdirection. *In re : Raman Karavan.*

32 Cr. L. J. 1212 :
134 I. C. 801 : 54 Mad. 588 :
33 L. W. 414 : 1931 M. W. N. 652 :
I. R. 1931 Mad. 849 :
A. I. R. 1931 Mad. 427.

———S. 297—*Misdirection—Three persons accused of culpable homicide—Deceased dying of fatal injury received in a fracas.*

In a trial by jury the Judge in charging the Jury said : "If you hold it proved that the three accused all set upon Ghulam Husain with the intention of beating him and that one of them struck the fatal blow, you will be justified in finding them all guilty of culpable homicide not amounting to murder, even if there is no evidence to show which of the three struck the blow" and then read and explained to them the provisions of S. 34 of the Penal Code : *Held*, that the Judge misdirected the Jury in stating that any of the accused might be found guilty of culpable homicide, even though his individual intention and the common intention was merely to beat. *Emperor v. Murid.*

11 Cr. L. J. 15 (b) :
4 I. C. 608 : 3 S. L. R. 125.

———S. 297 — *Misdirection to Jury, what amounts to—Heads of charge, principles applicable, to preparation of—Functions of Judge and Jury.*

Mere non-direction is not necessarily misdirection. Those who allege misdirection must show that something wrong was said, or that something was said which would make wrong that which was left to be understood. Every summing-up must be regarded in the light of the conduct of the trial and the questions which have been raised by the prosecution and defence, respectively. A Judge is not required under S. 367, Cr. P. C., to write out *in extenso* the charge which he addresses to the Jury, but he should set forth in writing the headings of his charge ; and such headings afterwards form part of the record of the proceedings in the trial before him. As the term "heads of charge" itself implies, the Judge must faithfully record the lines upon which he addressed the Jury, both on the evidence and on the law and the object of these heads of charge is to inform the High Court, should occasion arise, of what direction he gave in law to the Jury, and the nature of his summing-up of the evidence, not only for the prosecution but also for the defence. The headings of charge do not purport, nor are they intended by Statute, to be an exhaustive detail of every particular which the Judge may have addressed to the Jury. They should only record, in an intelligent form and with sufficient fullness, the points of law and the directions given by the Judge to the Jury. But in considering the language used, one must not parse the headings of charge as if it were an indictment. The method of expression and its form may be unsatisfactory, but if in substance one can see from the frame of the heads of charge what were the directions which the Judge gave to the Jury, and that they were right and proper, then there can be no ground of complaint, even

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though the phraseology and form adopted might be open to question. It is the sole function of the Judge to direct the Jury on all matters of law and the Jury must take their direction in law from the Judge. The Judge must present the main case for the prosecution and for the defence fully for the consideration of the Jury. *Eknath Sahay v. Emperor*.

17 Cr. L. J. 353 (a) :
35 I. C. 657 : 1 P. L. J. 317 :
A. I. R. 1916 Pat. 236.

—S. 297—Misdirection—Trial by Jury.

Where in a trial by a Jury on a charge of murder committed in a boat, it appeared from the prosecution evidence that the accused had left the boat sometime before the alleged time of the murder but the Judge did not bring that portion of the evidence specifically to the notice of the Jury : *Held*, that the omission of the Judge amounted to misdirection. *Ashraf Ali v. Emperor*.

19 Cr. L. J. 81 :
43 I. C. 241 : 21 C. W. N. 1152 :
A. I. R. 1918 Cal. 314.

—S. 297—Misdirection—Trial by Jury—Charge to Jury—Accomplice—Corroboration—Possession of stolen goods—Presumption—Criminal case—Burden of proof.

In a case of dacoity, the Judge in explaining Illustration (a) to S. 114 of the Evidence Act, gave the Jury the following direction :—"The Court may presume that a man who is in possession of stolen goods, soon after the theft, is either the thief or has received the goods knowing them to be stolen. When it is proved, or may be reasonably presumed, that the property in question is stolen property, the burden of proof is shifted, and the possessor is bound to show that he came by it honestly, and if he fails to do so, the presumption is that he is the thief or the receiver according to circumstances. I have already referred to the defence of these two accused. If the gentlemen of the Jury find that the accused have failed to account for their possession, then they may presume that the accused came by them dishonestly." *Held*, that the direction amounted to a serious misdirection inasmuch as (a) no presumption could arise under Illustration (a) to S. 114 of the Evidence Act with regard to property which could be merely presumed to have been stolen; (b) the burden of proof was throughout on the prosecution and could not be shifted, (c) the Jury were not properly directed that it was their duty to weigh all the circumstances of the case, consider the accused's explanation and then decide whether or not they should make the presumption laid down in the Illustration to the section. *Salga Charan Manna v. Emperor*.

26 Cr. L. J. 1155 :
88 I. C. 515 : 52 Cal. 223 :
A. I. R. 1925 Cal. 666.

—S. 297—Jurisdiction, what amounts to.

It is only when the non-direction of a Jury is such that there are grounds for thinking that the Jury by reason of it may have been put on the wrong track and made to arrive at a wrong conclusion that such non-direction can

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amount to a misdirection. *Rajit Mian v. Emperor*.

29 Cr. L. J. 81 :
106 I. C. 673 : 6 Pat. 817 :
9 P. L. T. 191 : A. I. R. 1903 Pat. 120.

—S. 297—Misdirection, what amounts to.

Where in a trial by Jury, the Judge fails to direct the mind of the Jury to a particular aspect of the case, or where he tells the Jury that the statement of one accused might be taken for what it is worth against a co-accused, this amounts to a misdirection sufficient to occasion a failure of justice and to vitiate the trial. *Suryya Kanta v. Emperor*.

21 Cr. L. J. 82 :
58 I. C. 674 : 24 C. W. N. 119 :
31 C. L. J. 20 : A. I. R. 1920 Cal. 980.

—S. 297—Misdirection, what amounts to—Failure to explain law and invite attention to evidence.

Where in a trial by Jury one of the charges against the accused is of abetment, and the Judge omits to direct the Jury as to the evidence of abetment and to explain the subject, his omission amounts to a misdirection. So, too, where he omits to invite the Jury to consider carefully the statement of the accused with reference to the charge framed against him, and also when the Judge omits to advise the Jury as to the attitude to be taken towards a retracted confession against a co-accused. *Hemanta Kumar v. Emperor*.

21 Cr. L. J. 775 :
58 I. C. 455 : 30 C. L. J. 29 :
47 Cal. 46 : A. I. R. 1920 Cal. 966.

—S. 297—Misdirection, what is.

Direction to the Jury to the effect that accused might be convicted upon his own statements which had subsequently been retracted without further corroboration, is a misdirection and it is also a misdirection to direct that the statement of two accomplices may corroborate each other when these statements are independent. *Kashim Ali v. Emperor*.

36 Cr. L. J. 70 :
152 I. C. 234 : 38 C. W. N. 586 :
7 R. C. 256 : A. I. R. 1934 Cal. 65.

—S. 297—Misdirection, what is.

In order to constitute misdirection the point omitted must be of such importance that omission to refer it renders the summing-up unfair. *Dhiraji v. Akasi*.

27 Cr. L. J. 785 :
95 I. C. 385 : 24 A. L. J. 506 :
A. I. R. 1926 All. 429.

—S. 297—Misdirection, what is.

It is not a correct proposition of law to lay down that a person who attempts to enforce a claim to property which he cannot substantiate, thereby creates the position that possession is with another, and if in a direction to the Jury, the language used by the Judge is open to such a construction, the direction is not proper. *Sahab Ali v. Emperor*.

34 Cr. L. J. 668 :
143 I. C. 899 : I. R. 1933 Cal. 490 :
A. I. R. 1933 Cal. 242 :

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—S. 297—*Misdirection, what is.*

One of the accused denied his presence at the scene and was supported in his statement by evidence. In summing up evidence, the Judge omitted to make all mention of this fact: *Held*, that the omission of this part of the case constituted a misdirection. *Emperor v. Murid.* 11 Cr. L. J. 15 (b) : 4 I. C. 608 : 3 S. L. R. 125.

—S. 297—*Misdirection, what is.*

Per Huda, J.—The Judge should draw the attention of the Jury to the fact that an eye-witness to the occurrence has not been examined by the prosecution and whether there was sufficient justification for the non-examination of that witness. The omission of the Judge to do so amounts to a misdirection. It is also a misdirection on the part of the Judge, in a case where the whole of the evidence is circumstantial, to direct the Jury that they must not acquit the accused simply because in their opinion he may possibly not be guilty, but that they should do so if they think the prosecution evidence is for good reasons not satisfactory. *Ashraf Ali v. Emperor.* 19 Cr. L. J. 81 : 43 I. C. 241 : 21 C. W. N. 1152 : A. I. R. 1918 Cal. 314.

—S. 297—*Misdirection, what is.*

The question whether a person was in Police custody while making a confession is one for the Judge to decide; and the omission of the Judge to state to the Jury his finding on the point that a person was in Police custody is not a misdirection. *In re : Saunkappa Rai.* 7 Cr. L. J. 325 : 18 M. L. J. 66 : 31 Mad. 127 : 8 M. L. T. 270 :

—S. 297—*Misdirection.*

Where all the main points in the evidence have been carefully placed before the Jury, the fact that one or two minor details were not placed before them will not amount to misdirection. *Tajer Ali Darji v. Emperor.* 35 Cr. L. J. 536 : 147 I. C. 1043 : 57 C. L. J. 583 : 6 R. C. 392 : A. I. R. 1934 Cal. 142.

—S. 297—*Misdirection, what is.*

Referring to inadmissible evidence in the charge which might have influenced the Jury adversely to the accused is a ground for setting aside a conviction in a jury trial. *Ohedali Sheik v. Emperor.* 32 Cr. L. J. 421 : 129 I. C. 680 : 52 C. L. J. 523 : A. I. R. 1931 Cal. 65.

—S. 297—*Misdirection.*

Where in trial for offence under S. 366, Penal Code, Judge tells the Jury that the fact of previous intimacy with the girl is immaterial, it constitutes misdirection. *Shahabali v. Emperor.* 35 Cr. L. J. 307 : 147 I. C. 79 : 38 C. W. N. 71 : 60 Cal. 1457 : 6 R. C. 229 : A. I. R. 1933 Cal. 718.

—S. 297—*Misdirection.*

Where a Sessions Judge, without explaining

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to the Jury what was meant by theft asked them to decide whether the accused were found in the place of theft and whether they were there with an honest or dishonest intention: *Held*, that the verdict should be set aside as the Jury was not asked to find on the question of dishonest removal. *In re : Kamma Aswathan.* 11 Cr. L. J. 164 (b) : 4 I. C. 1071 : 6 M. L. T. 324.

—S. 297—*Misdirection.*

Where the defence is substantially put to the Jury, a mere omission to refer to this or that circumstance or suggestion, is not non-direction, which amounts to misdirection. *Manarali v. Emperor.* 35 Cr. L. J. 567 : 147 I. C. 1203 : 37 C. W. N. 1066 : 58 C. L. J. 66 : 60 Cal. 1339 : 6 R. C. 411 : A. I. R. 1934 Cal. 124.

—S. 297—*Misdirection, whether curable.*

A misdirection to Jury unless it has occasioned a failure of justice is a mere irregularity curable under S. 537, Cr. P. C. *Dhiraji v. Akas.* 27 Cr. L. J. 785 : 95 I. C. 385 : 24 A. L. J. 506 : A. I. R. 1926 All. 429.

—S. 297—*Misdirection—Wrong proposition of law.*

There is a misdirection if in his charge to the Jury the Judge tells the Jury that since the stolen goods had been found in the possession of the accused, the onus of proof shifted on him and that unless he proved affirmatively that he acquired, the property lawfully, the Jury must convict him. *Bhut Nath Mondal v. Emperor.* 33 Cr. L. J. 40 : 134 I. C. 1071 (b) : 35 C. W. N. 291 : I. R. 1932 Cal. 31 (2) : A. I. R. 1931 Cal. 617.

—Ss. 297, 298 — *Misdirection — Jury asked to take broad view of the evidence—Warning against minor discrepancies.*

Where a Session Judge in his charge to the Jury observed:—"If you are satisfied that there was no object in proving a false case, not from the point of view of seeking for small discrepancies, but upon a broad view of the evidence given before you": *Held*, that there was no misdirection to the Jury and the Session Judge was right in conveying the caution against minor discrepancies in immaterial and collateral events in the case. *Bajnath Mahton v. Emperor.* 22 Cr. L. J. 125 : 59 I. C. 557 : 1 P. L. T. 708.

—Ss. 297, 298, 299—*Misdirection to Jury, whether ground for setting aside verdict.*

The accused were tried by the Sessions Judge and a Jury on charges under S. 465, 467 and 193, Penal Code, on the allegations that by personating one Mir Baksha, the husband of a certain woman; before the Muhammadan Marriage Registrar, they had induced the Registrar to make an entry of the divorce of the woman by her husband, to which entry they had affixed their thumb impressions, and

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thereby made a false document within the meaning of Ss. 463 and 464, Penal Code. In his charge to the Jury, the Sessions Judge said: "If the person who put his thumb impression in the register as Mir Bakhsha was not really Mir Bakhsha, it is clear that he made a false document, within the meaning of S. 464 and that his intention was that fraud should be committed and also that injury should be caused to Mir Bakhsha. He, therefore, committed forgery." *Held*, that there was a misdirection on the part of the Judge as he did not leave it to the Jury, as he should have done, to say whether on the evidence they found that the intention of the accused was dishonest and fraudulent, but as the verdict was not erroneous and was perfectly correct on the evidence, it should not be set aside. *Emperor v. Asimoddi*.

19 Cr. L. J. 649 :
45 I. C. 841 : 22 C. W. N. 572 :
A. I. R. 1918 Cal. 140.

—Ss. 297, 299 ILL. (a)—Misdirection.

An omission on the part of a Judge to explain to the Jury the difference between murder and culpable homicide not amounting to murder is not in every case a material misdirection. *Nga Mya v. Emperor*.

17 Cr. L. J. 49 :
32 I. C. 641 : 8 Bur. L. T. 220 :
8 L. B. R. 306 :
A. I. R. 1916 L. Bur. 114.

—Ss. 297 and 537—Misdirection—Case tried by Jury—Charge to Jury—Misdirection by Judge—Material irregularity.

Where in summing up a case the Judge addressed the jury as follows:—The accused are charged with dacoity. Dacoity is committed when any number of persons not less than five conjointly commit robbery: *Held*, that the Judge ought to have explained to the Jury what is necessary to constitute the offence of robbery as defined in S. 390 of the Penal Code. This is a real and not merely a technical defect curable by S. 537, Cr. P. C., and the convictions must be set aside. *Muri Valayan v. Emperor*.

5 Cr. L. J. 78 :
1 M. L. T. 399 : I. L. R. 30 Mad. 44.

—S. 297—Murder—Charge to Jury—Duty of Judge.

Per *Twomey, J.*—When the facts appearing in a case are consistent only with an intention to cause death or to cause bodily injury sufficient in the ordinary course of nature to cause death, the offence can only be murder and it would, in such a case, clearly be misleading to discuss culpable homicide done with any lesser criminal intention. In doubtful cases of murder, a Judge is bound to explain the law as to the minor offence of culpable homicide not amounting to murder as well as the major offence of murder. Per *Parlett, J.*—A judicial decision must be taken as arrived at under the particular circumstances of the case in which it was given and to govern another case only if its circumstances are similar. It is quite possible to explain fully and correctly

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what murder is without stating what it is not. A Court is bound to presume the absence of circumstances bringing the case within an exception unless and until the existence of these circumstances is proved or at least alleged. If there is material only for some of such circumstances but not others, it would not be right for a Judge to raise the applicability of the exception before the Jury, as by so doing he might mislead them into contravening S. 105 of the Evidence Act. *Nga Mya v. Emperor*.

17 Cr. L. J. 49 :
32 I. C. 641 : 8 Bur. L. T. 220 :
8 L. B. R. 306 : A. I. R. 1916 L. Bur. 114.

—S. 297—Murder—Charge to Jury—Duty of Judge.

The only express provision as to the duty of a Judge in charging a Jury is that in S. 297. It is not incumbent on a Judge to explain a part of the law to the Jury, which if they acted on, they would have gone wrong. Before a Judge leaves a case to the Jury for finding as to whether the accused's case comes within one of the exceptions to S. 300, Penal Code, there must be evidence, at least an allegation by the accused, on which they might reasonably and properly conclude the facts to be established. It is not the duty of a Judge to invent facts in the interests of the accused persons. *Nga Mya v. Emperor*.

17 Cr. L. J. 49 :
32 I. C. 641 : 8 Bur. L. T. 220 :
8 L. B. R. 306 : A. I. R. 1916 L. Bur. 114.

—S. 297—Murder case—Charge to Jury—Misdirection on point of law.

Where in a trial for murder the Judge in his charge to the Jury stated as follows: "If you hold that he intended to cause Karim Shah such bodily injury that death would be a possible but not the most probable result, you will find him guilty under S. 304, Part I, or if you hold that he had no such intention but knew as a reasonable man that Karim's death would be a likely consequence of his act, you will find him guilty under S. 304, Part II: *Held*, that the use of the word 'possible' instead of the word 'likely' amount to a misdirection on a point of law. *Natabar Haldar v. Emperor*.

31 Cr. L. J. 572 :
123 I. C. 751 : 50 C. L. J. 476 :
34 C. W. N. 223 : A. I. R. 1930 Cal. 136.

—S. 297—Non-direction—Curing of defect.

A grave omission to direct the Jury on a vital point cannot be made good merely by Counsel's calling attention to it at the termination of the summing up. *Padam Prosad v. Emperor*.

30 Cr. L. J. 993 :
119 I. C. 193 : 30 C. L. J. 106 :
33 C. W. N. 1121 : I. R. 1929 Cal. 753 :
A. I. R. 1929 Cal. 617.

—S. 297—Non-direction.

Defective nature of identification test—Jury not directed to its nature—Verdict based on such identification is vitiated. *Kuldip Singh v. Emperor*.

36 Cr. L. J. 28 :
152 I. C. 126 : 15 P. L. T. 803 :
7 R. P. 152 : A. I. R. 1934 Pat. 537.

Cr. P. CODE (1898), S. 297**—S. 297—Non-direction—Effect.**

A conviction cannot be set aside on the mere ground that the record made by the Judge of the heads of charge to the Jury is not sufficient to show that the Jury was adequately directed on the questions of law arising in the case. *Dhanpat Tewari v. Emperor.*

31 Cr. L. J. 786 :
125 I. C. 131 : 9 Pat. 148 :
11 P. L. T. 646 :
A. I. R. 1930 Pat. 243.

—S. 297—Non-direction—Effect on trial.

Where it is necessary at the trial to refer to the conviction of a co-accused in a previous trial with reference to the same occurrence, it is the duty of the Judge to particularly warn the Jury not to take into account the fact of the conviction at all. The failure to give such warning amounts to non-direction such as would vitiate the verdict of the Jury. *Hari Charan Das v. Emperor.*

27 Cr. L. J. 398 :
93 I. C. 46 : A. I. R. 1926 Cal. 728.

—S. 297—Non-direction.

Evidence against all accused not same—Omission to deal with evidence against each separately—Constitutes non-direction. *Miajan Biswas v. Emperor.*

34 Cr. L. J. 622 :
143 I. C. 682 : 37 C. W. N. 68 :
I. R. 1933 Cal. 461 :
A. I. R. 1933 Cal. 5.

—S. 297—Non-direction.

Judge not stating if confession was voluntary or not—Error of law is committed. *Ram Lal Ghose v. Emperor.*

36 Cr. L. J. 135 :
152 I. C. 681 : 7 R. C. 307 :
A. I. R. 1934 Cal. 757.

—S. 297—Non-direction—Non-direction, whether misdirection.

Mere non-direction unless it amounts to misdirection is not fatal to the charge. Failure to address on every one of the suggestions made by the defence is not non-direction. *Bapurao v. Emperor.*

41 Cr. L. J. 894 :
190 I. C. 283 : 1940 N. L. J. 264 :
13 R. N. 99 : A. I. R. 1940 Nag. 221.

—S. 297—Non-direction.

On failure of prosecution to examine material witnesses, Judge should direct Jury that they are entitled to make adverse inference. Omission to do so, is non-direction amounting to misdirection. *Nabab Ali v. Emperor.*

32 Cr. L. J. 228 (2) :
129 I. C. 99 : 34 C. W. N. 1151 :
I. R. 1931 Cal. 115 :
53 C. L. J. 54 : 58 Cal. 580 :
A. I. R. 1930 Cal. 708.

—S. 297—Non-direction when misdirection—Reference to arguments of pleaders.

In summing up, it is open to the Judge to refer the Jury to the arguments of pleaders ; but he should not omit matters of prime importance. A non-direction is not a misdirection unless it is on a matter of prime

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importance ; and especially if it tells in favour of the accused. *Imperator v. Minhwasayo.*

11 Cr. L. J. 13 :
4 I. C. 597 : 3 S. L. R. 102 :

—Ss. 297, 537—Non-direction, whether misdirection.

Non-direction merely is not misdirection, and those who allege misdirection, must show that something wrong was said, or that something was said which would make wrong that which was left to be understood. *Fateh Chand v. Emperor.*

18 Cr. L. J. 385 :
38 I. C. 945 : 24 C. L. J. 400 :
21 C. W. N. 33 :
A. I. R. 1917 Cal. 123.

—S. 297—Procedure—Evidence, admission of.

In a trial by Jury the Court should be very cautious in allowing evidence to be given against the accused, the admissibility of which depends on what other witnesses, when called by the Prosecution, may say in their deposition. *Ramesh Chandra Das v. Emperor.*

20 Cr. L. J. 324 :
50 I. C. 660 : 23 C. W. N. 661 :
29 C. L. J. 513 : 46 Cal. 895 :
A. I. R. 1919 Cal. 514.

—S. 297—Re-trial—Culpable homicide—Right of private defence of property—Omission to charge Jury—Misdirection—Re-trial.

In a trial for an offence under S. 304, Penal Code, the defence was that the accused woke up at night and found the deceased coming from inside the accused's hut, and inflicted wounds upon him which resulted in his death. The Sessions Judge directed the Jury with regard to the right of private defence of the body under S. 102 of the Penal Code, but gave no direction to the Jury with regard to the right of the accused under S. 103 of the Penal Code : *Held*, (1) that if the deceased came to the house with the intention of robbery and if he came from inside the hut, the Judge should have charged the Jury that if they accepted this story for the defence, they would have to consider whether there was a reasonable belief or apprehension in the mind of the accused that the thief had with him or was likely to have with him the articles which he had taken from inside the hut, and he should have further charged the Jury that if they accepted this story on behalf of the accused with regard to the probability that the thief had with him articles taken from inside the hut, they should consider whether the accused in the exercise of his rights of defence of property under S. 103 used more force than was reasonably necessary for preventing the thief from getting away with the stolen property ; (2) that this point not having been put to the Jury in the course of the charge, the conviction must be set aside and the accused must be re-tried. *Baseruddi Sheikh v. Emperor.*

26 Cr. L. J. 48 :
83 I. C. 528 : 28 C. W. N. 585 :
39 C. L. J. 525 :
A. I. R. 1924 Cal. 776 :

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—S. 297—*Re-trial—Defective charge.*

Where, though a charge to the Jury technically complied with the requirements of S. 297, Cr. P. C., in so far as it consisted of heads of charge on the face of it, yet the explanation of the law or the subject was drastically meagre and the summing up of the evidence was no more than the barest possible skeleton of the evidence on the record and important points which should have been brought to the notice of the Jury were not brought to their notice: *Held*, that it was a proper case for affording the accused another opportunity of having the case against them placed before the Jury by another officer at a second trial. *Dwarika Das Bairagi v. Emperor.*

30 Cr. L. J. 912 :

118 I. C. 351 : 33 C. W. N. 84 :

I. R. 1929 Cal. 639 : A. I. R. 1929 Cal. 170.

—S. 297—*Re-trial — Judge's charge confusing, effect of.*

Where a Judge's charge to a Jury is calculated to confuse them, the verdict of the Jury cannot be allowed to stand and the accused must be re-tried. *Edon Karikar v. Emperor.*

21 Cr. L. J. 829 :

58 I. C. 829 : A. I. R. 1920 Cal. 406.

—S. 297—*Re-trial—Judge asking Jury to return intermediate verdict on some points—Highly irregular procedure.*

The law does not recognise intermediate verdicts of Jurors. Where a Sessions Judge without summing up the entire case to the Jury and without charging them on all the issues involved drew their attention to the evidence relating to the time of occurrence upon which the whole case depended and asked them to return an intermediate verdict on that point and the Jury having unanimously found on that point, directed them to return a verdict of 'not guilty.' *Held*, that the procedure followed by the Sessions Judge was highly irregular and the case should be re-tried. *Government of Bengal v. Nasar Darzi.*

30 Cr. L. J. 434 :

115 I. C. 257 : 33 C. W. N. 451 :

I. R. 1929 Cal. 337 : A. I. R. 1929 Cal. 62.

—S. 297—*Re-trial.*

The Court should not send back a case for a re-trial by the Jury upon a proper summing up if it is of opinion that the evidence is not sufficient to support a conviction. *Sita Ram v. Emperor.*

33 Cr. L. J. 167 :

135 I. C. 392 : 8 O. W. N. 1215 :

I. R. 1932 Oudh 40 : A. I. R. 1932 Oudh 23.

—Ss. 297, 307—*Re-trial — Verdict of "guilty"—Judge preparing reference to High Court in anticipation of first verdict—Second charge—Verdict of "not guilty"—Procedure, illegality of.*

Where a Jury returned a unanimous verdict of "guilty" but the Sessions Judge charged them again and they returned a unanimous verdict of "not guilty" and it also appeared from the record that the Sessions Judge had before his second charge anticipated the Jury bringing in a verdict

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of "guilty" in the first instance and written out a letter of reference to the High Court disagreeing with the Jury: *Held*, that the procedure followed by the Sessions Judge was entirely illegal and unwarranted by law and that the accused should be re-tried. *Legal Remembrancer v. Jahay Sheikh.*

29 Cr. L. J. 228 :

107 I. C. 90 : 32 C. W. N. 144 :

A. I. R. 1928 Cal. 228.

—S. 297—*Riot case—Omission to mention object.*

Semble.—In case of riot the omission to mention the common object in the charge-sheet does not necessarily vitiate the trial. *Abdul Sheikh v. Emperor.*

17 Cr. L. J. 92 :

32 I. C. 684 : A. I. R. 1916 Cal. 355.

—S. 297—*Rioting—Charge to Jury—Misdirection.*

Where in a case of rioting the question of title to a certain property is of importance, and the Sessions Judge in his charge to the Jury asks them to arrive at their verdict irrespective of that question, his action amounts to a misdirection which vitiates the trial. *Ahed Fakir v. Emperor.*

26 Cr. L. J. 946 :

87 I. C. 98 : 43 C. L. J. 245 :

A. I. R. 1925 Cal. 1235.

—S. 297—*Robbery—Omission to explain the definition of robbery.*

When in a Sessions trial, the accused are charged with robbery, the omission on the part of the Judge to explain to the Jury the meaning of the term *robbery*, vitiates the trial and a re-trial should be ordered in the case. *In re: Suratti.*

11 Cr. L. J. 222 (a) :

6 I. C. 14.

—S. 297—*Setting aside conviction for failure to explain law to the Jury.*

If the Sessions Judge fails to explain the law to the Jury, the verdict must be set aside. *In re: Suruttai.*

11 Cr. L. J. 482 (b) :

7 I. C. 401 : 8 M. L. T. 82.

—S. 297—*Setting aside conviction—Law of private defence not well explained—Accused prejudiced—Conviction set aside.*

Where there had been no proper summing up and the direction as to the right of private defence was also not free from objection, and the accused had been prejudiced by these defects: *Held*, that the conviction of and the sentences passed on the accused should be set aside. *Abdul Rezaak v. Emperor.*

A. I. R. 1928 Cal. 269.

—S. 297—*Setting aside conviction—Misdirection—Misleading nature of Judge's summing up.*

In a trial by jury, the summing up by the Sessions Judge was calculated to leave upon the minds of the Jury the impression that the accused was identified by four persons and that the stolen property, was found in the possess-

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ion of the accused, whereas in fact, the accused was identified by the evidence of only two witnesses and the property was found in a house which was not the house of the accused: *Held*, that the errors in the sunning up of the most important evidence in the case had misled the jury and induced them to give a verdict which they would not have given, had the case been correctly put before them. The conviction was, therefore, set aside and a re-trial of the accused ordered. *In re. Manjunatha*.

11 Cr. L. J. 187 :

4 I. C. 1103 : 5 M. L. T. 134.

—————**S. 297—Sexual offences—Charge to Jury—Duty of Court.**

In trials of charges of sexual offences where allegations of sexual offences are made by women against men, very often unsupported by any corroborative evidence, the Judge must warn the Jury that it is dangerous to convict the accused upon uncorroborated evidence of the woman alone. The Judge must direct the Jury upon the important question whether the girl's evidence ought to be accepted without corroboration, whether there was corroboration, what kind of corroboration it was, and whether it was, as is necessary, corroboration with regard to the offence itself and which implicates the accused. Where the Judge has failed to warn the Jury, the conviction cannot be allowed to stand. *Taser Pramanik v. Emperor*.

41 Cr. L. J. 841 :

190 I. C. 150 : 44 C. W. N. 835 :

71 C. L. J. 590 : 13 R. C. 133 :

A. I. R. 1940 Cal. 391.

—————**S. 297—Summing up—Duty of Judge—One-sided summing up, legality of—Mere reading of evidence in extenso, whether sufficient.**

In summing up the evidence to the Jury it is not enough merely to read out the evidence in extenso. It is incumbent on the Judge to analyse the evidence and to place the case succinctly before Jury. A charge to the Jury which is entirely one-sided and calculated to suggest to the Jury that there is practically no doubt as to the main facts and that there is no use of considering the matter from any point of view other than presented by the prosecution is bad. *Emperor v. Rajab Ali Fakir*.

28 Cr. L. J. 742 :

103 I. C. 790 : 31 C. W. N. 881 :

46 C. L. J. 31 : A. I. R. 1927 Cal. 631.

—————**S. 297—Summing up—Duty of Judge.**

The fact that the evidence had been summarized at great length by both sides and the jury had taken notes from the arguments and had themselves made a complete summary of the evidence for their own convenience would not relieve the Judge from the duty of conforming to the provisions of S. 297, which distinctly lays down that he should sum up the evidence. *Abdul Razaak v. Emperor*.

A. I. R. 1928 Cal. 269.

—————**S. 297—Summing up—Essentials of.**

In a case tried by Jury the Judge must explain to the Jury the issues of fact which the Jury has to determine upon the charge upon which the prisoners are being tried and having

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made the Jury understand these issues, the more convenient mode of summing up the case for him to adopt is to present to the Jury, as materially and impartially as he can, a summary of the evidence and the considerations and inferences to be drawn from the evidence as they appear both on the negative and affirmative sides of the case. *Enayat Husain v. Emperor*.

28 Cr. L. J. 15 :

99 I. C. 47 : 25 A. L. J. 33 : 49 All. 209 :

A. I. R. 1926 All. 752.

—————**S. 297—Summing up—Essentials.**

It would ordinarily be impossible for the Judge to cram into the charge the minute details which are more likely to obscure the issue and confuse the minds of the Jury rather than enable them to grasp the essentials of the case. The object of the summing up under S. 297 is to place before the jury the facts and circumstances of the case both for and against the prosecution so as to help it in arriving at a right decision on the points which arise for their consideration. *Bapurao v. Emperor*.

41 Cr. L. J. 894 :

190 I. C. 283 : 1940 N. L. J. 264 :

13 R. N. 99 : A. I. R. 1940 Nag. 221.

—————**S. 297—Summing up.**

Evidence affecting all accused or none at all. Omission of Judge is to divide up evidence against each accused not misdirection. *Khoda Bux v. Emperor*.

35 Cr. L. J. 554 :

147 I. C. 1124 : 37 C. W. N. 1122 :

61 Cal. 6 : 6 R. C. 401 :

A. I. R. 1934 Cal. 105.

—————**S. 297—Summing up—Judge's charge to Jury—Heads of charge, contents of.**

The object of a summing up under S. 297, is to enable the Judge to place before the Jury the facts and circumstances of the case both for and against the prosecution so as to help them in arriving at a right decision upon the points which arise for their consideration. It is not the province of the Judge to find the facts for the Jury and then make an attempt to persuade them to accept his conclusions as correct. *Khajiruddin v. Emperor*.

27 Cr. L. J. 266 :

92 I. C. 442 : 42 C. L. J. 504 : 53 Cal. 372 :

A. I. R. 1926 Cal. 139.

—————**S. 297—Summing up.**

Judge should marshal evidence and give to Jury all shades and probabilities of case—Summing up does not mean that he should give merely a summary of the evidence. *Ilu v. Emperor*.

36 Cr. L. J. 358 :

153 I. C. 454 : 62 Cal. 337 : 7 R. C. 378 :

A. I. R. 1934 Cal. 847.

—————**S. 297—Summing up—Previous proceedings against accused—Failure to warn Jury to disregard result of such proceedings—Misdirection.**

Where in his summing up to a Jury, the Judge considers it necessary to refer to previous proceedings against the accused, he ought to deal with them in such a manner as to avoid, if possible, the minds of the Jury being affected by the result of the proceedings. It

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is his duty to warn the Jury to pay no attention to the result of those proceedings, and his omission to so warn the Jury amounts to a misdirection sufficient to vitiate the whole of the proceedings. *Mir Mouze Ali v. Emperor*.

21 Cr. L. J. 554 :
56 I. C. 853 : 31 C. L. J. 305 :
A. I. R. 1920 Cal. 617.

S. 297—Summing up.

When there is no evidence for the defence, only the evidence for the prosecution remains to be summed up. Consequently, a discussion of the prosecution evidence only cannot go to characterize the charge as a wholly one-sided charge. *Sri Kishen v. Emperor*.

37 Cr. L. J. 173 :
159 I. C. 900 : 1935 A. W. R. 1086 :
S R. A. 521 : A. I. R. 1935 All. 928.

—Ss. 297, 298, 299—*Summing up—Trial of several accused together—Omission to place defence evidence regarding each accused before Jury, effect of—Misdirection.*

Ss. 297 to 299, Cr. P. C. make it imperative on a Sessions Judge to place in his summing up to the Jury the evidence both for prosecution and defence. Therefore omitting to place before the Jury the evidence regarding the *alibi* set up by the defence when the question turned entirely upon the identity of the accused, and to sum up separately the evidence against the accused when many persons are involved, is a clear misdirection likely to prejudice the accused at their trial. The fact that the Vakils did not lay much emphasis upon the defence evidence is no reason why the Judge himself should not place it before the Jury. A conviction on such a charge is illegal and must be set aside. *In re : Sangam*.

17 Cr. L. J. 19 ;
32 I. C. 147 : A. I. R. 1917 Mad. 335.

—S. 297—*Supplementary trial—Charge—Reference to former trial.*

Where there are two trials—one original and the other supplementary—the duty of the Judge at the supplementary trial is to warn the Jury that the accused must have a perfectly fair trial, and that they are not to be biased by the result arrived in at the previous trial, it is neither necessary nor desirable for him to tell the Jury the offences of which the first batch of the accused were convicted. *Mufcuddi v. Emperor*.

24 Cr. L. J. 305 :
72 I. C. 65.

—S. 297—*Verdict, confused to—Fresh direction.*

Where the verdict of a Jury was confused and after a discussion which took place in their presence, the Judge gave a fresh direction about the various sections concerned and the Jury retired to re-consider the verdict and gave a second verdict. There is nothing illegal in the procedure. *Girishchandra v. Emperor*.

33 Cr. L. J. 135 :
135 I. C. 443 : 58 Cal. 1335 :
I. R. 1932 Cal. 123 :
A. I. R. 1932 Cal. 118.

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—S. 297—*Verdict, confused—Further direction—Second verdict, whether can be accepted.*

At the conclusion of a trial by Jury, the Jury brought in a unanimous verdict of culpable homicide not amounting to murder. The Judge questioned them as to which part of S. 304 of the Penal Code their verdict came under. Their answers revealed the fact that they did not at all understand the law applicable to the case and they requested the Judge to read out a passage to them from a certain reported judgment. The passage was read out and the Jury asked for permission to withdraw and consider their verdict again. They were allowed to do so and then brought in a unanimous verdict of murder which the Judge accepted: *Held*, that the first verdict of the Jury being incomplete and their answers to the Judge's questions having revealed the fact that they had arrived at no unanimous verdict under S. 304 of the Penal Code, it was the duty of the Judge to send them back for further consideration and that their second verdict being a unanimous and legal verdict, the Judge was bound to accept it. *Emperor v. Nga Tin Gyi*.

28 Cr. L. J. 213 :
99 I. C. 1013 : 4 Rang. 488 :
5 Bur. L. J. 209 :
A. I. R. 1927 Rang. 68.

—S. 297—*Verdict, legality of.*

A verdict obtained from the Jury without placing before them an important piece of evidence in favour of the defence, whatever may have been its real worth cannot be sustained. *Khujiuruddin v. Emperor*.

27 Cr. L. J. 266 :
92 I. C. 42 : 42 C. L. J. 504 :
53 Cal. 372 : A. I. R. 1926 Cal. 139.

—S. 297—*Verdict, legality of.*

It cannot be said that the Jury are acting perversely, because they are of opinion that the evidence of certain witnesses proves the guilt of certain of the accused but does not prove the guilt of their co-accused, although on the face of it, it implicates the latter in an equal degree. *Emperor v. Makhan Lal Garodia*.

34 Cr. L. J. 965 :
145 I. C. 365 : 37 C. W. N. 591 :
6 R. C. 102 : A. I. R. 1933 Cal. 472.

—S. 297—*Verdict, setting aside of.*

The verdict of a Judge cannot be set aside unless there is a clear misdirection in the charge by the Judge to the Jury. *Someshwar Jha v. Emperor*.

23 Cr. L. J. 91 :
65 I. C. 443 : 3 P. L. T. 101 :
4 U. P. L. R. Pat. 31 : A. I. R. 1923 Pat. 103.

—Ss. 297, 303—*Penal Code, Ss. 304, 334, 352—Verdict, confused—Charges under S. 304, 352—Verdict of guilty under S. 334, legality of—Charge to Jury—Duty of Judge.*

Where an accused person was charged at a trial with offences under Ss. 304 and 352, Penal Code, and the Jury brought in a verdict of 'not guilty' under S. 304, but guilty under S. 334: *Held*, (1) that the Jury having re-

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within his power to acquit the accused under S. 247. *Emperor v. Laxmi Prasad*.

41 Cr. L. J. 919 :
190 I. C. 467 : 1940 M. L. J. 399 :
13 R. N. 111 : A. I. R. 1940 Nag. 357.

————S. 247—*Acquittal—Both parties absent—*
Legality of acquittal—Acquittal of accused under
S. 247, whether bars fresh trial.

The effect of an acquittal under S. 247, Cr. P. C., is not confined to cases in which the accused appeared in answer to the summons. Where the case against an accused is dismissed under S. 247, owing to complainant's non-appearance, though the accused also was absent in spite of having been served with process, the accused is entitled to the full benefit of his acquittal. *In re : Guggilapu Peddaya*.

12 Cr. L. J. 41 :
9 I. C. 253 : 34 Mad. 253.

————S. 247—*Acquittal—Acquittal on date not*
fixed for hearing—Nullity—Fresh trial.

An order of acquittal passed under S. 247, Cr. P. C., on a date which was not fixed for the hearing, is a nullity and does not debar the Magistrate from taking up the case and trying the accused without an order from a superior Court to revive it. *Achambit Mondal v. Mahatab Singh*.

16 Cr. L. J. 148 :
27 I. C. 312 : 18 C. W. N. 1180 :
42 Cal. 365 : A. I. R. 1915 Cal. 119.

————S. 247—*Acquittal—Legality of order.*

The accused obstructed the flow of water in complainant's channel. The Magistrate held this was an offence under S. 426, I. P. C., namely, mischief, and issued a summons to him to appear and answer the charge, and as the complainant was absent, acquitted the accused under S. 247, Cr. P. C. : *Held*, that, although the offence might fall under S. 430, I. P. C., since the Magistrate had issued a summons to the accused, under S. 426, I. P. C., his order of acquittal was right. *Sunjeevappa v. Naranappa*.

9 Cr. L. J. 432 :
12 M. C. C. R. 265.

————S. 247—*Acquittal—Order of dismissal*
on adjourned date whether results in acquittal.

An order of dismissal of a complaint on an adjourned date of hearing of which the accused had no knowledge or notice, does not amount to an order of acquittal under S. 247. *Nunc Panakalu v. Ravula Subbarao*.

30 Cr. L. J. 191 :
113 I. C. 625 : 1928 M. W. N. 801 :
I. R. 1929 Mad. 161 : 52 Mad. 695 :
57 M. L. J. 331 : 30 L. W. 624 :
A. I. R. 1928 Mad. 1158.

————S. 247—*Acquittal—Restoration.*

Acquittal on, complainant being absent—Magistrate cannot take case again on file but should refer matter to District Magistrate. *Ekambara Mudali v. Alimalammal*.

32 Cr. L. J. 429 :
129 I. C. 628 : 1930 M. W. N. 409 :
32 L. W. 152 : 59 M. L. J. 708 :
53 Mad. 870 : I. R. 1931 Mad. 292 :
A. I. R. 1930 Mad. 1001.

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————S. 247—*Acquittal—Revival of proceedings.*

An order of acquittal passed under S. 247, Cr. P. C., so long as it is not set aside by a competent Court is a bar to fresh proceedings in respect of the same offence. A Magistrate has no jurisdiction to revise proceedings in a case which has terminated in an order of acquittal under S. 247. *Nityananda Koer v. Rakhahari Misra*.

24 Cr. L. J. 716 :
73 I. C. 940 : 38 C. L. J. 196 :
A. I. R. 1924 Cal. 96.

————S. 247—*Acquittal without jurisdiction,*
effect of.

A previous acquittal wholly without jurisdiction is no bar to a Magistrate taking cognizance of a second complaint. Therefore, a Magistrate, who, on a complaint, made by a servant of a zemindar for maiming his master's elephant, issues process under S. 436, Penal Code, to the accused but acquits the accused under S. 247, Cr. P. C., on the ground that the complainant is dead, acts without jurisdiction and is not debarred from hearing a second complaint by another servant. *Madho Chowdhury v. Turab Mian*.

15 Cr. L. J. 726 :
26 I. C. 174 : 18 C. W. N. 1211 :
A. I. R. 1915 Cal. 263.

————Ss. 247, 403—*Acquittal, acquittal for*
mischief—District Magistrate receiving complaint
for trial for theft—Bar to prosecution—Penal Code
(Act XLV of 1860), Ss. 379, 426—Mischief—
Complainant, absence of—Acquittal—Revival
of proceedings, legality of—Theft, charge of.

Petitioner was acquitted of the offence of mischief under S. 247, Cr. P. C. on the ground of the absence of the complainant. On the latter's application, the District Magistrate revived the complaint but directed that the prosecution should proceed under S. 379, Penal Code: *Held*, that the acquittal of the petitioner on the charge of mischief was a bar under S. 403, Cr. P. C. to his being put on his trial again on the same facts which were relied on to support the charge of theft and the order of the District Magistrate was, therefore, illegal. *Fazar Pramanik v. Emperor*.

25 Cr. L. J. 149 :
76 I. C. 293 : 37 C. L. J. 253 :
A. I. R. 1923 Cal. 407.

————S. 247, 403—*Acquittal before summons*
is served on accused—Bar to fresh suit.

An order of acquittal passed by a Magistrate under S. 247, Cr. P. C., although the accused had not been served with the summons is a final order and operates as a bar under S. 403 of the Code to the trial of the accused for the same offence. *Dattatraya Vaze v. Dattatraya Sadashiv Tendulkar*.

31 Cr. L. J. 1000 :
126 I. C. 321 : 31 Bom. L. R. 793 :
53 Bom. 693 : A. I. R. 1929 Bom. 408.

————Ss. 247, 403—*Acquittal, effect of.*

An order of acquittal under S. 247, Cr. P. C. operates as a bar under S. 403 to the entertainment of a complaint charging the

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turned a verdict of not guilty under S. 304 and having said nothing about any minor offence, they could not bring in a verdict of guilty under S. 334, inasmuch as an offence under S. 334 was not a minor offence to one under S. 352; (2) that if it were supposed that the verdict of guilty under S. 334 was brought in under the first charge, then there was no verdict in respect of the second charge, viz., the one under S. 352; (3) that the verdict of the Jury was confused and unintelligible and it was the duty of the Judge to obtain from them a proper and correct verdict. *Superintendent and Remembrancer, Legal Affairs v. Wilson*.

27 Cr. L. J. 926;
96 I. C. 270; 30 C. W. N. 693;
43 C. L. J. 537; A. I. R. 1926 Cal. 895.

———S. 298.

See also (i) Cr. P. C., 1898, Ss. 238 (1), 297, 372.

(ii) Evidence Act, 1872, Ss. 24, 30.

(iii) Penal Code, 1860, S. 366.

———Ss. 298, 299—*Admissibility of confession—Misdirection—Expressions assuming guilt of accused, propriety of.*

Per *Teunon, J.*—In a trial by Jury the Judge's treatment of a confession, though one-sided to some extent, may not by itself be a sufficient misdirection to the Jury to necessitate a re-trial. The Judge's instruction to Jury to take into consideration against an accused statements of co-accused as their "confessions or confessional statements or confessions of a sort," when as a matter of fact those statements were not self-incriminating, amounts to a misdirection. It is misdirection for a Judge to leave it to the Jury to decide whether certain statements or confessions made by the accused and how much thereof are inadmissible in evidence. It is for the Judge to admit or exclude evidence in accordance with the law on the subject and for the Jury to weigh and value the evidence admitted. A Judge in his charge to the Jury should avoid, as far as may be, the use of expressions which assume the guilt of the accused and must not indulge in the use of slang or colloquial phrases. *Amiruddin v. Emperor*.

19 Cr. L. J. 305;
44 I. C. 321; 22 C. W. N. 213;
27 C. L. J. 141; 45 Cal. 557;
A. I. R. 1918 Cal. 88.

———S. 298—*Admissibility of Evidence—Duty of Judge.*

Under S. 298 (1) (a) of the Cr. P. C. it is the duty of the Judge in a trial by Jury to decide on the admissibility of the evidence, and he must discharge this duty irrespective of the question whether objection has or has not been taken to the evidence by the parties themselves. In the case of a confession he must decide whether the confession is admissible in evidence or not, that is to say, he must consider whether it has been duly recorded and whether it is free from the infirmities mentioned in S. 24 of the Evidence Act. In dealing with the question of its

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admissibility he has to determine whether it is voluntary or not. *Sheikh Abdul v. Emperor*.
26 Cr. L. J. 606;
85 I. C. 830; A. I. R. 1925 Cal. 887.

———S. 298—*Admissibility of evidence.*

S. 298, Cr. P. C., lays, it upon the Judge as a special duty to prevent the production of inadmissible evidence whether it is or is not objected to by the parties. *Bhurasing v. Emperor*.

36 Cr. L. J. 1310;
158 I. C. 282; 29 S. L. R. 121;
A. I. R. 1935 Sind 115.

———S. 298—*Charge to Jury, contents of.*

In the heads of a charge to a Jury, the Judge should state how he explained the various relevant sections of the Penal Code to the Jury and should not content himself with a statement that the sections had been read and explained. In explaining the sections he should do so by applying them to the facts of the case and should tell the Jury what is necessary for them to find with reference to the facts in order to give a verdict of guilty on the various charges framed. *Abdul Rahim v. Emperor*.

26 Cr. L. J. 1279;
88 I. C. 1055; 41 C. L. J. 474;
A. I. R. 1925 Cal. 925.

———S. 298—*Charge to Jury—Duty of Judge.*

In a charge to Jury, merely stating evidence without any attempt to marshal facts or sift evidence, vitiates the trial. *Emperor v. Javed Sikdar*.

32 Cr. L. J. 1138;
134 I. C. 317; 53 C. L. J. 351;
35 C. W. N. 835;
I. R. 1931 Cal. 813.

———S. 298—*Charge to Jury, essentials of.*

In a Jury trial it is desirable that the record of the charge on questions of law should be sufficiently full to show whether the elements constituting the offences charged have been properly and fully explained to the Jury. But the heads of charge are not intended to be an exhaustive detail or every particular which the Judge may have addressed the Jury and a conviction cannot be set aside merely because it is not stated in the heads of charge that the elements of the offence concerned were explained to the Jury. *Ram Sarup Singh v. Emperor*.

32 Cr. L. J. 72;
128 I. C. 121; 9 Pat. 606;
I. R. 1931 Pat. 9;
11 P. L. T. 867;
A. I. R. 1930 Pat. 513.

———S. 298—*Charge, essentials of.*

Judge should analyse evidence against each accused. Charge must be intelligible and give direction in the matter of interesting and sifting evidence. When the charge is not satisfactory, the mere fact that the Judge told the Jurors that they need not take any notice of opinions expressed by him does

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not make any the less defective. — *Akbar Seikh v. Emperor*.

33 Cr. L. J. 486 :
137 I. C. 682 : 35 C. W. N. 404 :
I. R. 1932 Cal. 360 :
A. I. R. 1932 Cal. 395.

—S. 298—Charge to Jury—Misdirection.

A charge to a Jury must be read as a whole. If there are salient propositions in law in it, these will, of course, be the subject of separate analysis. But in a protracted narrative of fact, the determination of which is ultimately left to the jury, it must needs be that the view of the Judge may not coincide with the views of others who look upon the whole proceedings in black type. It would, however, not be in accordance either with usual or with good practice to treat such cases as cases of misdirection, if, upon the general view taken, the case has been fairly left within the Jury's province. *Jagdish Dutt Shukla v. King-Emperor*.

41 Cr. L. J. 545 :
188 I. C. 110 : 1940 O. W. N. 481 :
1940 O. L. R. 306 :
12 R. O. 424 :
A. I. R. 1940 Oudh 337.

—S. 298—Charge to Jury—Misdirection and non-direction—Document admitted without objection—Execution, proof of, whether necessary—Failure to draw attention of Jury to presumption arising under Statute.

Where a document, which is not *per se* inadmissible, is admitted by the Court in a Criminal trial without formal proof of execution, and the accused having sufficient opportunity at the trial to call for formal proof omits to take any objection, he cannot afterwards, in appeal, impeach the verdict of the Jury on the ground that the document had been admitted without formal proof. The omission to draw the attention of the Jury to the provisions of S. 103-B of the Bengal Tenancy Act and the presumption arising therefrom does not constitute a serious error on the part of the Judge, where the point has been thoroughly discussed by Counsel and the Jury are under no misconception regarding it. Where there is no evidence of a particular matter, it would be an error on the part of the Judge to lay down the law to the Jury on the matter, which is not a matter legally and properly before the Jury. The ability of the Counsel engaged in the defence does not relieve the Judge of his task, which the law imposes upon him, of fully and fairly charging the Jury. At the same time it is reasonable that the Judge should take into account the elaboration and the skill of Counsel. *Ram Bhagwan v. Emperor*.

19 Cr. L. J. 886 :
47 I. C. 82 : A. I. R. 1918 Pat. 201.

—S. 298—Confession—Charge to Jury—Confession implicating himself and co-accused—Absence of direction that confession should be corroborated—Misdirection.

Where a Sessions Judge charged the jury

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as follows :—“It is a rule of law that where a person confesses a crime and implicates himself, if he implicates the persons who have been tried along with him to the same extent as he implicates himself, then if you accept his statement as being true and voluntarily given as against himself, you can safely accept it as against the other persons”; Held, that as the Judge did not caution the Jury that such confession should be corroborated before it could be accepted, it amounted to a misdirection. *In re : Giddigadu*.

9 Cr. L. J. 404 :
1 I. C. 867.

—S. 298 (1)—Confession—Function of Judge and Jury.

The question whether a confession is voluntarily made or not is a question of law, to be determined by the Court from the facts, as a condition precedent to their admission. Having been declared competent and admissible, they are before the Jury for consideration. The Jury have no authority to reject them as incompetent. But the Jury are the sole Judges of the truth and weight to be given to confessions as they are of any other fact. In weighing the confessions, the Jury must take into consideration all the circumstances surrounding them and under which they were made, including those under which the Court declared, as a matter of law, they were voluntary. While there is no power in the Jury to reject the confessions, as being incompetent, there is no power in the Court to control the Jury in the weight to be given to facts. The Jury may, therefore, in the exercise of their authority, and within their province, determine that the confessions are untrue, or not entitled to any weight, upon the grounds that they were not voluntarily made. *Badan Ali v. Emperor* (F. B.)

37 Cr. L. J. 1084 :
165 I. C. 127 : 40 C. W. N. 794 :
63 Cal. 833 : 9 R. C. 343.

—S. 298—Directions to Jury—Benefit of doubt, direction by Judge as to, whether necessary.

In every charge to a Jury it is well to include therein a direction that the prisoner must always be given benefit of the doubt. But omission to give such a direction does not always render a conviction invalid. *Sonia Koshti v. Emperor*.

28 Cr. L. J. 177 :
99 I. C. 849 : A. I. R. 1927 Nag. 117.

—S. 298—Duty of Judge—Charge to Jury—Misdirection—Confession—Voluntariness and admissibility to be decided by Judge—Truth or falsehood to be judged by Jury.

It is for the Judge to decide whether a confession was made voluntarily and is consequently admissible in evidence. He ought not, in any circumstances, to throw on the Jury the duty of saying whether a confession is voluntarily made or not. If the Judge finds that it was voluntarily made and was not caused by any threat or inducement, he may admit it and then it will be for the Jury to say

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whether it is true or not. *Emperor v. Kesari Dayal Kanji*. 10 Cr. L. J. 65 :

2 I. C. 517 : 11 Bom. L. R. 332.

—S. 298—*Duty of Judge—Charge to Jury*
—*Duty of Judge to direct Jury to reject evidence of hostile witness—Misdirection.*

Where a witness is declared hostile and leave is granted to the party calling him, to cross-examine him, it is necessary that the Judge should explain to the Jury what the position is that then arises, namely, that by asking for leave to cross-examine the witness, the party calling him admits that he is not a witness of truth and one whose evidence is not entitled to credit, who is prepared to make one statement on oath at one time and another at another time and the evidence of such a witness should be rejected and left out of account in the minds of the Jury. An omission on the part of the Judge to tell the Jury to reject the evidence of such a witness would amount to misdirection. *Panchanau Gogai v. Emperor*.

31 Cr. L. J. 1207 :

127 I. C. 270 : 51 C. L. J. 203 :

34 C. W. N. 526 :

A. I. R. 1930 Cal. 276.

—S. 298—*Duty of Judge—Charge to Jury.*

Per *Woodroffe, J.*—The fact that the defence Counsel addressed the Jury for a long time would not excuse the Judge from referring to matters of prime importance in his charge to the Jury, inasmuch as the Jury should learn from him what are the important points to which their attention should be directed. *Peary v. Emperor*.

20 Cr. L. J. 300 :

50 I. C. 348 : 23 C. W. N. 426 :

A. I. R. 1919 Cal. 142.

—S. 298—*Duty of Judge—Confession.*

Under S. 298 (a) it is the duty of the Judge to decide whether confession is voluntary or not. *Nayeb Shabana v. Emperor*.

35 Cr. L. J. 1179 :

152 I. C. 44 : 38 C. W. N. 659 :

61 Cal. 390 : 7 R. C. 252 :

A. I. R. 1934 Cal. 656.

—S. 298—*Duty of Jury—Evidence, consideration of.*

Previous statements made by witnesses to the Police are not evidence in themselves and where they contradict with the evidence given by them at the trial, the question for the Jury is not whether the statements made in Court or those made to the Police are true, but whether the inconsistency in the statements does not make the evidence in Court unreliable. *Tajali Mian v. Emperor*.

28 Cr. L. J. 843 :

104 I. C. 459 : 9 P. L. T. 57 :

I. L. T. 40 Pat. 50 :

7 Pat. 50 : A. I. R. 1928 Pat. 31.

—S. 298—*Duty of Judge—Evidence Act (I of 1872), S. 114, Ill. (b), S. 133—Approver's evidence—Function of Judge and Jury—Misdirection.*

Per *Lort-Williams, J.*—The question as to what is or what amounts to corroborative evidence is a question of law to be decided by the Judge. The Judge should direct the attention of the

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Jury to those portions of the evidence confirming or corroborating the accomplice's story which do or do not fulfil the requirements of the rule that an approver's evidence must be corroborated in material particulars and must be such as to connect the accused with the crime. But the Judge must not tell the Jury that such or such witness does in fact corroborate the accused. That is the function of the Jury and depends upon whether they believe the witness or not. Though an omission to direct the attention of the Jury to those portions of evidence amounting to corroborative evidence would only be a non-direction, it is a misdirection if the Judge points out to the Jury certain portions of the evidence as fulfilling the requirements already stated, when in fact they do not do so. *Rebati Mohan Chakrabarti v. Emperor*.

30 Cr. L. J. 435 :

115 I. C. 258 : 32 C. W. N. 945 :

I. R. 1929 Cal. 338 : 56 Cal. 150 :

A. I. R. 1929 Cal. 57.

—S. 298—*Duty of Judge.*

It is not the duty of the Judge to put to the Jury hypothetical cases unsupported by any evidence. *Ajgar Shaikh v. Emperor*.

30 Cr. L. J. 799 :

117 I. C. 596 : 32 C. W. N. 839 :

48 C. L. J. 138 : I. R. 1929 Cal. 548 :

A. I. R. 1928 Cal. 700.

—S. 298—*Duty of Judge.*

It is the duty of the Judge to decide all questions of law arising in the course of the trial. The Judge will be in error if he leaves a question of law to be decided by the Jury. *Hadi Hussain v. Emperor*.

35 Cr. L. J. 502 :

147 I. C. 911 : 11 O. W. N. 211 :

6 R. O. 333 : A. I. R. 1934 Oudh 122 (2).

—S. 298—*Duty of Judge—Judge must determine, whether any evidence had been given on which Jury can find question for party on whom onus of proof lies.*

The Judge's duties elaborated under S. 298, include the duty to decide all questions of law arising in the course of the trial. It would, therefore, come within the duty of the Judge to determine whether any evidence had been given on which the Jury could properly find the question for the party on whom the onus of proof lies, for, that is a question of law. *Emperor v. Labbai Kutti*.

40 Cr. L. J. 437 :

180 I. C. 605 : 1938 M. W. N. 582 :

11 R. M. 732 : A. I. R. 1939 Mad. 190.

—S. 298—*Duties of Judge and Jury—Jury's power to resort to law books.*

The Jury should take the law from the Judge. They are not entitled to resort to a law book during their consultation about the verdict. The Judge may ask the Jury such questions only as are necessary to ascertain what their verdict is. To ask questions demanding their reasons for acquitting the accused of a charge on which they had delivered an unanimous verdict without any uncertain sound, is exceeding the

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limits of questioning which the law contemplates. *Emperor v. Bharmia*.

1 Cr. L. J. 265 :
6 Bom. L. R. 258.

—S. 298 (1)—*Error of Law—Judge directing that it was no part of Jury's duty to decide whether confession was voluntary or not—Whether commits error of law.*

Where the Judge in his charge to the Jury says: "it is not part of your duty to decide whether the confession was made voluntarily or by reason of any inducement, threat, promise of Police torture", in so directing the Jury not to consider whether the confession was made voluntarily or not, he commits an error of law. It is the function of the Judge to decide whether there is *prima facie* evidence for admitting the confession. When the confession has been admitted by the Judge, it is the function of the Jury to consider its credibility and weight, and in considering the credibility and weight, the Jury are at liberty to consider all the circumstances of the case including those circumstances already proved before the Judge and to give the evidence such credibility as they think it deserves. *Badan Ali v. Emperor*. (F. B.).

37 Cr. L. J. 1084 :
165 I. C. 127 : 40 C. W. N. 794 :
63 Cal. 833 : 9 R. C. 343.

—S. 298—*Expression of opinion by Judge.*

In a Jury trial, there is no harm in the Trial Judge expressing his opinion on facts, and in fact it is his duty to do so to assist the Jury, provided he is careful to express his opinion in such a way as not to interfere with the duties of the Jury to finally decide according to their own view of the facts. *Fazaruddin v. Emperor*.

26 Cr. L. J. 1553 :
90 I. C. 433 : 42 C. L. J. 111 :
A. I. R. 1925 Cal. 105.

—S. 298—*Expression of opinion by Judge.*

Under S. 298 (2), the Judge may, in the course of his summing up, express his opinion upon any question of fact. *Lalu v. Emperor*.

35 Cr. L. J. 668 :
148 I. C. 339 : 1933 A. L. J. 1446 :
56 All. 210 : 6 R. A. 683 :
A. I. R. 1933 All. 941.

—S. 298 (2)—*Expressing of opinion by Judge.*

In many cases it is not merely permissible but also desirable that the Judge should tell the Jury what view he has taken of the facts, in order to enable them to consider the facts properly and arrive at their own decision on them. *Abdul Rezaak v. Emperor*.

A. I. R. 1928 Cal. 269.

—S. 298—*Expression of opinion on facts.*

Under S. 288 (2), a Judge is entitled to express to the Jury, if he thinks proper, in the course of his summing up, his opinion on

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any question of fact relevant to the proceedings. *Sonia Koshli v. Emperor*.

28 Cr. L. J. 177 :
99 I. C. 849 :

A. I. R. 1927 Nag. 117.

—S. 298—*Forfeiture of pardon—Question of fact.*

The question of forfeiture of pardon is a question of fact, therefore, its decision rests with the Jury and not with the Judge. *Sashi Rajbanshi v. Emperor*.

16 Cr. L. J. 65 :
26 I. C. 657 : 19 C. W. N. 295 :
42 Cal. 856 : A. I. R. 1915 Cal. 667.

—S. 298—*Misdirection—Charge to Jury—Omission to charge on vital points.*

In a trial by Jury omissions on vital points in the Judge's charge to the Jury may amount to such misdirection as to vitiate the trial. Where the Judge's direction as to the probabilities has the effect of putting the probabilities in favour of the prosecution too strongly before the Jury and upon a mere assumption of the facts which the Jury are not asked to find for themselves, it amounts to a misdirection which vitiates the trial. *Chhakari Sheikh v. Emperor*.

26 Cr. L. J. 567 :
85 I. C. 711 : A. I. R. 1926 Cal. 439.

—S. 298—*Misdirection.*

It is a misdirection on the part of a Judge to lay before the Jury the purport of a statement which is neither on the record nor proved. *Dasrath Singh v. Emperor*.

23 Cr. L. J. 406 :
67 I. C. 502 : A. I. R. 1923 Pat. 158.

—S. 298—*Misdirection—Omission to direct Jury not to be influenced by non-admissible statement.*

The mere omission to direct a Jury not to be influenced by a statement which they are told is not evidence, does not amount to a misdirection of any importance. *In re : Puli Subba Reddli*.

20 Cr. L. J. 790 :
53 I. C. 694 : 10 L. W. 379 :
A. I. R. 1919 Mad. 222.

—S. 298—*Misdirection—Omission to draw attention of Jury to right of private defence.*

Failure on the part of the Court to put clearly before the Jury, the law relating to the right of private defence arising on the admitted and proved facts and to direct their attention to find as to whether the accused was, and, if so, how far justified, in preventing injury to himself in attacking his opponent is a serious misdirection vitiating the trial. *Aseruddin v. Emperor*.

28 Cr. L. J. 273 :
100 I. C. 353 : 53 Cal. 980 :
A. I. R. 1927 Cal. 257.

—S. 298—*Re-trial—Misdirection to Jury—Re-trial.*

Where the accused pleaded *alibi*, and called witnesses to prove the same, but the Sessions Judge did not refer to this evidence or to plea of the accused in his charge: *He'd*, that this was a misdirection which prejudiced the

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accused, and that the accused must be re-tried. *In re : Gangi Reddi Buchanna.*

8 Cr. L. J. 397 :
4 M. L. T. 194 : 18 M. L. J. 541.

———S. 298—*Misdirection—Trial vitiated.*

Charge under S. 477, I. P. C.—Essential facts not properly marshalled—Charge is misdirection vitiating trial. *Suren Behary Roy v. Emperor.* (F. B.)

32 Cr. L. J. 836 :
132 I. C. 145 : 35 C. W. N. 425 :
58 Cal. 1051 : I. R. 1931 Cal. 529 :
A. I. R. 1931 Cal. 184.

———S. 298—*Misdirection—Trial vitiated.*

Intermeddling with estate of deceased—Charge to Jury under Penal Code S. 406 on doctrine of entrustment—Charge amounts to misdirection vitiating trial. *Susen Behary Roy v. Emperor* (F. B.)

32 Cr. L. J. 836 :
132 I. C. 145 : 35 C. W. N. 425 :
58 Cal. 1051 : I. R. 1931-Cal. 529 :
A. I. R. 1931 Cal. 184.

———S. 298—*Misdirection, what is.*

Jury asked to accept the voluntary nature of confession and consider its truth from its voluntary nature—Serious misdirection is caused—Voluntary nature of the confession as regards its truth should be left to Jury for decision. *Kasim-ud-Din v. Emperor.*

36 Cr. L. J. 485 :
154 I. C. 273 : 39 C. W. N. 27 :
62 Cal. 312 : 7 R. C. 440 :
A. I. R. 1934 Cal. 853.

———S. 298—*Misdirection, what is.*

Merely reminding the Jury of the facts recorded should not be taken to mean that those witnesses should be necessarily believed and this will not constitute misdirection. *Lala v. Emperor.*

35 Cr. L. J. 668 :
148 I. C. 339 : 1933 A. L. J. 1446 :
56 All. 210 : 6 R. A. 683 :
A. I. R. 1933 All. 941.

———S. 298—*Misdirection.*

Statement that there was no reason to disbelieve prosecution witnesses: Held, did not constitute misdirection. *Sri Kishen v. Emperor.*

37 Cr. L. J. 173 :
159 I. C. 900 : 1935 A. W. R. 1086 :
8 R. A. 521 : A. I. R. 1935 All. 928.

———Ss. 298, 299—*Misdirection, what is—Re-trial.*

In a trial by Jury the Sessions Judge admitted as evidence confessional statements of the accused made to the Police which were not strictly within the limits laid down by S. 27 of the Evidence Act, and also allowed the Committing Magistrate to depose to statements made by the accused in the course of a proceeding undertaken by him for verifying the confession—statements which were at no time recorded by the Magistrate in accordance with the provisions of S. 164, Cr. P. C.: Held, that the trial was vitiated by misdirection so that the conviction of the accused and the sentence passed upon him must be set aside and the

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case re-tried by the Sessions Court. *Amiruddin v. Emperor.*

19 Cr. L. J. 305 :
44 I. C. 321 : 22 C. W. N. 213 :
27 C. L. J. 141 : 45 Cal. 557 :
A. I. R. 1918 Cal. 88.

———S. 298—*Misdirection.*

Where in a trial with the aid of Jury, the Judge has fully dealt with the evidence of the prosecution and the defence in his charge to the Jury and explained the law and brought out all the facts which were in favour of the accused, there is no misdirection to the Jury and the High Court would accept its unanimous verdict. *Jagdish Dutt Shukla v. King-Emperor.*

41 Cr. L. J. 545 :
188 I. C. 110 : 1940 O. W. N. 481 :
1940 O. L. R. 306 : 12 R. O. 424 :
A. I. R. 1940 Oudh 337,

———S. 298—*Misdirection.*

Where there is no corroboration worth the name of the approver's evidence and where the Judge fails to direct the Jury accordingly, his omission to do so amounts to misdirection. *Golam Asphin v. Emperor.*

33 Cr. L. J. 477 :
137 I. C. 497 : I. R. 1932 Cal. 336 :
A. I. R. 1932 Cal. 295.

———Ss. 298, 299—*Misdirection — Expert evidence, value of—Facts, conclusion as to—Inferences from facts—Judge, duty of—Jury, duty of—Thumb-impressions, comparison of—Prejudice.*

Evidence of an expert should be approached with considerable care and caution, specially where much depends upon such evidence. A Judge in charging a Jury should call the attention of the Jury to the nature and history of the case as laid before the Court by the prosecution. The question as to the identity of thumb-impressions on two or more documents, for the purpose of ascertaining whether the thumb-impressions are of one and the same person, is eminently a matter for the Jury and not for the Judge. Where, in a charge to the Jury, the Judge omits to call the attention of the Jury to the nature and history of the case as laid before the Court by the prosecution, to the fact that the evidence of an expert should be approached with considerable care and attention, and to the actual thumb-impression or mark on the document, execution of which was falsely admitted by a person, before a Sub-Registrar, by means of false personation, and gives his own opinion to the Jury upon the result of a comparison of thumb-marks, instead of leaving it to the Jury to form their own opinion, the charge is vitiated by misdirection and the accused may be prejudiced by such a charge. *Panchn Mondal v. Emperor.*

2 Cr. L. J. 311 :
1 C. L. J. 385.

———S. 298—*Murder—Confession, inadmissible in evidence, read before Jury, effect of—Re-trial.*

Where during the course of a trial by a Court of Sessions upon a charge of murder a confession by the accused was read to the Jury, but it subsequently transpired that the confession had not been recorded according to law

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and had to be ruled out as inadmissible; *Held*, that that statement might reasonably be regarded as having affected in some measure the minds of the Jurymen in convicting the accused, however the Judge might have endeavoured to remove that impression from their minds, and that, under the circumstances, the accused was entitled to a new trial. *Madodan Ram v. Emperor*. 23 Cr. L. J. 141 : 65 I. C. 573 : 3 P. L. T. 52.

—S. 298—Non-direction to Jury.

In cases of rape, Judge should warn Jury that complainant's evidence should not be accepted without corroboration. When he fails to direct Jury on these points, conviction must be set aside. *Surender Nath Das v. Emperor*. 35 Cr. L. J. 508 :

147 I. C. 999 (2) : 38 C. W. N. 52 : 6 R. C. 381 : A. I. R. 1933 Cal. 833.

—Ss. 298, 299—Non-direction when misdirection.

Where in his charge to the Jury in a case under S. 395, Penal Code, the Judge failed to give any direction to the Jury with regard to the fact that there was opportunity of recognition and that none of the accused were recognised at the time of occurrence: *Held*, that the omission was of vital importance and that the non-direction amounted in law to positive misdirection which vitiated the trial. *Seikh Abdul v. Emperor*. 26 Cr. L. J. 606 :

85 I. C. 830 : A. I. R. 1925 Cal. 887.

—S. 298—Omission—Misdirection, what is.

A mere omission or a mis-statement in the summing up is not itself a misdirection when the case has been fully heard by the Jury, but there is a miscarriage of justice where the omission or mis-statement is such that the Jury may probably be misled. *Sonia Koshli v. Emperor*. 28 Cr. L. J. 177 :

99 I. C. 849 : A. I. R. 1927 Nag. 117.

—S. 298—Non-direction, whether Misdirection.

Every non-direction in a charge to the Jury does not necessarily amount to misdirection. *Peary v. Emperor*. 20 Cr. L. J. 300 :

50 I. C. 348 : 23 C. W. N. 426 : A. I. R. 1919 Cal. 142.

—S. 298—Procedure—Counsel, duty of, to take notes.

Per *Sanderson, C. J.*, and *Woodroffe, J.*, In cases tried by a Jury on the original side of the High Court, especially in important cases, the Counsel for the prosecution should take notes of the summing up of the Judge. *Peary v. Emperor*. 20 Cr. L. J. 300 :

50 I. C. 348 : 23 C. W. N. 426 : A. I. R. 1919 Cal. 142.

—S. 298—Scope.

S. 298 of the Cr. P. C., does not lay down any principles, on the question of misdirection. *Jagdish Dutt Shukla v. King-Emperor*.

41 Cr. L. J. 545 : 188 I. C. 110 : 1940 O. W. N. 481 :

1940 O. L. R. 306 : 12 R. O. 424 : A. I. R. 1940 Oudh 337.

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Verdict of Jury given under S. 304, Penal Code—Second verdict under S. 302 is one on which conviction cannot be based. *Sadek Mandal v. Emperor*. (F. B.) 35 Cr. L. J. 496 : 147 I. C. 860 : 38 C. W. N. 254 : 61 Cal. 256 : 6 R. C. 374 : A. I. R. 1934 Cal. 173.

—S. 298 (2)—Scope.

It is only in those cases which fall under S. 298, Sub-s. (2), that the Judge can direct the Jury to return a verdict of 'not guilty.' *Rup Narain Kurmi v. Emperor*.

32 Cr. L. J. 975 :

132 I. C. 876 : 12 P. L. T. 746 : 10 Pat. 140 : I. R. 1931 Pat. 300 : A. I. R. 1931 Pat. 172.

—S. 298—Summing up—Expression of Judge's opinion.

Mere reiteration of evidence is not enough. Judge should direct Jury as to the weight which in his opinion ought to be attached to the evidence. He must direct that Jury must consider facts for themselves and form their own opinion on evidence. *M. W. Scott v. Emperor*.

36 Cr. L. J. 1232 :

157 I. C. 821 : 13 Rang. 141 : 8 R. Rang. 116 : A. I. R. 1935 Rang. 214.

—S. 298—Summing up—Misdirection, what constitutes—Judge simply stating his own opinion without adding safeguard that the Jury are at liberty to form their own opinion—Principles underlying summing up by Judge.

In the course of his summing up a Judge has a right to express his opinion, and if he expresses his opinion which is an unfair opinion and which prejudices the accused, the superior Appellate Court can and should interfere to remove the ill-consequences of such action by finding misdirection; but to this clear and sound rule of law it is not necessary to add the condition in effect that every word that the Judge says wherein he expresses his opinion should be qualified by most elaborate safeguards. It would not be in accordance either with usual or good practice to treat a case of misdirection, if, upon the general view taken, the case has been fairly left within the Jury's province. If the Judge attempts to take the case out of the Jury's province by something in the nature of imposing his own view upon the Jury, it is a case of misdirection, but if a Judge simply states his opinion which the law allows him to state in such a manner that intelligent Jurymen should see for themselves that it is only his opinion and nothing else, it is not necessary for him to add as a safeguard a remark that it is only his opinion and that the Jury are perfectly at liberty to form their own. On questions of fact Judge's opinion in no way binds the Jury but the Judge has a right to express it so that the Jury may know what it is. *Des Raj v. Emperor*.

29 Cr. L. J. 721 :

110 I. C. 577 : 5 O. W. N. 497 : A. I. R. 1928 Oudh 326.

—S. 298—Summing up of evidence.

Omission to record heads of charges are not sufficient to set aside verdict unless the

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omission has led to an erroneous verdict.
Kasimuddin v. Emperor. 36 Cr. L. J. 48 :
 154 I. C. 110 : 60 C. L. J. 45 : 7 R. C. 436 :
 A. I. R. 1935 Cal. 31.

—S. 298 (2)—Summing up.

Judge's address to Jury—Whether done properly or not should be determined from his summing up as a whole. *Mangal Singh v. Emperor.* 32 Cr. L. J. 858 :
 132 I. C. 232 : 8 O. W. N. 344 :
 I. R. 1931 Oudh 248 : A. I. R. 1931 Oudh 171.

—S. 299—Duty of Judge—Functions of Jury—Confession, voluntary nature of—Misdirection.

Under S. 299 the Jury must weigh and value the evidence admitted by the Judge and in order to do so, they also must themselves go into the question as to whether a confession admitted in evidence was made voluntarily, for a free and voluntary statement is some guarantee of its truth. It is, therefore, the duty of the Judge to place before the Jury the facts and circumstances, *pro* and *con*, with regard to the question whether a confession was voluntary or not and to ask them to form their own conclusions as to the character of the confession. Where the consideration of the question as to whether a confession is voluntary or not is taken away entirely from the Jury, it amounts to a serious omission sufficient to vitiate the verdict of the Jury. *Sheikh Abdul v. Emperor.* 26 Cr. L. J. 606 :
 85 I. C. 830 : A. I. R. 1925 Cal. 887.

—S. 299—Jury, power of.

If a witness says something which appears to be untrue, it is still open to the Jury to believe any other statement made by that witness. But that is a matter entirely within their own discretion and there is no hard and fast rule making other statements which are not proved to be false binding on the Jury. *Mahammad Sagiruddin v. Emperor.*

30 Cr. L. J. 120 :
 113 I. C. 280 : I. R. 1929 Cal. 123 :
 A. I. R. 1928 Cal. 551.

—Ss. 299, 307—Jury trial—Disagreement between Judge and Jury—Reference to High Court—High Court, duty of—Verdict, unanimous, when to be interfered with.

In dealing with a case under S. 307, Cr. P. C., the High Court is first called upon to consider the entire evidence. It has then to give due weight to the opinion of the Sessions Judge and to the opinion of the Jury and then to acquit or convict the accused. The opinion of the Sessions Judge, however, is his opinion on the merits of the case and does not include his speculations as to what external considerations, if any, might have affected the judgment of the Jury. An imputation of this character is not fair to the Jurors as they have no opportunity to defend their views and to repudiate the aspersions made against them. The opinion of the Jury signifies the verdict of the Jury. The measure of the relative weight to be attached to these two factors, cannot be crystallised into an inflexible

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formula. The answer must depend upon the circumstances of each case. But the trend of judicial opinion has been in favour of preference of the unanimous verdict of Juries on whom the duty is imposed by S. 299 to decide which view of the facts is true. The weight to be attached to the verdict of the Jury is, however, necessarily diminished when the verdict is not unanimous. On the other hand when the Judge accepts the verdict of the Jury as to some of the accused and not as to the others, his opinion is weakened in a corresponding measure. The High Court should not, however, interfere with a unanimous verdict of the Jury unless it can say decidedly that it thinks that the verdict is clearly wrong. Notwithstanding this, due weight must be given to the opinion of the Sessions Judge as required by Statute. *Emperor v. Dhananjay Ray.* 25 Cr. L. J. 758 :
 81 I. C. 246 : 38 C. L. J. 384 : 51 Cal. 347 :
 A. I. R. 1924 Cal. 321.

—S. 299—Misdirection to jury.

It is a material misdirection to the jury to tell them to leave out of consideration the evidence of a witness and the retracted confession of the accused. It should be left to the jury to act upon the evidence or not as they think right. As regards the retracted confession, the jury should have been told that they should consider in view of all the circumstances in the case, whether the confession, or the statement retracting it, was true and act accordingly. *Public Prosecutor v. Papakka.*

11 Cr. L. J. 683 :
 8 I. C. 573 : 8 M. L. T. 372.

—S. 299—Powers of Jury—Exclusive power of Jury to determine questions of fact—Judge not explaining it—Conviction held to be beyond jurisdiction.

Under S. 299, Cr. P. C., the Jury alone has the power to determine the question of fact whether the accused committed the offence under S. 307 or S. 325, or S. 323, Penal Code. When this aspect of the question is not explained to the jury, the Judge exceeds his jurisdiction in convicting the accused under S. 323 : *Held*, that if the Jury's verdict had been one of not guilty even in respect of the minor offence and the Judge was unable to accept that verdict, the proper course would have been to submit the case under S. 307 to the High Court. *Gangabisan v. Emperor.*

38 Cr. L. J. 442 :
 167 I. C. 748 : 19 N. L. J. 18 :
 9 R. N. 206.

—Ss. 299, 537—Re-trial.

In the trial, the jury after retiring, returned the ambiguous verdict "Guilty of stabbing, but without the intention of committing murder." The learned Judge presiding, instead of questioning the Jury under the provisions of S. 303, Cr. P. C. read to them certain parts of Ss. 299 and 300, Penal Code, and sent them back to consider further, with instruction to return a verdict of "Guilty," or "Not Guilty of murder." The jury after retiring returned a verdict of "Guilty," and accused

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was convicted and sentenced to death: *Held*, per *Adamson, C. J.* and *Fox, J.*—That the procedure followed was illegal, and that the conviction and sentence should be set aside. In the absence of express authority for the ordering of a re-trial, it seemed proper to leave to the executive authorities the question of the institution of fresh proceedings against the accused. *Hla Gyi v. Emperor.*

3 Cr. L. J. 1 :
11 Bur. L. R. 298 : 3 L. B. R. 75.

———S. 299—*Verdict of Jury—Sessions case—Right of Jury to return special verdict—Power of Judge to require a verdict of guilty or not guilty.*

The Cr. P. C. does not permit the recording of what is known in English law as a 'special verdict,' i. e., where the Jury state their findings on the facts themselves, leaving it to the Judge to apply the law to those facts and himself find the prisoner guilty or not guilty. A Judge is not entitled to ask the Jury the reasons for their verdict. He is not entitled to put questions to them to show that the conclusions at which they arrived were not logical or consistent. Any ambiguity in the Jury's verdict is the only justification for any question by the Judge. Where the Jury give their findings only on the facts, leaving it to the Judge to apply the law to those facts, the Judge is empowered to require the Jury to return a verdict of "guilty" or "not guilty." *Arunachella Thevan v. Emperor.*

13 Cr. L. J. 586 :
15 I. C. 1002.

———S. 300—*Non-compliance—Effect—Duty of Judge.*

If it is proved that in a trial after the Judge's charge to the Jury had been delivered, a person other than a juror spoke to or held communication with a member of the Jury without the leave of the Court, it is sufficient to upset the verdict: and it is not necessary to enquire into the nature of the communication held with the juror. Proper precautions should be taken by a Judge who presides over the Court in a Jury trial to make it impossible, after the charge has been delivered and the Jury have retired to consider their verdict, for any one other than a juror to speak with the Jury or communicate with the Jury without the leave of the Court. *Benimadhab Kundu v. Emperor.*

19 Cr. L. J. 737 :
46 I. C. 513 : 27 C. L. J. 553 :
22 C. W. N. 740 : A. I. R. 1919 Cal. 512.

———S. 300—*Non-compliance—Effect.*

S. 300 contemplates that after the Judge has delivered his charge, the Jury must forthwith retire to the Jury-room and then and there consider its verdict. The Jury must have no chance of communicating with any outside person while they are in fact considering their verdict. Where, after the Judge's charge to the Jury, the latter were allowed to disperse for several hours and then returned to the Court and considered and delivered their verdict: *Held*, that the provisions of S. 300

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had been disregarded and that the trial was vitiated. *Sarima Ahir v. Emperor.*

26 Cr. L. J. 861 :
87 I. C. 717 : 6 P. L. T. 552 :
3 Pat. L. R. 160 Cr. : A. I. R. 1925 Pat. 595.

———S. 300—*Non-compliance—Verdict, legality of.*

The fact that a Juror has a conversation with a stranger during an adjournment of the Court before the Judge's charge is concluded, is not a sufficient ground for interference by the High Court. *In re : Puli Subba Reddi.*

20 Cr. L. J. 790 :
53 I. C. 694 : 10 L. W. 379 :
A. I. R. 1919 Mad. 222.

———S. 301—*Verdict not clear—Procedure.*

Where the verdict of the Jury is not clear and definite, it is wrong for the Magistrate to send the case back to the jurors for a clear verdict according to law. *Emperor v. Vidya Sagar.*

147 I. C. 689 (2) : 10 O. W. N. 1270 :
6 R. O. 292 : A. I. R. 1934 Oudh 34.

———S. 302.

See also (i) Cr. P. C., 1898, Ss. 298, 299.

———S. 302—*Scope.*

Where the Jury are not unanimous, the proper course for the Judge is to require them, under S. 302, to retire for further consideration, and at the same time to give them further directions on matters of law. *Emperor v. Bharmia.*

1 Cr. L. J. 265 :
6 Bom. L. R. 258.

———S. 303.

See also (i) Cr. P. C., 1898, Ss. 297, 298, 299 (a), 303, 305.

———S. 303—*Applicability.*

S. 303 has no application where a Jury returns a clear verdict; that section applies only to cases where questions are necessary to ascertain what the verdict of the Jury is. *Edon Karikar v. Emperor.*

21 Cr. L. J. 829 :
58 I. C. 829 : A. I. R. 1920 Cal. 406.

———S. 303—*Judgment according to verdict.*

When the Judge agrees with the verdict of the Jury as against any particular accused, it is clearly his duty to pass sentence on that accused. *Emperor v. Babar Ali Gazi.*

16 Cr. L. J. 321 :
28 I. C. 657 : 19 C. W. N. 584 :
21 C. L. J. 492 : 42 Cal. 789 :
A. I. R. 1915 Cal. 731.

———S. 303—*Questions by Judge when competent—Unanimous verdict of Jury not interfered with.*

The mere fact that upon consideration of all the evidence before the Court, a Judge would have arrived at a conclusion different from that arrived at by the Jury, would not justify the High Court in interfering with their unanimous verdict. The verdict of the jury being quite free from ambiguity, the Sessions Judge was not quite correct, under the provisions of S. 303, in asking questions of the Jury, and the High Court

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declined to consider their answers. *Emperor v. Chirkua*.
2 Cr. L. J. 357 :
2 A. L. J. 475.

————S. 303, 307—*Questions by Judge, when competent.*

It is only when it is necessary to ascertain what the verdict of a Jury really is that S. 303, justifies a Judge in putting questions to the Jury. Where the verdict of the Jury was in a plain and simple verdict of "not guilty" the Judge is not justified to question the Jury, and it is his duty to accept the verdict. *Emperor v. Abdul Hamid*.
2 Cr. L. J. 259 :

9 C. W. N. 520 : I. L. R. 32 Cal. 759.

————S. 303—*Questions to Jury—Duty of Court—Omission of, effect of.*

That his omission to put questions to the Jury in this respect had deprived him of the opportunity of finding out whether the said amount or any part of it was included within the figure which he himself arrived at, so as to determine whether he really agreed with the verdict or not. *Khirode Kumar Mukerji v. Emperor*.
26 Cr. L. J. 532 :
85 I. C. 372 : 29 C. W. N. 54 :
40 C. L. J. 555 : A. I. R. 1925 Cal. 260.

————S. 303—*Question to Jury.*

In a case of criminal breach of trust in respect of a sum of over seven thousand rupees, the Jury returned a unanimous verdict of guilty but recommended the lightest punishment consistent with justice, as in their opinion, the amount misappropriated by the accused was much less than the amount stated in the charge. As to the amount embezzled, they were not unanimous and they said they were not able to ascertain it definitely but the majority of them were of opinion that it might be a thousand rupees or so out of the amount mentioned in the charge. The Judge agreed in the verdict. He, however, was of opinion that the amount embezzled was not a thousand rupees or so but nearly rupees five thousand. He accepted the verdict and convicting the accused under S. 408, Penal Code, sentenced him to undergo rigorous imprisonment for three years. On Appeal: *Held*, (1) that the verdict returned by the Jury was not a simple verdict of guilty or not guilty on the whole matter covered by the charge but a special or qualified verdict, to ascertain the exact scope and import of which it was the duty of the Judge to ask the Jury such questions as were necessary; (2) that the Judge should have endeavoured to ascertain how the Jury arrived at the amount of "about a thousand rupees or so" which, in their opinion, the accused was guilty of having embezzled. *Khirode Kumar Mukerji v. Emperor*.
26 Cr. L. J. 532 :
85 I. C. 372 : 29 C. W. N. 54 :
40 C. L. J. 555 : A. I. R. 1925 Cal. 260.

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————S. 303—*Questions to Jury—Limitation on.*

S. 303 limits the power of the Judge to question the Jury only to cases in which it is necessary to ascertain what the verdict of the Jury is—that is, where the verdict being delivered in ambiguous terms or with uncertain sound, their meaning is not clear. *Emperor v. Kondha Dhondiba*.
1 Cr. L. J. 331 :
6 Bom. L. R. 361 : I. L. R. 28 Bom. 412.

————S. 303—*Questions to Jury—Limitation on.*

The Judge has no power to put questions to the Jury after their verdict except those contained in S. 303, and the only questions which can be put are such as are necessary to ascertain what their verdict is. The Judge is not entitled to question the Jury about the reasons. *Emperor v. Karim Dai*.
33 Cr. L. J. 29 :
134 I. C. 1133 : 35 C. W. N. 407 :
I. R. 1932 Cal. 45 : A. I. R. 1931 Cal. 636.

————S. 303—*Questions to Jury—Limitation on.*

The only power that a Judge has to question a Jury as to their verdict is that conferred by S. 303 and is limited to putting such question as are necessary to ascertain what their verdict is. A Judge has no power to question the Jury on reasons for their verdict. *Ranjag Ahir v. Emperor*.
29 Cr. L. J. 466 :
109 I. C. 114 : 7 Pat. 55 :
9 P. L. T. 567 : I. L. T. 40 Pat. 102 :
A. I. R. 1928 Pat. 203.

————S. 303—*Question to Jury—Propriety of question as to desirability of reference to High Court.*

Although a Sessions Judge has no power under S. 303 or S. 307, to question a Jury as to the reasons for their verdict, it nevertheless is not improper to put them questions for the purpose of coming to a satisfactory conclusion whether the case is a fit one for reference to the High Court. *In re: Subbiah Thevan*. 21 Cr. L. J. 466 :
56 I. C. 498 : 1 L. W. 561 :
1920 M. W. N. 347 : 39 M. L. J. 65 :
43 Mad. 744 : A. I. R. 1920 Mad. 170.

————S. 303—*Questions to Jury, record of, necessity of.*

In a case tried with a Jury, the charge to the Jury should set forth the evidence for the prosecution and the defence and the points which arise for consideration, in a manner calculated to help the Jury in arriving at a proper verdict. If under S. 303, it becomes necessary to question the Jury, the Judge is bound to record the questions and the answers. *Palavesa Tevon v. Emperor*.
12 Cr. L. J. 140 :
9 I. C. 788 : 1911 2 M. W. N. 190 :
9 M. L. T. 345.

————S. 303—*Questions to Jury—Stage for.*

A Judge is not justified in questioning the

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Jury after they have given an unanimous verdict. *Asfar Sheikh v. Emperor*.

11 Cr. L. J. 557 :
8 I. C. 52.

—S. 303—Questions to Jury.

The High Court cannot supply by conjecture or inference the omission on the part of the Sessions Judge to ascertain from the Jurors themselves what they meant by their verdict. *Satdeo v. Emperor*.

37 Cr. L. J. 182 :
159 I. C. 919 : 1936 O. L. R. 18 :
1936 O. W. N. 28 : 8 R. O. 225 :
A. I. R. 1936 Oudh 164.

—S. 303—Questions to Jury.

Under S. 303 (1), the Judge is always entitled to ask the Jury such questions as are necessary to ascertain what their verdict is. *Khirade Kumar Mukerji v. Emperor*.

26 Cr. L. J. 532 :
85 I. C. 372 : 29 C. W. N. 54 :
40 C. L. J. 555 : A. I. R. 1925 Cal. 260.

—S. 303—Questions to Jury—When allowed.

A Judge has no power to question a Jury as to its reasons for an unanimous verdict when there is nothing ambiguous in the verdict itself and no uncertainty in the minds of the Jury themselves regarding it. *In re : Rama Naicker*.

13 Cr. L. J. 285 :
14 I. C. 669 : 22 M. L. J. 355.

—S. 303—Questions to Jury—When competent.

In a case in which the accused were being tried on several charges, the Judge directed the Jury to return a verdict in respect of each charge with reference to each accused. The Jury returned a unanimous verdict which made no reference to some of the charges. The Judge then put some questions to the Foreman of the Jury in order to ascertain precisely what the verdict of the Jury was as regards those charges : *Held*, that the course adopted by the Judge was quite legitimate and in accordance with the provisions of S. 303. *Eran Khan v. Emperor*.

24 Cr. L. J. 838 :
44 I. C. 950 : 50 Cal. 658 :
A. I. R. 1924 Cal. 47.

—S. 303—Question to Jury—When competent.

There is no provision in the Cr. P. C. which empowers the Judge to question the Jury as to their reasons for a unanimous verdict when there is nothing ambiguous in the verdict itself and no uncertainty in the minds of the Jury themselves regarding it. *Emperor v. Kondha Dhondiba*.

1 Cr. L. J. 331 :
6 Bom. L. R. 361 : I. L. R. 28 Bom. 412.

—S. 303—Questions to Jury—When competent.

Where the Jury return a verdict on the general issue of guilty or not guilty, and there is no ambiguity as to the precise offence of which the accused are convicted or acquitted S. 305 does not authorise the Sessions Judge to question the Jury, as the only questions he is entitled to put to the Jury are "such questions as are necessary to

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ascertain what their verdict is." *In re : Seranadu*.

6 Cr. L. J. 373 :
17 M. L. J. 476 : I. L. R. 30 Mad. 469.

—S. 303—Questions to Jury—When competent.

Where the verdict of the Jury is clear and precise, the Judge is not entitled to examine the Jurors as to the grounds upon which they have based their verdict. *Emperor v. Derajtullah Sheikh*.

31 Cr. L. J. 1150 :
127 I. C. 79 : 34 C. W. N. 283 :
A. I. R. 1930 Cal. 443.

—S. 303—Scope.

In the case of a verdict of the Jury, it is not open to the Court to make surmises or conjectures. *Satdeo v. Emperor*.

37 Cr. L. J. 182 :
159 I. C. 919 : 1936 O. L. R. 18 :
1936 O. W. N. 28 : 8 R. O. 225 :
A. I. R. 1936 Oudh 164.

—S. 303—Verdict, meaning of—Judge's right to question Jury.

By the word 'verdict' in S. 303, should be understood the collective opinion of the Jury as a body arrived at after mutual consultation and ascertained and announced by the Foreman. In cases of disagreement, the individual opinions of the Jurors are never intended to be disclosed. The Judge is only entitled to question the Jury as to their verdict, where it is ambiguous or incomplete. *Public Prosecutor v. Abdul Hameed*.

15 Cr. L. J. 197 :
22 I. C. 981 : 36 Mad. 585 :
A. I. R. 1914 Mad. 319.

—S. 303—Verdict, meaning of, verdict not unanimous—Procedure.

The "verdict" in S. 303, means the collective opinion of the Jury as a body, arrived at after mutual consultation and ascertained and announced by the Foreman. In cases of disagreement among the Jury, the individual opinions of Jurors are not intended to be disclosed and it is improper for the Sessions Judge to record the individual opinions of the Jurors by name. *Jagannath v. Emperor*.

26 Cr. L. J. 1346 :
89 I. C. 386 : 2 O. W. N. 534 :
12 O. L. J. 643 : A. I. R. 1925 Oudh 746.

—S. 303—Verdict on each charge—Necessity of.

In a case in which there are more than one accused and there are several charges, it is a convenient course for the Judge to take the verdict of the Jury upon each charge separately. *Eran Khan v. Emperor*.

24 Cr. L. J. 838 :
44 I. C. 950 : 50 Cal. 658 :
A. I. R. 1924 Cal. 47.

—S. 303—Verdict on each charge—Necessity of.

In case under S. 489-B, Penal Code, Judge should ascertain from jury their opinion as to whether the notes had been used with knowledge of their being forged. When

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same accused with having committed the same offence, on the same allegations of fact.
Emperor v. Dulla. 24 Cr. L. J. 862 ;

74 I. C. 1054 : 45 All. 53 :
A. I. R. 1923 All. 360.

———Ss. 247, 403—*Acquittal—Fresh complaint, whether barred.*

A judgment of acquittal following on complainant's default of prosecution under S. 247, Cr. P. C., does not entitle the person acquitted to plead *autrefois acquit* on a fresh prosecution on the same facts and S. 403 does not operate as a bar to the Court taking cognizance of a second complaint. *Bezawada Kotayya v. Konathalappalli Venkayya.*

19 Cr. L. J. 497 :
45 I. C. 257 : 40 Mad. 977 footnote :
A. I. R. 1918 Mad. 212.

———Ss. 247, 403, 494—*Acquittal of—Withdrawal from prosecution before service of summons, effect of—Acquittal as bar to further proceedings.*

The statutory acquittal under S. 494, Cr. P. C., in a summons-case operates as a bar to further proceedings on the same facts. The provisions of S. 403 clearly imply that every order of acquittal so long as it is in force, is a bar to further proceedings except in the circumstances specified in the section itself, and the words in Sub-s. (1) do not affect an order of acquittal under S. 494 or S. 247, Cr. P. C. The Police filed a charge-sheet under S. 447, Penal Code, against a person before a Magistrate with second class powers, whereupon a summons was issued but before it was served, the Public Prosecutor, with the consent of the Court, withdrew from the prosecution under S. 494, Cr. P. C. and the accused was acquitted as required by that section. Thereafter the person on whose field the offence of criminal trespass was alleged to have been committed, preferred upon the same facts a complaint charging the accused with offences under Ss. 143, 447 and 341, Penal Code. The accused was convicted and sentenced separately for each of the offences : *Held*, that the previous order of acquittal operated as a bar to further proceedings and that the conviction was, therefore, bad in law and must be set aside. *In re : Dudekula Lal Sahib.* 19 Cr. L. J. 501 :

55 I. C. 261 : 33 M. L. J. 121 :
22 M. L. T. 69 : 6 L. W. 175 : 40 Mad. 976 :
A. I. R. 1918 Mad. 231.

———Ss. 247, 403 (1)—*Acquittal—Fresh trial, bar of.*

An acquittal under S. 247, Cr. P. C., bars a further trial, under S. 403 (1) of the Code. *Suku Ram Koch v. Krishna Deb Sarma.*

30 Cr. L. J. 585 :
116 I. C. 174 : 49 C. L. J. 119 :
33 C. W. N. 260 : I. R. 1929 Cal. 462 :
A. I. R. 1929 Cal. 189.

———Ss. 247, 423 (a), 439—*Acquittal without jurisdiction—Revision—Interference—Further inquiry.*

The High Court will not ordinarily interfere in revision in the case of an acquittal, since the Local Government can appeal, but this rule does not properly apply to an acquittal

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under S. 247, Cr. P. C., and in any case, the rule will not prevent interference by that Court when the acquittal is the result of an improper clutching at jurisdiction. An acquittal of an offence arising out of certain facts under a wrong section will prevent a further enquiry into any offence based on the same facts until that acquittal is set aside. *Ram Nidh v. Ram Saran.* 25 Cr. L. J. 794 :

81 I. C. 314 : 26 O. C. 282 :
A. I. R. 1924 Oudh 64.

———Ss. 247, 435, 436—*Acquittal—Dismissal of summons-case for default—Second complaint barred.*

Where a complaint under S. 447, Penal Code, is dismissed for default of appearance of the complainant, the order must be taken to have been passed under S. 247, Cr. P. C., though the latter section is neither mentioned nor is the order in terms of that section. Such an order as the above is tantamount to an acquittal and the District Magistrate has no jurisdiction either under S. 435, or under any other section of the Code to set it aside. The powers of a District Magistrate directing further enquiry into any complaint are limited to the cases mentioned under S. 438 of the Code and an order passed under S. 247 of the Code does not fall within the purview of that section. *Bindra v. Bhagwanta.*

25 Cr. L. J. 359 :
77 I. C. 295 : A. I. R. 1925 Oudh 44.

———Ss. 247, 438, 403—*Acquittal, nature of—Reference under S. 438—Interference.*

Acquittal under S. 247, Cr. P. C., though not an acquittal on the merits, has the force of a complete acquittal for all purposes. A fresh and a separate trial on the same facts would be barred under S. 403, Cr. P. C. Where reference under S. 438 is received asking for interference against an order of acquittal, the High Court is very reluctant to accept such a reference. In cases of acquittal, the Provincial Govt. has a right of appeal. If the Provincial Govt. does not choose to file an appeal and if a reference is made asking the High Court to interfere with an order of acquittal, the High Court will interfere only if there be radical and incurable irregularity or a complete disregard of the law and procedure or a manifest injustice which has got to be cured. *Emperor v. Laami Prasad.*

41 Cr. L. J. 919 :
190 I. C. 467 : 1940 N. L. J. 394 :
13 R. N. 111 : A. I. R. 1940 Nag. 352.

———Ss. 247, 438, 439—*Acquittal—Acquittal obtained by improperly procuring complainant's absence—Revision.*

A brought a complaint against B under S. 426, Penal Code. On the date fixed for the trial, B improperly procured A's arrest on a false charge of committing nuisance, and the Magistrate acting under S. 247, Cr. P. C., acquitted B because A, the complainant, did not appear. Upon A's application the District Magistrate referred the case to the High Court recommending that the order of acquittal may be set aside and a new trial directed but the High Court declined to interfere, inasmuch as

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verdict recorded does not contain this, it is inconclusive. *Satdeo v. Emperor*.

37 Cr. L. J. 182 :
159 I. C. 919 : 1936 O. L. R. 18 :
1936 O. W. N. 28 : 8 R. O. 225 :
A. I. R. 1936 Oudh 164.

—S. 303—Verdict on each charge—Necessity of.

Where a number of accused persons were tried for dacoity, but the Jury found that five people did not take part in the occurrence and gave a verdict that two of the accused were guilty of robbery in which hurt was voluntarily caused and the two accused were convicted for robbery : *Held*, that the conviction for robbery being on a charge which was not specifically placed before the Jury and to which the accused were not asked to plead was irregular. *In re : Virumandi Thevan*.

28 Cr. L. J. 1007 :
105 I. C. 831 :
A. I. R. 1928 Mad. 207.

—S. 303—Verdict on several charges, mode of recording.

It is necessary for the Judge under S. 303 (1) to elicit from the Jury a separate verdict on various charges by questions and to record the questions and answers under S. 303 (2). A statement that the verdict is guilty where there are several charges, is not a sufficient compliance with the provisions of law. *Ramprasad v. Emperor*.

26 Cr. L. J. 1090 :
88 I. C. 178 : A. I. R. 1926 Nag. 53.

—S. 303—Verdict—Recommendation by Jury whether verdict—Recommendation by Jurors in verdict—Whether to be treated as part of verdict.

A recommendation made by the Jurors in their verdict is not a part of the verdict and should not be treated as such. *Emperor v. Vidya Sagar*.

147 I. C. 689 (2) :
10 O. W. N. 1270 : 1934 O. L. R. 149 (1) :
6 R. O. 292 :
A. I. R. 1934 Oudh 34.

—S. 304—See Cr. P. C., S. 302.**—S. 304—Accident or mistake—Meaning of.**

A Judge questioned a Jury as to their reasons for a verdict, which was unanimous and unambiguous, and in consequence, two of the Jury were led to say that they had been misled as to some of the evidence by the notes of the Foreman and that they would like to re-consider the case : *Held*, that this was not a case in which it could be said that a wrong verdict was delivered by accident or mistake, within the meaning of S. 304. *In re : Rama Nicker*.

13 Cr. L. J. 285 :
14 I. C. 669 : 22 M. L. J. 355.

—S. 304—Amending verdict—Grounds of.

Where a Judge gives a wrong explanation of S. 304 to the Jury, the mistake is so

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palpable that it is a good ground for ordering re-trial. *Ifatulla v. Emperor*.

32 Cr. L. J. 598 :
130 I. C. 884 : 35 C. W. N. 456 :
58 Cal. 1138 : I. R. 1931 Cal. 404 :
A. I. R. 1931 Cal. 345.

—S. 304—Amending verdict.

S. 304 obviously contemplates the amendment of the verdict in cases in which the verdict delivered is not in accordance with what was really intended by the Jury. *Emperor v. Kondha Dhondiba*.

1 Cr. L. J. 331 :
6 Bom. L. R. 361 : I. L. R. 28 Bom. 412.

—S. 304—Amending verdict—Stage for.

After the verdict has been recorded by the Judge and the Jury have left the box, it would be improper on the part of the Judge to listen to any application by the Jurors to amend the verdict. *Ifatulla v. Emperor*.

32 Cr. L. J. 598 :
130 I. C. 884 : 58 Cal. 1138 :
35 C. W. N. 456 : I. R. 1931 Cal. 404 :
A. I. R. 1931 Cal. 345.

—S. 304—Amending verdict—Stage for.

The power of amendment of a verdict provided by S. 304, must be exercised before or immediately after the verdict is recorded and cannot be exercised after the Jurors have dispersed. *Emperor v. Intya Salabakhhan*.

13 Cr. L. J. 842 :
17 I. C. 714 : 14 Bom. L. R. 897.

—S. 304—Applicability.

S. 304 has no application where there is no accident or mistake in the delivery of the verdict and the mistake lies in the misunderstanding of the law by the Jury. The Judge cannot address another charge to the Jury on the law and request them to re-consider their verdict in the light of the fresh charge. *In re : Sunaaram Iyer*.

32 Cr. L. J. 1276 :
134 I. C. 986 : 34 L. W. 380 :
1931 M. W. N. 857 : 61 M. L. J. 915 :
55 Mad. 256 : I. R. 1931 Mad. 874 :
A. I. R. 1931 Mad. 775.

—S. 304—Fresh verdict.

Once the verdict of the Jury has been given, it is illegal to admit further evidence and to invite the Jury to give a fresh verdict. *Lyme v. Emperor*.

25 Cr. L. J. 377 :
77 I. C. 425 : 4 Lah. 382 :
A. I. R. 1924 Lah. 17.

—S. 304—Re-consideration—Verdict before conclusion of evidence, legality of.

Before a case can be submitted to a Jury, all the evidence on both sides must be concluded. There is no power in a Judge to present a case to a Jury subject to conditions, and once a verdict is delivered, there is no power in the Trial Court or in the Jury to re-consider that verdict except under the provisions of S. 304 which provides that where a wrong verdict is delivered by accident or mistake, the Jury may amend it before or immediately after it is recorded. With this exception the Jury is *functus*

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ject does not dispense with legal requirements.
Mokshed Sheikh v. Emperor.

32 Cr. L. J. 233 :
129 I. C. 105 : I. R. 1931 Cal. 121 :
A. I. R. 1930 Cal. 756.

—S. 33—Scope of—Witness examined before Committing Magistrate—Whereabouts unknown—Admission of deposition during trial, legality of.

Where the whereabouts of a person who had given evidence for the prosecution before the Committing Magistrate were unknown and no attempt was made on behalf of the defence to challenge the fact that his whereabouts were unknown, and the Sessions Judge admitted the deposition given by the witness before the Committing Magistrate : *Held*, that there was nothing wrong or illegal in the procedure adopted by the Sessions Judge. *Jati Mali v. Emperor.*

31 Cr. L. J. 857 :
125 I. C. 599 : 33 O. W. N. 918 : 57 Cal. 248 :
A. I. R. 1929 Cal. 765.

—S. 33—Statement by witness—Deposition before Committing Magistrate—Witness disappearing at time of Sessions Trial—Transfer of deposition—Procedure.

Where a witness who has been examined before a Committing Magistrate has left the district at the time of the trial in the Sessions Court, his statement before the Committing Magistrate cannot be transferred to the Sessions file without taking evidence in proof of facts which would render the statement admissible within the provisions of S. 33, Evidence Act. *Khem Singh v. Emperor.*

26 Cr. L. J. 1086 :
88 I. C. 30 : 7 L. L. J. 105 :
A. I. R. 1925 Lah. 319.

—S. 33—Statement in Civil Court, admissibility of, in criminal case between same parties after death of deponent.

Accused, when defendant in a civil suit brought against him to recover a certain debt, produced a receipt purporting to have been signed by the plaintiff, showing that the debt had been discharged. The plaintiff was examined as a witness in the suit and he deposed that the receipt was a forgery. The prosecution of the accused was thereupon ordered, but before the trial came off, the plaintiff died and his statement in the civil suit was admitted in evidence in the criminal case against the accused. The accused was convicted and the question in appeal before the High Court was, whether the statement of the deceased plaintiff was admissible in evidence and whether the Court was justified in believing that statement : *Held*, that the statement had been rightly admitted, as the accused had an opportunity of cross-examining the deponent at the time the statement was made, and the proceedings were between the same parties and that if the Court was satisfied on a review of the entire evidence that the deponent had spoken the truth, his statement in the civil suit was sufficient to prove that the receipt was a forgery. *Debi Singh v. Emperor.*

20 Cr. L. J. 625 :
52 I. C. 385 : A. I. R. 1919 All. 351.

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—S. 33—Statement of witness, admissibility of.

The person against whom proceedings have been instituted under S. 476, Cr. P. C., has not the right to cross-examine witnesses during the enquiry under the said section. Therefore, if a witness is not forthcoming at the trial that is started on the result of such enquiry, his previous statement is not admissible under S. 33, Evidence Act. *Bakir Saheb Amir Saheb v. Emperor.*

17 Cr. L. J. 249 :
34 I. C. 969 : 18 Bom. L. R. 284 :
A. I. R. 1916 Bom. 218.

—S. 33—Statement of witness in previous trial.

Statements of witnesses made in a criminal trial are not admissible in evidence after the death of the witnesses in a subsequent trial against an accused person who had no opportunity of examining the witnesses, nor is the judgment delivered in a previous trial admissible in a subsequent trial of a different accused person in respect of the same offence. *Mohan Singh v. Emperor.*

26 Cr. L. J. 551 :
85 I. C. 647 : A. I. R. 1925 All. 413.

—S. 33—Statement recorded in one case, when can be treated as evidence in another—Essentials to be proved—Practice.

The evidence of a witness recorded in one case cannot be admitted as evidence in another case unless the requirements of S. 33, Evidence Act, are complied with. Where, therefore, in a case under S. 394, Penal Code, the complainants were not examined, a Police Constable having been produced to show that an attempt was made to summon them but they were not found, and the evidence of one of the complainants recorded in another case was admitted by the Magistrate : *Held*, that in the absence of proof that the complainant could not be procured without an amount of delay, expense and inconvenience, her evidence could not be treated as evidence in the case. *Dwarka Singh v. Emperor.*

24 Cr. L. J. 828 :
74 I. C. 860 : A. I. R. 1922 Oudh 254.

—Ss. 33, 58—Miscellaneous—Court, duty of, while admitting statement of absent witness—Irregularity—Misdirection.

Under S. 33, Evidence Act, the Judge has to satisfy himself that the presence of the witness cannot be obtained without an amount of delay or expense which he considers to be unreasonable, before he admits a statement made by the absent witness in a previous judicial proceeding. It is not enough to have the statement of the Public Prosecutor to that effect, there must be independent evidence before him before he can exercise the powers given to him under the Evidence Act. Therefore, where a Judge acts upon the statement of the Public Prosecutor, his procedure is irregular. In a trial by Jury, reception of inadmissible evidence by the Judge and his failure to warn the Jury against considering such evidence, amounts to mis-

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handwriting of documents admittedly written by the prosecutor, the Judge must place the documents before the Jury and ask them to make the comparison and decide whether the handwritings do or do not tally. *Khijir-ud-Din v. Emperor*. 27 Cr. L. J. 266 : 92 I. C. 442 : 42 C. L. J. 504 : 53 Cal. 372 : A. I. R. 1926 Cal. 139.

-----S. 73—Defect in procedure.

Where S. 73 says that the Court may direct any person present in Court to write, the procedure of delegating to another Magistrate not sitting as a Court, to take such a writing from the accused when the accused is not in Court nor standing his trial in Court, does not come within the provisions of the section. *Kishori v. Emperor*.

36 Cr. L. J. 921 :
156 I. C. 396 : 39 C. W. N. 986 :
7 R. C. 700 : A. I. R. 1935 Cal. 308.

-----S. 73—Interpretation.

The word "purports" in S. 73, Evidence Act, means "alleged." It is not necessary under the section that the writing, which is in dispute, must itself in terms express or indicate that it was written by the person to whom it is attributed. When an anonymous writing is produced and ascribed by the prosecution to a particular person, then the case for the prosecution must be taken to be that, having regard to the admitted documents, and the comparison between them and the disputed writing, the prosecution alleges that the disputed document *purports* to have been written or made by the accused. An anonymous writing ascribed to a particular person may, therefore, be compared under S. 73, Evidence Act. *Emperor v. Ganpat Balkrishna Rode*.

13 Cr. L. J. 505 :
15 I. C. 649 : 14 Bom. L. R. 310.

-----S. 73—Scope.

It is doubtful whether S. 73, refers to an accused person at all. *Kishori v. Emperor*.

36 Cr. L. J. 921 :
156 I. C. 396 : 39 C. W. N. 986 :
7 R. C. 700 : A. I. R. 1935 Cal. 308.

-----S. 73—Scope.

S. 73, Evidence Act, does not sanction the comparison of any two documents, but requires that the writing with which the comparison is to be made, shall be admitted or proved to have been written by the person to whom it is attributed, and next the disputed writing must *purport* to have been written by the same person. *Barindra Kumar v. Emperor*.

11 Cr. L. J. 453 :
7 I. C. 359 : 37 Cal. 467.

-----S. 73—Scope.

S. 73 includes an accused person. *Kishori v. Emperor*.

36 Cr. L. J. 921 :
156 I. C. 396 : 39 C. W. N. 986 :
7 R. C. 700 : A. I. R. 1935 Cal. 308.

-----S. 73—Scope.

Specimen signature of accused taken while in Police custody is admissible in evidence in his

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trial for forgery. *Emperor v. Ramrao Mangesh Burde*.

33 Cr. L. J. 666 :
138 I. C. 708 : 56 Bom. 304 :
34 Bom. L. R. 598 : I. R. 1932 Bom. 423 :
A. I. R. 1932 Bom. 406.

-----Ss. 73, 45, 47—Handwriting, proof of.

A party wishing to prove that a document is in the handwriting of a particular person can rely upon expert evidence under S. 45 of the Evidence Act, or the opinion of a competent witness under S. 47 of the Act, or direct comparison of the document with proved or admitted documents under S. 73 of the Act. *Khijir-ud-Din v. Emperor*. 27 Cr. L. J. 266 : 92 I. C. 442 : 42 C. L. J. 504 : 53 Cal. 372 : A. I. R. 1926 Cal. 139.

-----S. 74.

See also (i) Cr. P. C., 1898, S. 511.

-----S. 74—Acts or records—Meaning of.

The circular by which the Director-General of Posts and Telegraphs notified in August, 1922, that stamps of a particular kind would soon be issued to Post Offices for sale to the public is not an 'act' or 'record' of an act of a public officer within the meaning of S. 74 of the Evidence Act. *In re : A. Veluayudam Pillai*.

30 Cr. L. J. 483 :
115 I. C. 509 : 1929 M. W. N. 193 :
I. R. 1929 Mad. 461.

-----S. 74—Census Register—Whether public document.

Census Registers are not public documents within the meaning of S. 74, Evidence Act. *Emperor v. Bhavnrao Vilhalrao*.

1 Cr. L. J. 438 :
6 Bom. L. R. 535.

-----S. 74—Finger-print slip taken in jail—Whether public document.

A finger-print slip taken in pursuance of a statutory duty cast upon Police Officers after a convict enters the jail is an act of the executive within the meaning of S. 74, Evidence Act, and is, therefore, a public document. Similarly, a jail register written up by the jail authorities in the ordinary course of their duty as soon as a convict is admitted into jail, is a Public document. *Arumugam v. Emperor*.

40 Cr. L. J. 355 :
180 I. C. 431 : 1938 M. W. N. 595 :
48 L. W. 639 : 11 R. M. 700 :
A. I. R. 1938 Mad. 858.

-----S. 74—Parcha slip—Whether a public document.

A *parcha* slip granted in the course of survey proceedings is not a public document and is not in any way recognised by law. It is, therefore, inadmissible in evidence to prove title or possession. In a criminal trial, however, the Judge is competent to draw the attention of the Jury to the fact that the *parcha* slip was granted to a particular person as a fact relevant to the question of possession. *Ram Bhagwan v. Emperor*. 19 Cr. L. J. 886 : 47 I. C. 82 : A. I. R. 1918 Pat. 201.

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direction, which vitiates the whole proceeding. *Annavi Muthiriyar v. Emperor*.

16 Cr. L. J. 294 :
28 I. C. 518 : 28 M. L. J. 329 :
17 M. L. T. 214 : 1915 M. W. N. 229 :
A. I. R. 1916 Mad. 851.

————Ss. 33, 114, Illus. (b)—Corroboration—Approver's statement as basis for conviction—Corroboration required, nature of—Recovery of articles, value of.

In order to furnish a safe basis for conviction, an approver's statement should not only be corroborated in material particulars but it is necessary that the corroboration should be such as to identify the accused individually with the offence. The evidence of a witness who is no better than an accomplice cannot be relied upon as furnishing the necessary corroboration. The evidence of recovery of articles of ordinary character and of their identification must be received with caution and cannot be regarded a sufficient corroboration. *Nathu v. Emperor*.

30 Cr. L. J. 292 :
114 I. C. 326 : I. R. 1929 Lah. 246 :
A. I. R. 1929 Lah. 680.

————Ss. 33, 114, Illus. (b)—Statement of approver—Corroboration as to identity of accused, importance of.

Approver's evidence must be corroborated not only as to the circumstances of the crime but also as to the identity of the accused. *Wazir Chand v. Emperor*. 28 Cr. L. J. 564 :
102 I. C. 500 : A. I. R. 1928 Lah. 30.

————Ss. 33, 145—Deposition of witness—Statement made by witness before committing Magistrate, admissibility of, in Sessions trial.

Where in a Sessions trial the evidence of an absent witness was very material and was relied upon by the Sessions Judge in his charge to the Jury, but he was not produced although he resided within the Court's jurisdiction and could have been procured without any very great delay or expense: Held, that the deposition ought not to have been admitted and was not evidence. *Lakshman Totaram v. Emperor*.

16 Cr. L. J. 754 :
31 I. C. 354 : 17 Bom. L. R. 590 :
A. I. R. 1915 Bom. 237.

————S. 34—'Regularly kept,' meaning of—Effect of method of keeping books.

Books are regularly kept in the course of business within the meaning of the provisions of S. 34, Evidence Act, if they are kept in pursuance of some continuous and uniform practice in the current routine of the business of the particular person to whom they belong. The particular method, however, of keeping the books may affect their value as evidence. *Ramchand v. Emperor*.

14 Cr. L. J. 262 :
19 I. C. 534 : 6 S. L. R. 194.

————S. 34—Regularly kept, scope of—Account books—Formal proof of regular keeping, whether necessary.

Whether or not books of account have been regularly kept in the course of business with-

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in the meaning of S. 34, Evidence Act, is a question of fact and this question may be solved by a reference to the entries in the books under the Evidence Act of 1872; it is not necessary that there should be formal proof that the books were kept in the regular course of business. *Emperor v. Narbada Prasad*.

31 Cr. L. J. 356 :
121 I. C. 819 : 51 All. 864 :
A. I. R. 1930 All. 38.

————S. 35—Certificate by Magistrate—Confession.

A certificate recorded by a Magistrate under S. 35, Evidence Act, as to the voluntariness of a confession made to him is good *prima facie* evidence of the fact which it records. The certificate, however, is not conclusive and the facts may be proved which may lead the Court to think that the confession was not really voluntary. *Nar Singh v. Emperor*.

24 Cr. L. J. 561 :
73 I. C. 257 : 25 O. C. 229 :
A. I. R. 1922 Oudh 302.

————S. 35—Entries in Chaukidar's Register—Admissibility of.

The question whether any particular entry in a Chaukidar's Register of Births and Deaths is admissible in evidence, depends primarily on S. 35, Evidence Act. Under that section it is not enough to prove that the Chaukidar's Register is an official book, but it is also necessary to prove that any entry relied on in it was either made by a public servant in the discharge of his official duty, or made by some other person in performance of a duty specially enjoined by the law of the country. *Mohammad Jafar v. Emperor*.

21 Cr. L. J. 22 :
54 I. C. 166 : 22 O. C. 250 :
6 O. L. J. 577 : A. I. R. 1919 Oudh 75.

————S. 35—Entry in death register—Evidentiary value of.

The Court is not bound to accept an entry made in a Death Register as true and may reject the same if it is unreliable. *Kalipada Das Karmaakar v. Sashi Bhushan Majhi*.

32 Cr. L. J. 184 :
128 I. C. 804 : I. R. 1931 Cal. 100 :
A. I. R. 1930 Cal. 636.

————S. 35—Entries in Village Crime Note Book—Entries in—Admissibility under S. 35, Evidence Act (I of 1872).

The Village Crime Note Book is one of the registers prescribed for stations house under S. 621, Police Manual, and according to S. 636, every cognizable crime committed in a village should be entered in it. Where there is an official duty cast upon any officer to make an entry, and in pursuance of such a duty, he makes an entry in his register, such entries are admissible in evidence under S. 35, Evidence Act. Entries in the Village Crime Note Book are, therefore, admissible to prove that certain crimes were reported and registered but of course, they are no proof against persons named as suspects in them. *Amdu Miyan v. Emperor*.

38 Cr. L. J. 251 :
166 I. C. 587 : I. L. R. 1937 Nag. 315 at p. 324 :
9 R. N. 132 : A. I. R. 1937 Nag. 17 at p. 23

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———S. 74—Report of process-server, of delivery of possession under decree, whether public document.

The delivery of possession in execution of a decree is an act of a Tribunal, and a report made to the Court by an officer of the Court that its order has been carried out and possession has been delivered to the decree-holder which report is preserved as one of the Court records, is a "public document" within the meaning of S. 74, Evidence Act, and can be proved by the production of a certified copy as permitted by S. 77 of the Act. *Ballu v. Emperor*. 25 Cr. L. J. 917 : 81 I. C. 533 : A. I. R. 1925 Oudh 183.

———S. 74—Scope.

Statements of witnesses recorded in departmental inquiry are not public documents. *Government of Bengal v. Santiram Mondal*.

32 Cr. L. J. 10 :
127 I. C. 657 : 58 Cal. 96 :
I. R. 1930 Cal. 865 :
A. I. R. 1930 Cal. 370.

———S. 74—Statements under S. 164, Cr. P. C.—Whether public documents.

Statements recorded under S. 164 are public documents within the meaning of S. 74, Evidence Act. *Bhcrumal Khanchand v. Emperor*.

39 Cr. L. J. 57 :
171 I. C. 993 : 10 R. S. 134 :
A. I. R. 1937 Sind 303.

———S. 74 (2).

Returns filed with and in the custody of the Registrar, Joint Stock Companies, constitute public records under S. 74. *In the matter of : Amrita Bazar Patrika*.

19 Cr. L. J. 530 :
45 I. C. 338 : 45 Cal. 169 :
21 C. W. N. 1161 :
26 C. L. J. 459 : A. I. R. 1918 Cal. 988.

———S. 77—Dakhalnamah, whether public document—Certified copy, admissibility of.

A *Dakhalnamah* is a public document, and a duly certified copy of the same is admissible without proof. *Sita Ram v. Emperor*.

27 Cr. L. J. 1351 :
98 I. C. 471 : A. I. R. 1927 All. 52.

———S. 77—Proof by certified copy.

Report by process-server of delivery of possession under decree is a public document and can be proved by its certified copy. *Ballu v. Emperor*.

25 Cr. L. J. 917 :
81 I. C. 533 : A. I. R. 1925 Oudh 183.

———S. 78.

Sec also (i) Cr. P. C., 1898, S. 511.
(ii) Evidence Act, 1872, S. 74.

———S. 78—Proof of Government departmental documents.

A circular cannot be admitted under S. 78, Evidence Act, where it is not certified by the head of the department and does not purport

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to be printed by order of the Government. *In re : A. Veluayudam Pillai*.

30 Cr. L. J. 483 :
115 I. C. 509 : 1929 M. W. N. 193 :
I. R. 1929 Mad. 461.

———S. 78—Scope.

S. 76, Evidence Act, does not deal with the question whether any person has a right to inspect any particular public document, but only provides the means of proof of public documents which any person has the right to inspect. *In re : Muthia Swamiyar*.

6 Cr. L. J. 346 :
17 M. L. J. 471 : 3 M. L. T. 14 :
I. L. R. 30 Mad. 466.

———S. 78 (1)—Notification not published in Government Gazette as required by Ss. 4 (36) and 26 of N.-W. F. P. General Clauses Act, if can be proved under, by producing revenue records.

Where, as required by Ss. 4 (36) and 26, N.-W. F. P. General Clauses Act, a certain notification is not published in the *Government Gazette* of the Local Government, such notification is not one that has been made, and is in fact, not a notification. It cannot be proved under S. 78 (1), Evidence Act, by producing Revenue Records. *Emperor v. Fazal Rahman*.

38 Cr. L. J. 1042 :
170 I. C. 772 : 10 R. Pesh. 23 :
A. I. R. 1937 Pesh. 52.

———S. 80.

Sec also (i) Admission.
(ii) Cr. P. C., 1898, Ss. 164, 297, 360.
(iii) Penal Code, 1860, S. 193.

———S. 80—Essentials for presumption.

The absence of a certificate by the Judge at the foot of a deposition that the deposition was read over to or by the witness would not deprive the deposition of the benefit of the presumption under S. 80, Evidence Act. *Ramchandra Chandra Das v. Emperor*.

20 Cr. L. J. 324 :
50 I. C. 660 : 23 C. W. N. 661 :
29 C. L. J. 513 : 46 Cal. 895 :
A. I. R. 1919 Cal. 514.

———S. 80—Essentials for presumption.

The essential requirements for raising the presumption under S. 80, Evidence Act, as to the genuineness of a document purporting to be the record of the evidence, given by a witness in a judicial proceeding, appear to be that the witness should be duly sworn and examined and that the deposition should be signed by the Judge. The law does not require that the Judge should certify at the end of a deposition that it was read over to or by the witness. *Romesh Chandra Das v. Emperor*.

20 Cr. L. J. 324 :
50 I. C. 660 : 23 C. W. N. 661 :
29 C. L. J. 513 : 46 Cal. 895 :
A. I. R. 1919 Cal. 514.

———S. 80—Essentials for presumption.

When a document which is tendered in evidence at a trial purporting to be a confession, is found to contain the memorandum required

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———S. 165—Power of Magistrate to question witnesses.

Under S. 165, Evidence Act, a Magistrate is entitled to put to a witness any question at any time and in any form. *Pratap Singh v. Emperor.*

31 Cr. L. J. 659 :
124 I. C. 449 : I. R. 1930 Nag. 273.

———S. 165—Power to question witnesses—How to be exercised.

A Judge has no doubt the right to ask any question within limits at any time, but this right should be exercised with discretion. It is unfair to the accused to anticipate or break the thread of cross-examination. It is not the province of the Court to examine the witnesses, unless the pleaders on either side have omitted to put some material question or questions; and the Court should, as a general rule, leave the witnesses to the pleaders to be dealt with as laid down in S. 131 of the Act. *Nga Saw v. Emperor and Nga Po On v. Emperor.*

11 Bur. L. R. 8 :
2 Cr. L. J. 133.

———S. 165—Scope.

The power conferred upon a Judge under S. 165, Evidence Act, cannot be exercised for the purpose of introducing evidence in contravention of the law. *Keramat Mandal v. Emperor.*

27 Cr. L. J. 277 :
92 I. C. 453 : 42 C. L. J. 528 :
A. I. R. 1926 Cal. 147.

———S. 167.

- See also (i) Bombay Prevention of Gambling Act, 1887, S. 4.
(ii) Cr. P. C., 1898, Ss. 162, 350.
(iii) Evidence Act, 1872, Ss. 25, 80.

———S. 167—Appeal—Conviction, whether can be upheld.

Where a confession has been improperly admitted in evidence, it is permissible for an Appellate Court under S. 167, Evidence Act, to uphold the conviction, if independently of the confession the Court is of opinion that there is sufficient evidence on the record to justify the conviction, but where the Court is unable to say how far the judgment of the Trial Court and the opinion of the Assessors was influenced by the improper admission of the confession and where it is probable that if the Assessors had not known of the confession at all they might have looked at the rest of the evidence in an entirely different light, the conviction cannot be upheld. *Mhabli Rama Sail v. Emperor.*

26 Cr. L. J. 984 :
87 I. C. 520 : 26 B. L. Rom. 706 :
A. I. R. 1924 Bom. 480.

———S. 167—Case before High Court Sessions—Applicability.

There is nothing in the Evidence Act to support the suggestion that S. 167 has no application to a case tried by a jury at the High

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Court Criminal Sessions. *Ramanuja Ayyangar v. Emperor.*

37 Cr. L. J. 64 :
159 I. C. 240 : 1935 M. W. N. 5 :
68 M. L. J. 93 Sup. : 42 L. W. 140 :
A. I. R. 1935 Mad. 793.

———S. 167—Improper admission of evidence, effect of.

Under S. 167, Evidence Act, the improper admission of evidence is not of itself a ground for a new trial or reversal of a decision in a case, if it appears to the Court that independently of that evidence there was sufficient evidence to justify the decision. *Badri Choudhury v. Emperor.*

27 Cr. L. J. 362 :
92 I. C. 874 : 6 P. L. T. 620 :
A. I. R. 1926 Pat. 20.

———S. 167—Improper admission of evidence.

Under S. 167, Evidence Act, the improper admission of evidence is not ground of itself for reversal of any decision if it appears to the Court that independently of the evidence improperly admitted, there is sufficient evidence to justify the decision. A Court competent to deal with facts should ignore the evidence wrongly admitted and consider whether there still remains sufficient evidence to support the judgment. If this has not been done, the High Court on revision will ordinarily remand the case for a finding with reference to admissible evidence only. *Kuruba Sankara v. Kalli Manappa.*

25 Cr. L. J. 1275 :
82 I. C. 283 : 21 L. W. 87 :
A. I. R. 1925 Mad. 245.

———S. 167—Improper admission of evidence.

Where evidence of bad character or the accused's complicity in other crimes, confessional statements made to the Police and hearsay evidence are admitted, it must be assumed that such admission has prejudiced the accused, and in such a case, the trial must be set aside. A verdict based on such inadmissible evidence cannot be upheld. *Shetkh Abdul v. Emperor.*

26 Cr. L. J. 606 :
85 I. C. 830 : A. I. R. 1925 Cal. 887.

———S. 167—Questions to witness—Disallowed by the Court.

A party asking for redress at the hands of an Appellate or Revisional Court on the ground that the Court below has wrongly excluded a question which the party wished to put to a witness, must state the form and substance of the question proposed to be put to enable the Appellate or Revisional Court, as the case may be, to determine whether the particular question in each case was so framed as to make it admissible under Evidence Act. *Emperor v. Narayan.*

7 Cr. L. J. 24 :
9 Bom. L. R. 1385 : 3 M. L. T. 50.

———S. 167—Re-trial—When can be ordered.

Conviction on evidence wrongly admitted—Conviction upheld by Sessions Judge excluding wrongly admitted evidence—Trial taking different course by admission of inadmissible evidence—Case is outside purview of S. 167

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by S. 164 (3), Cr. P. C., a presumption arises under S. 80, Evidence Act, that all the necessary formalities purporting to have been performed have in fact been performed, and the document is admissible in evidence without further proof. *Partab Singh v. Emperor*.

27 Cr. L. J. 514 :
93 I. C. 978 : 2 Lah. Cas. 72 :
6 Lah. 415 : 7 L. L. J. 482 :
A. I. R. 1925 Lah. 605.

————S. 80—Deposition to be used as evidence—*Proof of deposition*.

S. 80, Evidence Act, contemplates that the deposition, which it is proposed to use as evidence, should have all the guarantees of authenticity which the law prescribes, one of them being that the Magistrate shall have signed it only after it has been read over to the witness in the presence of the accused or his Pleader, in order that the witness and the accused may have an opportunity of pointing out mistakes. *Tun Ya v. Emperor*.

20 Cr. L. J. 506 :
51 I. C. 666 : 10 L. B. R. 16 :
12 Bur. L. T. 197 : A. I. R. 1919 L. Bur. 129.

————S. 80—Record of confession according to law—*Presumption*.

Where the confessions are recorded strictly in accordance with law, the usual presumption arises under the provisions of S. 80. *Maung Tha Ka Do v. Emperor*.

37 Cr. L. J. 280 :
160 I. C. 292 : 8 R. Rang. 363 :
A. I. R. 1935 Rang. 491.

————S. 80—Record of deposition—*Meaning of*.

The recital in a judgment of a statement made by a witness cannot take the place of a record of the deposition of the witnesses, nor can such recital be accepted as evidence under S. 80, Evidence Act, and it, therefore, cannot form the basis of a prosecution under S. 193, Penal Code. *Nirghin Mahlon v. Emperor*.

21 Cr. L. J. 500 :
56 I. C. 660 : A. I. R. 1920 Pat. 171.

————S. 80—Record of dying declaration.

When a dying declaration is made before a Magistrate who records it, it is 'evidence' and can be admitted without proof under S. 80. *Suraj Bali v. Emperor*.

36 Cr. L. J. 65 :
152 I. C. 249 : 56 All. 750 :
7 R. A. 320 : A. I. R. 1934 All. 340.

————S. 80—Record of evidence of witness—*When can be proved*.

Depositions can be proved under S. 80 only, when they are taken in accordance with law. *Eusuf Ali v. Emperor*.

34 Cr. L. J. 430 :
142 I. C. 653 : I. R. 1933 Cal. 312 :
A. I. R. 1933 Cal. 190.

————S. 80—Record of statements under S. 164, Cr. P. C.—*Presumption*.

Statement made by a witness on oath before a Magistrate under S. 164, Cr. P. C., forms part

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of the Court's record, and need not be formally proved, and the use of it by the defence to contradict the witness, does not rob the defence of their right of reply, because that statement is a document within the terms of S. 80, Evidence Act, which not only mentions "a judicial proceeding" but speaks of "any officer authorized by law to take such evidence" and the Court must presume that it is a correct record of what the witness said to the Magistrate. A statement taken under S. 164, Cr. P. C., does not need to be "adduced," for it already forms part of the record and may be referred to by the Court as such, and so the question, whether if it is not put on the record, it could be referred to as part of the evidence or not, cannot arise. *Emperor v. Nanji Jeth*.

10 Cr. L. J. 24.

————S. 80—Record of statements under S. 360, Cr. P. C.—*Presumption*.

If a statement is properly recorded under S. 360, Cr. P. C., then under S. 80, Evidence Act, a strong presumption arises that the deponent stated in his evidence what appears in the deposition. If, however, S. 360, Cr. P. C., is not complied with, that presumption does not arise, and it is necessary for the person who alleges that the memorandum, which purports to be a deposition, but has been irregularly recorded, is accurate, to prove that it is accurate, if its accuracy is challenged. *Pitumal v. Emperor*.

26 Cr. L. J. 1137 :
88 I. C. 449 : 18 S. L. R. 342 :
A. I. R. 1921 Sind 16.

————S. 80—Statement recorded by Magistrate in Native State, *whether admissible unless deposed to by him*.

S. 80, Evidence Act, refers only to those Officers, Judges and Magistrates, who come under Cl. 7 of S. 57 of the Act, and hence the statement of an accused person recorded by a Magistrate in a Native State cannot be used in evidence unless the Magistrate has appeared and deposed to the statement having been given before and recorded by him. *Emperor v. Dhanka Amra*.

15 Cr. L. J. 433 :
24 I. C. 169 : 15 Bom. L. R. 261 :
A. I. R. 1914 Bom. 41.

————S. 80—Statement under S. 164, Cr. P. C.—*Presumption*.

Statements recorded under S. 164 are presumed to be genuine. *Sadulla v. Emperor*.

39 Cr. L. J. 864 (b) :
177 I. C. 32 : 40 P. L. R. 752 :
11 R. L. 276 : A. I. R. 1938 Lah. 477.

————Ss. 80, 91—C. P. C., O. XVIII, R. 5—*Deposition not read over to witness, admissibility of*.

The omission to read over the deposition of a witness to him as provided by O. XVIII, R. 5, of the C. P. C., makes the record of the deposition inadmissible in any criminal proceedings against him, and S. 91, Evidence Act, bars the admission of oral evidence, in such a

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and should be sent back for re-trial. *C. G. Lloyd v. Emperor.*

34 Cr. L. J. 294 :
142 I. C. 274 (2) : I. R. 1933 Cal. 250 :
A. I. R. 1933 Cal. 136.

———S. 167—Scope—Improper admission of evidence—Rest of the evidence enough to justify conviction—Trial, if bad.

Where the inadmissible evidence is received in the form of a confession to a Police Officer, the trial is not vitiated if the rest of the evidence is sufficient to justify the conviction. *Jamna Prasad v. Emperor.*

39 Cr. L. J. 427 (b) :
174 I. C. 523 : 10 R. N. 417 :
A. I. R. 1938 Nag. 325.

EXAMINATION

See also Cr. P. C., 1898, S. 257.

EXAMINATION AND CROSS-EXAMINATION IN BATCHES

———Prolonging trial, desirability of.

Examination and cross-examination of witnesses by batches in the Court of the Presidency Magistrate on various dates at intervals, thereby prolonging the trial, disapproved. *Muhamad Ibrahim v. Emperor.*

18 Cr. L. J. 609 :
39 I. C. 977 : 21 C. W. N. 694 :
A. I. R. 1918 Cal. 588.

EXAMINATION OF ACCUSED

See also Cr. P. C., 1898, Ss. 164, 342, 364.

———Nature of—Nature of questions to be put to accused to explain any circumstances appearing in the evidence against him.

The nature of the questions which may be put to an accused person in his examination is clearly indicated in S. 342, Cr. P. C., namely to explain any circumstances appearing in the evidence against him. *Nga Te v. Emperor.*

2 Cr. L. J. 227 :
11 Bur. L. R. 33.

EXAMINATION OF FEMALE WITNESSES

———Of female witnesses at their own houses.

It is an unusual course that the Police should take a number of women away from their village to the Police Station on the pretext that they wished to examine them. The examination of the women might have been conducted at their own house rather than at the Police Station. *Haladhar Bhumji v. Sub-Inspector of Police.*

2 Cr. L. J. 51 :
9 C. W. N. 199.

EXAMINATION OF WITNESSES

———Time-limit.

Where an attempt was being made to protract the examination-in-chief of the defence witnesses to a most unnecessary extent so as to delay, if not to prevent, the final termination of the case, and the address of the counsel had proceeded for 15 days, it was held, that the Magistrate was not unreason-

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able in fixing a time-limit for the examination-in-chief of the remaining witnesses and for the close of the address. *Chintaman Singh v. Emperor.*

7 Cr. L. J. 146 :
7 C. L. J. 177 : 12 C. W. N. 299 :
35 Cal. 243.

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———Ss. 3 (1) (n), 51, 52—Applicability of—Licensee in possession of liquor more than the amount specified in his licence.

A licensee may possess liquor in excess of the amount specified in S. 3 (1) (n), Excise Act, (XII of 1896) and up to the amount specified in his licence, or pass, and if he is in possession of more than the latter quantity, he is punishable under S. 51, which applies to 'any person,' S. 52 providing a penalty for certain offences not punishable by S. 51. S. 52 does not apply to cases for which a penalty is provided by some other part of the Act. *Mangal Singh v. Emperor.*

11 Cr. L. J. 495 :
7 I. C. 491 : 21 P. R. 1910 Cr.

———Ss. 18, 48 (1) (d)—Intoxicating drug—Hemp—Majun.

Majun or sweetmeat prepared with Indian Hemp is not necessarily an intoxicating drug within the meaning of S. 18, Excise Act. Its possession, therefore, is not an offence. Possession to be punishable must be with knowledge. *Venkatarama Chetty v. Emperor.*

11 Cr. L. J. 77 :
4 I. C. 898 : U. B. R. 1907—09, III Excise p. 1.

———Ss. 20, 21, 49—Sale of intoxicating drug when completed—Sale of charas in bond in the hands of the Excise Authorities to an unlicensed person—Sale defined for the purposes of Act.

For the purposes of the Excise Act of 1896 the sale of an intoxicating drug is not complete until delivery thereof to the purchaser or some one on his behalf, consequently a licensed vendor who holds a "sale-in-bond" charas licence and sells the charas in bond in the hands of the Excise Authorities to an unlicensed person, who cannot take delivery until he takes out a licence, does not break, under S. 21, Excise Act, the condition of his licence and is not liable to be prosecuted under S. 49. *Dhanpat v. Emperor.*

12 Cr. L. J. 192 :
10 I. C. 682 : 5 P. W. R. 1911 Cr. :
4 P. R. 1911 Cr. : 89 P. L. R. 1911.

———S. 21—'Sale'—Sale without licence—Sale not for profits.

One Panna Lal, who had no licence under the Excise Act, purchased some methylated spirits for the Secretary of the Jhansi Club from whom he had received orders for the same. He sent the spirits to the Club and made no profits for himself: Held, that, under the circumstances, the transaction did not amount to a sale under S. 21, Excise Act. *Panna Lal v. Emperor.*

9 Cr. L. J. 503 :
2 I. C. 192 : 31 All. 293 :
6 A. L. J. 238.

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case, to prove the contents of the deposition. *Emperor v. Nabab Ali*.

25 Cr. L. J. 1027 :
81 I. C. 803 : 51 Cal. 236 :
A. I. R. 1924 Cal. 705.

———Ss. 80, 91—*Record of statements under S. 193, Cr. P. C.—Presumption.*

The only evidence in a case under S. 193, Penal Code, regarding the statement made by a witness is the record of the deposition prepared by the Court. That record only is admissible under S. 91 read with S. 80, Evidence Act. No other evidence is admissible and the presumption attaches to the correctness of the record both as to the correctness of the statements embodied therein and of the oath having been administered to the witness. *Ram Dhari Singh v. Emperor*.

19 Cr. L. J. 169 :
43 I. C. 585 : 1918 Pat. 13 :
4 P. L. W. 44 : A. I. R. 1918 Pat. 448.

———Ss. 80, 114—*Record of confession according to law—Presumption.*

S. 80, Evidence Act, provides that a confession by any prisoner or by any accused, taken in accordance with law and purporting to be signed by the examining Magistrate, shall be presumed to have been so made. It is not necessary that the officer who recorded the confession should be examined as a witness. *Guja Majhi v. Emperor*.

18 Cr. L. J. 445 :
38 I. C. 1005 : 2 P. L. J. 80 :
A. I. R. 1917 Pat. 247.

———Ss. 80, 167—*Record of evidence of witness—Admissibility.*

Having regard to the provisions of S. 80, Evidence Act, a document which purports to be a record or memorandum of the evidence of a witness may be admitted in evidence without formal proof. *Padom Prasad v. Emperor*. (S. B.)

30 Cr. L. J. 993 :
119 I. C. 193 : 50 C. L. J. 106 :
33 C. W. N. 1121 : I. R. 1929 Cal. 753 :
A. I. R. 1929 Cal. 617.

———S. 81.

See also (i) Evidence Act, 1872, S. 62.

———S. 81—*Presumption—Presumptions as to printer and publisher—Proof—Printing Presses and Newspapers Act (XXV of 1867), S. 7, —Declaration to be produced.*

Under S. 81, Evidence Act, a Court should presume that a document purporting to be a newspaper or journal is the particular newspaper or journal, and not that it was printed or published by a particular person, that is, the presumption of the genuineness of a document does not include the presumption, that it was printed and published by the person by whom it purports to have been published. That a particular person is the printer and publisher of a newspaper can be proved by producing a copy of his declaration under Act XXV of 1867. It is doubtful whether S. 81, Evidence Act, applies merely to public documents and not to private newspapers and

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journals. The question whether a copy of a *Government Gazette* or any other publication can be treated as evidence of the contents of the original is not one relating to the proof of documents but to the admissibility of secondary evidence. *Jeremiah v. Vas*.

12 Cr. L. J. 585 :
12 I. C. 961 : 10 M. L. T. 506 :
1911, 2 M. W. N. 576 : 22 M. L. J. 73.

———S. 81—*Presumption of genuineness.*

There is a presumption under S. 81, Evidence Act, of the genuineness of a copy of a newspaper produced in Court. *Ram Chandra v. Emperor*.

31 Cr. L. J. 168 :
120 I. C. 798 : A. I. R. 1930 Lah. 371.

———S. 83.

See also Punjab District Boards Act, 183, S. 57.

———S. 88.

See also Penal Code, 1860, S. 411.

———S. 88—*Scope.*

S. 88 does not bar a document being considered along with other evidence though the original may not be proved. *Raghunath Pandey v. Emperor*.

34 Cr. L. J. 421 :
142 I. C. 809 : 13 P. L. T. 802 :
I. R. 1933 Pat. 176 : A. I. R. 1933 Pat. 96.

———S. 88—*Telegrams—Proof—Presumption.*

Before S. 88, Evidence Act, can be utilized, there must be legal proof that the message had been forwarded from the Telegraph Office to the person to whom such message purports to have been addressed. In the absence of such evidence, the telegram cannot be held to have been proved. *Thackur Singh v. Emperor*.

10 Cr. L. J. 520 :
4 I. C. 240.

———S. 90—*Record of rights—Presumption—Whether rebuttable.*

The fact that a Record of Rights was prepared more than thirty years ago does not in any way affect the presumption attaching to it in law. The presumption is a rebuttable one. *Ramroop Mahton v. Mano Mian*.

35 Cr. L. J. 481 :
147 I. C. 774 : 15 P. L. T. 147 :
13 Pat. 153 : 6 R. P. 378 :
A. I. R. 1934 Pat. 86.

———S. 91—*Confession—Oral evidence—Admissibility.*

The confession of an accused person made to a Magistrate holding an inquiry is a matter required by law to be reduced to the form of a document within the meaning of S. 91 of the Evidence Act. *Emperor v. Gulabu*.

14 Cr. L. J. 211 :
19 I. C. 307 : 11 A. L. J. 286 :
35 All. 260.

———S. 91—*Confession—When admissible—Confession must be voluntary.*

A confession, in order to be admissible, in

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———Ss. 30, 31, 46 (c)—*Importation of foreign liquor—Illegally importing foreign liquor into the territory to which this Act extends.*

The introduction of any quantity of foreign liquor, however small, and for whatever purpose it may have been imported into any of the territories to which the Excise Act, 1894, extends, is illegal and punishable under S. 46 (c) of the Act. *Sher Singh v. Emperor.*

6 Cr. L. J. 440 :

14 P. R. Cr. 1907 : 2 P. W. R. 117 Cr.

———Ss. 30 (1), 30 (2) (a)—*Meaning of—Possession of permissible quantity of each foreign spirit or liquor—Possession of large quantities of brandy and beer—Accused a well-to-do Chinaman—Presumption of possession for private consumption.*

The meaning of S. 30 (1), Excise Act, is that a man may possess 12 quarts of foreign spirit without reference to any other kind of spirit or liquor in his possession. The section permits a man to possess without pass or licence 12 reputed quart bottles of foreign spirit, 12 reputed quart bottles of foreign fermented liquor, one reputed quart bottle of country spirit and 4 reputed quart bottles of country fermented liquor, all at the same time. Cl. (a) of S. 30 (2) cannot mean that a man may keep foreign spirit for his private use without a pass or licence *only* if he has no foreign fermented liquor in his possession at the same time. The accused, a well-to-do Chinaman, who could afford to buy one to two hundred rupees worth of liquor for festive occasions was charged with possessing a large quantity of brandy and beer when the annual Chinese festival was in fact near at hand : *Held*, that the accused was *prima facie* entitled to the benefit of the exception contained in Cl. (a) of S. 30 (2). *Emperor v. Gu Wa.* 12 Cr. L. J. 581 : 12 I. C. 845 : 4 Bur. L. T. 146.

———Ss. 39 (2) and 3 (1) (n)—*‘Private use,’ meaning of—Prohibition against possession of spirits and liquor in excess of specified quantities not applicable to possession for private use.*

Sub-s. 2 of S. 30, Excise Act, enacts that the prohibition against possession of any quantity in excess of specified quantities of spirits and liquor does not extend to the possession of foreign spirits or foreign fermented liquor, purchased by a person for his private use and not for sale. The words “private use” are not confined to the meaning of personal consumption. If an accused alleges that any foreign spirit or any foreign fermented liquor in his possession is for his private use and not for sale, it is for the prosecution to show that he has it for sale. Mere possession of quantities in excess of those specified in Cl. (n) of Sub-s. 1 of S. 3 Act is not sufficient to justify a conviction. *Emperor v. Lipyin.*

2 Cr. L. J. 505 :

11 Bur. L. R. 227.

———S. 38—*Searches.*

Searches to which S. 38, Excise Act, applies are regulated by the special provisions of that

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section and not by the provisions of the Cr. P. C. *Mi Hauk v. Emperor.*

7 Cr. L. J. 87 :

4 L. B. R. 121 : 14 Bur. L. R. 202.

———S. 44—*Scope.*

The use of artificial means to hasten the fermentation of what is already fermented liquor, and to preserve it or make it more palatable, does not amount to making or manufacturing fermented liquor within the meaning of S. 45, Excise Act. *Emperor v. Nga Beik Kyi.*

3 Cr. L. J. 430 :

U. B. R. Cr. 1905.

———Ss. 44, 49, 52, 57—*Extent of authority—Police Officer invested with powers under S. 44—Extent of authority—Competency to lay complaint under S. 49 or S. 52.*

Police Officers invested with powers under S. 44, Excise Act, can only be treated as Excise Officers for the purposes of Ss. 36, 37 and 38 of the Act. A Police Officer so empowered is not an Excise Officer within the meaning of S. 57, so as to be competent to make a report of an offence punishable under S. 49 or S. 52 of the Act. *Emperor v. Naidar Singh.*

11 Cr. L. J. 394 :

6 I. C. 717 : 13 P. R. Cr. 1910.

———Ss. 44, 57—*Excise Officer—Police Officer invested with powers under S. 44, whether Excise Officer for purposes of S. 57.*

A Police Officer invested with powers of an Excise Officer under S. 44, Excise Act, is to be deemed an Excise Officer for the purpose of S. 57 of the Act, because he is an Excise Officer for the purposes of Ss. 36, 37 and 38 of the Act. *Emperor v. Shibban.*

15 Cr. L. J. 336 :

23 I. C. 688 : 2 P. R. 1914 Cr. :

138 P. L. R. 1914 : A. I. R. 1914 Lah. 454.

———S. 45—*Conviction under.*

Where some articles which might have been used for distilling country liquor were found in the yard of an unoccupied house adjoining that of the accused over which the accused had no control and the place could be reached from outside and the accused was convicted of an offence under S. 45, Excise Act : *Held*, that the conviction must be set aside. *Hira Singh v. Emperor.*

1 Cr. L. J. 953 :

5 P. L. R. 428.

———S. 45—*Preparation and attempt—Liquor—Country fermented liquor—Seinbat—Seinye.*

An accused found in possession of three viss of *Seinbat*, which is not country fermented liquor, intended for the manufacture of *Seinye*, which is a kind of country fermented liquor, cannot be punished under S. 45, Excise Act, for the mere intention of manufacturing fermented liquor. Nor can he be punished for an attempt to manufacture, as his act has not proceeded beyond the stage of mere preparation. *Emperor v. Nga Kyaw.*

14 Cr. L. J. 499 :

20 I. C. 745 : 6 Bur. L. T. 140.

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evidence must be made voluntarily and without any pressure. *Emperor v. Gulabu.*

14 Cr. L. J. 211 :
19 I. C. 307 : 11 A. L. J. 286 :
35 All. 260.

———S. 92 — Pro-note — Oral evidence—
Admissibility.

The making of a pro-note by way of security for a sum of money advanced or given to the maker does not, under S. 92, Evidence Act, shut out oral evidence as to the purpose for which the money is given. Where an advance was made under an oral contract for the sale and purchase of paddy and was secured by a pro-note : *Held*, that the making of the pro-note did not shut out proof of the terms of the contract. *Ba Shein v. Emperor.*

22 Cr. L. J. 721 .
64 I. C. 33 : 10 L. B. R. 366 :
13 Bur. L. T. 239 : A. I. R. 1922 L. Bur. 10.

———S. 98—Government Notification—
Proof of.

An extract from a newspaper is not admissible to prove a Government Notification. *Moti Lal Nehru v. Emperor.*

32 Cr. L. J. 311 :
129 I. C. 443 : 1930 A. L. J. 1535 :
I. R. 1931 All. 171 : A. I. R. 1931 All. 12.

———S. 105.

See also (i) Cr. P. C., 1898, Ss. 190, 289,
342.
(ii) Criminal trial.
(iii) Jurisdiction.
(iv) Penal Code, 1860, Ss. 84,
143, 302, 326.

———S. 105—Accused when relieved—Case
for prosecution itself showing that accused's act
fell under exception in Penal Code—Accused
is relieved of the burden.

By S. 105, Evidence Act, it is of course the duty of the accused to show that his offence falls within any of the exceptions in the Penal Code, but where it appears from the prosecution evidence itself that the act falls within the exception, the accused will clearly be relieved of that burden. *In re : Kannegati Chowdrayya v. Emperor.*

39 Cr. L. J. 993 :
178 I. C. 67 : 47 L. W. 568 :
1938, 1 M. L. J. 670 : 1938 M. W. N. 385 :
11 R. M. 400 : I. L. R. 1938 Mad. 805 :
A. I. R. 1938 Mad. 656.

———S. 105—Burden of proof of innocence,
if lies on accused.

The decision in *Woolmington v. Director of Public Prosecutions* (1935) A. C. 462, that whilst the prosecution must prove the guilt, there is no such burden laid on the accused to prove his innocence, and it is sufficient for him to raise a doubt as regards his guilt, is in no way inconsistent with the law in British India. Indeed the principles there laid down form a valuable guide to the correct interpretation of S. 105, Evidence Act. *Emperor v. U Damapala.* (F. B.)

38 Cr. L. J. 524 :
168 I. C. 193 : 14 Rang. 666 :
9 R. Rang. 340 : A. I. R. 1937 Rang. 83.

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———S. 105—Burden of proof—Meaning of.

S. 105 enacts that the burden of proving the existence of circumstances bringing the case within any General or Special Exception in the Penal Code, shall lie upon the accused, and the Court shall presume the absence of such circumstances. In this section the phrase 'burden of proof' is clearly used in its second sense, namely, the duty of introducing evidence. The major burden, that of establishing on the whole case the guilt of the accused beyond reasonable doubt, never shifts from the prosecution. *Emperor v. Damapala.* (F. B.)

38 Cr. L. J. 524 :
168 I. C. 193 : 14 Rang. 666 :
9 R. Rang. 340 : A. I. R. 1937 Rang. 83.

———S. 105—Burden of proof.

When once the complainant has proved that the accused has stated things which must harm the complainant's reputation, it is for the accused to prove that he made the statement "in good faith for the public good". *Abdur Razak v. Gouri Nath.*

11 Cr. L. J. 205 :
5 I. C. 714 : 4 P. W. R. 1910 Cr.

———S. 105—Burden of proof—Whether shifts.

The duty of the accused under S. 105 is to introduce such evidence as will displace the presumption of the absence of circumstances bringing the case within an exception and will suffice to satisfy the Court that such circumstances may have existed. The burden of the issue as to the non-existence of such circumstances is then shifted to the prosecution which has still to discharge the major burden of proving on the whole case the guilt of the accused beyond reasonable doubt. *Emperor v. U Damapala.* (F. B.)

38 Cr. L. J. 524 :
168 I. C. 193 : 14 Rang. 666 :
9 R. Rang. 340 : A. I. R. 1937 Rang. 83.

———S. 105—Duty of Court—Presumption.

An accused person is not bound to speak the truth and cannot be pinned down to any particular statement he may have made. The burden of proving the existence of circumstances bringing a case within Exception I to S. 300, Penal Code, lies on the accused person, and under S. 105, Evidence Act, a Court is bound to presume the absence of any such circumstances. *Kakar Singh v. Emperor.*

25 Cr. L. J. 1005 :
81 I. C. 717 : 6 L. L. J. 575 :
A. I. R. 1924 Lah. 733.

———S. 105—Exception—Plea of—Effect of.

Even in a case to which S. 105, Evidence Act applies, an accused may rely upon an exception in his defence and fail to prove it and yet be entitled to an acquittal, for the prosecution may have failed to prove all the necessary elements in the offence of which the accused has been charged, or the accused may, by his statement, read with the other evidence on record, have raised a reasonable doubt in the mind of the Court and so have entitled himself to an acquittal. *Shewaram Jethanand Shivadasani v. Emperor.*

41 Cr. L. J. 28 :
184 I. C. 474 : 1940 Kar. 249 :
12 R. S. 107 : A. I. R. 1939 Sind 209.

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———S. 45—Tapping a tari tree.

Tapping a *tari* tree, or leaving sweet *tari*, to ferment, is not manufacturing *tari*. *Emperor v. Mi Thit*. 2 Cr. L. J. 470 : 4 B. R. 1905 Excise 3.

———Ss. 45, 51—Distilling and possessing spirit, not distinct offences—Separate convictions for distilling and possessing spirits, legal but not desirable.

Distilling spirit and possessing the spirit obtained by such distillation are not distinct offences within the meaning of S. 35, Cr. P. C., and a double sentence is prohibited by S. 71, Penal Code. Although under S. 235 (1), Cr. P. C., separate convictions for the two offences are legal, yet it is neither necessary nor desirable to convict for possessing spirit when the manufacture is proved. *Emperor v. Nga San Dun*. 1 Cr. L. J. 552 : 4 B. R. 1904, 1st Qr. P. C. 1.

———Ss. 45, 51—Evidence—Emptying a vessel containing *lahan*—Evidence of general repute not admissible.

B was neither guilty under S. 45 nor under 51, Excise Act, 1906, where the implements for preparing fermented liquor were found in the house of *M* and everything that happened took place on his premises and the only fact found against *B* was that he assisted *M* to empty a vessel containing *lahan* specially when there was no proof of this fact independent of the evidence of the *Darogah* and two constables : *Held*, also, that the evidence of general repute that *B* was in the habit of selling illicit liquor was not admissible against him. *Bhagat Singh v. Emperor*. 5 Cr. L. J. 119 : 2 P. W. R. Cr. 5 :

———S. 48 (c)—Importing cocaine—Presumption regarding.

A registered postal parcel containing cocaine addressed to accused's daughter aged 10 years and to a house, in which accused was not living was received by appointment by the accused from the postman in charge ; the parcel remained unopened for about 10 minutes when the Excise Officers entered and arrested the accused for importing cocaine. She pleaded that she had ordered some toys for her girl, that she took delivery of the parcel thinking it to be the expected one containing toys : *Held*, that, in the absence of evidence that the accused was at the time expecting a parcel, addressed identically with that seized but with different contents, the inference was that the parcel seized was the one expected and it contained what she had ordered. *Emperor v. Stella*. 14 Cr. L. J. 440 : 20 I. C. 600 : 6 Bur. L. T. 129.

———S. 49—Scope—Liquor, sale of—Licence, breach of conditions of—Abetment.

The accused, who had purchased liquor for a British soldier from a licensed vendor in contravention of a condition of the vendor's licence, was guilty of abetment of the breach of the condition, though the vendor himself, having no guilty knowledge or intention, com-

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mitted no offence. *Emperor v. Mukhtar Khan*. 3 Cr. L. J. 135 : 6 P. L. R. 673 : 55 P. R. 1905 Cr.

———S. 49—Scope of—Selling medicine containing brandy.

A medical practitioner who puts a little brandy into one of the medicine prescribed and sold by him to a patient does not thereby sell brandy and contravene the provisions of the Excise Law. *Emperor v. Bhagwan Das*. 16 Cr. L. J. 218 : 28 I. C. 842 : 33 P. R. 1914 Cr. : 224 P. L. R. 1915 : A. I. R. 1914 Lah. 564.

———S. 50—Liability of licensee.

A liquor licensee under the Excise Act is responsible under S. 50 for the default of his servants in permitting drunkenness in his shop without his knowledge. *Shin Gyi v. Emperor*. 19 Cr. L. J. 49 : 43 I. C. 81 : 9 L. B. R. 81 :

10 Bur. L. T. 262 : A. I. R. 1919 L. Bur. 156.

———S. 51.

See also Excise Act, 1896, S. 45.

———S. 51—Conviction under—Possession of over 4 quarts of *tari*.

Where an accused had affixed ten receiving pots to his two toddy trees the previous night and the Excise Officer early next morning found that these pots contained over four quarts of *tari* allowable under the Excise Act : *Held*, that the accused was in possession of the *tari* and was rightly convicted under S. 51, Excise Act. *Emperor v. Nga Aw*. 17 Cr. L. J. 62 :

32 I. C. 654 : 8 Bur. L. T. 246 : 8 L. B. R. 217 : A. I. R. 1916 L. Bur. 8.

———S. 51—Conviction under.

The accused, a Burman, was convicted under S. 51, Excise Act, of illegal possession of 18 quart bottles of Younger's Monk Brand Beer : *Held*, that the possession of more than 12 quart bottles of beer being *prima facie* illegal, it was for the accused when charged with the illegal possession to prove that he purchased the beer for his private use and not for sale. *Emperor v. Nga Chi*. 4 Cr. L. J. 133 : U. B. R. Cr. 1906 : 12 Bur. L. R. 295.

———S. 51—Finding of *Lahan* in premises outside village under suspicious circumstances.

The finding of articles suggesting illicit distillation in a place easily accessible, such as an ordinary cattle shed, which usually remains open and is situate outside the village, is not sufficient for convicting the owner of the shed under S. 51 of Act XII of 1896, particularly where the search was made at the instigation of that person's enemy, and no other incriminating article was found in any part of his dwelling house. *P. Wasakhi v. Emperor*. 15 Cr. L. J. 176 : 22 I. C. 752 : 98 P. L. R. 1914 : 43 P. W. R. 1913 Cr. : A. I. R. 1914 Lah. 111.

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-----S. 105—Gambling—Proof that it is game of mere skill—Onus on the accused.

The onus to show that any offence falls within a general exception of the Gambling Act, is upon the accused and it is for him to show that the game played is a game of mere skill. *Ram Newaz Lal v. Emperor*.

15 Cr. L. J. 276 :
23 I. C. 484 : A. I. R. 1914 Cal. 532.

-----S. 105—Offence of grievous hurt—Right of private defence—Duty of accused to justify.

When one man takes away the life of another man, he should show circumstances which justify his doing so. It lies upon the accused to show that in exercising the right of private defence he did not exceed that right. The onus is upon him to prove the circumstances from which the Court might conclude that he was justified in going to such an extreme length as causing grievous hurt by killing a man. *Asir-ud-Din Ahmad v. Emperor*.

1 Cr. L. J. 708 :
8 C. W. N. 714.

-----S. 105—Offence under S. 307, Penal Code—Burden of proof of special exception.

If a man fires off a fire-arm while an officer is attempting to arrest him, and if the defence is that he had merely the intention of frightening the officer by firing in the air, then the burden of proving that fact is upon the defence. *Emperor v. Munshi*.

37 Cr. L. J. 787 :
162 I. C. 844 : 1936 O. L. R. 333 :
1936 O. W. N. 553 : 8 R. O. 413 :
A. I. R. 1936 Oudh 294.

-----S. 105—Offence under S. 307, Penal Code—Intention to frighten—Onus on accused.

Under S. 105, Evidence Act, where a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the General Exceptions in the Penal Code or within any Special Exception or Proviso contained in any other part of the same Code, or in any law defining the offence, is upon him, and the Court shall presume the absence of such circumstances. *Emperor v. Munshi*.

37 Cr. L. J. 787 :
162 I. C. 844 : 1936 O. L. R. 333 :
8 R. O. 413 : 1936 O. W. N. 553 :
A. I. R. 1936 Oudh 294.

-----S. 105—Penal Code, S. 99—Right of private defence of property—Whether a Court ought to set up such right for accused.

A Court ought not to set up for the accused the defence that he acted in the exercise of the right of private defence of property, when the accused himself has not set up such defence. *Emperor v. Gullu*.

1 Cr. L. J. 427 :
24 A. W. N. 113.

-----S. 105—Presumption of absence of exception.

The burden of proving the existence of

EVIDENCE ACT (I OF 1872)

circumstance bringing a case within any of the general exceptions of the Penal Code, rests upon the accused and S. 105, Evidence Act says that the Court shall presume the absence of such circumstances. *Narain Das v. Emperor*.

23 Cr. L. J. 513 :
68 I. C. 113 : 4 L. L. J. 91 : 3 Lah. 144 :
9 P. W. R. 1922 Cr. : A. I. R. 1922 Lah. 1.

-----S. 105—Presumption—When removed.

An accused need not lead evidence. If it is apparent from the evidence on the record, whether produced by the prosecution or by the defence, that a General Exception would apply, then the presumption is removed and it is open to the Court to consider whether the evidence proves to the satisfaction of the Court that the accused comes within the Exception. *Anandi v. Emperor*.

24 Cr. L. J. 225 :
71 I. C. 689 : 45 All. 329 :
A. I. R. 1923 All. 327.

-----S. 105—Scope.

The burden of proving the existence of circumstances bringing a case within any special Exception or Proviso contained in any part of the Penal Code is upon the person accused and the Court shall presume the absence of such circumstances. *Emperor v. Chandan Singh*.

11 Cr. L. J. 612 :
8 I. C. 259.

-----S. 105—Scope.

Under S. 105, Evidence Act, the burden of proving the existence of circumstances bringing the case of an accused person within any of the General Exceptions in the Penal Code, is on the accused, and the Court shall presume the absence of such circumstances. *Anandi v. Emperor*.

24 Cr. L. J. 225 :
71 I. C. 689 : 45 All. 329 :
A. I. R. 1923 All. 327.

-----S. 105—Scope.

Where a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the General or Special Exception is upon him. *Emperor v. Munshi*.

37 Cr. L. J. 787 :
162 I. C. 844 : 1936 O. L. R. 333 :
1936 O. W. N. 553 : 8 R. O. 413 :
A. I. R. 1936 Oudh 294.

-----Ss. 105, 106—Burden of proof—Meaning of.

The phrase 'burden of proof' is used in two distinct meanings in the law of evidence, namely, the burden of establishing a case, and the burden of introducing evidence. In a criminal trial, the burden of proving everything essential to the establishment of the charge against the accused lies upon the prosecution, and that burden never changes. But it would clearly impose an impossible task on the prosecution if the prosecution were required to anticipate every possible defence of the accused and to establish that each such defence could not be made out, and of this task the prosecution is

EXCISE ACT (XII OF 1896)

———S. 51—Scope of—‘No person,’ whether singular includes plural—Joint possession of liquor, consequences of.

S. 51, Excise Act, prohibits the joint possession by several persons of more spirit or fermented liquor than may be sold retail to one person: If two persons, having each bought 4 quarts of liquor, put it together and carry it home, each of them is in contemplation of law in possession of the whole. *Emperor v. Nga Pyu*.

17 Cr. L. J. 476 :

36 I. C. 156 : 8 L. B. R. 464 :

A. I. R. 1917 L. Bur. 160.

———S. 52.

See also Cr. P. C., 1898, S. 556.

———S. 52—Master and servant—Licensee—Servant permitting drunkenness in shop during master's absence—Master, whether liable.

A liquor licensee is responsible under S. 50, Excise Act, for the default of his servants in permitting drunkenness in his shop without his knowledge. *Nga Shin Gyi v. Emperor*.

18 Cr. L. J. 865 :

41 I. C. 977 : A. I. R. 1917 L. Bur. 25.

———S. 52—Master's liability, test of.

In S. 52, Excise Act, 1896 ; the words “Any person who breaks.....any condition of a licence granted under this Act,” refer only to the actual license-holder. Where the license-holder deputes a servant to manage a retail liquor-shop, the former is punishable for any breach of a condition, even if he has expressly forbidden the servant to do the act prohibited by the condition. The test of the master's liability in such cases is whether the servant's act was done in the course of management. *Emperor v. Rustomji Pestonji*.

2 Cr. L. J. 659 :

1 N. L. R. 81.

———S. 57—Excise Officer, definition of.

A head constable is an Excise Officer within the meaning of S. 57 of the Excise Act, 1896. *Emperor v. Lachmi Narain*.

8 Cr. L. J. 5 :

28 A. W. N. 157 : 30 All. 377 :

5 A. L. J. 444.

———S. 60—Absence of search warrant, effect of.

The absence of a search warrant does not affect the legality of the trial of a case under the Excise Act. Where upon a search made by an Excise Inspector cocaine is found, the conviction of the accused would depend not on the legality of the search but on the fact of his being in illegal possession of the cocaine. *Syed Ahmad v. Emperor*.

15 Cr. L. J. 19 :

22 I. C. 163 : 35 All. 575 :

11 A. L. J. 933.

———S. 60—Presumption—Oath not recorded as administered to witness.

There is no provision of law which requires

EXCISE ACT (I OF 1914)

a Court examining a witness to record the fact that the oath was administered to him. Where the record does not show that the oath was administered to a witness, the reasonable presumption in the absence of any suggestion to the contrary would be, that proper procedure was followed and the oath duly administered. *Syed Ahmad v. Emperor*.

15 Cr. L. J. 19 :

22 I. C. 163 : 35 All. 575 :

11 A. L. J. 933.

EXCISE ACT (BENGAL) (V OF 1908 B. C.)

———Ss. 61, 46—Conviction under.

Where the accused illicitly imported cocaine which was seized by the Customs Authorities in Calcutta and was never delivered to him: Held, that the accused was liable to be convicted of an attempt to commit the offence of importation under S. 61 read with S. 46, Bengal Excise Act, and not of an offence under S. 46 of the Bengal Excise Act of actually importing cocaine into Bengal illegally. *Booth, C. H. v. Emperor*.

15 Cr. L. J. 35 :

22 I. C. 179 : 18 C. L. J. 567 :

18 C. W. N. 386 : 41 Cal. 545 :

A. I. R. 1914 Cal. 649.

EXCISE ACT (I. E. B. & A. OF 1910)

———Ss. 53, 72—Bona fide medicated article—“Kameswar Modak”—Mixture containing bhang—Manufacture and sale, whether punishable.

The accused, a *Kaviraj*, was convicted under S. 53, Eastern Bengal and Assam Excise Act for manufacturing and selling an excisable article, namely, a mixture called *Kameswar Modak* which contains *bhanga*. The defence of the accused throughout was that the article in question was a *bona fide* medicated article prepared by him for medicinal purposes: Held, that the accused was protected by S. 72 of the Act. *Satish Chandra Roy v. Emperor*.

14 Cr. L. J. 300 :

19 I. C. 956 : 17 C. W. N. 939.

EXCISE ACT (I OF 1914)

———Nature of punishment.

Deterrent punishment is necessary. Good family of accused is no ground for light sentence. *Emperor v. Dharam Singh*.

34 Cr. L. J. 180 :

141 I. C. 592 : 34 P. L. R. 552 :

I. R. 1933 Lah. 154.

———S. 75—Illegality of trial.

Excise offence in Native State—Trial in British India—Accused discharged for want of certificate—Certificate granted after one year—Trial is invalid. *Bhan Singh v. Emperor*.

34 Cr. L. J. 578 :

143 I. C. 341 : I. R. 1933 Lah. 343 :

A. I. R. 1933 Lah. 659 (2).

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relieved by the provisions of S. 105, Evidence Act, and its closely allied section, S. 106. *Emperor v. Damapala*. (F. B.)

38 Cr. L. J. 524 :
168 I. C. 193 : 14 Rang. 666 : 9 R. Rang. 340 :
A. I. R. 1937 Rang. 83.

———Ss. 105, 106—*Proof of exception—Exercise Act (XII of 1896), Ss. 3 (1) (n), 30, 51—Possession of foreign spirit or fermented liquor for private use or sale—Burden of proof.*

When a person, charged with having in his possession any quantity of foreign spirit or fermented liquor larger than that specified in S. 3 (1) (n), pleads that he purchased it for his private use, the onus lies on him to prove that he purchased it for his private use and not for sale. *Emperor v. Maung Pwa*. 10 Cr. L. J. 80 :
2 I. C. 543 : 5 L. B. R. 52.

———S. 106.

See also Penal Code, 1860, Ss. 124-A, 411, 441.

———S. 106—*Criminal trial—Absence of explanation from accused—Presumption.*

When a *prima facie* case is made out against an accused person and the presumption of innocence is displaced, he cannot safely rely on the presumption of innocence or on the infirmity of the evidence for the prosecution. The force of suspicious circumstances is augmented whenever a party attempts no explanation of facts which he may reasonably be presumed to be able and interested to explain. *Bukshan v. Emperor*. 27 Cr. L. J. 1265 :
98 I. C. 113 : A. I. R. 1927 Sind 85.

———S. 106—*Facts known to others also—Applicability.*

S. 106, Evidence Act, contemplates facts which in their nature are such as to be within the knowledge of the accused and of nobody else. It has no application to cases where the fact in question, having regard to its nature, is such as to be capable of being known not only by the accused but also by others if they happened to be present when it took place. The section cannot be invoked to make up for the inability of the prosecution to produce evidence of circumstances pointing to the guilt of the accused. Where facts proved by evidence give rise to the inference of guilt, unless rebutted, it is not the result of the application of S. 106, but of the probative force of such facts. *Ram Bharosey v. Emperor*.

38 Cr. L. J. 205 :
166 I. C. 430 : 1936 A. L. J. 1124 :
1936 A. W. R. 927 : 9 R. P. 406 (2) :
A. I. R. 1936 All. 833.

———S. 106—*Presumption of innocence.*

Whatever force a presumption arising under S. 106, Evidence Act, may have in civil or less serious criminal cases, in a trial for murder, it is extremely weak in comparison

EVIDENCE ACT (I OF 1872)

with the dominant presumption of innocence. *Ashraf Ali v. Emperor*. 19 Cr. L. J. 81 :

43 I. C. 241 : 21 C. W. N. 1152 :
A. I. R. 1918 Cal. 314.

———S. 106—*Proof—Nature of.*

Accused seeking to plead that he fired at Police to escape arrest—Nature of proof required, stated. *Emperor v. Munshi*.

37 Cr. L. J. 787 :
162 I. C. 844 : 1936 O. L. R. 333 :
1936 O. W. N. 553 : 8 R. O. 413 :
A. I. R. 1936 Oudh 294.

———S. 106—*Scope.*

S. 106, Evidence Act, is not intended to be used to place upon the accused the burden of proving their innocence. S. 106 is not a proviso to the rule that the burden of proving the guilt of the accused is upon the prosecution but on the contrary, the section is subject to that rule. The burden of proving a particular fact or a particular defence is a different matter. S. 106 does not enable the Judge to say to the Jury that the accused must explain this or that, or he must satisfy them on this point or that or be found guilty. *Shevaram Jethanand Shivdasani v. Emperor*. 41 Cr. L. J. 28 :
184 I. C. 474 : 1940 Kar. 249 : 12 R. S. 107 :
A. I. R. 1939 Sind 209.

———Ss. 106, 105—*Nature of proof.*

Under S. 106, Evidence Act, when a person does an act with some intention other than which the character and circumstances of the act suggest, the burden of proving that intention is upon him. Consequently, if a person wants to plead that he fired at the Police in order that he might be able to escape arrest, then it is for him to state that in his examination either before the Committing Magistrate or in the Court of Session and to adduce evidence in support of that statement. The fact that the shots sizzled past over the heads of the Policemen and did not cause hurt to any one will not go to prove that the accused did not commit the offence under S. 307, Penal Code. *Emperor v. Munshi*. 37 Cr. L. J. 787 :
162 I. C. 844 : 1936 O. L. R. 333 : 8 R. O. 413 :
1936 O. W. N. 553 : A. I. R. 1936 Oudh 294.

———Ss. 106, 114 (e)—*Parcels containing incriminating exhibits—Proof of transmission and identity—Duty of prosecution.*

The failure of the prosecution to prove satisfactorily the transmission of parcels containing incriminating exhibits (*i.e.*, blood-stained clothes) direct to the Chemical Examiner, and to prove that the articles received by that officer are the identical ones referred to at the trial, is not a mere technical defect. In important matters of this kind, it is essential for the prosecution to show that ordinary diligence was exercised and that the ordinary procedure followed. *Muhammad Din v. Emperor*. 26 Cr. L. J. 1420 :

89 I. C. 844 : A. I. R. 1926 Lah. 79.

EXCISE CASES

———Punishment — Government Circulars—
Reference by Magistrates.

The object of Government in issuing Circulars is to bring to the notice of the Magistrates certain circumstances mentioned there in which, when relied upon, must be openly stated in Court and the parties allowed to comment thereon. Nothing can be more deleterious to the administration of criminal justice than a notion that the Magistrate conceives himself to be under orders to pass any particular kind of sentence or that any considerations affect his decision but such as are openly stated in a Court and are subject to comment by the prosecution and the defence. *Emperor v. Mustali*.

27 Cr. L. J. 633 :
94 I. C. 409 : 20 S. L. R. 70 :
A. I. R. 1926 Sind 193.

EXCISE OFFICER

See also Evidence Act, 1872, S. 25.

EXECUTION

———Decree in a title suit—Land delivered to decree-holder in execution of decree—Crops growing, whether pass.

Where, in execution of a decree in a title suit, possession of land is given to the decree-holder, the growing crops pass with the land. *Udai Narain Gain v. Ramanath Midda*.

18 Cr. L. J. 732 :
40 I. C. 732 : A. I. R. 1918 Cal. 668.

———Maintenance decree.

It cannot be laid down that a decree for further maintenance is always incapable of execution, and a fresh suit is necessary. That would entirely depend on the nature of the suit, the nature of the relief granted, and the form of the decree. *Jagatram Kuer v. Munder Kuer*.

35 Cr. L. J. 1062 :
150 I. C. 373 : 3 A. W. R. 569 :
56 All. 425 : 6 R. A. 1078 :
A. I. R. 1934 All. 87.

EXECUTIVE ACTS

See also (i) Government of India Act, 1919, S. 72.

(ii) Title to immovable property.

EXPENSES OF WITNESSES

———Accused, whether can be asked to pay—Government, when bound to pay.

In the case of a private prosecution in respect of a bailable offence, the only case in which the Government can be made to pay the expenses of prosecution witnesses in the Central Provinces, is where it appears to the Magistrate that the prosecution is directly in the interests of public justice within the meaning of the rules contained in the Judicial Commissioner's Criminal Circular No. 1-37. S. 544, Cr. P. C. is subject to rules made by the Local Government. *Radhakishan v. Ramkrishan*.

25 Cr. L. J. 912 :
81 I. C. 448 : 7 N. L. J. 57 :
A. I. R. 1924 Nag. 114.

EXPERT

See also Criminal trial.

EXPERT EVIDENCE

See also (i) Criminal trial.

(ii) Evidence.

(iii) Evidence Act, 1872, Ss. 35, 45.

(iv) Penal Code, 1860, S. 565.

———Corroboration.

The statement of a witness made during a search which is subsequently retracted, cannot be taken as evidence. The testimony of a witness given before a Committing Magistrate may, by the special provisions of S. 288, Cr. P. C., be accepted as substantive evidence if he is examined at the trial before the Court of Session and may be preferred to the statement made by him at the trial; but a statement made on any other occasion by him, cannot be used except to corroborate or contradict the evidence given at the trial. *In re : Basrur Venkata Row*.

13 Cr. L. J. 226 :
14 I. C. 418 : 11 M. L. T. 93 :
22 M. L. J. 270 : 1912 M. W. N. 125.

———Cross-examination, absence of—Opinion of expert, whether can be challenged.

Where there has been no cross-examination of a finger-print expert witness impeaching the examination which he had made of and the test to which he had put a particular finger print impression submitted for his consideration, the value and weight to be attached to such witness's evidence cannot be diminished by applying to it considerations to which the witness's attention was never directed. *Sarwar Khan v. Emperor*.

21 Cr. L. J. 257 :
55 I. C. 273 : A. I. R. 1920 Pat. 334.

———Handwriting—Forgery—Comparison of handwriting—Acquaintance with handwriting—Statement of witness at search—Examination of accused.

In a case of forgery where the chief evidence against the accused consists of the comparison made by an expert of the forged document with documents proved to be in the accused's handwriting, the question whether the standard writings compared by the expert are properly proved is a matter of great importance. In cases where a conclusion is based regarding the authorship of a forged document, on a comparison of handwriting, the expert should generally be able to point to marked peculiarities in the ordinary writing of the accused, which are reproduced in the forged document, the accused being unable to avoid them. A conviction should not ordinarily be based on the mere evidence afforded by a comparison of handwriting by an expert without substantial corroboration. There may be cases in which the peculiarities in the handwriting of a person are so numerous and striking and there are so many mannerisms of the forger that he is unable to avoid in committing his forgery, that the Court may safely conclude on expert evidence alone that the writing is that of a particular person. When it is intended to treat as genuine a letter

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———S. 112—Divorce not amounting to legal dissolution of marriage, effect of.

Where a divorce in the sense of a legal dissolution of marriage has not taken place, the marriage must be deemed to continue for the purpose of S. 112, Evidence Act. *M. Kannappan v. Kullammal*.

31 Cr. L. J. 1089 :
126 I. C. 613 : A. I. R. 1930 Mad. 194.

———S. 112—Impotence—Whether proof of non-access.

Proof of impotence would be equivalent to proof of non-access. *Nga Tune E. v. Mi Chon*.

16 Cr. L. J. 84 :
26 I. C. 996 : U. B. R. 1914, II 23 :
A. I. R. 1914 U. Bur. 36.

———S. 112—Legitimacy of child—Wife whether entitled to maintenance.

Where a husband soon after his marriage left for another city, and returning back after a month refused to go to the house of his wife and live with her, and after more than 280 days from the marriage but during the continuance of the marriage, a child was born to her: *Held*, that though the marriage between the parties may still be subsisting in the eye of the law and the child of the wife is for that reason to be presumed to be the child of the husband, yet on the evidence it was clear that the husband did not get access to the wife during the time when the child could have been begotten and consequently the presumption that the child is the child of the husband was rebutted: *Held*, also, that the fact that her child was begotten when her husband could not get access to her showed that she must have been guilty of adultery on more than one occasion and, therefore, she was not entitled to maintenance. *Ma Thein v. Maung Mya Khin*.

38 Cr. L. J. 646 :
168 I. C. 825 : 9 R. Rang. 368 :
A. I. R. 1937 Rang. 67.

———S. 112 — Presumption—Rebuttal of—Proof of.

The presumption created by S. 112, Evidence Act, can only be rebutted by proof of non-access, and to prove non-access, the evidence must be such as to exclude all doubts. If the husband has had access, adultery on the wife's part will not justify a finding of illegitimacy. *Nga Tune E v. Mi Chon*.

16 Cr. L. J. 84 :
26 I. C. 996 : U. B. R. 1914, II 23 :
A. I. R. 1914 U. Bur. 36.

———S. 112—Scope.

Where the point for decision is one of evidence (e.g. paternity) only, the case would be governed by S. 112 and not by the personal law of the parties. The question of a child's paternity is not one of succession, inheritance, marriage or caste, or any religious institution or usage, within the meaning of S. 13, Burma Laws Act, 1898. *Nga Tune E v. Mi Chon*.

16 Cr. L. J. 84 :
26 I. C. 996 : U. B. R. 1914, II 23 :
A. I. R. 1914 U. Bur. 36.

EVIDENCE ACT (I OF 1872)

———S. 114.

———Accomplice.
———Approver's statement, corroboration.
———Cattle lifting.
———Circumstantial evidence.
———Civil and Criminal cases.
———Common course of events.
———Conflicting presumptions.
———Corroboration.
———Criminal trial.
———Evidence of accomplice.
———Evidence of approver.
———Evidence withheld.
———Identification of stolen property.
———Illustration to value of.
———Murder case.
———Official acts.
———Presumption.
———Retracted confession.
———Stolen property.
———Whether introduces element of compulsion.

———S. 114.

See also (i) Calcutta Municipal Act, 1923, S. 418.

(ii) Calcutta Police Act, 1866, S. 46.

(iii) Cr. P. C., 1898, Ss. 162, 164, 196, 338.

(iv) Evidence Act, 1872, Ss. 24, 27, 30, 133.

(v) Indian Councils Act, 1861, S. 39.

(vi) Penal Code, 1860, Ss. 366, 379, 408, 411, 414.

(vii) Police Act, 1861, S. 31.

———S. 114—Accomplice, who is.

A person who himself steals and hands over the stolen property to another, would be an accomplice in the offence of receiving stolen property. *Chetumal Rekumal v. Emperor*.

36 Cr. L. J. 608 :
154 I. C. 937 : 28 S. L. R. 336 :
7 R. S. 178 : A. I. R. 1934 Sind 185.

———S. 114—Accomplice, who is.

An "accomplice" is one who is a guilty associate in the crime or who sustains such a relation to the criminal act that he could be charged jointly with the accused. It is not every participation in a crime which makes a party an accomplice in it. *Chetumal Rekumal v. Emperor*.

36 Cr. L. J. 608 :
154 I. C. 937 : 28 S. L. R. 336 :
7 R. S. 178 : A. I. R. 1934 Sind 185.

———S. 114—Approver's statement—Corroboration.

It is not sufficient that an approver should be corroborated with regard to the actual commission of the crime itself but he should also be corroborated in material points as to the part played by his accomplices. The question of necessary quantum of corroboration depends upon the view which the Court takes of the approver's character and of his general demeanour in the witness-box. *Jagwa Dhanuk v. Emperor*.

27 Cr. L. J. 484 :
93 I. C. 804 : 5 Pat. 63 :
7 P. L. T. 396 : A. I. R. 1926 Pat. 232.

EXPLOSIVES ACT (IV OF 1884)

not proved to have been written by the accused and as a circumstance against him, it would be fair and natural for the Court, under Ss. 289 and 342, Cr. P. C., to examine the accused about it and to put him such questions as would enable him to explain its significance. *In re : Basrur Venkata Row.*

13 Cr. L. J. 226 :
14 I. C. 418 : 11 M. L. T. 93 :
22 M. L. J. 270 : 1912 M. W. N. 125.

Expert evidence is alone sufficient for conviction. *See Evidence Act, S. 54.*

———*Opinion formed by expert before examination in Court, use of Opinion of expert in civil case, use of, in subsequent criminal trial.*

The opinion of an expert which is admissible against an accused is one given by him at the trial. The opinion formed by him before the trial in another case is not substantive evidence. It is doubtful if such opinion recorded for the purpose of a previous suit is at all admissible. *Ganda Mal v. Emperor.*

29 Cr. L. J. 778 :
110 I. C. 810 : A. I. R. 1928 Lah. 921.

———*Whether can be contradicted by reference to passages in technical works.*

Where an expert witness has been examined on a scientific subject in support of the prosecution, passages in scientific treatises cannot be used by the defence in refutation of the expert's opinion, unless those passages have been put to the prosecution expert and unless notice has been given to him by cross-examination of the deductions which the defence seek to draw from them, so that he may give an answer if he can. In a prosecution for adulteration of *ghlee*, it would not be safe to rely on technical treatises alone without the aid of an expert to whom their alleged effect may be put. *Grande Venkata Ratnam v. Corporation of Calcutta.*

19 Cr. L. J. 753 :
46 I. C. 593 : 22 C. W. N. 745 :
28 C. L. J. 32 : A. I. R. 1919 Cal. 862.

EXPERT WITNESS

———*Value of expert evidence—Examination on commission, impropriety of.*

It is not proper to examine an expert on commission in the absence of the accused. The evidence of the expert has always to be carefully weighed, and when given on commission, its value is very considerably reduced. *Nur Din v. Emperor.*

29 Cr. L. J. 377 :
108 I. C. 369 : 10 L. L. J. 235 :
A. I. R. 1928 Lah. 533.

EXPLOSIVES ACT (IV OF 1884)

———*Licence for Patakhas.*

No license for the manufacture or sale of *patakhas* is required under the Explosives Act. *Emperor v. Bansidhar.*

11 Cr. L. J. 287 :
5 I. C. 911 : 8 P. R. 1910 Cr. :
9 P. W. R. 1910 Cr.

———*Toy fireworks.*

Patakhas are not explosives within the meaning of the Explosives Act but are toy fire-works, and

EXPLOSIVES ACT (IV OF 1884)

as such, exempt from r. 35, Explosive Rules. *Pritamdas Chellaram v. Emperor.*

34 Cr. L. J. 1046 :
145 I. C. 621 : 6 R. S. 34 :
A. I. R. 1933 Sind 171.

———*"Toy fireworks"—Rules under—Clove-crackers, possession of, without licence, whether legal.*

Clove-crackers or lavangi-crackers are "toy fireworks" within the meaning of rule 3 issued under the Explosives Act and are, therefore, exempt from rule 25 imposing the necessity of a licence for possessing them. *Emperor v. Rachapa Gurappa Hattarvat.*

18 Cr. L. J. 139 (a) :
37 I. C. 491 : 18 Bom. L. R. 556 :
A. I. R. 1917 Lah. 322.

———S. 4 — "Explosive"—Meaning of, includes electric sparklets.

The definition of "explosive" in S. 4, Explosives Act, is wide enough to include electric sparklets since the exemption of "toy fireworks" was removed by the amendment of the rules in 1917. *Kalagaria Sanjayasiraju v. Emperor.*

189 I. C. 779 :
1939 M. W. N. 1250 : 13 R. M. 334 :
A. I. R. 1940 Mad. 284.

———S. 4 (1) (2)—*Licence—China crackers, whether explosives—Rules framed under the Act, rr. 3, 71—Toy fireworks—Presumption—Possession of explosives—Licence to possess certain quantity for specified period.*

China crackers are explosives within the meaning of clauses (1) and (2) of S. 4 Explosives Act. The onus is on the person in possession of explosives to show that they are toy fireworks under rule 3 of the rules framed under the Act. The whole scheme of the rules framed under the Explosives Act is to require a separate licence for possession, at any one time and place, of explosives in addition to a licence to import during a particular period. *In re : Guru Mnrti Chelti.*

20 Cr. L. J. 108 :
48 I. C. 988 : 8 L. W. 626 :
25 M. L. T. 175 : 1919 M. W. N. 351 :
A. I. R. 1919 Mad. 846.

———S. 5.

See also Penal Code, 1860, S. 120-B.

———S. 5—*Burden of proof—Explosives Rules, r. 35—Charge under r. 35—Onus of proving that articles found were explosives—Fireworks, whether explosives.*

Where a person is charged under r. 35, Explosives Rules, with being in possession of explosives not in accordance with the licence granted to him, the burden of proving that the articles which were found in the possession were explosives and were covered by the Rules is upon the prosecution and the mere fact that the accused took possession of and signed for a consignment which was described as fireworks does not amount to an admission by him that these were explosives within the purview of these rules. *Polaki Chidambaram v. Emperor.*

31 Cr. L. J. 851 :
125 I. C. 532 : 1930 M. W. N. 73 :
A. I. R. 1930 Mad. 678.

EVIDENCE ACT (I OF 1872)

———S. 114— *Cattle lifting — Presumption when arises—Rebuttal.*

In all the circumstances of cattle lifting in Sind, the possession of stolen cattle three to four months after theft is sufficient to raise a presumption of guilt under S. 114, Evidence Act, but such presumption may be rebutted by evidence showing that the possession of the accused had a lawful origin. *Emperor v. Sumar Jurio.*

18 Cr. L. J. 411 :
38 I. C. 971 : 10 S. L. R. 167 :
A. I. R. 1917 Sind 3.

———S. 114—Circumstantial evidence —
Proof—Prosecution, duty of.

In criminal cases, as a rule, it is for the prosecution to prove their case and an accused person should not be convicted merely because he has told lies in his defence. In case of circumstantial evidence, however, where facts are put forward on behalf of the prosecution which, unless explained, justify an inference of guilt being drawn against the accused, it is both lawful and proper for the Court to consider the explanation of those facts which the accused puts forward in his defence. *Abdul Aziz v. Emperor.*

17 Cr. L. J. 23 :
32 I. C. 151 : A. I. R. 1916 All. 63.

———S. 114—Civil and Criminal cases—
Applicability.

S. 114, Evidence Act, applies not only to civil suits but also to criminal cases. *Jannadas Tharumal v. Emperor.*

41 Cr. L. J. 401 (2) :
187 I. C. 127 : 12 R. S. 223 :
A. I. R. 1940 Sind 42.

———S. 114—Common course of events.

If articles, which are of foreign production, are found exhibited by vendors within Municipal limits, it is permissible to presume that they had paid Octroi duty on such goods when the same were originally imported. *Raj Narain Varma v. Municipal Board, Farrukhabad.*

147 I. C. 1199 :
6 R. A. 626 : 3 A. W. R. 543 :
A. I. R. 1934 All. 318.

———S. 114—Conflicting presumptions.

There is the normal presumption of innocence in favour of every accused person whose guilt has to be proved beyond the possibility of a doubt. Where in a criminal case there is a conflict between the presumption of innocence and any other presumption, the presumption of innocence prevails. The strength of the presumption varies according to the seriousness of the charge; the greater the crime, the stronger being the proof required for conviction. *Neeha v. Emperor.*

29 Cr. L. J. 609 :
109 I. C. 801 : 11 N. L. J. 104 :
A. I. R. 1928 Nag. 213.

———S. 114—Corroboration.

The testimony of an approver's wife does

EVIDENCE ACT (I OF 1872)

not afford reliable independent corroboration of the approver's evidence. *Sultan v. Emperor.*

34 Cr. L. J. 450 :
142 I. C. 823 : 33 P. L. R. 13 :
I. R. 1933 Lah. 273.

———S. 114—Corroboration—Extent of.

The extent of corroboration which a Court will demand will naturally vary with the circumstances of each case, including the character and antecedents of the approver and the degree of suspicion attached to his evidence. *Hakam Singh v. Emperor.*

31 Cr. L. J. 517 :
123 I. C. 513 : A. I. R. 1929 Lah. 850.

———S. 114—Corroboration—Nature of.

A rule of law is not the same thing as a rule of prudence. The rule of law is contained in S. 114, Evidence Act, which lays down that the Court may presume that an accomplice is unworthy of credit unless he is corroborated in material particulars. To say that an accomplice is to be corroborated in material particulars is not the same thing as to say that he is to be corroborated by a witness who is not an accomplice. No doubt it is a rule of prudence to say that ordinarily evidence which is itself tainted should not be accepted as corroboration of tainted evidence. But it is opposed to all common sense to lay down that in a case, the circumstances of which show that the rule of prudence does not apply, the Court is precluded from acting on evidence which it believes to be true. *Bimal Krishna Biswas v. Emperor.*

37 Cr. L. J. 840 :
163 I. C. 566 : 62 Cal. 819 : 9 R. C. 30 :
39 C. W. N. 761.

———S. 114—Corroboration—Nature of.

But all that the rule requires is that an accomplice's story be corroborated by independent testimony proceeding from a source other than the approver and that such testimony should tend to implicate the accused, and the confirmation of the accomplice's story does not mean that there should be independent evidence of the accomplice's account of the crime itself. Corroboration need not be such as would in itself be sufficient to furnish a basis for conviction. *Barkati v. Emperor.*

28 Cr. L. J. 625 :
103 I. C. 49 : A. I. R. 1927 Lah. 581.

———S. 114—Corroboration—Nature of.

Corroboration need not necessarily consist of direct evidence that the accused committed the crime; it is sufficient even if it consists of circumstantial evidence of his connection with the crime. *Hakam Singh v. Emperor.*

31 Cr. L. J. 517 :
123 I. C. 513 : A. I. R. 1929 Lah. 850.

———S. 114—Corroboration—Necessity of.

It is necessary that the evidence of an accomplice should be corroborated in material particulars by independent evidence which is free from the taint attached to the evidence of

EXPLOSIVE SUBSTANCES ACT (VI OF 1908)

—S. 5, rr. 32, 138—*Breach of condition by servant—Master's liability—Acting 'in the scope of employment', meaning of.*

The accused held a licence under the Explosives Act to manufacture gun-powder, containing a condition that the explosive shall be manufactured in a tent or lightly constructed building exclusively appropriated for the purpose. The accused constructed a building which complied with this condition. One of his servants employed by him to manufacture gun-powder took the necessary ingredients from this building to the accused's house and performed part of the process of manufacture there. An explosion occurred and the servant and another were injured. On a trial for breach of the conditions of the licence: *Held*, that inasmuch as the servant was acting in the course of her employment and inasmuch as the Statute imposed an absolute liability on the holder of the licence, the accused was guilty. *Emperor v. Mahadevappa Hanmantappa.*

28 Cr. L. J. 364 :

100 I. C. 972 : 29 Bom. L. R. 153 :
51 Bom. 352 : A. I. R. 1927 Bom. 209.

—S. 8—*Occupier, meaning of—"Occupier" means person actually in charge and on spot.*

For the purposes of S. 8, Explosives Act, IV of 1884, the word "occupier" means a person who was in actual occupation of the premises and control of the operations in progress there. The section imposes an obligation on the occupier to give notice of the accident forthwith. It must, therefore, refer to an individual who is actually on the spot and in charge of the factory. An occupier for the purposes of the Factories Act may include an owner if the owner is in actual possession of the factory. In any case when the owner appoints a manager and puts him in charge of the factory, both the owner and the manager cannot be regarded as being occupiers. The person who answers that description is the manager. *Gopal Ambadas Chawre v. Emperor.*

37 Cr. L. J. 839 :

163 I. C. 400 (1) : 9 R. N. 2 :
18 N. L. J. 235.

—S. 8—"Occupier," meaning of.

The word "occupier" in S. 8 refers to some one on the spot at the time of the explosion who must necessarily have become aware of the explosion. *Zeri Khan v. Emperor.*

16 Cr. L. J. 622 :

30 I. C. 446 : 8 Bur. L. T. 288 :
A. I. R. 1915 L. Bur. 105.

EXPLOSIVE RULES.

—R. 35.

See also Explosives Act, 1884, S. 5.

EXPLOSIVE SUBSTANCES ACT (VI OF 1908)

—S. 3—*'Malice,' meaning of.*

The word 'malice' in S. 3 is not used in its ordinary popular sense meaning vindictiveness against a particular individual but in the legal acceptance of the word. Malice in the legal

EXPLOSIVE SUBSTANCES ACT (VI OF 1908)

acceptance of the word is not confined to personal spite against individuals but consists in a conscious violation of law to the prejudice of another. *Bhagat Singh v. Emperor.*

31 Cr. L. J. 290 :

121 I. C. 726 : 31 P. L. R. 73 :
A. I. R. 1930 Lah. 266.

—S. 4 *Conviction.*

Person having mansal stains on his apparel—It is unsafe to base conviction merely on this evidence. *Indar Datt v. Emperor.*

32 Cr. L. J. 818 :

132 I. C. 185 : I. R. 1931 Lah. 537 :
A. I. R. 1931 Lah. 408.

—S. 4, Cl. (b)—*Criminal conspiracy.*

Supplying shots and red arsenic for making one bomb only—Supplier is guilty. *Bhahananda Banerjee v. Emperor.* (S. B.)

34 Cr. L. J. 1222 :

146 I. C. 186 : 57 C. L. J. 213 :
6 R. C. 183 : A. I. R. 1933 Cal. 747.

—S. 4—*Illegality of conviction.*

Absence of proof that explosions caused brought accused within Act—Conviction is not legal. *Khimji Khetsi v. Emperor.*

36 Cr. L. J. 1037 :

156 I. C. 972 : 8 R. S. 20.

—S. 4—*Lethal weapon—Gramophone needle.*

A gramophone needle can scarcely be regarded as a lethal weapon. *Khimji Khetsi v. Emperor.*

36 Cr. L. J. 1037 :

156 I. C. 972 : 8 R. S. 20.

—S. 4—*Possession.*

In order to constitute an offence under S. 4 (b), possession must be conscious and intelligent possession and not merely the physical presence of the accused in proximity or even in close proximity of the offending object. *Kuldip Chand v. Emperor.*

36 Cr. L. J. 300 (2) :

153 I. C. 139 : 7 R. L. 392 (2) :
37 P. L. R. 132 : A. I. R. 1934 Lah. 718.

—S. 4—*Scope of—"Unlawfully" and "maliciously", definition of—Possession, nature of, to be basis for conviction—Possession defined—Incriminating article found in joint family house.*

In S. 4, Explosive Substances Act; the term 'unlawfully' signifies not for a lawful object and the expression 'maliciously' means and implies an intention to do an act which is wrongful, to the detriment of another person. The mere fact that an article is found in a house belonging to a joint family does not *per se* render every member of the family liable for its possession. Where the portion of the house in which article is found is not in the exclusive possession of a particular member but is used by, or is accessible to, all the members of the family, there is no presumption that the article is in the possession or control of any person other than the house-master or the head of the family. But it is open to the prosecution to prove that the possession was with some other

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an accomplice. *Kamboji Venkataramanna v. Emperor.*

35 Cr. L. J. 1040 :
149 I. C. 964 : 67 M. L. J. 74 :

1933 M. W. N. 1129 :

40 L. W. 237 : 6 R. M. 663 :

A. I. R. 1934 Mad. 248.

———S. 114—Corroboration—Necessity of—Principle of.

The rule that it is not safe to convict upon the uncorroborated testimony of an approver is based on long experience of the Courts of India. *Sultan v. Emperor.*

34 Cr. L. J. 450 :

142 I. C. 823 : 33 P. L. R. 13 :

I. R. 1933 Lah. 273.

———S. 114—Corroboration—Necessity of.

The ordinary rule of practice in criminal cases is that an approver's statement should be corroborated by independent evidence connecting each accused with the crime. *Gehna v. Emperor.*

33 Cr. L. J. 414 :

137 I. C. 95 : 33 P. L. R. 16 :

I. R. 1932 Lah. 294 :

A. I. R. 1932 Lah. 180.

———S. 114—Corroboration—Sufficiency of.

Alleged poisoning of husband by wife—Confession by wife retracted—Articles stained with poison recovered from house—Poison discovered in viscera and vomits of deceased : *Held*, sufficient corroboration under S. 114. *Aishan Bibi v. Emperor.*

36 Cr. L. J. 14 :

152 I. C. 206 : 15 Lah. 310 :

37 P. L. R. 67 : 7 R. L. 263 :

A. I. R. 1934 Lah. 150 (2).

———S. 114—Criminal trial.

Admission to Police that accused with another committed murder and buried ornaments which he produced. But no explanation given of his connection with ornaments—Court can infer that accused had taken part in murder. *In re : Kallam Narayana.*

34 Cr. L. J. 481 :

143 I. C. 46 : 64 M. L. J. 88 :

1932 M. W. N. 801 :

37 L. W. 220 : 56 Mad. 231 :

I. R. 1933 Mad. 261 :

A. I. R. 1933 Mad. 233.

———S. 114—Criminal trial.

In making presumptions of fact or in drawing inferences of fact from evidence, a Judge or a Jury must always have regard to all the known facts of the case. *In re : Kallam Narayana.*

34 Cr. L. J. 481 :

143 I. C. 46 : 64 M. L. J. 88 :

1932 M. W. N. 801 :

37 L. W. 220 : 56 Mad. 231 :

I. R. 1933 Mad. 261 :

A. I. R. 1933 Mad. 233.

———S. 114—Evidence of accomplice—Confessing co-accused's evidence is like that of approver.

Confessing co-accused's evidence is practically that of an approver, and must be treated as

EVIDENCE ACT (I OF 1872)

such especially where the confession was not free from inducement. *Mahadeo v. Emperor.*

10 O. L. J. 280 :

A. I. R. 1924 Oudh 65.

———S. 114—Evidence of accomplice—Dacoity—Approver's statement—Corroboration—Recovery of stolen property—Association of accused persons.

In a case of dacoity, the recovery of a portion of the stolen property from the possession of an accused person is a sufficient corroboration of the approver's statement so as to justify a conviction of such accused person. Evidence that certain persons accused of having committed the offence of dacoity were seen together at a place other than that at which the dacoity was committed on the day previous to the dacoity, is no such corroboration of the statement of an approver as to justify the conviction of such persons. *Maula Das v. Emperor.*

26 Cr. L. J. 693 :

86 I. O. 69 : 26 P. L. R. 40 :

A. I. R. 1925 Lah. 426.

———S. 114—Evidence of accomplice—Discretion of Court.

There is no hard and fast rule that a conviction cannot be supported which proceeds on the uncorroborated testimony of an accomplice, S. 114 itself indicates that it is for the Court to consider whether the maxims given in the illustration do or do not apply to the particular case before it. *Raghunath Pandey v. Emperor.*

34 Cr. L. J. 421 :

142 I. C. 809 : 13 P. L. T. 802 :

I. R. 1933 Pat. 176 :

A. I. R. 1933 Pat. 96.

———S. 114—Evidence of accomplice—British and Indian, principles for.

The rule of law requiring independent corroboration is a rule of caution which applies to all accomplices evidence. In England it is based on principles derived from the judicial experience of ages. In India it is expressly confirmed by S. 114, Evidence Act. *Bimal Krishna Biswas v. Emperor.*

37 Cr. L. J. 840 :

163 I. C. 566 : 62 Cal. 819 :

39 C. W. N. 761 : 9 R. C. 30.

———S. 114—Evidence of accomplice—The evidence of an accomplice must be viewed with all the suspicion which ordinarily attaches to it.

Where the accomplice makes his confession and sticks to it, and he actually allows himself to be convicted upon it, no doubt to that extent, there is some sort of guarantee of its truthfulness, but he remains an accomplice with all the suspicion attaching to an accomplice, and his evidence must be viewed with all the suspicion which ordinarily attaches to the evidence of an accomplice. *Emperor v. Kam-ud-Din Sheikh.*

A. I. R. 1928 Cal. 233.

———S. 114—Evidence of accomplice—Value of.

Per *Abdur Rahim and Ayling, JJ.*—Where the statement of a deceased accomplice is not made in the presence of the accused, very little

Cr. P. CODE (1898), S. 306

Officio as soon as its verdict is announced to the Court. *Lynne v. Emperor*.

25 Cr. L. J. 377 :
77 I. C. 425 : 4 Lab. 382 :
A. I. R. 1924 Lab. 17.

S. 304—Scope.

Courts in India cannot travel beyond the scope of S. 304. The Court will not disturb

a verdict openly given in Court, if it is satisfied that all the jurors heard the words of Foreman and expressed no dissent at the time. *Emperor v. Intya Salabathkhan*.

13 Cr. L. J. 842 :
17 I. C. 714 : 14 Bom. L. R. 897.

S. 304—Verdict of jury unanimous—

When can be disturbed.

The conviction based on a unanimous verdict of the jury cannot be disturbed unless there was material misdirection or other material irregularity. *In re : Sundaram Aligar*.

32 Cr. L. J. 1276 :
134 I. C. 986 : 34 L. W. 380 :
1931 M. W. N. 857 : 61 M. L. J. 915 :
55 Mad. 256 : I. R. 1931 Mad. 874 :
A. I. R. 1931 Mad. 775.

S. 305—Scope.

Judge disagreeing with jury—Judge can give his own opinion of guilt or innocence of accused and reasons for same—Jury is not influenced merely by such disagreement. *Premchand K. Shaham v. Emperor*.

36 Cr. L. J. 1359 :
158 I. C. 365 : 8 R. S. 47 :
A. I. R. 1935 Sind 189.

S. 306.

See also (i) Cr. P. C., 1898, ss. 297, 298, 303, 305.

S. 306—Judge accepting jury's verdict must pass appropriate sentences.

When a Judge accepts the verdict of the jury, he should pass the appropriate sentence required by law upon the accused. *Mohsena Khair v. Emperor*.
40 Cr. L. J. 880 :
-184 I. C. 222 : 43 C. W. N. 893 : 12 R. C. 214 :
A. I. R. 1939 Cal. 610.

S. 306—Individual opinion of Assessors, necessity of.

In cases tried with the aid of Assessors, each of the Assessors should be asked to give his opinion clearly as to what happened and he should then, if necessary, be asked to give his opinion on such matters as intention, knowledge, etc. *Khemna v. Emperor*.

30 Cr. L. J. 378 :
115 I. C. 66 : I. R. 1929 Lab. 322 :
A. I. R. 1929 Lab. 37.

S. 306—Judgment according to verdict—Duty of Court.

Where a Judge accepts the verdict of the jury, he is bound to award punishment as if he agrees with the verdict without giving any weight to the doubts which he may personally entertain as to the propriety of the verdict. *Ramdas Rai v. Emperor*.
30 Cr. L. J. 721 :
117 I. C. 173 : 8 Pat. 344 : 10 P. L. T. 409 :
I. R. 1929 Pat. 381 : A. I. R. 1929 Pat. 313.

Cr. P. CODE (1898), S. 307

S. 306—Scope.

S. 306 does not impose an obligation on the Judge to refer a case to the High Court except when the conditions set out in S. 307 are satisfied. *Ramdas Rai v. Emperor*.

30 Cr. L. J. 721 :
117 I. C. 173 : 8 Pat. 344 : 10 P. L. T. 409 :
I. R. 1929 Pat. 381 : A. I. R. 1929 Pat. 313.

S. 307.

Appeal.

Applicability.

Disagreement.

Duty of High Court on reference.

Interests of Justice.

Interruption.

Jury trial.

Miscellaneous.

Powers of High Court.

Powers of High Court on reference.

Procedure.

Reference.

Scope.

Verdict.

S. 307.

Sec also (i) Cr. P. C., 1898, ss. 254, 274, 298, 302, 303.
(ii) Criminal Trial.
(iii) Penal Code, 1860, ss. 34, 366, 411.

S. 307—Appeal—Verdict by jury—Interference by High Court.

A conviction by a lower Court accepting the verdict of a jury cannot be set aside by the High Court in appeal unless there is an error of law. *Inamal Ali v. Emperor*.

28 Cr. L. J. 19 :
99 I. C. 51 : 44 C. L. J. 233 :
S. 307—Appeal—Verdict of jury—Interference by Appellate Court.

The Appellate Court will interfere with the verdict of a jury, when such verdict is obviously perverse or manifestly wrong or unreasonable. *Rama Dhin Brahmin v. Emperor*.
29 Cr. L. J. 963 :
112 I. C. 51 : A. I. R. 1929 Nag. 36.

S. 307 (2)—Applicability.

S. 307 (2), refers to cases in which a Sessions Judge tries an accused charged with offences triable with the aid of jury. *Chambasappa v. Emperor*.
33 Cr. L. J. 172 :
135 I. C. 495 : 33 Bom. L. R. 1571 :
I. R. 1932 Bom. 111 : A. I. R. 1932 Bom. 61.

S. 307 (2)—Disagreement, between Judge and jury—Judge's power to ask for reasons.

Where a Sessions Judge disagrees with the verdict of the jury, it is not competent to him, if the verdict returned by the jury is clear, to ask the jury for their reasons. *Emperor v. Ali Hyder*.

86 I. C. 712 : 4 P. L. T. 425 :
26 Cr. L. J. 856 :
A. I. R. 1923 Pat. 474.

S. 307—Disagreement between jurors—Judge to ask reasons before reference.

Where in trial by jury in a Court of Sessions, the case depends entirely on circumstantial

Cr. P. CODE (1898), S. 307

evidence and the Jurors are divided in opinion, the Judge ought, if he intends to make a reference to the High Court under S. 307, to ascertain from the Jurors the reasons for their opinion. *Emperor v. Zohra*.

21 Cr. L. J. 278 :
55 I. C. 294 : 1 P. L. T. 657 :
A. I. R. 1920 Pat. 674.

————S. 307 — *Disagreement — Disagreement between Judge and Jury, what is—Reference when competent.*

All that Ss. 307 and 306 provide is that the Judge should disagree with the verdict of the Jury, that is to say, if the Jury's verdict is that the accused is guilty or not guilty and the Judge is of a contrary opinion, he can refer the case to the High Court unless he does not think it necessary to express his disagreement. Where a Judge is doubtful and is distinctly of the opinion that the benefit of the doubt should be given to the accused, then certainly he is of the opinion that the verdict of the Jury should be that he is not guilty. If, therefore, the Jury returns a verdict of guilty, he is disagreeing with the verdict of the Jury even though he may not be certain in his own mind of the absolute innocence of the accused and the complete falsity of the complaint. *Manjia v. Emperor*.

38 Cr. L. J. 465 :
167 I. C. 802 : 1937 A. L. J. 43 :
I. L. R. 1937 All. 419 : 9 R. A. 578 :
A. I. R. 1937 All. 195.

————S. 307—*Disagreement—Reference—Duty of Judge.*

Sessions Judges are under no obligation whatsoever to have or to express their individual opinion upon really disputable questions of fact which are for the Jury. If a Judge agrees or disagrees, it is a matter *prima facie* for himself but if he disagreed with the verdict of the Jury and is clearly of opinion that it is necessary for the ends of justice to submit the case to the High Court, he is obliged to do so. If he is not clearly of opinion that the conviction is wrong so as to make it necessary for the ends of justice to submit the case to the High Court, then the position is that described in S. 306, —“the Judge does not think it necessary to express disagreement—and his opinion being on that view irrelevant, should not be expressed in the judgment. Where a Judge stated: Not agreeing with but accepting the unanimous verdict of the Jury I convict the accused: *Held*, that this was a very deplorable mode of expression. *Ebrahim Molla v. Emperor*.

30 Cr. L. J. 1036 :
118 I. C. 290 : 33 C. W. N. 371 :
56 Cal. 473 : I. R. 1929 Cal. 770 :
A. I. R. 1929 Cal. 415.

————S. 307—*High Court on reference.*

On a question of misdirection as to evidence, the High Court has to see whether it is reasonably probable that the Jury would not have returned the verdict but for the misdirection complained of. *Ilu v. Emperor*.

36 Cr. L. J. 358 :
153 I. C. 454 : 62 Cal. 337 :
7 R. C. 378 : A. I. R. 1934 Cal. 847.

Cr. P. CODE (1898), S. 307

————S. 307—*Duty of High Court on reference.*

Where a reference is made to the High Court under S. 307, it is the duty of the High Court not only to consider the entire evidence but also to give due weight to the opinion of the Sessions Judge and the Jury. *Emperor v. Mofizel Penda*.

26 Cr. L. J. 1298 :
89 I. C. 242 : 29 C. W. N. 842 :
A. I. R. 1925 Cal. 909.

————S. 307—*Interests of justice—Reference.*

It is not necessary that the Judge must be satisfied that the verdict is perverse before making reference under S. 307. It is sufficient that he should be clearly of opinion that the reference is necessary in the interests of justice. *Sakhawat v. Emperor*.

38 Cr. L. J. 330 :
167 I. C. 61 : 19 N. L. J. 320 :
9 R. N. 163 : I. L. R. 1937 Nag. 277 :
A. I. R. 1937 Nag. 50.

————S. 307—*Interest of justice—Reference.*

Where the trial Judge disagrees with the verdict of the Jury but does not think it necessary in the interests of justice to make a reference under S. 307, it is not obligatory upon him to do so. *Hari Charan Das v. Emperor*.

27 Cr. L. J. 398 :
93 I. C. 46 : A. I. R. 1926 Cal. 728.

————S. 307—*Interference—Perverse verdict.*

The High Court will unhasitatingly interfere with the verdict of a Jury when it is obviously perverse or manifestly wrong or unreasonable. Where in a case of rape, the Jury come to the conclusion that the girl had been raped but gives a verdict of not guilty and there is a *prima facie* illogicality in their verdict, it is incumbent on the High Court to examine the case as whole and form their own conclusion as to the true facts. *Dathu v. Emperor*.

38 Cr. L. J. 355 :
167 I. C. 241 : 9 R. N. 170 :
A. I. R. 1937 Nag. 33.

————S. 307—*Interference—Verdict of majority—Distinction between conviction and acquittal verdicts—Majority of verdict, if to be reversed unless it is proved verdict of acquittal was perverse rather than that of conviction.*

If a Jury convicted one accused and then acquitted another, against whom the evidence was exactly the same, it might be said that the verdict must be perverse. But such considerations do not apply where the verdict was not unanimous and three of the Jurors were not prepared to accept the evidence against any of the accused. Nor would it be enough to say that such a majority verdict ought to be reversed, unless it could be established that the verdict of acquittal was perverse rather than the verdict of conviction. *Emperor v. Sherali Badyakar*.

38 Cr. L. J. 758 :
169 I. C. 342 : 63 C. L. J. 140 :
9 R. C. 926.

————S. 307—*Interference with acquittal—Grounds for.*

The High Court will not interfere in cases of

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weight can be attached to it as corroborative evidence. *In re : Talari Narainswami.*

12 Cr. L. J. 170 :
9 I. C. 978 : 9 M. L. T. 503.

—S. 114—Evidence of approver, corroboration of.

It is not necessary that an approver's evidence should be corroborated by other evidence on each and every point. All that the law clearly requires is that some relevant and material part of the approver's story inculpating the accused should have support from an independent source. *Hakam Singh v. Emperor.*

31 Cr. L. J. 517 :
123 I. C. 513 : A. I. R. 1929 Lah. 850.

—S. 114 - Evidence of approver.

If corroboration in material particulars connecting any of the accused with the offence is forthcoming, the approver's testimony can be used against the accused person concerned. But without such corroboration, the mere implication of 'an accused' person by two approvers would not enhance the value of their testimony as against that person. *Hakam Singh v. Emperor.*

31 Cr. L. J. 517 :
123 I. C. 513 : A. I. R. 1929 Lah. 850.

—S. 114—Evidence of approver—Value of.

The question as to whether or not a statement of an approver should be taken into consideration or should be totally rejected, is one which will depend on the circumstances of each case. Beyond reiterating the law on the subject, which is to the effect that the statement of the approver must be very thoroughly scrutinized and should not be accepted unless it is corroborated by other independent evidence in the case, no hard and fast rule can be enunciated which will govern all cases. *Bhola Nath v. Emperor.*

40 Cr. L. J. 856 :
184 I. C. 191 : 1939 A. L. J. 785 :
12 R. A. 189 : I. L. R. 1939 All. 736 :
1939 A. W. R. 464 : A. I. R. 1939 All. 567.

—S. 114—Evidence of approver, value of.

There is no statutory prohibition against accepting the evidence of an approver and condemning to death another person upon his uncorroborated testimony. But as a rule of practice, it is extremely dangerous to do so, especially where such evidence, when examined, is obviously open to criticism from the point of view of possible mistake or intentional concealment or misrepresentation. The confession of a criminal who has confessed his guilt in so far as it implicates other persons besides himself, must be treated as very little, if at all, superior in value to that of an accomplice who has received a pardon, and, therefore, where the Court has a witness belonging to each of these classes, the testimony of one cannot be treated as a corroboration of the testimony of the other unless both of them survive the test which can reasonably be applied to witnesses, so that in the result, the Court can say with confidence that neither

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of them has swerved in substance from the truth. *Parlab Singh v. Emperor.*

27 Cr. L. J. 879 :
96 I. C. 127 : A. I. R. 1926 All. 705.

—S. 114—Evidence withheld—Presumption—Discretion to draw.

S. 114, Evidence Act, only lays down that the Court may presume that evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it, but it cannot be taken to be a principle of law that the Court must presume it. *Aditya Prasad Singh v. Emperor.*

28 Cr. L. J. 704 :
103 I. C. 560 : 1 Luck. Cas. 195 :
A. I. R. 1927 Oudh 318.

—S. 114—Identification of stolen property.

Though Burmese coins cannot be absolutely identified, they are sufficiently uncommon at the present day to cast upon an accused person, in whose possession they are found and identified as stolen, the burden of proving that he came by them honestly. *Maung Lay v. Emperor.*

25 Cr. L. J. 381 :
77 I. C. 429 : 1 Rang. 609 :
A. I. R. 1924 Rang. 173.

—S. 114—Illustration to, value of—Approver.

The illustrations appended to S. 114, Evidence Act, are not statements of the law, qualified only by particular exceptions, nor are they rigid principles of the law, they are merely illustrations or instances of the application of certain maxims out of many possible instances. A Judge must direct himself to treat the evidence of an approver with the greatest caution and suspicion but nevertheless may act on this evidence if he believes it. *Govinda v. Emperor.*

23 Cr. L. J. 673 :
69 I. C. 257 : 17 N. L. R. 113 :
A. I. R. 1921 Nag. 39.

—S. 114—Murder case—Possession by accused of commonplace articles which belonged to deceased, evidentiary value of.

Where in a murder case the trial Judge rejected some evidence about three objects, an umbrella, a stick and a bundle, which were said to have been pointed out by the accused as being in the well, where the body of the dead man had been found, on the ground that the articles were very commonplace articles, though there was a considerable body of other evidence also against the accused : *Held*, that such evidence could not be rejected without discussing its weight when it is not in isolation but is called in as supplementary to the rest of the evidence in the case, and the rejection of the evidence was, therefore, illegal. *Public Prosecutor v. Chandaya Chetty.*

31 Cr. L. J. 983 :
126 I. C. 109 : A. I. R. 1929 Mad. 92.

—S. 114—Official acts—Presumption of regularity.

When it is proved that an attachment has been made, in the absence of any evidence to the contrary, it ought to be presumed that all

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—S. 114, III. (b)—*Corroboration, extent and nature.*

Evidence of approver must be taken with great care. It must be corroborated in important and material particulars. *Indar Datt v. Emperor.*

32 Cr. L. J. 818 :
132 I. C. 185 : I. R. 1931 Lah. 537 :
A. I. R. 1931 Lah. 408.

—S. 114, III. (b)—*Corroboration, extent and nature.*

Material particulars must implicate accused in order that corroboration may be sufficient. *Shibadas Dax v. Emperor.*

35 Cr. L. J. 551 :
147 I. C. 1172 : 37 C. W. N. 934 :
6 R. C. 399 : A. I. R. 1934 Cal. 114.

—S. 114, III. (b)—*Corroboration, extent and nature.*

Obiter.—Evidence of an accomplice may be corroborated by confession of co-accused as against other co-accused where truth of confession is guaranteed. *Beni Mahdo v. Emperor.*

35 Cr. L. J. 273 :
146 I. C. 1064 : 10 O. W. N. 688 :
6 R. O. 209 : A. I. R. 1933 Oudh 355.

—S. 114, III. (b)—*Corroboration, extent and nature.*

The corroboration need not be direct evidence; it is sufficient if it is merely circumstantial evidence of his connection with the crime. *Dhaju Mandal v. Emperor.*

34 Cr. L. J. 476 :
146 I. C. 934 : I. R. 1933 Pat. 187 :
A. I. R. 1933 Pat. 112.

—S. 114, III. (b)—*Corroboration, extent and nature.*

The evidence necessary for corroboration is independent testimony which affects the accused by connecting or tending to connect him with the crime. *Dhaju Mandal v. Emperor.*

34 Cr. L. J. 476 :
146 I. C. 934 : I. R. 1933 Pat. 187 :
A. I. R. 1933 Pat. 112.

—S. 114, III. (b)—*Corroboration, extent and nature.*

To sustain conviction, there must be independent corroboration of approver's testimony in material circumstances connecting and identifying accused with the offence. *Jiwan Singh v. Emperor.*

35 Cr. L. J. 352 :
147 I. C. 215 : 34 P. L. R. 866 :
6 R. L. 360 : A. I. R. 1934 Lah. 23 (2).

—S. 114, III. (b)—*Corroboration, extent and nature of.*

The mere fact that the approver's story is a very probable one, is no reason for dispensing with the rule that such evidence requires independent corroboration. *Emperor v. Shanharshet Ramshet.*

35 Cr. L. J. 317 :
147 I. C. 25 : 35 Bom. L. R. 1040 :
58 Bom. 40 : 6 R. B. 181 :
A. I. R. 1933 Bom. 1182.

—S. 114, III. (b)—*Corroboration, nature and extent of.*

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Court should consider whether the requisite corroboration is furnished by other evidence or facts proved in the case, though at the same time the Court may rightly, in exceptional cases, notwithstanding the maxim, and in the absence of corroboration, give credit to the accomplice's testimony against the accused, if it sees good reason for doing so upon grounds other than, so to speak, the personal corroboration. *Baboo Singh v. Emperor.*

37 Cr. L. J. 163 :
159 I. C. 875 : 1936 O. L. R. 5 :
1936 O. W. N. 64 : 8 R. O. 212 :
A. I. R. 1936 Oudh 156.

—S. 114, III. (b)—*Corroboration—Nature and extent of.*

The statement of an approver is always to be suspected and it needs corroboration of a kind that will implicate the person accused in the crime, although there is no statutory provision that a person is not to be convicted on the uncorroborated testimony of the approver. The corroboration need not be direct evidence. *Abdul Salam v. Emperor.*

36 Cr. L. J. 617 :
154 I. C. 1015 : 4 A. W. R. 1171 : 7 R. A. 853 :
A. I. R. 1935 All. 132.

—S. 114, III. (b)—*Corroboration—Nature of.*

Although the evidence of one or more accomplices may strengthen the evidence against another, the corroboration required must be corroboration by independent evidence and not by what is called tainted evidence. *Malhu Marheta v. Emperor.*

35 Cr. L. J. 213 :
146 I. C. 701 : 16 N. L. J. 186 : 6 R. N. 93 :
A. I. R. 1933 Nag. 352.

—S. 114, III. (b)—*Corroboration—Nature of.*

Corroboration would be of little value unless it comes from an independent source. The testimony of one accomplice, for instance, would be of little value as a piece of corroborative evidence in support of the testimony of another accomplice. *Hakam Singh v. Emperor.*

31 Cr. L. J. 517 :
123 I. C. 513 : A. I. R. 1929 Lah. 850.

—S. 114, III. (b)—*Corroboration—Nature of.*

The corroboration need not be direct evidence that the accused committed the crime; it is sufficient if it is merely circumstantial evidence of his connection with the crime. But evidence in corroboration must be independent. *Hari Ram v. Emperor.*

36 Cr. L. J. 673 :
155 I. C. 197 : 36 P. L. R. 488 : 15 Lah. 673 :
7 R. L. 652 : A. I. R. 1935 Lah. 125.

—S. 114, III. (b)—*Corroboration—Nature of.*

The production of stolen property by an accused person even from a place which is not in his own possession, may be accepted as material corroboration of the evidence of an accomplice who has deposed that the

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necessary formalities were complied with.
Arjun v. Emperor. 36 Cr. L. J. 1094 (2) :

157 I. C. 178 (b) : 1935 A. L. J. 390 :
1935 A. W. R. 512 : 8 R. A. 128 :
A. I. R. 1935 All. 436.

———S. 114—Presumption when arises—
Thief and receiver of stolen property.

Where burglary was committed at night and the stolen property was found next morning in the possession of a certain person, the presumption is that that person was one of the thieves. Where the receiving of the stolen property is a totally separate transaction from the burglary in which the property was stolen, the trial of the receiver of the property with the thief would be illegal. *Baiju v. Emperor.*

14 Cr. L. J. 124 :
18 I. C. 684 : 11 A. L. J. 94.

———S. 114—Presumption of ordinary course of business.

Where sums are paid before the presiding officer of the Court at the time when a receipt was given for them, the presumption under S. 114, Evidence Act, is that the ordinary course of business was followed in the case in question. *Emperor v. Ahmed Shah.*

A. I. R. 1923 Lah. 566.

———S. 114—Presumption of theft.

The question as to what amounts to recent possession sufficient to justify the presumption of theft in any particular case under S. 114, Evidence Act, varies just as the stolen article is or is not calculated to pass readily from hand to hand and, therefore, the importance to be attached to possession must vary with the circumstances of each individual case. *Neeha v. Emperor.*

29 Cr. L. J. 609 :
109 I. C. 801 : 11 N. L. J. 104 :
A. I. R. 1928 Nag. 213.

———S. 114—Presumption under, extent of.

Accused was convicted under S. 412, Penal Code, and the Judge holding that he must, under S. 114, Evidence Act, be presumed to have known the atrocious nature of the dacoity by which the goods were obtained, awarded him the maximum penalty : *Held*, that, as the presumption alone would not justify fixing the accused with more than the knowledge that the goods recovered from him had been obtained by dacoity, the sentence was excessive. *Azimuddin Sardar v. Emperor.*

22 Cr. L. J. 60 :
59 I. C. 204 : 32 C. L. J. 89 :
A. I. R. 1920 Cal. 698 (b).

———S. 114—Retracted confession—*Approver, statement of—Confession, retracted, whether amounts to corroboration—Evidence Act (I of 1872), S. 114, Ill. (b).*

The retracted confession of an accused person may be sufficient corroboration of the approver's story as against himself but not against a co-accused. *Pallia v. Emperor.*

20 Cr. L. J. 188 :
49 I. C. 604 : 12 P. W. R. 1919 Cr. :
A. I. R. 1919 Lah. 356.

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———S. 114—Retracted confession.

The evidence of retracted confession of a co-accused is no better than the evidence of a second approver. It is a good corroborative evidence against him but not against a co-accused. *Gehna v. Emperor.*

33 Cr. L. J. 414 :
137 I. C. 95 : 33 P. L. R. 16 :
I. R. 1932 Lah. 294 : A. I. R. 1932 Lah. 180.

———S. 114—Stolen property—Possession not explained—Presumption.

When the unexplained possession of articles is the only circumstance appearing in the evidence against the accused, it is not sufficient to warrant a presumption of complicity in murder. *Jamunia v. Emperor.*

37 Cr. L. J. 1047 :
164 I. C. 964 : 9 R. N. 48 :
I. L. R. 1936 Nag. 78 : A. I. R. 1936 Nag. 200.

———S. 114—Whether introduces element of compulsion.

The proviso (b) to S. 114, Evidence Act, with regard to the evidence of an accomplice introduces no element of compulsion. *Gafoor v. Emperor.*

37 Cr. L. J. 992 :
164 I. C. 677 : 9 R. Rang. 125 :
A. I. R. 1936 Rang. 373.

———S. 114—Knowledge of unknown circumstances relating to crime—Inference of guilt.

Where an accused charged of murder points out unknown matters relating to the crime, such as the bodily remains and certain articles of the deceased, one may presume under the Evidence Act, S. 114, that he is connected with the crime unless he can give some satisfactory explanation as to how he came by that knowledge. *Gurdil Singh v. Emperor.*

26 Cr. L. J. 342 :
84 I. C. 646 : 5 Lah. 301 :
1 L. C. 134 : A. I. R. 1924 Lah. 559.

———S. 114—Murder and robbery or receiving stolen property—Presumption of graver offence, when can be drawn.

It may be presumed under S. 114, Evidence Act, that the accused was either involved in the murder and robbery or at least received the stolen property knowing it to be the proceeds of the robbery. But when the question arises whether the presumption of the graver offence or of the lesser offence is to be drawn, it is for the prosecution to establish the graver presumption rather than for the graver presumption to be drawn in the absence of an explanation from the accused. *Emperor v. Mayadhar Pothal.*

40 Cr. L. J. 625 :
181 I. C. 1001 : 20 P. L. T. 420 :
5 B. R. 706 : 11 R. P. 653 :
18 Pat. 450 : A. I. R. 1939 Pat. 577.

———S. 114—Objection that person doing official Act had no power—Burden of proof.

When an objection is raised that a particular person who does an official act has no power to do it, it is for that person to prove that he has such power. No mere presumption under S. 114 can dispose of the objection.

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accused joined him in committing the burglary or theft. *Muhammad v. Emperor*.

29 Cr. L. J. 863 :
111 I. C. 447.

—S. 114, III. (b)—*Corroboration—Nature of.*

There is a difference between general and material corroboration of an approver. What is required is material corroboration, and by it is meant the evidence concerning participation of his companion in committing the crime. Being found in the company of the approver shortly after a dacoity, is very strong indication of fellowship in the crime. The evidence of witnesses that they identified such and such accused first at the identification parades and then in Court, is valueless where the prosecution fails to prove conclusively that there was no possibility for the witnesses to have seen the features of the accused before he was placed in the paradas. *Sahai Singh v. Emperor*.

18 Cr. L. J. 852 :
41 I. C. 820 : 21 P. W. R. 1917 Cr. :
A. I. R. 1917 Lah. 311.

—S. 114, III. (b)—*Corroboration—Necessity of.*

Approver—Absence of motive to implicate individual accused, does not make ordinary rule as to necessity of corroboration inapplicable. *Bimal Pershad Jain v. Emperor*.

35 Cr. L. J. 752 :
148 I. C. 745 : 6 R. L. 588 :
A. I. R. 1934 Lah. 583.

—S. 114, III. (b)—*Corroboration—Necessity of—Approver—Conviction based on uncorroborated testimony of approver, legality of—Corroboration required, nature of.*

It is not an inflexible proposition of law that a conviction cannot be based upon the uncorroborated testimony of an accomplice, but it is the usual practice of the Courts to require corroboration of the story of the approver before declaring an accused person to be guilty of a crime. The amount or kind of corroboration required in a particular case must, however, depend upon the peculiar circumstances of that case. *Naraina v. Emperor*.

29 Cr. L. J. 209 :
107 I. C. 97.

—S. 114, III. (b)—*Corroboration—Necessity of—Circumstantial evidence to corroborate, whether sufficient.*

The evidence in corroboration of an approver's evidence need not be direct evidence showing that the accused have committed the crime. It is sufficient if it is merely circumstantial evidence of their connection with the crime. *Lale v. Emperor*.

30 Cr. L. J. 922 :
118 I. C. 423 : 6 O. W. N. 441 :
I. R. 1929 Oudh 439 : A. I. R. 1929 Oudh 321.

—S. 114, III. (b)—*Corroboration—Necessity of.*

Per Courtney Terrel, C. J.—In dealing with the requirement as to corroboration, one is

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ex hypothesi dealing with the case in which the presumption of suspicion attaching to the accomplice's evidence has not been removed. In cases where the Tribunal is satisfied for good reason that the evidence of the accomplice is truthful, the Tribunal is under no obligation to demand corroboration. *Ratan Dhanik v. Emperor*.

30 Cr. L. J. 137 :
113 I. C. 329 : 9 P. L. T. 672 : 8 Pat. 235 :
A. I. R. 1928 Pat. 630.

—S. 114, III. (b)—*Corroboration—Necessity of.*

Motive of approver in confessing to save woman to whom he was attached—Stronger corroboration is needed. *Bimal Pershad Jain v. Emperor*.

35 Cr. L. J. 752 :
148 I. C. 745 : 6 R. L. 588 :
A. I. R. 1934 Lah. 583.

—S. 114, III. (b)—*Corroboration—Necessity of.*

The evidence of an accomplice, however trustworthy it may be, should not be acted upon unless it is corroborated as against the particular accused in material respects. The case of an accused who is convicted upon his own plea and then appears as a witness against his co-accused, comes within the ambit of this rule. *Allisah Rajesah v. Emperor*.

34 Cr. L. J. 136 :
141 I. C. 347 : 34 Bom. L. R. 1453 :
I. R. 1933 Bom. 76 (2) : A. I. R. 1933 Bom. 24.

—S. 114, III. (b)—*Corroboration, what is.*

Evidence of an isolated instance of association by itself is not of much corroborative value. *Ranbir Singh v. Emperor*.

33 Cr. L. J. 242 :
136 I. C. 19 : 33 P. L. R. 241 :
I. R. 1932 Lah. 195 : A. I. R. 1932 Lah. 204.

—S. 114, III. (b)—*Corroboration, what is.*

There is a general consensus of judicial opinion that the corroboration must be with regard to circumstances showing that the particular accused was connected with the crime. *Jai Singh v. Emperor*.

33 Cr. L. J. 287 :
136 I. C. 321 : 8 O. W. N. 1240 :
I. R. 1932 Oudh 113 : A. I. R. 1932 Oudh 11.

—S. 114, III. (b)—*Evidence of accomplice.*

An accomplice is unworthy of credit unless he is corroborated in material particulars. Where there are several accused, the corroboration must go to the guilt of each of the accused separately, and it must be such as to satisfy the Court that the approver has not substituted the name of one or more of the accused for that of some other person who actually took part in committing the offence. The rule with regard to corroboration of the statement of an accomplice is not an absolute one. But it is only in exceptional cases that the corroboration can be dispensed with. A witness who does not carry much weight is

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Harendra Nath Mukerjee v. Chairman, Birnagar Municipality.

2 Cr. L. J. 144 :

1 C. L. J. 15.

———S. 114—Police refusing to refresh memory as to date of arrest—*Inference.*

Where the Assistant Sub-Inspector of Police is asked to remember the date of arrest of the accused, but he refuses to refresh his memory, the Court may draw an inference against him. *Lal Singh v. Emperor.*

37 Cr. L. J. 940 :

164 I. C. 373 : 9 R. L. 111 :

38 P. L. R. 881 : A. I. R. 1936 Lah. 707.

———S. 114—Two further illustrations to Illus. (b), S. 114—*Object of.*

Two further illustrations given to Illus. (b), S. 114, Evidence Act, show circumstances in which the presumption normally to be drawn is capable of being displaced. These illustrations are not exhaustive. They are given by way of guidance only, and in order that a Court may test the facts of a particular case to see whether anything has emerged to show that the evidence of an accomplice need not be corroborated in material particulars. *The King v. Nga Myo.* (F. B.)

39 Cr. L. J. 581 :

175 I. C. 465 : 1938 Rang. 190 :

10 R. Rang. 494 : A. I. R. 1938 Rang. 177.

———S. 114—Woman sleeping in room containing two cots, *presumption—Extent of.*

The illustrations to S. 114, Evidence Act, show the extent to which Court may draw presumptions and clearly S. 114 is no justification for a Court presuming without evidence that because a woman sleeps in a room with two cots, her husband, an inmate of the house, has slept on the other cot on a particular night. *Shewakram Issardass v. Emperor.*

40 Cr. L. J. 661 :

182 I. C. 464 : 12 R. S. 8 :

A. I. R. 1939 Sind 130.

———Ss. 114, 133—*Accomplice—Absence of evidence that the intriguing wife shared with accused's intention to kill her husband—She held not an accomplice.*

The facts that the deceased met his death at the hands of the accused in the presence of the wife of the deceased who was, in all probability, in love with the accused and that she made no attempt at all to prevent the commission of the crime, are quite insufficient, to render her an accomplice whose evidence requires corroboration under the provisions of the Evidence Act. There should be evidence to show that she shared with the accused any intention that the deceased should be killed. *In re : Addanki Venkadu.*

40 Cr. L. J. 606 :

181 I. C. 933 : 1938 M. W. N. 1272 :

49 L. W. 175 : 11 R. M. 883 :

A. I. R. 1939 Mad. 266.

———Ss. 114, 133—*Corroboration, necessity of.*

Under S. 133, Evidence Act, approvers are competent witnesses against the accused persons, and a conviction based on the uncorroborated evidence of an approver would not be illegal "merely" because of want of corroboration. Notwithstanding S. 114 and Illustration

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tion (b), the Courts are not tied down in any technical way ; but it is their duty when deciding (i) whether any corroboration of a particular accomplice is required ; (ii) what amount or kind of corroboration is required, to look at the question as a prudent man, desiring to avoid error and to arrive at the truth, would look at it. Therefore, where the Court, while keeping in view the presumption that an accomplice is unworthy of credit unless he is corroborated in material particulars and after making due allowance for the considerations which render the evidence of an accomplice untrustworthy, nevertheless comes to the conclusion that it is true although uncorroborated and that it establishes the guilt of the accused, it is its duty to convict. *Balmokand v. Emperor.*

16 Cr. L. J. 354 :

28 I. C. 738 : 11 P. W. R. 1915 Cr. :

17 P. R. 1915 Cr. : 246 P. L. R. 1915 :

A. I. R. 1915 Lah. 16.

———Ss. 114, 133—*Corroboration—Sufficiency of.*

The evidence of an accused person's conduct may be used as corroboration of an approver's story. But when the conduct of the accused, though raising a very strong suspicion against him is not inconsistent with his innocence, it must be considered as insufficient corroboration of approver's story and, therefore, not affording a safe basis for conviction. *Chatru Malik v. Emperor.*

29 Cr. L. J. 851 :

111 I. C. 435 : 10 Lah. 265 :

A. J. R. 1928 Lah. 681.

———Ss. 114, 133—*Uncorroborated evidence of accomplice—Conviction on—Legality of.*

In a case of kidnapping followed by murder, the uncorroborated evidence of an accomplice, whose share in the crime was almost as bad as that of any of those who took part in it, was the only evidence against those implicated in the crime : *Held*, that a conviction based on such evidence is not illegal if the Court is satisfied after mature consideration that the accomplice has spoken the truth. *Nga Po Chit v. Emperor.* (F. B.)

12 Cr. L. J. 132 :

9 I. C. 778 : 4 Bur. L. T. 50.

———Ss. 114, 133 — *Uncorroborated testimony of accomplice—Value of—Duty of Court to test.*

Though the terms of S. 133, Evidence Act, suggest that a conviction based upon evidence of the kind above referred to, is to be regarded as exceptional and though according to Illustration (b), S. 114, the Court may presume that an accomplice is unworthy of credit unless he is corroborated in material particulars, the Court must carefully test the truth of the uncorroborated evidence of an accomplice and must search for the motives which have prompted him to say what he said and for the circumstances which led up to his disclosures and that the evidence must be subjected to the most rigid tests in the endeavour to ascertain the true facts. *Nga Po Chit v. Emperor.* (F. B.)

12 Cr. L. J. 132 :

9 I. C. 778 : 4 Bur. L. T. 50.

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not sufficient corroboration of an accomplice.
Sheo Narain Singh v. Emperor.

26 Cr. L. J. 1317 :
89 I. C. 261 : 12 O. L. J. 429 :
A. I. R. 1925 Oudh 715.

———S. 114, III. (b)—*Evidence of accomplice.*

As a general rule, there is a presumption that an accomplice is unworthy of credit, unless he is corroborated in material particulars. The existence of general hostility, general enmity and a desire, however strong, or a motive, however effective, to procure the death of another person may be a piece of circumstantial evidence, but is not corroboration of a statement of participation in a particular crime. Corroboration must point indubitably to the identification of the person charged with the particular act with which the direct evidence connects him.
Kalwa v. Emperor.

27 Cr. L. J. 746 :
95 I. C. 74 : 24 A. L. J. 410 : 48 All. 409 :
A. I. R. 1926 All. 377.

———S. 114, III. (b) — *Evidence of accomplice..*

As a rule, the statement of a co-accused ought not to be relied upon without sufficient corroboration on material points. The evidence of a witness, who retracts his statement in the cross-examination, cannot be safely relied upon against an accused person unless there are very strong reasons for holding that the second statement is absolutely false. The Court cannot rely upon a mere probability in a criminal case. *Shah Alim v. Emperor.*

26 Cr. L. J. 412 :
84 I. C. 1052 : 6 L. L. J. 280 :
A. I. R. 1925 Lah. 44.

———S. 114, III. (b) — *Evidence of accomplice—Corroboration, necessity of.*

The rule requiring independent corroboration in material particulars of the evidence of an accomplice is only a rule of caution, which for a long time, has been adopted as a rule of practice by the Courts in England as well as in India, and is now virtually a rule of law. The reason underlying the rule is that the testimony of an accomplice is regarded as tainted evidence and it is, therefore, considered unsafe to base a conviction on it unless there is independent corroboration forthcoming. On the same principle, corroboration is insisted upon in the case of the evidence of informers. The evidence of an accessory after the event suffers more or less from the same taint as the evidence given by an accomplice. It would be very unsafe to accept the solitary evidence of such a person as proving the guilt of the accused without independent corroboration in material particulars. *Emperor v. Kalloo.*

38 Cr. L. J. 286 :
166 I. C. 667 : 1937 O. L. R. 33 :
9 R. O. 328 : 1937 O. W. N. 104 :
A. I. R. 1937 Oudh 259.

———S. 114, III. (b) — *Evidence of accomplice.*

In dealing with the evidence of an accomplice, the Judge is not bound to rely on such

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statements only as are corroborated by reliable evidence. Once a foundation is established for a belief that such a witness is speaking the truth, because his statement is corroborated by true evidence on material points, the Judge is at liberty to come to a conclusion as to the truth or falsity of other statements not corroborated. *Bhimrao Narsimha Hublikar v. Emperor.*

26 Cr. L. J. 696 :
86 I. C. 72 : 27 Bom. L. R. 120 :
A. I. R. 1925 Bom. 261.

———S. 114, III. (b) — *Evidence of accomplice—Penal Code (Act XLV of 1860), S. 302—Murder—Accomplice, statement of—Corroboration.*

A statement of an accomplice cannot be accepted as proof against an accused person without corroboration in material particulars. In dealing with the evidence of an accomplice it must be remembered that it is easy for a, single-handed murderer or suspect to make up a plausible story implicating another person along with himself in the commission of a crime, especially when that other person is not present when the story is first told. Before the story of an accomplice in a murder case can be safely accepted, his statement with regard to the date and occasion of the death of the deceased must be corroborated. *Feroze Khan v. Emperor.*

26 Cr. L. J. 769 :
86 I. C. 401 : 6 L. L. J. 608 :
A. I. R. 1925 Lah. 268.

———S. 114, III. (b) — *Evidence of accomplice—Penal Code (Act XLV of 1860), S. 396—Dacoity with murder—Approver, statement of—Corroboration.*

Accused were charged with an offence under S. 396, Penal Code, and the principal evidence against them was that of an approver. The latter stated that shortly after the commission of the dacoity, they met a particular person at some distance from the scene of the dacoity, and this part of his story was borne out by the person referred to by him. The accused were arrested only a few hours after the commission of the dacoity travelling in the company of the approver : *Held*, that the evidence of the approver was amply corroborated and the offence had been established against the accused. *Hakim v. Emperor.*

26 Cr. L. J. 343 :
84 I. C. 647 : A. I. R. 1923 Lah. 153.

———S. 114, III. (b) — *Evidence of accomplice.*

Where the bribe-giver does not offer a bribe willingly, but the official concerned makes use of his official position to enforce his illegitimate demand, and the witnesses as to payment of bribe are not striving to save themselves by throwing the blame for the offence upon the bribe-taker : *Held*, that a conviction could be based on the uncorroborated testimony of such witnesses though accomplices. At any rate, they are such witnesses that a much slighter degree of corroboration is needed to establish their credit than would be the case if they were entirely voluntary accomplices in the offence which they

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———S. 114 (e)—*Official Act—Presumption*
 —C. P. C. (Act V of 1908), O. XXI, r. 24 (2)—
Warrant signed by Serishtadar "by order"—
Presumption.

Where a *Serishtadar* signs a warrant "by order" the presumption under S. 114 (c), Evidence Act, is applicable, and he must be held to be the officer appointed by the Court to sign processes as required by Cl. (2) of r. 24 of O. XXI of the C. P. C. *Girdhar Sarkar v. Harish Chandra.* 24 Cr. L. J. 584 : 73 I. C. 328 : 37 C. L. J. 331 : 27 C. W. N. 1042 : A. I. R. 1923 Cal. 584.

———S. 114 (b)—*Evidence of accomplice—Presumption under S. 114 (b)—Court can depart from it under special circumstances—Conviction in such cases is not illegal under S. 133.*

Under S. 114 (b) of the Evidence Act, a Court may presume that an accomplice is unworthy of credit unless he is corroborated in material particulars, and the ordinary rule is to presume that accomplices are unworthy of credit unless corroborated in material particulars. *In re: Surajpal Singh.* 39 Cr. L. J. 818 : 176 I. C. 853 : 11 R. N. 81 : 1938 N. L. J. 185 : I. L. R. 1938 Nag. 516 : A. I. R. 1938 Nag. 328.

———S. 114 (e)—*Official act—Presumption of regularity.*

Where an officer takes action under a particular section, the presumption is that he had full powers to do the same until the contrary is proved by the accused. *Emperor v. Abdul Ghafur.* 30 Cr. L. J. 566 : 116 I. C. 29 : 1929 A. L. J. 28 : I. R. 1929 All. 509 : A. I. R. 1929 All. 68.

———S. 114 (e)—*Presumption—Due promulgation, if can be presumed.*

There is no presumption under S. 114 (e), Evidence Act, that the order was published as required by S. 222, Bengal Municipal Act. The fact that the accused applied for licence to sell meat within the limits of the Municipality in the previous year does not throw the onus upon him to show negatively that there was no promulgation as is required by law. *Khurshid Chik v. Raniganj Municipality.* 139 I. C. 134 : 36 C. W. N. 823 : I. R. 1932 Cal. 558 : A. I. R. 1932 Cal. 833.

———S. 114, Cls. (e) (f)—*Notification under Bengal Embankment Act—Official act—Presumption of regularity—Publication of Notification under S. 6, Bengal Embankment Act—Presumption under S. 114 (e) and (f) if can be relied upon.*

Apart from the difficulty of getting direct proof of local publication of a notification under S. 6, Bengal Embankment Act after an interval of time exceeding 25 years, the Crown can be permitted to rely on the presumption under S. 114, Cls. (e) and (f). *Ramadhikari Singh v. Emperor.* 38 Cr. L. J. 266 : 166 I. C. 699 : 9 R. P. 337 : 3 B. R. 214 : A. I. R. 1937 Pat. 14.

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———S. 114, Ill. (a).

———Interpretation.

———Object.

———Onus of proof.

———Possession of stolen property.

———Presumption.

———Property not proved as stolen.

———Scope.

———S. 114, Ill. (a)—Interpretation.

The expression "soon after" in S. 114, Ill. (a), Evidence Act, would not apply to the case of goods discovered thirteen months after the theft. A person found in possession of stolen goods 2 or 3 years after the theft is not bound to explain his possession thereof. *In re: Jaimullabdin.* 20 Cr. L. J. 819 : 53 I. C. 819 : 26 M. L. T. 389 : 11 L. W. 43 : 38 M. L. J. 489 : A. I. R. 1920 Mad. 1025.

———S. 114, Ill. (a)—Object.

Ill. (a) to S. 114, Evidence Act, is only an example of the manner in which inferences can be drawn from the common course of events, human conduct, etc. *Smith v. Emperor.* 19 Cr. L. J. 189 : 43 I. C. 605 : A. I. R. 1918 Mad. 111.

———S. 114, Ill. (a)—Onus of proof.

S. 114 does not relieve the prosecution of the onus of proving the accused's guilt in respect of a charge under S. 411, Penal Code, the onus is there just as in the case of any other charge, but under certain conditions, a presumption may arise to alleviate it. *Giyan Chandra v. Emperor.* 38 Cr. L. J. 196 : 166 I. C. 363 : 9 R. A. 403 : 1936 A. L. J. 1158 : 1936 A. W. R. 973 : A. I. R. 1937 All. 47.

———S. 114, Ill. (a)—Possession of stolen property—Presumption.

Where stolen property is found in the possession of a person soon after the theft, the Court is under S. 114, Evidence Act, entitled to presume that either that person is himself the thief or he has received the goods knowing them to be stolen, unless he can account for his possession. *Yamin v. Emperor.* 26 Cr. L. J. 145 : 83 I. C. 705 : A. I. R. 1924 All. 701.

———S. 114, Ill. (a)—Possession of stolen property—Time of.

In a case of possession of stolen goods, no fixed time limit can be laid down to determine whether possession is recent or otherwise. Every case must be judged on its own facts. *Emperor v. Ekabbar.* 27 Cr. L. J. 617 : 94 I. C. 361 : A. I. R. 1926 Cal. 925.

———S. 114, Ill. (a)—Presumption—Extent of.

By reason of S. 114, Illus. (a), Evidence Act, the Court is entitled to presume that a person who is found in possession of property which has been stolen is either the receiver or the actual thief. The nature of the presumption which the Court should draw in each individual

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speak to. *Deonandan Pershad Singh v. Emperor*. 3 Cr. L. J. 452:

10 C. W. N. 669 : I. L. R. 33 Cal. 649.

———S. 114, III. (b) — *Evidence of accomplices—Value of.*

As a matter of law, the uncorroborated evidence of an accomplice is sufficient to support a conviction, but as a matter of policy, it is generally unsafe to rely on such evidence alone. *Muhammad Panah v. Emperor*.

35 Cr. L. J. 1170 :

150 I. C. 917 : 7 R. S. 33 :

A. I. R. 1934 Sind 78 (2).

———S. 114, III. (b) — *Evidence of accomplice—Value of.*

Courts must exercise great caution if there are circumstances which indicate inducement or pressure. Inducement by means of promise of pardon is an instance of inducement permitted by law. *Bimal Pershad Jain v. Emperor*.

35 Cr. L. J. 752 :

148 I. C. 745 : 6 R. L. 588 :

A. I. R. 1934 Lah. 583.

———S. 114, III. (b) — *Evidence of accomplice—Value of.*

Evidence of accomplice requires independent corroboration as against each accused. *Emperor v. Shankarshet Ramshet*.

35 Cr. L. J. 317 :

147 I. C. 25 : 35 Bom. L. R. 1040 :

58 Bom. 40 : 6 R. B. 181 :

A. I. R. 1933 Bom. 1182.

———S. 114, III. (b) — *Evidence of accomplice—Value of.*

S. 114 should be read along with S. 130, Evidence Act, in order to determine the manner in which the testimony of an accomplice should be dealt with before basing a conviction on his evidence alone. Though the Evidence Act does not require the Judge to make a presumption of the untrustworthiness of an accomplice's evidence, the proper course for the Court to follow is to make the presumption unless there be special occasion for not doing so. This does not deprive the Court of the right given by the Legislature to exercise its discretion. The previous statements of an accomplice cannot legally amount to corroboration within the meaning of illustration (b) to S. 114 of the Indian Evidence Act. *Muthu Kumarasawmi Pillai v. Emperor*.

13 Cr. L. J. 352 :

14 I. C. 896 : 1912 M. W. N. 549 :

12 M. L. T. 1.

———S. 114, III. (b) — *Evidence of accomplice—Value of.*

There must be corroboration of accomplice's evidence in material particulars. *Jia Singh v. Emperor*.

33 Cr. L. J. 287 :

136 I. C. 321 : 8 O. W. N. 1240 :

I. R. 1932 Oudh 113 :

A. I. R. 1932 Oudh 11.

———S. 114, III. (b) — *Evidence of accomplice—Value of.*

Whatever attenuates the wickedness of the

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accomplice tends at the same time to diminish the presumption that he will not acknowledge and confess it with sincerity and truth. *Muhammad Panah v. Emperor*.

35 Cr. L. J. 1170 :

150 I. C. 917 : 7 R. S. 33 :

A. I. R. 1934 Sind 78 (2).

———S. 114, III. (b) — *Evidence of approver—Approver—Corroboration—Corroboration of approvers inter se—Penal Code (Act XLV of 1860), S. 411, offence under—Corroboration required.*

An approver is unworthy of credit as against each accused unless corroborated in material particulars. One approver cannot corroborate another approver unless there is something on the record to show that they had no chance of collaboration before giving evidence. The evidence that the accused appeared before certain *panchayats* which made certain inquiries into certain thefts or that they received moneys (*bhungas*) promising to restore property cannot be corroborative evidence of an offence under S. 401, Penal Code. The corroborative evidence of witnesses that the assembling of the accused at a particular well was always followed by a theft is not sufficient corroboration where none of the witnesses ever reported to the Police at the time of the occurrence of any one of the thefts that it was preceded by a meeting of the accused at a particular well. *Munshi v. Emperor*. 27 Cr. L. J. 600 :

94 I. C. 264 : 27 P. L. R. 276 :

A. I. R. 1926 Lah. 439.

———S. 114, III. (b) — *Evidence of approver—Corroboration—Necessity of—Conspiracy to murder—Approver—Corroboration.*

The evidence of an approver, if believed, is sufficient foundation whereon to repose a conviction, but in practice the Courts *ex majori cautela* insist upon corroboration of an approver's statement in material particulars. The only corroboration of an approver's statement in a case in which the accused were charged with conspiracy to murder was that shortly after the alleged date of the conspiracy, the accused helped the approver in obtaining murderous weapons: *Held*, that this was sufficient corroboration to satisfy the requirements of the law. *Tota Singh v. Emperor*.

23 Cr. L. J. 734 :

69 I. C. 462.

———S. 114, III. (b) — *Evidence of approver—Corroboration—Necessity of.*

While S. 114, illustration (b), Evidence Act, is not imperative, the Courts *ex majori cautela* insist upon the corroboration of an approver's evidence in material particulars. *Kauromal v. Emperor*. 25 Cr. L. J. 1057 :

81 I. C. 881 : A. I. R. 1925 Sind 105.

———S. 114, III. (b) — *Evidence of approver.*

The corroboration of an approver's story on the question of the identity of the accused persons as participants in the offence requires careful investigation, and the accused must be given the benefit of the doubt if the Court is of opinion that the evidence on the question of identity is not sufficient to exclude a reasonable doubt. *Monohar Mandal v. Emperor*. 31 Cr. L. J. 115 :

126 I. C. 775 : A. I. R. 1930 Cal. 430.

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case depends entirely upon the nature of the evidence adduced. Where a long interval has elapsed before the stolen property has been recovered, it is often unsafe to assume that the possessor was the actual thief. The highest presumption which can be drawn from the possession of stolen property by itself, and in the absence of any other evidence, is presence at the scene of the theft. *Nga Thein Pe v. The King*.

41 Cr. L. J. 44 :
184 I. C. 545 : 12 R. Rang. 155 :
A. I. R. 1939 Rang. 361.

———S. 114, III. (a)—*Presumption—If rebuttable by facts.*

It is clear that under S. 114, Illus. (a), Evidence Act, there is a presumption against a man in possession of recently stolen goods that he knew them to be stolen. But it is not necessary to rely on the presumption if the facts do not warrant it. *Emperor v. Saifal*.

38 Cr. L. J. 1066 :
171 I. C. 342 : 39 P. L. R. 1 :
I. L. R. 1937 Lah. 227 : 10 R. L. 185 :
A. I. R. 1937 Lah. 700.

———S. 114, III. (a)—*Presumption—Nature of.*

A presumption arises against a person who is found in possession of recently stolen property. But the presumption under S. 114, Evidence Act, is only a presumption of fact and is rebuttable. *Emperor v. Pallooram*.

37 Cr. L. J. 1004 :
164 I. C. 111 (1) : 18 N. L. J. 237 :
9 R. N. 22.

———S. 114, III. (a)—*Presumption—Possession of stolen property.*

Where a thief got into a house by house-breaking and the stolen property was found in his possession, he may be presumed not only to have committed the theft but also house-breaking. *Huscin v. Emperor*.

17 Cr. L. J. 32 :
32 I. C. 160 : A. I. R. 1916 L. Bur. 12.

———S. 114, III. (a)—*Presumption—Scope of.*

Though illustration (a) to S. 114, Evidence Act, refers to cases of theft, the provision in question is no more than an illustration and the presumption is not confined to cases of theft but extends to all charges, however penal, including even murder. Consequently, where a person is found to have been in possession of part of property stolen in a dacoity soon after the dacoity, it may be presumed that he was one of the dacoits or that he received the property knowing it to have been stolen at the dacoity. *Ramsarup Singh v. Emperor*.

32 Cr. L. J. 72 :
128 I. C. 121 : 9 Pat. 606 :
11 P. L. T. 867 :
I. R. 1931 Pat. 9 :
A. I. R. 1930 Pat. 513.

———S. 114, III. (a)—*Presumption under—Discretion to draw.*

The presumption that may arise under S. 114

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from recent possession of stolen property is discretionary. *Bhutnath Mondal v. Emperor*.

33 Cr. L. J. 40 :
134 I. C. 1071 : 35 C. W. N. 291 :
I. R. 1932 Cal. 31 (2) :
A. I. R. 1931 Cal. 617.

———S. 114, III. (a)—*Presumption under—Nature of.*

The possession of stolen property would raise not a violent or strong presumption but a probable presumption merely. *Suchit v. Emperor*.

32 Cr. L. J. 614 :
130 I. C. 800 : 12 P. L. T. 350 :
I. R. 1931 Pat. 208 :
A. I. R. 1931 Pat. 85.

———S. 114, III. (a) — *Presumption under—When arises.*

Where an article which was stolen in October was recovered from the possession of the accused in the following May, the Court, under S. 114, is entitled to presume that the accused is either a thief or a retainer of stolen goods knowing them to be stolen unless he can account for his possession of the goods. *Reoti v. Emperor*.

34 Cr. L. J. 1018 :
145 I. C. 609 : 6 R. A. 135 :
1933 A. L. J. 523 :
A. I. R. 1933 All. 461.

———S. 114, III. (a)—*Presumption under—When does not arise.*

Stolen property found in possession of accused after six months—Presumption under S. 114, III. (a) cannot be relied upon. *Jagnarain Tewari v. Emperor*.

36 Cr. L. J. 1466 :
158 I. C. 840 : 8 R. C. 219 :
A. I. R. 1935 Cal. 680.

———S. 114, III. (a) — *Presumption—When arises—Duty of Crown.*

It is, no doubt, true that if all the accused persons were in joint possession of the stolen property, a presumption would arise that all of them were either thieves or receivers of stolen property. But before such presumption could be raised, it is incumbent on the Crown to prove (a) that each one of the accused had either physical or constructive possession of the stolen property or any part of it or (b) that one or more of the accused had possession of the stolen property or any part of it, either physical or constructive, on behalf of themselves and the other co-accused and to their knowledge. *Mataro v. Emperor*.

29 Cr. L. J. 924 :
111 I. C. 732 : 23 S. L. R. 5 :
A. I. R. 1929 Sind 9.

———S. 114, III. (a)—*Presumption — When arises.*

No doubt, possession of stolen *ghce* immediately after the theft raises the presumption of theft against the person in whose possession stolen *ghce* is found. But the law is clear that in order to raise the presumption, the possession of the property must be exclusive as well as recent. Possession implies not

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———S. 114, III. (b)—*Evidence of approvers*
—*Value of.*

A co-accused against whom the charge has been unconditionally withdrawn is a more reliable witness than an accomplice who is examined under conditional pardon. *Sudam Chandra Bag v. Emperor.* 34 Cr. L. J. 675 : 144 I. C. 74 : I. R. 1933 Cal. 494 : A. I. R. 1933 Cal. 148.

———S. 114, III. (b)—*Evidence of approver*
—*Value of.*

Approver's evidence against his co-accused must be independently corroborated. *Ranbir Singh v. Emperor.* 33 Cr. L. J. 242 : 136 I. C. 19 : 33 P. L. R. 241 : I. R. 1932 Lah. 195 : A. I. R. 1932 Lah. 204.

———S. 114, III. (b)—*Evidence of approver*
—*Value of.*

It is not safe to base a conviction on the testimony of an approver unless it is corroborated on vital points. *Jang Singh v. Emperor.* 27 Cr. L. J. 918 : 96 I. C. 262.

———S. 114, III. (b)—*Evidence of spy*
—*Value of.*

Some degree of disfavour does attach to persons playing the role of spy or informer. Their evidence must be carefully scrutinized and the weight to be attached to it must depend upon the character of each individual witness. *Bhuneshwari Pershad v. Emperor.* 32 Cr. L. J. 860 : 132 I. C. 234 : 8 O. W. N. 503 : I. R. 1931 Oudh 250 : A. I. R. 1931 Oudh 172.

———S. 114, III (b)—*Interpretation—'May,' whether it means 'must'.*

The word 'may' in Illus. (b) to S. 114. Evidence Act, does not mean 'must.' *Emperor v. O. A. Mathews.* 31 Cr. L. J. 809 : 125 I. C. 281 : A. I. R. 1929 Cal. 822.

———S. 114, III. (b)—*Offence of dacoity*
—*Corroboration—Nature of.*

Evidence relating to the recovery of alleged stolen articles from the possession of an accused person, which is itself suspicious and unsatisfactory, cannot be treated as corroborating the evidence of an approver involving that accused person in the commission of an offence of dacoity. The house of a person accused of dacoity was searched in his absence and certain stolen articles were alleged to have been recovered. The accused was given no opportunity of checking the result of the search or giving any explanation as to how the articles came into the house. There was no evidence as to where the respective articles were found nor as to who produced them : *Held*, that the evidence as to the search was unsatisfactory and could not be used as corroboration of the approver's statement incriminating the accused. *Saudagar Singh v. Emperor.* 25 Cr. L. J. 495 : 77 I. C. 895 : 5 L. L. J. 572 : A. I. R. 1923 Lah. 683.

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———S. 114, III. (b)—*Retracted confession*
—*Effect of.*

Confessing accused retracting confession and refusing to accept pardon—*Effect of, stated.* *Nga Pohlaing v. Emperor.* 35 Cr. L. J. 39 : 146 I. C. 303 (2) : 6 R. Rang. 89 : A. I. R. 1933 Rang. 320.

———S. 114, III. (b)—*Retracted confession.*

Evidence of an approver is not a good corroboration of a retracted confession. *Indar Dall v. Emperor.* 32 Cr. L. J. 818 : 132 I. C. 185 : I. R. 1931 Lah. 537 : A. I. R. 1931 Lah. 408.

———S. 114, III. (b)—*Retracted confession.*

The Court should not legitimately apply rules of prudence which relate to the sworn testimony of an accomplice or approver to the retracted confession of a confessing prisoner, and by means of the application of these rules impliedly make that retracted confession substantive evidence against the persons accused along with the confessing prisoner. *Baboo Singh v. Emperor.* 37 Cr. L. J. 163 : 159 I. C. 875 : 1936 O. L. R. 5 : 1936 O. W. N. 64 : 8 R. O. 212 : A. I. R. 1936 Oudh 156.

———S. 114, III. (b)—*Scope.*

Effect of Ss. 114, III. (b) and 133, which are to be read together, considered. *Aung Hla v. Emperor.* (S. B.) 33 Cr. L. J. 205 : 135 I. C. 849 : 9 Rang. 404 : I. R. 1932 Rang. 65 : A. I. R. 1931 Rang. 235.

———S. 114, III. (b)—*Scope.*

S. 114, illustration (b), Evidence Act, is meant to embody a rule of practice which deserves all the reverence of law, viz., that no respect ought to be paid to the testimony of an accomplice, unless he is corroborated in some material circumstances, and the corroboration ought to consist of the circumstances that affect the identity of the party accused. Such evidence should not, as a rule, be accepted, except in very exceptional cases. Persons who actually pay bribes or co-operate in such payment or are instrumental in the negotiations for the purpose are accomplices of the person bribed and their testimony should not be accepted without independent corroboration. The evidence of one accomplice is not sufficient corroboration of the evidence of other accomplices, and previous statements made by an accomplice are not such corroboration of his evidence in Court as to satisfy the requirements of the rule requiring an accomplice's evidence to be corroborated. *In re : Vyasa Rao.* 12 Cr. L. J. 150 : 9 I. C. 897 : 1911, 1 M. W. N. 327 : 21 M. L. J. 283 : 10 M. L. T. 84.

———S. 114, III. (b)—*Statement of approver - Confession of co-accused, whether corroboration—Material corroboration, what amounts to.*

The confession of a co-accused does not rank as corroboration of the statement of the approver. Where reasonable proof exists that a sum of money deposited by the accused

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only the physical act of detention but also an intention to possess which is known to civil lawyers as the *animus possidendi*. *Mataro v. Emperor*.

29 Cr. L. J. 924 :
111 I. C. 732 : 23 S. L. R. 5 :
A. I. R. 1929 Sind 9.

———S. 114, III. (a)—*Presumption — When arises.*

Under S. 114, Evidence Act, the Court may, if the circumstances justify it, draw a presumption of guilt against a person who is in possession of stolen property; but the section does not lay down that whenever a person is in possession of stolen goods, a presumption of his guilt automatically arises. The III. (a) itself shows that the presumption will not arise unless the accused is in possession of the goods soon after the theft and unless he is unable to account for his possession. *Giyān Chandra v. Emperor*.

38 Cr. L. J. 196 :
166 I. C. 363 : 1936 A. L. J. 1158 :
1936 A. W. R. 973 :
A. I. R. 1937 All. 47.

———S. 114, III. (a)—*Presumption — When arises.*

When a person is found in possession of stolen articles soon after the theft, the law presumes that such person must either be the thief or the receiver of the stolen goods. The identity of the stolen articles being established, the identity of the thief or the receiver of the stolen goods is presumed to be established. *Hazari v. Emperor*.

31 Cr. L. J. 1210 :
127 I. C. 247 : 7 O. W. N. 527 :
A. I. R. 1930 Oudh 353.

———S. 114, III. (a)—*Presumption — When can arise.*

To justify a presumption of guilt under S. 114, III. (a), Evidence Act, the possession of the accused in respect of property proved to have been stolen must be established. *Gul Shera v. Emperor*.

34 Cr. L. J. 163 :
141 I. C. 537 : I. R. 1933 Sind 58 :
A. I. R. 1932 Sind 180.

———S. 114, III. (a)—*Presumption — When does arise.*

A person found in possession of the stolen property a couple of hours after the commission of a burglary can, therefore, be rightly convicted of an offence under S. 457, Penal Code. *Jai Narain v. Emperor*.

34 Cr. L. J. 649 (1) :
143 I. C. 835 : 10 O. W. N. 47 :
I. R. 1933 Oudh 207 :
A. I. R. 1933 Oudh 117.

———S. 114, III. (a)—*Presumption — When does not arise.*

If a few stolen articles are found in possession of a person under circumstances which may give rise to the probability of his coming by them honestly some

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time after the theft, the presumption does not arise. *Emperor v. Ekabbar*.

27 Cr. L. J. 617 :
94 I. C. 361 : A. I. R. 1926 Cal. 925.

———S. 114, III. (a)—*Presumption — When does not arise.*

If several months have passed, or if the accused is able to give an apparently reasonable explanation of his possession of the stolen property, the presumption will not arise. *Giyān Chandra v. Emperor*.

38 Cr. L. J. 196 :
166 I. C. 363 : 1936 A. L. J. 1158 :
1936 A. W. R. 973 :
A. I. R. 1937 All. 47.

———S. 114, III. (a)—*Presumption, when does not arise.*

Possession of stolen goods several months after the theft and at a place several miles away from the scene of theft, does not raise any presumption that the person in possession is either the thief or a receiver of stolen property. In such a case, there is no onus on the accused to explain how he got the property and the prosecution cannot succeed by proving the defence to be false. *Alia v. Emperor*.

27 Cr. L. J. 112 :
91 I. C. 544 : 1 Lah. Cas. 471 :
A. I. R. 1926 Lah. 272.

———S. 114, III. (a)—*Presumption, when does not arise.*

Possession of stolen property by a person 19 months after the burglary does not raise the presumption that such person is either a thief or a receiver of stolen property knowing it to be stolen. *Nagli v. Emperor*.

27 Cr. L. J. 807 :
95 I. C. 471 : A. I. R. 1926 Lah. 528.

———S. 114, III. (a)—*Presumption when does not arise.*

Possession of stolen property 12 years after the theft, does not raise the presumption that the accused is either the thief or the receiver of stolen property. *Mangal v. Emperor*.

27 Cr. L. J. 986 :
96 I. C. 650.

———S. 114, III. (a)—*Presumption—When does not arise.*

The accused need not prove affirmatively that he came by the goods innocently. It is sufficient if he can give an explanation which may raise doubt in the mind of the Court as to the guilt of the accused. If he gives any explanation which, in the opinion of the Jury, may possibly be true, although they do not necessarily believe it, then the Crown cannot rely upon the presumption and must prove the guilt of the accused. *Hori Ram v. Emperor*.

35 Cr. L. J. 621 :
148 I. C. 141 : 1933 A. L. J. 1534 :
56 All. 250 : 6 R. A. 649 :
A. I. R. 1933 All. 893.

———S. 114, III. (a)—*Presumption under—When does not arise.*

When a stolen animal is found in the possession of a person about nine months after

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with a banker was borrowed by him from a certain person for the purpose of redeeming a mortgage which existed on his land, the story as told, unless proved to be untrue, cannot be said to be material corroboration of the statement of an approver that the accused had got the money as his share of the booty in a dacoity. *Gurdit Singh v. Emperor*.

19 Cr. L. J. 439 (b) :
44 I. C. 967 : 9 P. W. R. 1918 Cr :
52 P. L. R. 1918 : A. I. R. 1918 Lah. 358.

———Ss. 114, III. (b), 133, 30—*Approver, evidence of—Corroboration in material particulars.*

Courts should not ordinarily depart from the well-recognized practice of accepting the evidence of an approver as against an accused person only when it is corroborated in material particulars by other independent evidence. It is the more necessary to follow this rule where the accused belong to a low class and it is a matter of no difficulty for the approver to include the name of any person of that class among the offenders, even though he had no connection with the offence and it might be difficult for him to establish his innocence. In exceptional cases Courts might, for reasons stated, act upon the evidence of an approver as a whole, though uncorroborated in particular details by independent evidence. *Ghulam Rasul v. Emperor*.

17 Cr. L. J. 220 :
34 I. C. 332 : 31 P. W. R. 1916 Cr. :
A. I. R. 1916 Lah. 339.

———S. 144, III. (b)—*Proviso—Scope.*

The qualification to Illus. (b) under S. 114 only points out that in a particular case there may be circumstances; for instance, circumstances showing previous concert among accomplices to be highly improbable, which may lessen the degree of independent corroboration required. But these circumstances themselves have to be proved by independent evidence and it does not make the general rule of caution inapplicable, for without corroboration the risk remains and that is what the Court has to remember. *Bimal Krishna Biswas v. Emperor*.

37 Cr. L. J. 840 :
163 I. C. 566 : 62 Cal. 819 :
39 C. W. N. 761 : 9 R. C. 30.

———S. 114, III. (e)—*Official act—Presumption.*

Although it has to be presumed under S. 114, III. (e), Evidence Act, that every official act is properly performed, yet this presumption is hardly sufficient to satisfy a Court that such precautions have been taken at an identification parade as to render it truly valuable. *Kallu v. Emperor*.

23 Cr. L. J. 449 :
67 I. C. 721 : 4 L. L. J. 448 :
4 U. P. L. R. Lah. 95 : A. I. R. 1922 Lah. 31.

———S. 114, III. (e)—*Official acts—Presumption.*

Documents filed in Court cannot be presumed to be documents referred to in order of sanction by Governor-General in absence of *prima facie* indication that they are annexures to

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order of sanction—Identity must be proved. *Diwan Singh Maftoon v. Emperor*.

36 Cr. L. J. 744 ;
155 I. C. 450 : 7 R. N. 176 :
A. I. R. 1935 Nag. 90.

———S. 114, III. (e)—*Official act—Presumption.*

It may be presumed that the officer issuing the warrant has performed his duty correctly, and until the presumption is displaced, it is not necessary for the officer to give any evidence in the matter. *Vallibhai Ibrahim v. Emperor*.

34 Cr. L. J. 137 (2) :
141 I. C. 346 : 34 Bom. L. R. 1447 :
I. R. 1933 Bom. 74 : A. I. R. 1933 Bom. 79.

———S. 114, III. (e)—*Official act—Presumption of—Legality of.*

An assumption by a Judge that the Officers of the Police Department are naturally depraved is quite unwarranted and even offensive. *Public Prosecutor v. Pallasanapalle Nagaraju*.

32 Cr. L. J. 262 :
129 I. C. 229 : 1930 M. W. N. 350 :
59 M. L. J. 114 : 32 L. W. 285 :
I. R. 1931 Mad. 229 : A. I. R. 1931 Mad. 42.

———S. 114, III. (e)—*Official acts—Presumption of regularity.*

From the presence in the Police party of several senior officers of Police, when the witnesses for search were chosen, it may be concluded, in the absence of any suggestion to the contrary, that the witnesses were properly chosen. *Boon Chin v. Emperor*.

36 Cr. L. J. 1228 :
157 I. C. 798 : 8 R. Rang. 110 :
A. I. R. 1935 Rang. 233.

———S. 114, III. (e)—*Official acts—Presumption of regularity.*

Where a sanction for prosecution by the Chief Secretary to the Government referred to the 'undermentioned persons,' and the names of the persons were shown on the back of the paper: *Held*, that there was a presumption that all official acts were regularly performed and it could not be assumed that the Chief Secretary signed the sanction before the names of the accused persons were written on the paper. *Emperor v. Diwan Chand*.

31 Cr. L. J. 692 :
124 I. C. 347 : A. I. R. 1930 Lah. 81.

———S. 114, III. (e)—*Official act—Presumption of regularity.*

Under S. 114, it may be presumed that a warrant once signed and issued, remains actually in existence until it has been destroyed. *Emperor v. Kalu*.

34 Cr. L. J. 679 (2) :
144 I. C. 67 : I. R. 1933 Lah. 402 :
A. I. R. 1933 Lah. 159.

———S. 114, III. (e)—*Official act—Presumption of regularity—Proof for, when required.*

Ordinarily it may be presumed under S. 114, III. (c), Evidence Act, that a Government Notification purporting to have been published in a *Gazette* of a certain date, was in fact so published; but where the interval between the issue of a notification and action taken

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its loss, it cannot be said that he was in possession of it 'soon after the theft' within the meaning of S. 114. *Suchil Ahir v. Emperor*.

32 Cr. L. J. 614 :
130 I. C. 800 : 12 P. L. T. 350 :
I. R. 1931 Pat. 208 :
A. I. R. 1931 Pat. 85.

———S. 114, III. (a)—*Presumption when does not arise.*

Where an accused person produces stolen property from his house, a presumption would arise under S. 114, III. (a), Evidence Act, that the accused was either the thief or had received the goods knowing them to be stolen unless he can account for his possession of the stolen articles. But the mere fact that an accused person points out the place in which stolen property is concealed, does not give rise to any presumption under S. 114, or justify his conviction of the offence of receiving stolen property, still less of the offence of theft or dacoity. *Emperor v. Shivputraya Baslingaya*.

31 Cr. L. J. 1104 :
126 I. C. 876 : 32 Bom. L. R. 574 :
A. I. R. 1930 Bom. 244.

———S. 114, III. (a)—*Presumption when does not arise.*

Where an earthen jar containing stolen *ghee* was found in a Railway waggon in which five Railway porters and a Policeman in charge of the train were travelling, and the only evidence in the case was that the *ghee* had been stolen from the tins of *ghee* loaded in the same train : *Held*, that the five porters could not be convicted of theft on the basis of the presumption arising out of possession of stolen *ghee* as, under the circumstances, possession of the *ghee* could not be imputed to them. *Mataro v. Emperor*.

29 Cr. L. J. 924 :
111 I. C. 732 : 23 S. L. R. 5 :
A. I. R. 1929 Sind 9.

———S. 114, III. (a)—*Presumption, when does not arise.*

Where more than six months after the dacoity some ornaments (consisting of a pair of bangles, a frontlet and ear-rings) were found in the possession of the accused : *Held*, that having regard to the nature of the ornaments, which were of common description and were likely to pass from hand to hand, the case was not covered by S. 114, III. (a), Evidence Act, and the accused should not have been called upon to explain their possession. *Sugar Singh v. Emperor*.

4 Cr. L. J. 436 :
3 A. L. J. 808 : 26 A. W. N. 314 :
29 All. 138 : 1 M. L. J. 449.

———S. 114, III. (a)—*Presumption—When does not arise.*

Where the accused is proved to have been in lawful custody of the article as a bailee, unless the prosecution proves that he had knowledge as to its being a stolen article, the guilt cannot be brought home to him. *Emperor v. Paltooram*.

37 Cr. L. J. 1004 :
164 I. C. 111 (1) : 18 N. L. J. 237 :
9 R. N. 22.

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———S. 114, III. (a)—*Property not proved as stolen—Presumption does not arise.*

In a criminal case the onus is on the prosecution to prove beyond reasonable doubt the guilt of the accused and that onus never changes. Before a presumption can arise under III. (a) of S. 114, Evidence Act, it must be proved that the goods found in the possession of the accused have been stolen. No such presumption will arise in a case where it may reasonably be presumed that the property in question is stolen property. *Salva Charan Manna v. Emperor*.

26 Cr. L. J. 1155 :
88 I. C. 515 : 52 Cal. 223 :
A. I. R. 1925 Cal. 666.

———S. 114, III. (a)—*Scope.*

S. 114 does not mean that in the case of recent possession of stolen property, the accused must affirmatively prove that he came by the goods innocently. The section only exempts the Crown from proving the guilt of the accused unless he gives some explanation as to how he came by the goods. *Bhulnath Mondal v. Emperor*.

33 Cr. L. J. 40 :
134 I. C. 1071 : 35 C. W. N. 291 :
I. R. 1932 Cal. 31 (2) : A. I. R. 1931 Cal. 617.

———S. 114, III. (a)—*Scope.*

The illustrations to S. 114, Evidence Act, only exemplify the law as enacted in the section and cannot be taken to restrict the sense of the section. The section itself simply says that the existence of any fact may be presumed which the Court thinks likely to have happened, having regard to the common course of natural events, human conduct, etc. *Chotley Lal v. Emperor*.

26 Cr. L. J. 578 :
85 I. C. 722 : A. I. R. 1925 All. 220.

———S. 114, III. (a)—*Scope.*

The provisions of S. 114, III. (a), do not entitle the Court to presume the knowledge of dacoity or dacoits which is required for a conviction under S. 412. *Istahar Khondkar v. Emperor*.

37 Cr. L. J. 701 :
162 I. C. 927 : 62 Cal. 956 :
39 C. W. N. 620 : 8 R. C. 665 :
A. I. R. 1936 Cal. 796.

———S. 114, III. (b).

———Accomplice.

———Applicability.

———Approver.

———Corroboration.

———Evidence of accomplice.

———Evidence of approver.

———Evidence of spy.

———Offence of dacoity.

———Retracted confession.

———Scope.

———Statement of approver.

———S. 114, III. (b)—*Accomplice—Corroboration.*

For conviction on evidence of an accomplice, corroboration is essential. *Nawab Khan v. Emperor*.

34 Cr. L. J. 476 :
146 I. C. 934 : I. R. 1933 Pat. 187 :
A. I. R. 1933 Pat. 112.

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on it is very short, a Court might require stricter proof that all the formalities requisite to the act of notifying had actually been carried out. *Balkrishana Anant Hirlekar v. Emperor.*

32 Cr. L. J. 572 :
130 I. C. 577 : 33 Bom. L. R. 82 :
55 Bom. 356 : I. R. 1931 Bom. 257 :
A. I. R. 1931 Bom. 132.

———S. 114, III. (e)—*Search warrant under S. 46, Calcutta Police Act—Non-compliance with provisions—Presumption.*

S. 114, III. (c) cannot be relied upon where a search warrant issued under S. 46, Calcutta Police Act, 1866, has not been proved to have been issued after due compliance with S. 46 of that Act. *Walvekar v. Emperor.*

27 Cr. L. J. 920 :
96 I. C. 264 : 30 C. W. N. 713 :
53 Cal. 718 : A. I. R. 1926 Cal. 966.

———S. 114, III. (g)—*Evidence withheld—Effect of.*

If a witness is not called by the prosecution, which it was the duty of the prosecution to call, what happens is at the most that there arises a presumption that if the witness had been called, he would not have supported the prosecution case. Failure to call such a witness is not, however, fatal to the case of the prosecution. Where a Judge left it to the Jury to say for themselves how far the failure of the prosecution to call a witness was so material as to raise in their minds a reasonable doubt as to the prosecution evidence: *Held*, that there was no misdirection. *Krishna Maharana v. Emperor.*

31 Cr. L. J. 306 :
121 I. C. 477 : 9 Pat. 647 :
A. I. R. 1929 Pat. 651.

———S. 114, III. (g)—*Evidence withheld—Presumption.*

Non-production of evidence by party in possession of the same—Inference that such evidence, if produced, will not support such party can be raised. *Deonarain Singh v. Emperor.*

35 Cr. L. J. 693 :
148 I. C. 519 : 15 P. L. T. 647 :
6 R. P. 484 : A. I. R. 1934 Pat. 132.

———S. 114, III. (g)—*Evidence withheld—Presumption—When can be drawn.*

Before the Jury can draw a presumption under S. 114 (g), Evidence Act, they have to be satisfied that the person, who, it is suggested, has been kept back, in fact knew the facts, and was a willing and truthful witness, and, therefore, was willing and able to give relevant evidence at the trial. *Girishchandra Namadas v. Emperor.*

33 Cr. L. J. 135 :
135 I. C. 443 : 58 Cal. 1335 :
I. R. 1932 Cal. 123 :
A. I. R. 1932 Cal. 118.

———S. 114, III. (g)—*Evidence withheld—Presumption, when does not arise.*

Prosecution not calling witnesses mentioned in first information report—No presumption

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under S. 114 necessarily arises. *Girishchandra Namadas v. Emperor.*

33 Cr. L. J. 135 :
135 I. C. 443 : 58 Cal. 1335 :
I. R. 1932 Cal. 123 :
A. I. R. 1932 Cal. 118.

———S. 114, III. (g)—*Evidence withheld—Presumption.*

The ordinary rule of evidence is that every disputed fact must be proved by the best evidence, and the consequential presumption is that the evidence which could be produced, and is not, would not be favourable to the party who withholds it. In the matter of: *Palamadai Muthusami Aiyar Gopala Aiyar.*

158 I. C. 707 :
8 R. S. 54 : A. I. R. 1935 Sind 196.

———S. 114, III. (h)—*Refusal to answer—Presumption.*

Under S. 114, III. (h), if a man refuses to answer a question, which he is not compelled to answer by law, the Court may presume that the answer, if given, would be unfavourable to him. *Sherjang v. Emperor.*

32 Cr. L. J. 684 :
131 I. C. 277 : I. R. 1931 Lah. 405 :
A. I. R. 1931 Lah. 178.

———S. 118.

See also (i) Evidence Act, 1872, S. 21.
(ii) Oaths Act, 1873, Ss. 5, 6,
13.

———S. 118—*Accused—Competency as witness.*

Though an accused person is "competent to testify" within S. 118, such a person is incompetent to be a witness. *Emperor v. Nga Po Min.*

34 Cr. L. J. 121 :
141 I. C. 89 : 10 Rang. 511 :
I. R. 1933 Rang. 14 :
A. I. R. 1932 Rang. 190.

———S. 118—*Child witness—Competency of.*

If the child, though of tender years, is sufficiently intelligent to understand the questions put to him and to give rational answers to those questions, then his capacity to give evidence is on the same footing as that of any other adult. *Tulsi v. Emperor.*

29 Cr. L. J. 767 :
110 I. C. 799 : A. I. R. 1928 Lah. 903.

———S. 118—*Child witness—Competency of.*

If the Court is of opinion that by reason of tender years and defective or immature understanding, the child could not have perceived the particular incident to prove which he is produced as a witness, the Court should not only refrain from administering the oath to him but should also decline to examine him as a witness. *Tulsi v. Emperor.*

29 Cr. L. J. 767 :
110 I. C. 799 : A. I. R. 1928 Lah. 903.

———S. 118—*Child witness—Testing capacity to testify—Necessity of.*

Before a child of tender years is asked any

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————S. 114, III. (b)—*Accomplice—Corroboration, nature of.*

Evidence of corroboration must be independent testimony which affects the accused by connecting or tending to connect him with the crime. *Mohan Lal v. Emperor.*

36 Cr. L. J. 569 :
154 I. C. 812 : 1935 A. L. J. 479 :
1935 A. W. R. 457 : 7 R. A. 801 :
A. I. R. 1935 All. 477.

————S. 114, III. (b)—*Accomplice—Corroboration, necessity of.*

The evidence of accomplices should only be accepted if there is independent testimony of them which affects the accused by connecting or tending to connect them with the crime. The independent evidence need not be direct evidence. *Gorakh Nath v. Emperor.*

36 Cr. L. J. 205 :
152 I. C. 934 : 4 A. W. R. 1288 :
7 R. A. 421 : A. I. R. 1935 All. 86.

————S. 114, III. (b)—*Accomplice—Corroboration required.*

Where the accomplice is coerced to commit an offence, he is not a criminal of the basest kind. The corroboration necessary to establish his credit will be less. *Muhammad Panah v. Emperor.*

35 Cr. L. J. 1170 :
150 I. C. 917 : 7 R. S. 33 :
A. I. R. 1934 Sind 78 (2).

————S. 114, III. (b)—*Accomplice—Corroboration, rule as to.*

When the rule of corroboration is not applied, there should be strong reason for not following it. *Anna Champat Rao Deshmukh v. Emperor.*

38 Cr. L. J. 444 :
167 I. C. 752 : 19 N. L. J. 221 :
9 R. N. 211.

————S. 114, III. (b)—*Accomplice—Corroboration.*

The statement of an accomplice is, of course, subject to suspicion, but in certain cases, it is of great value in evidence. Such a statement, unless supported by reliable evidence of another kind to corroborate it, is not sufficient in itself to form the basis of a conviction. *Mohan Lal v. Emperor.*

36 Cr. L. J. 569 :
154 I. C. 812 : 1935 A. L. J. 479 :
1935 A. W. R. 457 : 7 R. A. 801 :
A. I. R. 1935 All. 477.

————S. 114, III. (b)—*Accomplice's evidence—Corroboration required.*

Accomplice's evidence — Corroboration—Circumstance to furnish corroboration should have criminal significance apart from accomplice's story. *Muhammad Panah v. Emperor.*

35 Cr. L. J. 1170 :
150 I. C. 917 : 7 R. S. 33 :
A. I. R. 1934 Sind 78 (2).

————S. 114, III. (b)—*Accomplice—Evidence of—Value of.*

The Court though it may presume the evidence of accomplices to be unworthy of credit,

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is not compelled to do so. *Hanuman Sahay v. Emperor.*

38 Cr. L. J. 72 :
165 I. C. 564 : 3 B. R. 54 :
9 R. P. 183 : A. I. R. 1936 Pat. 531.

————S. 114, III. (b)—*Accomplice—Meaning of.*

Although a person who assists in the disposal of the body may become liable to punishment under S. 201, Penal Code; this is quite another offence, and helping to dispose of the body of a man who had been murdered without having taken any part in the murder itself, does not make a man an accomplice with regard to the murder. In India, there is no such thing as an accessory after the fact and it is difficult to hold that a man who does not abet a crime can be regarded as an accomplice. *Nga Pauk v. The King.*

39 Cr. L. J. 200 :
172 I. C. 911 : 10 R. Rang. 286 :
A. I. R. 1937 Rang. 513.

————S. 114, III. (b)—*Accomplice—Person making himself agent of prosecution to disclose offence—Whether accomplice—Corroboration, if necessary.*

A person who makes himself an agent for the prosecution with the purpose of disclosing an offence, is a Police spy or decoy and not an accomplice, and, therefore, his evidence though its value would depend upon his character, would not require corroboration. *Govinda v. Emperor.*

38 Cr. L. J. 423 :
167 I. C. 521 : 9 R. N. 193 :
I. L. R. 1937 Nag. 181 : A. I. R. 1936 Nag. 245.

————S. 114, III. (b)—*Accomplice, value of, evidence of.*

The testimony of persons who have been compelled to pay illegal gratification, has much greater probative force than that of ordinary accomplices. *The Deputy Legal Remembrancer v. Upendra Kumar.*

6 Cr. L. J. 434 :
12 C. W. N. 140.

————S. 114, III. (b)—*Accomplice, value of.*

The evidence of an accomplice is not to be completely disregarded merely because the Sessions Judge may have an apprehension that the High Court may take a different view from his. *Mohan Lal v. Emperor.*

36 Cr. L. J. 569 :
154 I. C. 812 : 1935 A. W. R. 457 :
1935 A. L. J. 479 : 7 R. A. 801 :
A. I. R. 1935 All. 477.

————S. 114, III. (b)—*Accomplice, what is—Corroboration.*

A witness who was a consenting party to a crime, though not actually taking part in it, is clearly an accomplice and the evidence of that witness cannot be acted upon unless it is corroborated in material particulars. *Shangara Ram v. Emperor.*

33 Cr. L. J. 935 :
140 I. C. 194 : 33 P. L. R. 691 :
I. R. 1932 Lah. 695 :
A. I. R. 1932 Lah. 557.

————S. 114, III. (b)—*Accomplice, what is.*

Where a person assisted in the removal of blood stains from the ground under compulsion:

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questions bearing on the *res gestæ*, the Court should test his capacity to understand and give rational answers and his capacity to understand the difference between truth and falsehood. The Judge must form his opinion as to the competency of a witness before his actual examination commences. *Shcikh Fakir v. Emperor*.
4 Cr. L. J. 412 :
11 C. W. N. 51.

————S. 118—Child witness—Testing capacity to testify—Necessity of.

Before examining a child of tender years as a witness, a Court should satisfy itself that the child is sufficiently intellectually developed to comprehend what he has seen and to give an intelligent account of it to the Court. *Tulsi v. Emperor*.

29 Cr. L. J. 767 :
110 I. C. 799 : A. I. R. 1928 Lah. 903.

————S. 118—Child witness—Testing capacity to testify—Necessity of.

It would be desirable if the Court, before examining the child as a witness, tests his intellectual capacity by putting a few simple and ordinary questions to him and to record a brief proceeding so that the Appellate Court may feel satisfied as to the capacity of the child to give evidence. *Tulsi v. Emperor*.

29 Cr. L. J. 767 :
110 I. C. 799 : A. I. R. 1928 Lah. 903.

————S. 118—Child witness—Testing capacity to testify—Necessity of.

When a young child is called as a witness, the first step for the Judge or Magistrate to take is to satisfy himself, by questioning the child that the child is a competent witness within the meaning of S. 118, Evidence Act. *Ah Phul v. The King*.

41 Cr. L. J. 129 :
185 I. C. 205 : 1940 Rang. 104 :
12 R. Rang. 185 :
A. I. R. 1939 Rang. 402.

————S. 118—Children's evidence—Mode of testing capacity to testify.

When the evidence of a child of tender years is adduced, the Judicial Officer should, for the sake of precaution, ascertain, as a preliminary measure, by means of a few simple questions, whether the intelligence of the child is such that (whether sworn or not) it is capable of giving testimony which is patent of credit, and it is desirable that something should, at the commencement of the record of the evidence of a witness of this character, be entered to show that such a test has been in fact made, although it is not obligatory under the law to do so. *Panchu Choudhury v. Emperor*.

23 Cr. L. J. 233 :
66 I. C. 73 : 3 P. L. T. 649 :
A. I. R. 1923 Pat. 91.

————S. 118—Scope of.

S. 118, Evidence Act, makes no distinction between witnesses called for the prosecution

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and those called for the defence. *Joseph v. Emperor*.

26 Cr. L. J. 492 :
85 I. C. 236 : 3 Rang. 11 :
3 Bur. L. J. 265 :
A. I. R. 1925 Rang. 122.

————S. 118—Testing capacity to testify—Necessity of.

By S. 118, Evidence Act, the Legislature has not prescribed an inflexible rule of universal application to the effect that before a child of tender years is questioned, the Court must, by preliminary examination, test his capacity to understand and to give rational answers and must form an opinion as to the competency of the witness before the actual examination commences. The mere circumstance, therefore, that a Sessions Judge did not interrogate the witnesses of tender years before their examination began with a view to test their capacity, does not invalidate the trial. *Nafar Sheikh v. Emperor*.

14 Cr. L. J. 485 :
20 I. C. 741 : 18 C. L. J. 582 :
18 C. W. N. 147.

————S. 118—Testing capacity to testify—Who can test.

The question of the capacity of a witness to testify is a question for the Judge himself to decide and not for the Jury, although after he has decided in favour of the competency of a witness, it is for the Jury to determine the amount of credit to be given to the statements made by such witness. *Nafar Sheikh v. Emperor*.

14 Cr. L. J. 485 :
20 I. C. 741 : 18 C. L. J. 582 :
18 C. W. N. 147.

————S. 118—Who may testify—Children's evidence—Oaths Act (X of 1873), Ss. 5, 13—Child witness—Failure to administer oath—Evidence, whether inadmissible—Insanity of accused, plea of—Time.

A child's evidence is not inadmissible merely because no oath was administered to it. Although S. 5, Oaths Act, is imperative, still S. 13 governs cases of this sort. *Golla Chinna Venkadu v. Emperor*.

15 Cr. L. J. 161 :
22 I. C. 737 : A. I. R. 1914 Mad. 293.

————S. 118—Who may testify—Evidence of children, value of.

Young children are dangerous witnesses. Any mistakes or discrepancies in their statements are ascribed to innocence or failure to understand, and undue weight is often given to what is merely a well-taught lesson. Children have good memories and no conscience. They are easily taught stories and live in a world of make-believe so that they often become convinced that they have really seen the imaginary incident which they have been taught to relate. *Manni v. Emperor*.

32 Cr. L. J. 48 :
127 I. C. 878 : 7 O. W. N. 736 :
6 Luck. 210 : I. R. 1930 Oudh 494 :
A. I. R. 1930 Oudh 406.

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Held, that the person could not be regarded as an accomplice. *Ghulam Hussain v. Emperor*.

33 Cr. L. J. 567 :
138 I. C. 223 : 33 P. L. R. 263 :
I. R. 1932 Lah. 429.

———S. 114, III. (b)—*Accomplice, what is.*

Whether a person is or is not an accomplice, depends upon the facts in each particular case considered in connection with the nature of the crime ; and persons to be accomplices must participate in the commission of the same crime as the accused persons in a trial are charged with. *Narain Chandra Biswas v. Emperor*.

37 Cr. L. J. 445 :
161 I. C. 289 : 63 C. L. J. 191 :
8 R. C. 508 : A. I. R. 1936 Cal. 101.

———S. 114, III. (b)—*Accomplice—Who is.*

A wife who knew all about the proposal to murder her husband and was a consenting party, is in the position of an accomplice. *Ali Muhammad v. Emperor*.

36 Cr. L. J. 491 :
154 I. C. 224 : 7 R. L. 529 :
A. I. R. 1934 Lah. 171.

———S. 114, III. (b)—*'Accomplice', who is.*

Eye-witness to murder becoming accessory after commission by disposing of corpse is virtually an accomplice—Evidence of such person needs scrutiny and corroboration in material particulars. *Turab v. Emperor*.

36 Cr. L. J. 166 :
152 I. C. 473 : 7 R. O. 235 :
1934 O. L. R. 875 : 11 O. W. N. 1383 :
A. I. R. 1935 Oudh 1.

———S. 114, III. (b)—*Accomplice, who is.*

Person seeing murder but not giving information—Testimony is not better than that of an accomplice—Truth of his story is not above suspicion. *Sundar Lal v. Emperor*.

35 Cr. L. J. 836 :
148 I. C. 1045 (2) : 6 R. O. 482 :
11 O. W. N. 661 :
A. I. R. 1934 Oudh 315.

———S. 114, III. (b)—*Accomplice—Who is.*

Witnesses who had admittedly witnessed the crime and had assisted in concealing the evidence of that crime or at least had connived at such thing being done and who did not attempt to give any information either to the Police or to any other person to enable the offenders to be brought to justice, are not in a better position than that of accomplices, and it is not safe to accept their testimony unless corroborated by some independent circumstances. *Hayatu v. Emperor*.

31 Cr. L. J. 50 :
120 I. C. 190 : A. I. R. 1929 Lah. 540.

———S. 114, III. (b)—*Applicability.*

S. 114, III. (b), Evidence Act, only applies to the testimony of an accomplice given on oath before the Court, and not to confessions before a Magistrate. *Gangapa Kardepa v. Emperor*.

14 Cr. L. J. 625 :
21 I. C. 673 : 15 Bom. L. R. 975.

———S. 114, III. (b)—*Applicability.*

Where the act of an accomplice imports no

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great moral delinquency, the presumption enacted in III. (b) to S. 114, Evidence Act, does not apply. This is recognized as a consideration controlling or rebutting that presumption in the second explanatory III. (b) to the section. The rule as to corroboration being necessary to accomplice's evidence, is a rule of practice. Even if this rule of practice has not been adhered to by the lower Court, the High Court will not interfere on revision unless the case presents exceptional circumstances. *Emperor v. Isardas*.

13 Cr. L. J. 767 :
17 I. C. 79 : 6 S. L. R. 162.

———S. 114, III. (b)—*Approver—Corroboration—Confession of co-accused subsequently retracted—Whether can be used to corroborate approver.*

An approver can be corroborated by the confession of a person who is being tried jointly with the accused for the same offence implicating both himself and the accused and a confession which is subsequently retracted may equally well be used to corroborate an approver, though it is the duty of the Court to scrutinize such corroboration with very great care. *Nga Hla Maung v. Emperor*.

38 Cr. L. J. 774 :
169 I. C. 425 : 10 R. Rang. 4.
A. I. R. 1937 Rang. 218.

———S. 114, III. (b)—*Approver—Corroboration—Confession of person tried jointly with accused for same offence—Both retracting confessions—Corroboration, if sufficient.*

The evidence of an approver can be corroborated by the confession of a person who is being tried jointly with the accused for the same offence and this principle applies even where both the approver and the confessor subsequently retract their statements. *Nga Tun Shwe v. Emperor*.

38 Cr. L. J. 705 :
169 I. C. 45 : 9 R. Rang. 384 :
A. I. R. 1937 Rang. 116.

———S. 114, III. (b)—*Approver—Corroboration.*

Corroboration on three significant points : *Held*, on evidence it was sufficient. *Sarat Chandra Dhupi v. Emperor*. (S. B.)

35 Cr. L. J. 1335 :
151 I. C. 473 : 7 R. C. 133 :
A. I. R. 1934 Cal. 719.

———S. 114, III. (b)—*Approver—Corroboration—Motive.*

No matter how strong a motive is proved to be, it is unsafe to convict on the evidence of an approver unless there is corroboration. The mere uttering of a threat some months before the murder could not of itself be taken to show that the person uttering the threat was connected with the death. *Kartar Singh v. Emperor*.

37 Cr. L. J. 597 (1) :
162 I. C. 511 : 38 P. L. R. 949 :
17 Lah. 518 : 8 R. L. 916 :
A. I. R. 1936 Lah. 400.

———S. 114, III. (b)—*Approver—Corroboration, nature of.*

In the matter of corroboration of an approver's

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———S. 118—Who may testify.

If the witness is found to be incapable of understanding the obligations of an oath or affirmation, he may be examined without an oath or affirmation, provided he is found to be a competent witness. These facts may be noted, so that the record may show that before taking the statement of a witness of that character, the trial Court had ascertained that the witness was a competent witness under S. 118, Evidence Act, and that the omission to administer an oath or affirmation was due to his want of understanding the obligations of an oath. The ignorance of a child on such a matter as the nature of a solemn affirmation is not necessarily equivalent to an inability to understand ordinary questions and give rational answers. *Hari Ramji Pavar v. Emperor*.

19 Cr. L. J. 593 :
45 I. C. 497 : 20 Bom. L. R. 365 :
A. I. R. 1918 Bom 212.

———S. 118—Who may testify—Infant witness—His competency, if must be tested before his examination.

S. 118, Evidence Act, vests in the Court the discretion to decide whether an infant is or is not disqualified to be a witness by reason of understanding or lack of understanding. This discretion must be exercised in a judicial manner. The proposition that the competency of the witness should be tested before his examination is commenced, is not quite justified by the provisions of S. 118, Evidence Act. *Krishna Kahar v. Emperor*.

41 Cr. L. J. 405 :
187 I. C. 129 : I. L. R. 1939, 2 Cal. 569 :
43 C. W. N. 1117 : 12 R. C. 550 :
A. I. R. 1940 Cal. 182.

———S. 118—Witness—Test of competency.

The only test of competency of a witness is that he should not be prevented from understanding the questions put to him or from giving rational answers to those questions by tender years or other cause. *Ram Jolaha v. Emperor*.

28 Cr. L. J. 541 :
102 I. C. 349 : 8 P. L. T. 594 :
A. I. R. 1927 Pat. 406.

———Ss. 121, 123, 124, 125, 126—Distinction between questions which witness cannot be compelled to answer and those which witness cannot be permitted to answer.

A distinction should be drawn between questions which a witness cannot be compelled to answer and those which he cannot be permitted to answer. The latter class of questions might properly be forbidden but questions of the former class are in no way barred; a witness has merely the right of refusing to answer such questions, without any hostile inference being drawn from his refusal. The most, therefore, that a Magistrate can do, in the case of a witness who is ignorant of his privilege, is to warn him that he need not answer. But if the witness elects to waive his privilege of refusing to answer, his answer is admissible in evidence. *Mahomed Ali v. Emperor*.

12 Cr. L. J. 277 :
10 I. C. 917 : 4 Bur. L. T. 133.

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———S. 122—Communications between husband and wife, admissibility of.

The evidence of the wife of the accused as to certain communications between her and her husband is inadmissible under S. 122, Evidence Act. *Jowala Sahai v. Emperor*.

16 Cr. L. J. 184 :
27 I. C. 664 : 34 P. R. 1914 Cr. :
226 P. L. R. 1915 : A. I. R. 1914 Lah. 569.

———S. 122—Communication during marriage—Communication between husband and wife not to be disclosed without consent of the other party.

Statements alleged by the wife of an accused person to have been made to her in respect of the offence with which he is charged, without the accused or his representative-interest consenting to these statements being disclosed, are inadmissible under S. 122, Evidence Act. *Milkhi v. Emperor*.

14 Cr. L. J. 273 :
19 I. C. 705 : 218 P. L. R. 1913 :
24 P. W. R. 1913 Cr.

———S. 122—Communication during marriage—Consent to give evidence, if can be implied.

Under S. 122, Evidence Act, the consent to the evidence being given cannot be implied. It is incumbent upon the Court to ask the party against whom the evidence is to be given whether he or she would consent to the evidence being given and not to admit it unless such consent is given. *Nga Tin v. Emperor*.

38 Cr. L. J. 1089 :
171 I. C. 529 : 10 R. Rang. 162 :
A. I. R. 1937 Rang. 347.

———S. 122—Communication during marriage—Disclosure by widow after husband's death, whether permissible.

The prohibition enacted by S. 122, Evidence Act, rests on no technicality that can be waived at will but is founded on principle of high import which no Court is entitled to relax. Therefore, where a widow disclosed certain communications which had been made to her by her husband in connection with a murder, immediately before his death, her disclosure was excluded from consideration by the High Court on the ground that not only she could not be compelled to disclose those communications but that she should not have been permitted to disclose the same, for there was no one who did or could consent to the disclosure. *Narab Howladar v. Emperor*.

15 Cr. L. J. 303 :
23 I. C. 511 : 40 Cal. 891.

———S. 122—Communication during marriage—Disclosure not to be permitted except with consent—Consent cannot be implied—Duty of Court, to ask whether consent given or not—Proof of guilt by circumstantial evidence—Nature of evidence required.

Under S. 122, Evidence Act, no communication between husband and wife can be disclosed by the one against the other without consent of the party concerned. The consent cannot be implied. It is incumbent upon the Court to ask the party against whom the evidence is to

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story, it would be impossible to expect and indeed is not required that an accomplice should be confirmed in every detail of the crime. *Dalip Singh v. Emperor*.

35 Cr. L. J. 641 :
148 I. C. 379 : 6 R. L. 547 :
A. I. R. 1933 Lah. 294.

———S. 114, III. (b)—*Approver—Corroboration, necessity of.*

Even in cases where the approver otherwise appears to be a satisfactory witness, it is unsafe to base the conviction solely on his testimony unless his testimony is corroborated by independent evidence in some material particulars. *Ata Muhammad v. Emperor*.

36 Cr. L. J. 1202 :
157 I. C. 626 : 8 R. L. 127 :
37 P. L. R. 271.

———S. 114, III. (b)—*Approver—Corroboration, nature of.*

There should be direct and material corroboration of the statement of an approver who is of very bad character. Where the charge is that the approver and his companions made preparations to commit dacoity and actually assembled together at various places for that purpose, the evidence that he preached sedition and excited the populace to mutiny does, in no way, corroborate his statement, though their doing so was also illegal. Evidence tending to show that the co-accused or some of them were seen in the company of the approver at or in the vicinity of the places at which, he says, dacoities were to be committed, is not sufficient corroboration of his statement. *Waryam Singh v. Emperor*.

32 I. C. 843 : 2 P. W. R. 1916 Cr. :
A. I. R. 1916 Lah. 390.

———S. 184, III. (b)—*Approver—Corroboration.*

Where the prosecution evidence led in to corroborate the approver's testimony is unconvincing and interested, the witnesses being on inimical terms with some of the accused, the required corroboration cannot be said to have been supplied. *Arjan v. Emperor*.

35 Cr. L. J. 583 :
147 I. C. 1231 : 34 P. L. R. 1 :
6 R. L. 492 : A. I. R. 1933 Lah. 102.

———S. 114, III. (b)—*Approver—Evidence, value of.*

Mere irregularities in matters of procedure in recording statements on different dates and at different times cannot take away the value of the evidence of the approvers before the Court when it is found that it is in the main supported by other reliable evidence, documentary and oral. *Jitendra Nath Gupta v. Emperor*. (S. B.)

38 Cr. L. J. 818 :
169 I. C. 977 : 10 R. C. 69 :
A. I. R. 1937 Cal. 99.

———S. 114, III. (b)—*Approver, statement of—Conviction—Approver changing statement—Corroboration for accepting his previous statement as true.*

As the approver is a person who does not scruple to tell different stories on different

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occasions on oath, his statement is not a very strong basis for a conviction though undoubtedly legally it can be such. The approver who has changed his statement, stands in a very much worse position than an ordinary approver. Some very strong corroboration, therefore, would be necessary before it would be safe to accept his previous version as true. In the absence of the test of cross-examination, the confessions of the co-accused cannot be considered to be sufficient corroboration. *Faqir Singh Sudh Singh v. Emperor*.

40 Cr. L. J. 897 :
184 I. C. 219 : 41 P. L. R. 333 :
12 R. L. 183 : A. I. R. 1939 Lah. 429.

———S. 114, III. (b)—*Approver's evidence—Corroboration, what is.*

It cannot be laid down as a matter of law that the evidence of witnesses who support the statement of an approver is not corroborative evidence merely because their evidence was known to the Police before the approver was examined by them. It can, however, be urged in such a case that the approver's evidence should not be believed because he might have been tutored by the Police to make a statement fitting in with the evidence of the other witnesses. *In re: Ibrahim*.

26 Cr. L. J. 1146 :
88 I. C. 458 : 42 C. L. J. 496 :
A. I. R. 1926 Cal. 374.

———S. 114, III. (b)—*Approver's evidence—Corroboration.*

No conviction should be based on the testimony of an approver, unless it is corroborated in material particulars by independent evidence connecting each of the culprits with the commission of the crime. *Mangal Singh v. Emperor*.

35 Cr. L. J. 1046 :
150 I. C. 21 : 36 P. L. R. 121 :
6 R. L. 829 : A. I. R. 1934 Lah. 346.

———S. 114, III. (b)—*Approver's statement—Corroboration, nature of.*

Although a conviction based entirely on the evidence of an approver is not illegal, but to base a conviction on the evidence of the approver, his statement must be corroborated by independent evidence which should extend to the identity of each of the persons charged, and mere confirmation of the general narrative of the crime is insufficient. *Hubba v. Emperor*.

11 Cr. L. J. 71 :
4 I. C. 884 : 12 O. C. 418.

———S. 114, III. (b)—*Corroboration, extent and nature.*

Approver's statement unless corroborated by extensive evidence cannot be basis of conviction. *Nizam Din v. Emperor*.

35 Cr. L. J. 719 :
148 I. C. 8 : 6 R. Pesh. 47 :
A. I. R. 1934 Pesh. 11.

———S. 114, III. (b)—*Corroboration, extent and nature of.*

Corroboration must be as to identity of person accused. *Ambica Charan Roy v. Emperor*.

33 Cr. L. J. 19 :
134 I. C. 1121 : 35 C. W. N. 1270 :
I. R. 1932 Cal. 33 : A. I. R. 1931 Cal. 697.

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be given whether he or she would consent to the evidence being given, and not to admit it unless such consent is given. Where it is sought to prove an offence on circumstantial evidence only, there must be a chain of evidence, or series of established facts, so far complete as to leave no reasonable ground for a conclusion therefrom consistent with the innocence of the accused. *Bishen Das v. Emperor*.

14 Cr. L. J. 316 :
19 I. C. 1004 : 244 P. L. R. 1913 :
27 P. R. 1913 Cr. : 44 P. W. R. 1913 Cr.

—S. 122—*Communication during marriage—Statement, incriminating, made by wife to husband, admissibility of.*

A statement of an incriminating nature made by a wife to her husband can be received in evidence against the former in support of a charge of an offence. *Ishanan v. Emperor*.

25 Cr. L. J. 783 :
81 I. C. 271 : A. I. R. 1923 Lah. 40.

—S. 122—*Communication during marriage—Wife charged with murdering her step-son—Confession made to husband—Husband's evidence inadmissible.*

Where a woman is charged with the murder of her step-son, her husband's evidence, in so far as it relates to the alleged confession by her to him and to the alleged pointing out of the body by her to him alone, is inadmissible in view of S. 122, Evidence Act, and of the interpretation put upon it in *Milkhi v. Emperor*, 19 I. C. 705 ; 14 Cr. L. J. 273 ; 218 P. L. R. 1913. An offence 'against' a person within the meaning of the section is an offence calculated to injure his person or property or reputation—as in cases of defamation—and does not include an offence against a son, though such offence may cause to the father grief of mind. A confession by a woman in Police custody, to which she has been relegated by her own husband and to which she was remanded after the confession was made, is of little value when it is found to have been retracted only five days later before the same Magistrate. *Fatima v. Emperor*.

15 Cr. L. J. 613 :
25 I. C. 525 : 10 P. R. 1914 Cr. :
261 P. L. R. 1914 Cr. : A. I. R. 1914 Lah. 380.

—S. 123.

See also Evidence Act, 1872, S. 162.

—S. 123—*Accidents Register, if privileged document.*

The Accidents Register is not a privileged document and can be sent for, if necessary. *In re : Addagalla Venkanna*.

41 Cr. L. J. 817 :
189 I. C. 816 : 1939 M. W. N. 1128 (2) :
50 L. W. 796 (1) : 13 R. M. 398 :
A. I. R. 1940 Mad. 240.

—S. 123—*Affairs of State—Privilege—Extent of.*

The privilege extends not merely to the actual text of the report but also to the statements of the witnesses which it incorporates. This does not, however, prevent the witnesses themselves being cross-examined under S. 145, Evidence Act, as to whether they had made previous

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statements at variance with the evidence given by them in Court. *Emperor v. Nanda Singh*.

26 Cr. L. J. 1347 :
89 I. C. 387 : 2 O. W. N. 422 :
12 O. L. J. 450 : A. I. R. 1925 Oudh 540.

—S. 123—*Affairs of State—Privilege—Discretion of Head of Department whether can be questioned.*

In the case of a document which is an unpublished official record relating to affairs of State, the Head of the Department has absolute discretion to give or withhold permission for production of the document in evidence, and it is not open to the Court to call for the document in dispute in order to ascertain whether it falls within the description of an unpublished official record relating to affairs of State. *Emperor v. Nanda Singh*.

26 Cr. L. J. 1347 :
89 I. C. 387 : 2 O. W. N. 422 :
12 O. L. J. 450 : A. I. R. 1925 Oudh 540.

—S. 123—*Affairs of State—Privilege.*

Statement of witness that certain papers did not come into existence till a particular date—Knowledge of witness based on entry in Government record—Non-production of record—Claim as to privilege, record being State secret—Statement, held inadmissible. *Jaffarul Hussain v. Emperor*.

33 Cr. L. J. 599 :
138 I. C. 351 : 59 Cal. 1046 :
36 C. W. N. 574 :
I. R. 1932 Cal. 448 :
A. I. R. 1932 Cal. 468.

—S. 123—*Affairs of State—What is.*

Under S. 123, it is only when the document deals with affairs of State that privilege can be rightfully claimed. The diary of a foot constable who was shadowing the movements of a suspect cannot possibly become an affair of the State within the accepted meaning of the words. *Mohan Singh Bath v. Emperor*.

41 Cr. L. J. 667 :
188 I. C. 717 : 13 R. L. 56 :
42 P. L. R. 484 :
A. I. R. 1940 Lah. 142.

—S. 123—*Disclosing name of informer—Legality of.*

The Court should decline to sanction any step which would, in practice, almost necessarily result in the disclosure of the name of the informer, contrary to the provisions of S. 123, Evidence Act. *Bagumal Wadhmal v. Emperor*.

18 Cr. L. J. 70 :
37 I. C. 54 : 10 S. L. R. 134 :
A. I. R. 1917 Sind 43.

—S. 123—*Jail Manual, Para. 900—Report made to Inspector General of Prisons under Para. 900, whether privileged.*

A report submitted to the Inspector General of Prisons under Para. 900, Jail Manual, is an unpublished official record relating to affairs of State within the meaning of S. 123, Evidence

Cr. P. CODE (1898), S. 307

acquittal by a Jury unless the acquittal stood out as patently bad. Where the verdict is patently bad and amazingly perverse, the case calls for interference. *Emperor v. Ramdas*.

33 Cr. L. J. 465 :
137 I. C. 346 : I. R. 1932 Oudh 233.

———S. 307—Interference with verdict—Verdict supported by evidence, effect of.

Where in a trial before the Court of Session, the Judge disagreeing with the verdict of "not guilty" returned by the Jury, referred the case to the High Court under S. 307: *Held*, that as there was evidence on the record which would support the conclusion arrived at by the Jury, though there was evidence also the other way, the verdict of the Jury could not be said to be perverse or erroneous; that on the contrary, it may have been correct so that the accused must be acquitted. *Emperor v. Asgar Mandal*.

20 Cr. L. J. 20 :
48 I. C. 500 : 22 C. W. N. 811 :
A. I. R. 1919 Cal. 1060.

———S. 307—Interference with verdict—Grounds for.

A Court would be slow to interfere with an unanimous verdict of a Jury unless a clear case is made out. *Emperor v. Neamatulla*.

14 Cr. L. J. 556 :
21 I. C. 156 : 17 C. W. N. 1077.

———S. 307—Interference with verdict—Grounds for.

Accused was tried by a Jury upon a charge of theft. He produced no witnesses in defence. The prosecution evidence showed that immediately after the theft he was pursued and was caught red-handed with the stolen property in his possession. The Jury returned a verdict of not guilty: *Held*, that the verdict was perverse, and that the accused should be convicted under S. 380, Penal Code. *In re : Subbiah Thevan*.

21 Cr. L. J. 466 :
56 I. C. 498 : 1 L. W. 561 :
1920 M. W. N. 347 : 39 M. L. J. 65 :
43 Mad. 744 : A. I. R. 1920 Mad. 170.

———S. 307—Interference with verdict—Grounds for.

Admission for improper evidence—Verdict may be set aside by High Court. *Issuf Mahomed v. Emperor*.

32 Cr. L. J. 1077 :
133 I. C. 748 : 55 Bom. 435 :
33 Bom. L. R. 305 : I. R. 1931 Bom. 396 :
A. I. R. 1931 Bom. 311.

———S. 307—Interference with verdict—Grounds for.

Before the High Court can refuse to accept the verdict of the Jury in a reference under S. 307, it must find that the verdict is unreasonable. *Emperor v. Premananda Dutt*.

26 Cr. L. J. 1256 :
88 I. C. 1000 : 29 C. W. N. 738 :
42 C. L. J. 247 : 52 Cal. 987 :
A. I. R. 1925 Cal. 876.

———S. 307—Interference with verdict—Grounds for.

Interference except in cases of flagrant and

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patent miscarriage of justice is not proper. *Emperor v. Bishnu Chandra Das*. (F. B.).

34 Cr. L. J. 918 :
145 I. C. 236 : 37 C. W. N. 1180 :
6 R. C. 81 : A. I. R. 1933 Cal. 665.

———S. 307—Interference with verdict—Grounds for—Charge under S. 304, Indian Penal Code—Conviction under S. 304-A, Indian Penal Code, legality of.

It is only when, as a matter of fact, the High Court is of opinion that the verdict of the Jury is perverse that it is entitled in a reference under S. 307 to place its own opinion on the evidence against the opinion of the Jury. Where an accused person is charged with an offence under S. 307, Penal Code, it is competent to the Sessions Judge, and to the High Court, on a reference under S. 307 to convict the accused of an offence under S. 304-A, Penal Code. *Emperor v. Charles John Walker*.

26 Cr. L. J. 211 :
83 I. C. 995 : 26 Bom. L. R. 610 :
A. I. R. 1924 Bom. 450.

———S. 307—Interference with verdict—Grounds for.

High Court will not interfere unless the Jury has taken perverse view of evidence. *Emperor v. Nashai Sardar*.

33 Cr. L. J. 593 (2) :
138 I. C. 278 : 56 C. L. J. 19 :
I. R. 1932 Cal. 439 :
A. I. R. 1932 Cal. 656.

———S. 307—Interference with verdict—Grounds for.

In a case of murder, the accused was found to have been in recent possession of articles belonging to the deceased, and traces of human blood were found on these articles as also on articles of clothing, one of which was actually being worn by the accused when he was arrested by the Police: *Held*, that the possession was a fact from which the Court might presume not merely theft or receipt of stolen property but the mere aggravated offence connected with theft.

Where in a charge to the Jury there was no guidance on this point and the Jury acquitted the accused: *Held*, that there was a serious omission detracting materially from the value of the verdict and opinion of the Jurors. *Emperor v. Neamatulla*.

14 Cr. L. J. 556 :
21 I. C. 156 : 17 C. W. N. 1077.

———S. 307—Interference with verdict—Grounds for.

In a murder case the confession by the accused regarding administering *dhatara* to deceased was retracted at the trial in the Sessions Court. The Chemical Examiner's report was not satisfactory or sufficient. The Doctor's evidence showed that even though there was some undigested food found in the stomach, no trace of poison was detected either in the stomach or in the food. The High Court held that the verdict of the Jury acquitting the accused was not so perverse or unreasonable as to justify interference. *Emperor v. Ahirunnessa Bibi*.

A. I. R. 1923 Cal. 579.

———S. 307—Interference with verdict—Grounds for.

CR. P. CODE (1898), S. 307

In a reference under S. 307, the High Court will not set aside the verdict of the jury unless it is satisfied that the view of the jury is a bad or impossible view even if it is of opinion that the view of the Sessions Judge is a good and possible view. *Emperor v. Chitrami Lal*.

31 Cr. L. J. 719 :
124 I. C. 661 : 7 O. W. N. 376 :
A. I. R. 1930 Oudh 334.

S. 307—Interference with verdict—

Grounds for.

In a reference under S. 307, High Court will not interfere with the unanimous verdict of the jury unless it is of opinion that it is perverse and unreasonable. The reference will be rejected if the High Court is of opinion that there was evidence upon which the jury might reasonably have come to the conclusion at which they have arrived.

Emperor v. Jogai Kar.

32 Cr. L. J. 452 :
129 I. C. 798 : 57 Cal. 1183 :

I. R. 1931 Cal. 270 :
A. I. R. 1931 Cal. 15.

S. 307—Interference with verdict—

Grounds for—Disagreement.

In a reference under S. 307, the verdict of the jury cannot be regarded as final on all questions of fact whether for or against the accused.

Dattatraya Sadashiv Karve v. Emperor. (F. B.)

41 Cr. L. J. 289 :
186 I. C. 402 : I. L. R. 1940 Nag. 394 :

12 R. N. 204 : A. I. R. 1940 Nag. 17.

S. 307—Interference with verdict—

Grounds for.

In dealing with a case under S. 307, the High Court, which has not had the opportunity to see the witnesses, must act with great caution. In such a case the High Court is not justified in interfering with the verdict of the jury merely because in its opinion the evidence would have warranted a different verdict.

Emperor v. Akbar Molla.

25 Cr. L. J. 773 :
81 I. C. 261 : 38 C. L. J. 379 :

51 Cal. 271 : A. I. R. 1924 Cal. 449.

S. 307—Interference with verdict—

Grounds for.

Interference with verdict of jury—Powers of High Court—English and Indian Law compared—Verdict of jury manifestly wrong and against weight of evidence on record—Interference is proper. *Emperor v. Chhedra*.

34 Cr. L. J. 795 :
144 I. C. 582 : 8 Luck. 439 :

10 O. W. N. 234 : I. R. 1933 Oudh 270 :

A. I. R. 1933 Oudh 181.

S. 307—Interference with verdict—

Grounds for.

Judge should state in the letter of reference offence committed, though mere omission to state it when the Judge's opinion as to offence committed appears from body of latter, is not necessarily a ground for rejection of reference. *Emperor v. Panchanan Sarkar*.

143 I. C. 600 : 37 C. W. N. 341 :
I. R. 1933 Cal. 448 :
A. I. R. 1933 Cal. 404.

CR. P. CODE (1898), S. 307

S. 307—Interference with verdict—

Grounds for.

On a reference under S. 307, the High Court cannot interfere unless satisfied that the verdict of the jury is perverse. The High Court will not interfere with the verdict of a jury merely because on a perusal of the evidence the Judges think that they would have come to a different conclusion from that at which the jury arrived. *Emperor v. Bai Lal*.

33 Cr. L. J. 745 :
139 I. C. 272 : 34 Bom. L. R. 896 :
I. R. 1932 Bom. 490.

S. 307—Interference with verdict—

Grounds for—Reference to High Court—Statement of reasons for verdict by Foreman, effect of—Penal Code, ss. 395, 411, 412.

The accused was tried by a jury in Sessions Court on charges under ss. 395, 411 and 412, Penal Code. The case for the prosecution was that within two days from the commission of a dacoity, five of the articles stolen in the course of the dacoity were found in the possession of the accused. In delivering the verdict of not guilty by the majority of the jury, the Foreman volunteered a statement of their reasons in the following terms:—"On the ground that the accused had no knowledge that the articles were obtained by dacoity." The Sessions Judge, disagreeing with the verdict, made a reference to the High Court under S. 307 on the ground *inter alia* that the statement of the Foreman showed that the majority of the jury had accepted the evidence regarding the *factum* of the dacoity and also the evidence identifying the articles found in the accused's shop with articles stolen by the dacoits.

The High Court can interfere when the verdict is perverse but it ought not to do so unless it is perverse. *Dattatraya Sadashiv Karve v. Emperor* (F. B.)

Ss. 307—Interference with verdict—

Grounds for.

The High Court can interfere when the verdict is perverse but it ought not to do so unless it is perverse. *Dattatraya Sadashiv Karve v. Emperor* (F. B.)

41 Cr. L. J. 289 :
186 I. C. 402 : I. L. R. 1940 Nag. 394 :

12 R. N. 204 : A. I. R. 1941 Nag. 17.

S. 307—Interference with verdict—

Grounds for.

The High Court does not exercise the power vested under S. 307 in setting aside the verdict of the jury, unless it is perverse or patently wrong, and is convinced that in giving effect to the same, it would not meet the ends of justice. *Emperor v. Nibharash Mandal Mohar Mandal*.

174 I. C. 803 : 66 C. L. J. 351 :
10 R. C. 726 : A. I. R. 1938 Cal. 295.

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Aet, and is, therefore, a privileged document.
Emperor v. Nanda Singh.

26 Cr. L. J. 1347 :
89 I. C. 387 : 12 O. L. J. 450 :
2 O. W. N. 422 :
A. I. R. 1925 Oudh 540.

—S. 123—Privilege under S. 123—
Procedure to be followed by Head of Department.

The law requires that before privilege is claimed, the Head of the Department should have the document in front of him, should give his attention to the matter, should weigh carefully whether the privilege should or should not be claimed and unless he is satisfied that affairs of State are concerned, he should not claim privilege for a document or withhold from a Court the means of judging whether a particular witness's statement is true or not true. It is true that the Head of a Department has an absolute privilege on the point, it is for him to decide whether the matter is one in which privilege should be claimed or should not be claimed, but it would be good to follow the practice of the English Law, namely that some indication should be given to the Court as to why privilege is claimed or what affairs of State are involved in the matter. Without such indication, there is always a danger that the Court may draw an adverse inference from the non-production of the document. The Court is entitled according to the circumstances of each particular case to draw an inference adverse to the party claiming the privilege.
Mohan Singh Bath v. Emperor.

41 Cr. L. J. 667 :
188 I. C. 717 : 13 R. L. 56 :
42 P. L. R. 484 :
A. I. R. 1940 Lah. 142.

—Ss. 123, 124—Statements made to forest range officer whether privileged.

Privilege under Ss. 123 and 124, Evidence Act, cannot be claimed in respect of statements recorded in the course of an investigation permitted by law; as for example, by the forest range officer, as they do not relate to any affairs of State nor can they be said to be communications made in official confidence, the disclosure of which would be injurious to public interests.
In re: Kaliyappaudayan.

38 Cr. L. J. 619 :
168 I. C. 867 : 45 L. W. 470 :
1937 M. W. N. 322 :
1937, 1 M. L. J. 613 : 9 R. M. 655 :
A. I. R. 1937 Mad. 492.

—Ss. 123, 124—Statement not reduced to writing made to Police Officer during investigation—Whether can be used at trial for offence not under investigation when it was made.

So far as statements not reduced to writing are concerned, there is no reason why statements made to a Police Officer in the course of an investigation should not, if relevant under the Evidence Act, be used at a trial for an offence not under investigation when they were made, provided that they are not held privileged by the provisions of Ss. 123 and

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124, Evidence Act. *Baij Nath Bhatnagar v. Muhammad Din.*
38 Cr. L. J. 246 :
166 I. C. 501 : 17 Lah. 472 :
38 P. L. R. 1040 : 9 R. L. 389 :
A. I. R. 1936 Lah. 359.

—Ss. 123, 124, 125—Privileged statements.

The statements made by witnesses in the course of a departmental inquiry into the conduct of Police Officers are not privileged under Ss. 123, 124 or 125, Evidence Act, when those witnesses are subsequently examined in a Criminal Court on a charge against the Police Officers of taking illegal gratification and they fall within the ordinary rules of evidence as laid down in Ss. 155 and 162 of the Evidence Act. *Harbaas Sahai v. Emperor.*

13 Cr. L. J. 445 :
15 I. C. 77 : 16 C. W. N. 431.

—Ss. 133, 162—Posting Register, whether State document.

An entry in a Register of Postings showing that certain Customs Preventive Officers were ordered to be at their stations at a particular hour does not refer to matters of State and is not excluded from disclosure under S. 123 or 162, Evidence Act. *Rokun Ali v. Emperor.*

19 Cr. L. J. 524 :
45 I. C. 284 : 22 C. W. N. 451 :
A. I. R. 1918 Cal. 138.

—S. 124.

See also Evidence Act, 1872, S. 123.

—S. 124—Official communication—Privilege.

A statement made by a subordinate officer to his superior officer regarding the apprehension of a certain accused person within the hearing of various people, cannot be withheld from the Court under S. 124, Evidence Act. *Rokun Ali v. Emperor.*

19 Cr. L. J. 524 :
45 I. C. 284 : 22 C. W. N. 451 :
A. I. R. 1918 Cal. 138.

—S. 124—Official report, whether privileged.

Reports by one Government Officer to another written in official confidence are privileged under S. 124, Evidence Act, and are not documents that an outsider has a right to inspect. *Vallabhram Ganpatram v. Emperor.*

27 Cr. L. J. 689 :
94 I. C. 881 : 27 Bom. L. R. 1391 :
A. I. R. 1926 Bom. 122.

—S. 124—Railway Station Master—Whether public officer.

Quaere.—Whether a Railway Station Master is a 'public officer' within the meaning of S. 124' Evidence Act. *Emperor v. Bhagwati Prasad.*

31 Cr. L. J. 479 :
123 I. C. 222 : 6 O. W. N. 937 :
5 Luck. 297 : A. I. R. 1929 Oudh 543.

—S. 124—State document—Rejection by Court.

It is incumbent upon a Court to prevent the disclosure of State documents in proceedings

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———S. 133—*Uncorroborated testimony of approver—Conviction on—Legality of.*

It is not safe to base a conviction upon the evidence of an approver who is deeply interested in putting responsibility for the offence upon shoulders other than his own, unless there is some independent evidence to corroborate his story in material particulars. *Chanan Singh v. Emperor.*

28 Cr. L. J. 193 :
99 I. C. 929 : 9 L. L. J. 610 :
28 P. L. R. 39 : A. I. R. 1927 Lah. 78.

———S. 133—*Uncorroborated testimony of approver—Conviction on—Legality of.*

Uncorroborated testimony of an approver—Conviction is legal. *Nanhak Ahir v. Emperor.*

35 Cr. L. J. 1104 :
150 I. C. 687 : 15 P. L. T. 264 :
13 Pat. 529 : 7 R. P. 12 (2) :
A. I. R. 1934 Pat. 309.

———S. 133—*Uncorroborated testimony of approver—Conviction—Legality of.*

Where there is no material corroboration of the statement of the approver and the statement in itself is not convincing, it is most unsafe to convict the accused on that statement and he should be given the benefit of the doubt. *Gujar Singh v. Emperor.*

36 Cr. L. J. 671 :
155 I. C. 149 : 7 R. L. 643 :
A. I. R. 1934 Lah. 21.

———S. 133.

S. 133, Evidence Act, should be considered along with Illustration (b) to S. 114. Except in circumstances of an especial nature, it is the duty of the Court to raise the presumption that an accomplice's evidence is unworthy of credit as against the accused persons, unless it is corroborated in material particulars and the failure of a Judge to direct the Jury to that effect is an error in law. It will nonetheless be an error in law if the trial was held without a Jury and the Judge or Magistrate misdirected himself on this point and treated an accomplice's evidence like that of any other witness. Any especial circumstances that may justify a disregard of this rule must be especially set out and considered. The corroboration must relate not only to the crime but also to the identity of the prisoner. *Muthukumaraswami Pillai v. Emperor.*

13 Cr. L. J. 352 :
14 I. C. 896 : 1912 M. W. N. 549 :
12 M. L. T. 1.

———Ss. 133, 3, 114, III. (b)—*Accomplice—Evidence of—Corroboration.*

It is not necessary that the story of an accomplice should be corroborated in every detail of the crime, nor is it necessary that the corroborative evidence should itself be enough for conviction; if that were so, the evidence of the accomplice would not be needed at all. When it is established that there are good grounds for believing the accomplice's story by reason of the existence of corroboration on material points implicating any of the accused, the Court can safely come to a conclusion as to the truth of the whole story on uncorroborated

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points so far as they implicate the same accused persons. *Gafoor v. Emperor.*

37 Cr. L. J. 992 :
164 I. C. 677 : 9 R. Rang. 125 :
A. I. R. 1936 Rang. 373.

———Ss. 133, 4, 114, III. (b)—*Evidence of accomplice—Value of.*

S. 133, Evidence Act, is the only absolute rule of law as regards the evidence of accomplices. But there is a rule of guidance to which the Court also should have regard; that rule of guidance is to be found in III. (b) to S. 114, Evidence Act. S. 114 of the Evidence Act enacts a rule of presumption; and read with S. 4 of the Act, it indicates that this is not a hard and fast presumption, incapable of rebuttal, a *praesumptio juris et de jure*. The right to raise this presumption as to an accomplice is sanctioned by the Act; and it would be an error of law to disregard it, what effect is to be given to it must be determined by the circumstances of each case. The evidence of the accomplice requires to be accepted with a great deal of caution and scrutiny, because among other things, he is likely to swear falsely in order to shift the guilt from himself. But this consideration hardly applies to the evidence of one who testifies that he has bribed the accused, for, by his own testimony, so far from shifting the offence from himself, he in fact thereby fastens it upon himself, for it is by making himself out to be a briber that he shows another has been bribed. The corroboration to the evidence of an accomplice, when required, should be such corroboration in material particulars as would induce a prudent man, on the consideration of all the circumstances, to believe that the evidence is true not only as to the narrative of an offence committed but also so far as it affects each person thereby implicated. *Emperor v. Shrinivas Krishna.*

3 Cr. L. J. 33 :
7 Fom. L. R. 969.

———Ss. 133, 114 Illus.—*Evidence of accomplice—Corroboration—Nature of.*

Corroboration means independent testimony. Where it is required, it is necessary because the evidence sought to be corroborated is in some way unreliable. When in the case of an accomplice it is desirable because the accomplice's evidence comes from a tainted source, the nature of the corroboration required is not mere evidence of a tainted kind but fresh evidence of an untainted kind. *Nga Aung Pe v. Emperor.*

38 Cr. L. J. 785 :
169 I. C. 705 : 1937 Rang. 110 :
10 R. Rang. 19 : A. I. R. 1937 Rang. 209.

———Ss. 133, 114 Illus.—*Uncorroborated testimony of accomplice—Value of—Independent testimony, necessity of.*

In the illustrations to S. 114, Evidence Act, it is pointed out that the Court may presume that an accomplice is unworthy of credit unless he is corroborated in material particulars. If special circumstances exist which render it safe in an exceptional case to act upon the uncorroborated testimony of an accomplice and upon that alone, the Court will not merely for

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before it. No sound distinction can be drawn between the duty of the Judge when objection is taken by the responsible officer of the Crown, or by the party, or when, no objection being taken by any one, it becomes apparent to him that a rule of public policy prevents the disclosure of the documents or information sought. *Wamanrao v. Emperor*.

27 Cr. L. J. 707 :
94 I. C. 899 : 22 N. L. R. 34 :
A. I. R. 1926 Nag. 304.

———S. 124—Theft by Railway servant—*Enquiry by Station Master—Statement made to Station Master, whether privileged.*

Where certain Railway servants were charged with theft and the accused called for certain statements made to the Station Master by the prosecution witnesses in a preliminary inquiry conducted by the Station Master and the Divisional Superintendent to whom the Station Master had forwarded the statements, pleaded privilege under S. 124, Evidence Act : *Held*, that the statements were not privileged as they were not made to the Station Master 'in official confidence' within the meaning of S. 124, Evidence Act. If a public officer to whom communications are made in official confidence considers that the public interest would suffer by their disclosure, such communication could not be produced in evidence. But if it is not established that they were made in official confidence, the opinion of the officer before whom they were made is not relevant. *Emperor v. Bhagwati Prasad*.

31 Cr. L. J. 479 :
123 I. C. 222 : 6 O. W. N. 937 :
5 Luck. 297 : A. I. R. 1929 Oudh 543.

———S. 125.

See also Evidence Act, 1872, Ss. 25, 125.

———S. 126.

See also Cr. P. C., 1898, S. 94 (3).

———S. 126—Counsel—Professional obligations of.

It is an error of judgment on the part of a Counsel and against his professional obligation to accept the brief of a case in which he has to appear on behalf of his client as a witness in the case. *Hearsey v. Mrs. Eva Forster*.

15 Cr. L. J. 429 :
24 I. C. 165 : 12 A. L. J. 285 :
A. I. R. 1914 All. 364.

———S. 126—Criminal cases—Professional Communication—Privilege.

In a criminal case even the protection under S. 126 cannot be availed of. *Ganga Ram v. Habib Ullah*.

37 Cr. L. J. 113 :
159 I. C. 524 : 1935 A. L. J. 1176 :
1935 A. W. R. 1152 : 8 R. A. 458 :
A. I. R. 1936 All. 212.

———S. 126—Evidence of Counsel for client, relevancy of.

Where a Counsel in a case offered himself as the principal witness for his client and his evidence was recorded but the Magistrate, while writing judgment, ruled it out as irrelevant : *Held*, that in determining the relevancy

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or irrelevancy of any evidence the Court is precluded from considering matters beyond the purview of the Evidence Act and, therefore the Court below was wrong in ruling out the evidence as inadmissible on the ground of the competency of the Counsel to be a witness in his case, and consequently there was no real trial of the case on the merits : *Held*, further, that this was a fit case for revision. *Hearsey v. Mrs. Eva Forster*.

15 Cr. L. J. 429 :
24 I. C. 165 : 12 A. L. J. 285 :
A. I. R. 1914 All. 364.

———S. 126—Letters written by one accused to other accused in possession of Lawyer not privileged.

Letters written by one accused to another accused alleged to be in possession of latter's Lawyer are not *prima facie* privileged communications by accused to his Lawyer. *Public Prosecutor, Madras v. M. S. Menoki*.

41 Cr. L. J. 186 :
185 I. C. 419 : 50 L. W. 428 :
1939, 2 M. L. J. 634 : 1939 M. W. N. 1127 :
12 R. M. 563 : A. I. R. 1939 Mad. 914.

———S. 126—Professional communication.

A failure on the part of a client to claim privilege when he is under cross-examination, does not amount to "express consent" given by him to his legal advisor to disclose a communication which is otherwise privileged. *Bhagwani Choithram v. Deoram*.

34 Cr. L. J. 562 :
143 I. C. 345 : 27 S. L. R. 72 :
I. R. 1933 Sind 126 : A. I. R. 1933 Sind 47.

———S. 126—Professional communication.

Communications between a prosecutor in a Crown case and his Attorney are not privileged. *Bhagwani Choithram v. Deoram*.

34 Cr. L. J. 562 :
143 I. C. 345 : 27 S. L. R. 72 :
I. R. 1933 Sind 126 : A. I. R. 1933 Sind 47.

———S. 126—Professional communication.

Mukhtear in possession of a draft of incomplete statement—Privilege can be claimed. *Majan Biswas v. Emperor*.

34 Cr. L. J. 622 :
143 I. C. 682 : 37 C. W. N. 68 :
I. R. 1933 Cal. 461 : A. I. R. 1933 Cal. 5.

———S. 126—Professional communication.

Privilege—Plender observing facts in the course of and for the purposes of his employment not bound to disclose them. *Hakam v. Emperor*.

36 Cr. L. J. 31 :
152 I. C. 164 : 7 R. L. 261 :
A. I. R. 1934 Lah. 269.

———S. 126—Professional communication.

The mere presence of the friends of the client having themselves interest in the client, does not destroy the privilege. *Bhagwani Choithram v. Deoram*.

34 Cr. L. J. 562 :
143 I. C. 345 : 27 S. L. R. 72 :
I. R. 1933 Sind 126 :
A. I. R. 1933 Sind 47.

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the reason that the conviction proceeds upon such uncorroborated testimony say that the conviction is illegal. This is the plain meaning of S. 133. *Nga Aung Pe v. Emperor*.

38 Cr. L. J. 785 :

169 I. C. 705 : 1937 Rang. 110 :

10 R. Rang. 19 : A. I. R. 1937 Rang. 209.

———Ss. 133, 114, III. (b)—*Evidence of accomplice*.

S. 133, Evidence Act, lays down the rule of law regarding the testimony of accomplices, and S. 114, III. (b) is merely a guide to assist the Court, though in a vast majority of cases prudence requires that there shall be corroboration. The evidence of one approver cannot be said to corroborate that of another except where both have, at the earliest opportunity, and before there has been any chance of corroboration, deposed to the same acts as having been committed by a particular accused person. A confession made by a co-accused after the whole of the prosecution evidence has been recorded can be used as evidence against the person making it, but cannot be used as against his co-accused either as evidence in itself or as corroboration of the testimony of an accomplice. *Narain Das v. Emperor*.

23 Cr. L. J. 513 :

68 I. C. 113 : 4 L. L. J. 91 :

3 Lah. 144 : 9 P. W. R. 1922 Cr. :

A. I. R. 1922 Lah. 1.

———S. 133, 114, III. (b)—*Evidence of accomplice*.

However convincing the evidence of an accomplice or approver may be of the facts necessary to be proved, it has become a settled course of practice not to convict an accused person on the uncorroborated evidence of an approver, and the corroboration ought to consist in some circumstances that affects the identity of the accused person. The corroboration of the evidence of an accomplice or approver should go to some circumstances, affecting the identity of the accused as participating in the transaction. And such corroboration ought to be that which is derived from unimpeachable or independent evidence, as distinguished from that derived from the earlier statements of the same accomplice or the statements of other accomplices. *Emperor v. Baji Krishna*.

1 Cr. L. J. 568 :

6 Bom. L. R. 481.

———Ss. 133, 114, III. (b)—*Evidence of accomplice*.

There is no rule of law or practice that the self-incriminating portion of the evidence of an accomplice is unworthy of belief unless corroborated. The credibility of a witness who says that he and another joined in committing an offence stands *per se* as far as his self-accusation is concerned on the same footing as that of a witness who says that he alone committed an offence, though in the latter instance, there would be a narrowed basis for cross-examination to test his own self-accusation. *Emperor v. Hanmant Vasudeo Mulgund*.

1 Cr. L. J. 412 :

6 Bom. L. R. 443.

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———Ss. 133, 114, III. (b)—*Evidence of accomplice—Value of Corroboration required, nature of*.

The evidence of an accomplice must be corroborated in some material particulars, not only bearing upon the facts of the crime, but upon the accused's implication in it, and further, evidence of one accomplice is not available as corroboration of another. These rules laid down by English Courts are equally applicable in India. *Nitai Chandra Jana v. Emperor*. (S. B.)

38 Cr. L. J. 852 :

170 I. C. 201 : 10 R. C. 98 :

A. I. R. 1937 Cal. 433.

———Ss. 133, 114, III. (b)—*Evidence of approver—Corroboration of*.

A previous statement of an approver is no corroboration of a later statement by the same approver. There must be a corroborative evidence of the approver when he speaks to the identity of the accused, because while he may speak truly as to the actual factum of the murder, he may speak falsely when he speaks as to the identity of the accused. So that there must be some evidence which associates or tends to associate each individual accused with the crime, or—there must be such evidence as to the identity of the accused, as satisfies the Court that when the approver speaks as to the complicity of this accused and that accused in the offence, he speaks the truth. *Khairo v. Emperor*.

38 Cr. L. J. 995 :

170 I. C. 922 : 10 R. S. 77 :

31 S. L. R. 470 : A. I. R. 1937 Sind 221.

———Ss. 133, 114, III. (b), 157—*Accomplice, testimony of, corroboration of, how far necessary—Corroboration, previous statement, how far amounts to*.

S. 133, Evidence Act, contains the rule of law as regards the value to be attached to the uncorroborated testimony of any accomplice. S. 114, III. (b), is merely a rule of guidance to assist the Court. No hard and fast rule can be laid down as to where and to what extent an "accomplice" must be corroborated. Previous statements of an accomplice may amount to corroboration. *Barkat Ali v. Emperor*.

18 Cr. L. J. 29 :

36 I. C. 861 : 2 P. R. 1917 Cr. :

A. I. R. 1916 Lah. 32.

———Ss. 133, 134—*Conviction on uncorroborated evidence of accomplice, legality of*.

Though in actual practice the uncorroborated testimony of an accomplice will generally be insufficient to bring home an offence to an accused person, there is no rule of law that the uncorroborated testimony of an accomplice is necessarily insufficient to establish a charge against an accused. *Ratan Dhanuk v. Emperor*.

30 Cr. L. J. 137 :

113 I. C. 329 : 9 P. L. T. 672 :

8 Pat. 235 : A. I. R. 1928 Pat. 630.

———Ss. 133, 157—*Accomplice and informer—Difference between*.

To judge whether a witness is an informer or an accomplice, it has to be seen whether

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-----S. 126—Professional communication.

The protection in S. 126 does not refer to the production of documents, as against which the client himself is not protected. *Ganga Ram v. Habib Ullah*.

37 Cr. L. J. 113 :
159 I. C. 524 : 8 R. A. 458 :
1935 A. L. J. 1176 :
1935 A. W. R. 1152 :
A. I. R. 1936 All. 212.

-----S. 126—Professional communication.

When the communication is not made in confidence, then no sort of privilege attaches to it. *Bhagwani Choitaram v. Deoram*.

34 Cr. L. J. 562 :
143 I. C. 345 : 27 S. L. R. 72 :
I. R. 1933 Sind 126 :
A. I. R. 1933 Sind 47.

-----S. 126—Professional communication.

Where there is no allegation that so long as his employment continued, the Pleader observed any fact showing that an offence or fraud had been committed, the offence of fraud, if any, having been committed after his employment ceased, Proviso II of S. 126 does not apply. *Bhagwani Choithram v. Deoram*.

34 Cr. L. J. 562 :
143 I. C. 345 : 27 S. L. R. 72 :
I. R. 1933 Sind 126 :
A. I. R. 1933 Sind 47.

-----Ss. 126, 162—Professional communication.

Omission to comply with formality of getting summons issued for production is only trivial irregularity—Inherent jurisdiction rests on Court to call for production—Denial of *Mukhtiar* to produce, capable of explanation—Production made when finally ordered : *Held*, action against *Mukhtiar* need not be taken. *Ganga Ram v. Habib Ullah*.

37 Cr. L. J. 113 :
159 I. C. 524 : 8 R. A. 458 :
1935 A. L. J. 1176 :
1935 A. W. R. 1152 :
A. I. R. 1936 All. 212.

-----S. 132.

See also (i) Coroner's Act, 1871, S. 19.
(ii) Penal Code, 1860, Ss. 409, 500.

-----S. 132—'Compelled to answer,' meaning of.

The question of compulsion under S. 132, Evidence Act, is one of fact. It does not follow that a witness is compelled to answer every question put to him by Counsel ; but he may be compelled to do so in particular cases, and in such cases, the section would be applicable. On the other hand, compulsion does not involve the necessity of a formal objection to giving the answer and an order made at the time to the witness compelling him to answer. *Emperor v. Banarsi*.

25 Cr. L. J. 477 :
77 I. C. 829 : 22 A. L. J. 144 :
46 All. 254 : A. I. R. 1924 All. 381.

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-----S. 132—Compulsion under—Nature of.

Compulsion referred to in S. 132, Evidence Act, may be express or implied. It is difficult to draw a distinction between compulsion, express and implied. *Ghanshamdas Gianchand v. Nenumal*.

36 Cr. L. J. 78 :
152 I. C. 346 : 7 R. S. 85 :
28 S. L. R. 251 :
A. I. R. 1934 Sind 114.

-----S. 132—Evidence of compulsion.

In Central Provinces where the Judges are permitted to simply make notes of the deposition of a witness, the mere record of a deposition is not by itself a sufficient evidence of the compulsory or voluntary nature of his statement. *Surajmal v. Ramnath*.

28 Cr. L. J. 996 :
105 I. C. 820 : A. I. R. 1928 Nag. 58.

-----S. 132—Object.

The Penal Code contains no exception in favour of statements made in evidence in Court to give them absolute privilege, but there can be no doubt that S. 132, Evidence Act, if it applies, gives complete protection against criminal prosecution. *Rasool Bhai v. The King*.

41 Cr. L. J. 48 :
184 I. C. 566 : 1939 Rang. 479 :
12 R. Rang. 159 : A. I. R. 1939 Rang. 371.

-----S. 132—Privilege of witness.

An answer given by a witness to a question put to him either by the Court or by Counsel on either side falls within the protection afforded by S. 132, Evidence Act, especially when the question is on a point which is relevant to the case. It is not necessary that the witness should have protested against the question. *Chatur Singh v. Emperor*.

21 Cr. L. J. 825 :
58 I. C. 825 : 18 A. L. J. 940 :
2 U. P. L. R. (All.) 355 : 43 All. 92 :
A. I. R. 1921 All. 362.

-----S. 132—Privilege of witness—Claim must be made for.

The protection afforded by S. 132, Evidence Act, must be claimed by a witness before he makes the statement in respect of which a question is subsequently raised. One *S* made a report to the Police that the accused had committed a theft. Upon investigation, the report was found to be false and *S* was prosecuted under S. 182, Penal Code. In that case the accused, as prosecution witness, made a statement that he had not committed the theft and that *S* had made a report against him through enmity as they had had a quarrel about a partition wall. He went on further to explain that he had an intrigue with an aunt of *S* : *Held*, that the accused could not, in respect of the latter statement, claim the benefit of the protection afforded by S. 132, Evidence Act, inasmuch as he should have claimed the protection before he made the statement. *Kallu v. Sital*.

19 Cr. L. J. 231 :
43 I. C. 823 : 16 A. L. J. 201 :
A. I. R. 1918 All. 260.

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the witness entered into the conspiracy for the sole purpose of detecting or betraying it or whether he is a person who concurred fully in the criminal designs of his co-conspirator for a time and joined in the execution of those till either out of fear or for some other reason he turned on his former associates and gave information to the Police. If at the time when he joined the conspiracy he had no intention of bringing his associates to book, but his sole object was to partake in the commission of the crime, he cannot be called an informer but is an accomplice, and his position is not modified simply because later on he turns round and carries information to the Police. *Mangat Rai v. Emperor*.

29 Cr. L. J. 740 :
110 I. C. 676 : 10 L. L. J. 262 :
29 P. L. R. 703 : A. I. R. 1928 Lah. 647.

—S. 134—Accomplice—Truthfulness of evidence—Conviction based on.

Per *Courtney Terrel, C. J.*—In order to ascertain whether the evidence of the accomplice is truthful and, therefore, exempt from the requirements of corroboration, the Tribunal should apply intrinsic as well as extrinsic test, but, if having applied these tests, it comes to the conclusion that the accomplice is a truthful person, the accomplice then becomes an ordinary witness. S. 134, Evidence Act, becomes operative and the Tribunal may proceed to convict upon his evidence alone. *Ralan Dhanuk v. Emperor*.

30 Cr. L. J. 137 :
113 I. C. 329 : 9 P. L. T. 672 :
8 Pat. 235 : A. I. R. 1928 Pat. 630.

—S. 135—Discretion of Court—If should be used in favour of accused.

Order of cross-examination of prosecution witnesses—Court has discretion but it should be exercised in favour of defence. *Moosa Haji Abdul Shakoor v. Emperor*.

34 Cr. L. J. 347 :
142 I. C. 479 : 37 C. W. N. 288 :
I. R. 1933 Cal. 274 : A. I. R. 1933 Cal. 189.

—S. 135—Production and order of examination of witnesses.

In a Sessions trial, the Public Prosecutor declined to treat certain persons who were essentially defence witnesses, as witnesses for the prosecution. On the application of the defence they were then called by the Court, and no question having been put by the Court, were cross-examined first by the prosecution, and next by the defence: *Held*, that the examination in this manner of the witnesses was highly improper. *Gangadhar Goala v. Reed*.

23 Cr. L. J. 41 :
64 I. C. 665 : 25 C. W. N. 609 :
33 C. L. J. 503.

—S. 136.

See also Evidence Act, 1872, S. 157.

—S. 138.

See also Cr. P. C., 1898, Ss. 165, 439.

—S. 138—Cross-examination—What is.

Cross-examination need not be confined to matters raised elsewhere in the evidence. The right of cross-examination given by the Evi-

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dence Act is not fettered by the fact that police papers are in existence but have not been referred to. S. 138 of the Evidence Act gives the defence the right to cross-examine prosecution witnesses at the conclusion of their examination-in-chief and such cross-examination may be on all points and by means of all questions not disallowed by the Evidence Act. Though the defence have the further right to re-call and cross-examine prosecution witnesses after the charge has been framed, they cannot be compelled to so defer all or any of the cross-examination which they are by law entitled to make. To do so is to deprive them of part of the means available for obtaining an order of discharge. *Mahomed Ally v. Emperor*.

12 Cr. L. J. 277 :
10 I. C. 917 : 4 Bur. L. T. 133.

—S. 138—Examination-in-chief, value of, in absence of cross-examination.

S. 138, Evidence Act, merely lays down the order in which witnesses will be examined, cross-examined and re-examined. An examination-in-chief of a witness, without an opportunity being offered to the opposite party to cross-examine, is not legally acceptable. *Moti Singh v. Dhanukdhari Singh*.

24 Cr. L. J. 595 :
73 I. C. 339 : A. I. R. 1923 Pat. 53.

—S. 138—Scope of.

S. 138, Evidence Act, deals not with the rights of the party but only provides the order in which the proceedings are to be conducted. *Emperor v. C. A. Mathews*. 31 Cr. L. J. 809 :
125 I. C. 281 : A. I. R. 1929 Cal. 822.

—S. 143—Leading questions in cross-examination disallowed—Effect of.

The refusal to allow a question to be put in cross-examination merely because it is in the form of a leading question, is illegal. Where that occurs, Counsel should ask for the question and the order disallowing it to be recorded. *Deiya v. Emperor*.

17 Cr. L. J. 500 :
36 I. C. 468 : 9 Bur. L. T. 133 :
A. I. R. 1918 L. Bur. 22.

—S. 143—Right of accused.

When the prosecution fails, on the evidence, to secure a conviction for the crime committed, it is inexpedient, even though it may be lawful to prosecute the accused for a conspiracy, the proof whereof really rests on the establishment of that very crime. It is not by proof of his character but by proof of the facts that a man's guilt is to be established. In the course of cross-examination by the defence for the purpose of eliciting facts in their favour from the prosecution witnesses, though those facts are irrelevant, the defence are entitled in view of the generality of the provisions of S. 143, Evidence Act, to ask leading questions. *Amritlal Hazra v. Emperor*. 16 Cr. L. J. 497 :
29 I. C. 513 : 21 C. L. J. 331 :
19 C. W. N. 676 : 42 Cal. 957 :
A. I. R. 1916 Cal. 188.

—S. 144.

See also Bengal Municipal Act, 1884, S. 45.

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———S. 132—*Privilege of witness—Claim must be made for it.*

Ordinarily it is for the witness to claim protection under S. 132, Evidence, Act at the very time of giving his self-criminating answer and to prove it as a defence to a prosecution for defamation. *Surajmal v. Ramnath.*

28 Cr. L. J. 996 :
105 I. C. 820 : A. I. R. 1928 Nag. 58.

———S. 132—*Privilege of witness—Claim must be made for it.*

The protection given by S. 132 must be claimed directly or indirectly in some way or another where the witness objects to answering any particular question on the ground that a true answer may render him liable to legal consequences and he is then told by the Court to answer, his protection under S. 132 is complete. There can be no further protection given outside S. 132. *Rasool Bhai v. The King.*

41 Cr. L. J. 48 :
184 I. C. 566 : 1939 Rang. 479 :
12 R. Rang. 159 : A. I. R. 1939 Rang. 371.

———S. 132—*Privilege of witness—Defamatory statement by witness—Criminal liability—Tests.*

A witness, who being actuated by malicious motives, makes a voluntary and irrelevant statement not elicited by any question put to him while under examination to injure the reputation of another, commits an offence punishable under S. 500, Penal Code. He cannot claim the privilege allowed to witness by S. 132, Evidence Act. *Surajmal v. Ramnath.*

28 Cr. L. J. 996 :
105 I. C. 820 : A. I. R. 1928 Nag. 58.

———S. 132—*Privilege of witness—How determined.*

The status of the witness and his capacity to realise the risk and take objection to the question at the time of giving the answers and the motive with which he gives his evidence, go a great way to determine his criminal responsibility or otherwise for a statement made by him. *Surajmal v. Ramnath.*

28 Cr. L. J. 996 :
105 I. C. 820 : A. I. R. 1928 Nag. 58.

———S. 132—*Privilege of witness—Penal Code (Act XLV of 1860), S. 500—Defamation—Privilege—Witness, answer given by, to Court, whether privileged.*

An answer given by a witness to the Court, after he has left the witness-box, cannot form the subject of proceedings under S. 500, Penal Code, as such proceedings are prohibited under S. 132, Evidence Act. *Ganga Sahai v. Emperor.*

21 Cr. L. J. 186 :
54 I. C. 890 : 18 A. L. J. 112 :
42 All. 257 : A. I. R. 1920 All. 140.

———S. 132—*Privilege of witness.*

Privilege cannot be claimed by a person accused of defamation unless matter about which he made a statement was relevant to the

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matter in issue and he was compelled to make the statement. *Kashi Ram v. Emperor.*

32 Cr. L. J. 435 :
129 I. C. 707 : 1930 A. L. J. 1121 :
I. R. 1931 All. 195 :
A. I. R. 1930 All. 493.

———S. 132—*Privilege of witness.*

Statement of witness without objecting to answer—Subsequent trial of witness for causing injuries to accused in prior case—Statement can be considered in subsequent trial. *Ram Dayal v. Emperor.*

35 Cr. L. J. 71 :
146 I. C. 438 : 10 O. W. N. 735 :
6 R. O. 109 : A. I. R. 1933 Oudh 370.

———S. 132—*Privilege of witness.*

The accused verified and filed a written statement in a certain suit. Subsequently, in another suit, in which he was the defendant, he gave evidence and was cross-examined with a view to show that certain statements, he had made in the written statement he had verified and filed in the first suit, were false. His pleader objected when the questions were put, but the objection was overruled, and the accused admitted that those statements were false, and on the strength of that admission, he was prosecuted and convicted of perjury : *Held*, that the accused was "compelled to answer" the questions within the meaning of the Proviso to S. 132, Evidence Act, and that the answers could not be proved against him on a charge of having made false statements in the verified written statement filed by him in the first suit, and that the conviction was bad. *Deputy Superintendent v. Promotha Nath.*

11 Cr. L. J. 403 :
6 I. C. 782.

———S. 132—*Protection—When afforded.*

Where the question the answer to which has laid open the witness to a criminal prosecution for defamation had been put by the Court itself, he is entitled to benefit of S. 132. *Jagannath v. Emperor.*

35 Cr. L. J. 1316 :
151 I. C. 435 : 7 R. O. 123 :
1934 O. L. R. 740 : 11 O. W. N. 1075 :
A. I. R. 1934 Oudh 386.

———S. 132—*Scope of—Co-accused in separate case, whether can be called as defence witness.*

Petitioner who was being tried in separate trials for offences under Ss. 3 and 4 of the Public Gambling Act, wished to examine a co-accused in the case under S. 4 as his defence witness in the case under S. 3. The Magistrate refused to permit this : *Held*, that S. 132, Evidence Act, provided sufficient protection for the witness in such a case, and he could not be excused from appearing in the witness-box. *Raja Ram v. Emperor.*

24 Cr. L. J. 633 :
73 I. C. 521 : 5 L. L. J. 429 :
A. I. R. 1924 Lah. 247.

———S. 132—*(Proviso)—Applicability.*

The Proviso to S. 132 of the Evidence Act

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———S. 145.

See also C. P. C., 1908, O. VI, r. 5,
Cr. P. C., 1898, Ss. 154,
162, 172, 360.

———S. 145 — Cross-examination as to statements—Witness making statement to Police—Such witness sought to be contradicted in cross-examination—Statement, if should first be proved.

It is not necessary that the statement made by the witness to the Police must be first proved before he is allowed to be cross-examined upon it in order to contradict him. He may be allowed to be cross-examined in order to avoid delay provided his statement to the Police is proved subsequently. The accused has no right to dictate the order in which the prosecution witnesses shall be examined., *Muhammad Zaman v. Emperor*.

39 Cr. L. J. 627 :
174 I. C. 678 : 10 R. Pesh. 71 :
A. I. R. 1938 Pesh. 18.

———S. 145—F. I. R.—Admission and procedure.

In admitting First Information Reports in evidence, the procedure laid down in S. 145, Evidence Act, must be strictly followed. *Mahla Singh v. Emperor*.

32 Cr. L. J. 522 :
130 I. C. 410 : 32 P. L. R. 259 :
I. R. 1931 Lah. 282 : A. I. R. 1931 Lah. 38.

———S. 145—First Information Report—Use of.

The only use which can be made of a First Information Report is to corroborate or contradict the evidence of the witness who made it, after the preliminaries required by S. 145 have been complied with. It does not form substantive evidence in itself. *Abdul Aziz Musalman v. Emperor*.

35 Cr. L. J. 957 :
149 I. C. 447 : 30 N. L. R. 262 :
6 R. N. 229 : A. I. R. 1934 Nag. 94.

———S. 145—First information, use of.

The first information is a document of great importance and it is, in practice, always and very rightly, produced and proved in criminal trials, but it is not a piece of substantive evidence and it can be used only as a previous statement admissible to corroborate or contradict the author of it. *Aular Singh v. Emperor*.

14 Cr. L. J. 642 :
21 I. C. 882 : 17 C. W. N. 1213.

———S. 145—Police diaries—Use of.

It is only what is written in Police diaries that can be used under S. 145, Evidence Act. *Dharam Singh v. Emperor*.

29 Cr. L. J. 343 :
108 I. C. 162 : A. I. R. 1928 Lah. 507.

———S. 145—Previous statements—Cross-examination.

The proposition that an illiterate person is immune from the processes of law with regard to contradiction by a previous statement, has no authority in law, and would nullify almost completely the provisions of S. 145 if it were so, as the majority of witnesses in criminal cases are illiterate. It makes not the slight

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test difference whether the witness is literate or illiterate; attention can be drawn to any portion of a previous statement by reading the statement to the witness; he does not require to read it himself. *Muzaffar Khan Sikandar Khan v. Emperor*. 40 Cr. L. J. 708 :
182 I. C. 935 : 12 R. L. 80 :
41 P. L. R. 775 : I. L. R. 1939 Lah. 509 :
A. I. R. 1939 Lah. 268.

———S. 145—Previous statements—Cross-examination.

The right procedure, when a prosecution witness is contradicting himself is to ask the Judge to look into the diary and decide whether the accused person should not have a copy of the statement. If such copy be granted, the witness's attention must be called to the same before the investigating officer is called to prove the record made by him. *Kashi Ram v. Emperor*.

29 Cr. L. J. 472 (b) :
109 I. C. 120 : 26 A. L. J. 139 :
A. I. R. 1928 All. 280.

———S. 145—Previous statements—Cross-examination.

There is no duty cast upon the Counsel who wishes to cross-examine a witness by putting to him a previous statement, first, to prove that statement. S. 145, Evidence Act, has to be read with S. 162, Cr. P. C., and quite clearly indicates that the attention of a witness is to be called to the previous statement before the writing can be proved. If the witness admits the previous statement, or explains any discrepancy or contradiction, it obviously makes it unnecessary for the statement thereafter to be proved. On the other hand, if the statement still requires to be proved, that can be done later by calling the person before whom the statement was made. *Muzaffar Khan Sikandar Khan v. Emperor*.

40 Cr. L. J. 708 :
182 I. C. 935 : 41 P. L. R. 775 :
12 R. L. 80 : I. L. R. 1939 Lah. 509 :
A. I. R. 1939 Lah. 268.

———S. 145—Previous statements—Cross-examination.

Where a Judge has not allowed Counsel affectively to cross-examine the witnesses called for the Crown when they had made previous statements which contradicted their statements in the Sessions Court, as (a) their previous statements had not at that stage been proved, and (b) the witnesses were illiterate, there has been a failure of justice in the hearing of the case. The mere fact that the Judge may have taken into consideration any discrepancies which might exist before he wrote his judgment does not cure the failure of justice. *Muzaffar Khan Sikandar Khan v. Emperor*.

40 Cr. L. J. 708 :
182 I. C. 935 : 41 P. L. R. 775 :
12 R. L. 80 : I. L. R. 1939 Lah. 509 :
A. I. R. 1939 Lah. 268.

———S. 145—Previous statements—Cross-examination.

Where the examination of witnesses has been reduced by an investigating officer to writing, it is undesirable to permit the accused's

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does not apply to voluntary statements.
Haidar Ali v. Abru Mia.

2 Cr. L. J. 459 :
2 C. L. J. 105 : 9 C. W. N. 911 :
I. L. R. 32 Cal. 756.

-----S. 132—Proviso, scope of.

Unless a person objects to any question the answer to which is likely to criminate him, he cannot be said to have been compelled to give such answer within the meaning of the Proviso to S. 132, Evidence Act. *Emperor v. Cunna.*

22 Cr. L. J. 68 :
59 I. C. 324 : 22 Bom. L. R. 1247.

-----S. 133.

-----Accomplice.

-----Approver.

-----Conviction on uncorroborated testimony.

-----Corroboration.

-----Corroboration, extent and nature of.

-----Evidence of accomplice.

-----Evidence of approver.

-----Evidence of discharged accomplice.

-----Offer of bribe.

-----Retracted Confession.

-----Scope.

-----Statement of accomplice.

-----Testimony of accomplice.

-----Uncorroborated evidence of accomplice.

-----Uncorroborated testimony of accomplice.

-----Uncorroborated testimony of approver.

-----S. 133.

See also (i) Confession.

(ii) Cr. P. C., 1898, Ss. 172, 337, 338.

(iii) Evidence Act, 1872, Ss. 21, 30, 114, III. (b).

-----S. 133—Accomplice—Corroboration—Several accused—Evidence identifying some—Conviction of others, whether legal.

It is unsafe to convict a person upon the evidence of an accomplice, unless he is corroborated in material particulars, both as to the circumstances of the offence and the identity of the persons whom he implicates. When several persons are indicted and the evidence of the accomplice is confined as to some only and not as to others, the Court, as a general rule, ought to acquit those against whom there is no corroboration. The foremost essential condition about an approver's statement being good evidence is that the approver's statement must be a trustworthy statement. *Lodya Mahar v. Emperor.*

30 Cr. L. J. 331 :
114 I. C. 623 : I. R. 1929 Nag. 95 :
A. I. R. 1929 Nag. 222.

-----S. 133—Accomplice, evidence of.

The evidence of an accomplice is unworthy of credit unless it is corroborated in material particulars. Where there are more than one accused person, there must be corroboration against each of the accused showing his connection with the offence alleged against

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him. The identification of the particular accused by witnesses to whom they were strangers is not valueless. *Nikka v. Emperor.*

17 Cr. L. J. 156 :
33 I. C. 636 : 19 P. W. R. 1916 Cr. :
A. I. R. 1916 Lah. 297.

-----S. 133—Accomplice—Quantum of corroboration.

Where on the one side there are Police Officers acting in conspiracy with one another to demand and receive illegal gratification and are ready to make use of their official position to enforce such demand, the testimony of the accomplices who were victimised by them into offering them illegal gratification and had not willingly done so, would require a much slighter degree of corroboration than would be the case if the accomplices were entirely voluntary accomplices. *C. E. Ring v. Emperor.*

31 Cr. L. J. 65 :
120 I. C. 340 : 31 Bom. L. R. 545 :
53 Bom. 479 : A. I. R. 1929 Bom. 296.

-----S. 133—Accomplice, who is.

Accomplices are those who are in some way or other connected with the offence in question. *Yacoub v. Emperor.*

34 Cr. L. J. 1255 :
146 I. C. 240 : 6 R. Rang. 85 :
A. I. R. 1933 Rang. 199.

-----S. 133—Accomplice, who is.

An accomplice includes one who poses as an accomplice and his evidence requires corroboration. *Ghulam Asphia v. Emperor.*

33 Cr. L. J. 477 :
137 I. C. 497 : I. R. 1932 Cal. 336 :
A. I. R. 1932 Cal. 295.

-----S. 133—Accomplice—Who is.

Mere knowledge that a bribe is to be given does not make the person who has the knowledge a participator in the giving of bribe and hence an accomplice. *C. E. Ring v. Emperor.*

31 Cr. L. J. 65 :
120 I. C. 340 : 31 Bom. L. R. 545 :
53 Bom. 479 : A. I. R. 1929 Bom. 296.

-----S. 133—Accomplice—Who is—Person privy to crime is accomplice.

Where a witness is found, from his own testimony, to be privy to the crime alleged to be committed by the accused, his evidence is no better than that of an accomplice. *Nur Mohd. alias Nura v. Emperor.*

1 L. C. 532 : 6 L. L. J. 529 :
A. I. R. 1925 Lah. 253.

-----S. 133—Accomplice—Who is.

The term accomplice signifies a guilty associate in crime or where the witness sustains such a relation to the criminal act that he could be jointly indicted with the accused. *Emperor v. C. A. Mathews.*

31 Cr. L. J. 809 :
125 I. C. 281 : A. I. R. 1929 Cal. 822.

-----S. 133—Approver—Corroboration—Direction of Court.

Per Macpherson, J.—When a Tribunal is invested by Statute with a discretion without

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Counsel to ask the investigating officer if a certain witness made a particular statement to him, even though the language of S. 155, cl. (3) of the Evidence Act, is wide enough to permit the putting of such questions. In such circumstances, the written record made by the Police Officer is the only proper and right thing to prove to discredit the witness. A copy of a statement made before the Police cannot be used against a witness until he has been confronted with it *Kashi Ram v. Emperor*.

29 Cr. L. J. 472 :
109 I. C. 120 : 26 A. L. J. 139 :
A. I. R. 1928 All. 280.

—S. 145—Previous statement of witness—
Statement, use of, to discredit witness.

A previous statement of a witness made before a Magistrate who first started to try the case, cannot be used to discredit the evidence given by the witness at the eventual trial before another Magistrate, unless the statement has been brought into evidence after cross-examination. *Sawan Singh v. Emperor*.

26 Cr. L. J. 1585 :
90 I. C. 657 : 7 L. L. J. 339 :
A. I. R. 1925 Lah. 499.

—S. 145—Previous statements—Use of.

Absence of evidence susceptible of corroboration recorded under S. 288, Cr. P. C. —Whole statement cannot be put to the Jury. *Manar Ali v. Emperor*.

35 Cr. L. J. 567 :
147 I. C. 1203 : 37 C. W. N. 1066 :
58 C. L. J. 66 : 6 R. C. 411 :
A. I. R. 1934 Cal. 124.

—S. 145—Previous statements—Use of.

Evidentiary value of—Non-compliance with S. 145—Judge is not justified in discrediting testimony of witnesses on the ground of their having made different statements before Police. *Emperor v. Silla*.

35 Cr. L. J. 843 :
148 I. C. 1059 : 6 R. O. 488 :
11 O. W. N. 568 :
A. I. R. 1934 Oudh 229.

—S. 145—Scope.

Although S. 145, Evidence Act, admits of previous statements being referred to for purposes of cross-examination, it does not authorise a Court to treat such statements as evidence against an accused. *Rakhia v. Emperor*.

12 Cr. L. J. 214 :
10 I. C. 119 : 157 P. L. R. 1911 :
56 P. W. R. 1911 Cr.

—S. 145—Scope.

Headman cannot examine witness in inquiry —Statement made to him can be used only under Ss. 145 and 157. *Mi Choke v. Emperor*.

34 Cr. L. J. 781 :
144 I. C. 369 : I. R. 1933 Rang. 105 :
A. I. R. 1933 Rang. 119.

—S. 145—Scope.

S. 145 nowhere lays down that the document which is intended to be used to contradict

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a witness must come from proper or legitimate custody. *Emperor v. Raja Ram*.

34 Cr. L. J. 1162 :
146 I. C. 83 : 16 N. L. J. 198 :
6 R. N. 66 (1) : A. I. R. 1934 Nag. 35.

—S. 145—Uninterpreted deposition—
Use of.

Depositions of witness in a previous case where there was no compliance with the provisions of S. 360, Cr. P. C., can be referred to in a subsequent trial for the purpose of contradiction. *Fazlur Rahman v. Emperor*.

28 Cr. L. J. 772 :
104 I. C. 100 : 6 Pat. 478 :
8 P. L. T. 773 :
A. I. R. 1927 Pat. 315.

—S. 145, if controls S. 155—
Oral statements made to witnesses by others—
Questions to witnesses about those statements—
Admissibility.

S. 145, Evidence Act, speaks only of previous statements in writing and makes no mention of oral statements. It, therefore, cannot control S. 155. Consequently questions proposed to be put to prosecution witnesses about oral statements made to them by other witnesses are legally admissible, although the Court may refuse to place any reliance on them on the ground that they had not been put to these witnesses for explanation. To disallow such questions may, therefore, be prejudicial to the accused. *Muktawundas v. Emperor*.

40 Cr. L. J. 393 :
180 I. C. 602 : 12 R. N. 377 :
1938 N. L. J. 434 :
I. L. R. 1939 Nag. 109 :
A. I. R. 1939 Nag. 13.

—Ss. 145, 154—Evidence of hostile witness—
Value of.

It is open to a Court to grant permission to a party calling a witness to treat the witness as hostile and to cross-examine him if it finds that the witness is equivocating, and a Court of Revision will not ordinarily interfere with the discretion exercised in this matter by the trial Court. The legal result of treating a witness as hostile is not to discredit his evidence *in toto*, and the party calling him is entitled to rely on those portions of his evidence upon which he wishes to rely, and it is for the Court in the particular circumstances of each case to credit or to discredit the different portions of his evidence. *Jhangir Ardesir Cama v. Emperor*.

28 Cr. L. J. 1012 :
106 I. C. 100 : 29 Bom. L. R. 996 :
A. I. R. 1927 Bom. 501.

—Ss. 145, 155—Previous statements—Proper use of.

Previous statements made by a witness containing evidence against the accused, may be admitted for the purpose of impeaching the credit of the witness or contradicting the statements made by him in Court, but they can-

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any indication of the grounds upon which the discretion is to be exercised, it is a mistake for a superior Tribunal to lay down any rules with a view to indicating the particular grooves in which the discretion should run.

Ratan Dhanuk v. Emperor. 30 Cr. L. J. 137 :
113 I. C. 329 : 9 P. L. T. 672 :
8 Pat. 235 : A. I. R. 1928 Pat. 630.

—S. 133—Approver, retracted statement of—Admissibility of.

A retracted statement of an approver is admissible in evidence against an accused person. *Dammur Veerabhadra v. Emperor.*

22 Cr. L. J. 400 :
61 I. C. 528 : 12 L. W. 385 :
A. I. R. 1920 Mad. 741.

—S. 133—Approver.

There is no positive legal bar to taking an approver's evidence as a basis for a conviction but unless some reliable corroboration on a material point were superadded to it, it would, in almost all cases, be unsafe to accept it as conclusive. *Maung Lay v. Emperor.*

25 Cr. L. J. 381 :
77 I. C. 429 : 1 Rang. 609.
A. I. R. 1924 Rang. 173.

—S. 133—Approver whether can corroborate approver.

There is nothing in S. 133, Evidence Act, to suggest that the statement of one approver cannot be regarded as corroborating that made by another approver; if, however, it can be shown that the approvers had ample opportunity of consultation, the corroborative value of their evidence would be greatly diminished. *Darya Singh v. Emperor.*

25 Cr. L. J. 520 :
77 I. C. 984 : A. I. R. 1923 Lah. 666.

—S. 133—Conviction on uncorroborated testimony—Legality of.

Confession of co-accused and testimony of accomplice without other evidence is not sufficient to justify conviction of other accused. *Beni Madho v. Emperor.*

35 Cr. L. J. 273 :
146 I. C. 1064 : 10 O. W. N. 688 :
6 R. O. 209 : A. I. R. 1933 Oudh 355.

—S. 133—Conviction on uncorroborated testimony—Legality of.

It is seldom safe to base a conviction upon a statement of accomplices unless there is independent evidence to corroborate it in material particulars. *Gaya Prasad v. Emperor.*

32 Cr. L. J. 1184 :
134 I. C. 401 : 8 O. W. N. 517 :
6 Luck. 658 : I. R. 1931 Oudh 353.

—S. 133—Conviction on uncorroborated testimony of accomplice—Legality of.

It is open to a Court to act on the uncorroborated testimony of an accomplice when it believes his evidence to be true. Illustration (b) to S. 114, Evidence Act, does not override or render nugatory the express declaration contained in S. 133, which does not require that the evidence of an accomplice must be regarded as unworthy of credit, unless corroborated in material particulars. In cases tried

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by Jury, the Judge should direct the Jury as to the taint attaching to such evidence but should, after administering this caution, leave it to them whether to believe it or not. In cases tried without a Jury, the Judge should direct himself to the above effect. The law does not require that the Court could first make the presumption that an accomplice's testimony is untrue and then find out if there are special circumstances to rebut that presumption. *Muthu Kumar asawmi Pillai v. Emperor.*

13 Cr. L. J. 352 :
14 I. C. 896 : 1912 M. W. N. 549 :
12 M. L. T. 1.

—S. 133—Conviction on uncorroborated testimony—Legality of.

Notwithstanding the provisions of Ss. 30, 114 and 133, Evidence Act, a conviction cannot be based upon the uncorroborated testimony of an approver, however convincing that testimony may be. *Ambica Charan Roy v. Emperor.*

33 Cr. L. J. 19 :
134 I. C. 1121 : 35 C. W. N. 1270 :
I. R. 1932 Cal. 33 : A. I. R. 1931 Cal. 697.

—S. 133—Corroboration—Nature of.

The corroboration must be in material particulars, made by the evidence of one who is not an accomplice or a confessing co-accused. *Daulat v. Emperor.*

31 Cr. L. J. 153 :
120 I. C. 721 : A. I. R. 1930 Nag. 97.

—S. 133—Corroboration—Nature of.

Where the first statement requires corroboration from an independent source, such corroboration should not be sought in the evidence of an accomplice recorded in the Sessions Court. *Ramani Mohan De v. Emperor.*

34 Cr. L. J. 638 :
143 I. C. 797 : I. R. 1933 Cal. 482 :
A. I. R. 1933 Cal. 146.

—S. 133—Corroboration—Nature of.

Where the only evidence against an accused person charged with an offence under S. 395, Penal Code, is that he has produced stolen property out of a place which is not in his possession, that evidence is not sufficient to support a conviction for theft or for receiving stolen property, but it is evidence against the person producing it, and it is material corroboration of an accomplice who has deposed that that person joined him in committing a dacoity or a burglary, or a theft. *Khushal Singh v. Emperor.*

25 Cr. L. J. 234 :
76 I. C. 698 : A. I. R. 1923 Lah. 335.

—S. 133—Corroboration—Nature of.

Where there are several accused and the story of the approver has been confirmed on many points and as regards the identity of several of the accused, it should not be considered necessary that his story should be corroborated as regards the identity of the remaining accused unless there are reasons for believing that the approver has named those other accused on account of personal spite or some other reason. *Daulat v. Emperor.*

31 Cr. L. J. 153 :
120 I. C. 721 : A. I. R. 1930 Nag. 97.

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not be used as substantive evidence against the accused. *Bishen Datt v. Emperor*.

28 Cr. L. J. 965 :
105 I. C. 677 : 21 A. L. J. 954 :
A. I. R. 1927 All. 705.

———Ss. 145, 155—Scope.

Statements under S. 164 and not under S. 288, Cr. P. C. are admissible under Ss. 145, 155, Evidence Act, for contradicting statements subsequently made in Court by persons making those former statements. *Pullo v. Emperor*.

16 Cr. L. J. 132 :
27 I. C. 196 : 1 O. L. J. 753 :
17 O. C. 363.

———Ss. 145, 155 (3)—Previous statements—Cross-examination—Statement made by witness before Police and reduced to writing, whether admissible—Procedure.

A statement made by a witness in a criminal case to the Police which has been taken down in writing is admissible in evidence at the trial under S. 155 (3), Evidence Act, for the purpose of contradicting such witness, provided the provisions of S. 145 are complied with in the matter of putting the specific parts of the statement which are to be relied upon to the witness in his cross-examination. *Thomas James Henry Arnup v. Kedar Nath Ghose*.

27 Cr. L. J. 129 :
91 I. C. 801 : 30 C. W. N. 835 :
A. I. R. 1925 Cal. 1017.

———Ss. 145, 157—First Information Report, evidentiary value of.

The statement of a person recorded by the Police as a First Information Report can be proved only to corroborate that person's evidence in Court under the provisions of S. 157, Evidence Act, or to impeach his credit by cross-examination under S. 145. It cannot be used as substantive evidence against the maker who is subsequently charged with the offence. *Thakar Singh v. Emperor*.

29 Cr. L. J. 277 :
107 I. C. 761.

———S. 146—Impeaching character of witness—Examination of witness—Calling witnesses to prove bad character of other witnesses, legality of.

It is permissible under S. 146, Evidence Act, to cross-examine a witness as to his credit but when questions have been put to him to impeach his credit and he has answered them, the examination of further witnesses to disprove his answers is not allowed. *Maung San Myin v. Emperor*.

31 Cr. L. J. 303 :
121 I. C. 715 : 7 Rang. 771 :
A. I. R. 1930 Rang. 49.

———S. 146—Impeaching character of witness.

It is quite contrary to the Evidence Act, to try to impeach a witness by means of contradictory statements made unless the contradictory statement is put to him in cross-examination. *Maung San Myin v. Emperor*.

31 Cr. L. J. 303 :
121 I. C. 715 : 7 Rang. 771 :
A. I. R. 1930 Rang. 49.

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———S. 148—Discretion — Propriety of allowing a question conveying an imputation thirty years remote in time.

A Magistrate does not exercise his discretion wisely in allowing a question conveying an imputation, thirty years remote in time, against a witness. *Emperor v. Ghulam Mustafa*.

1 Cr. L. J. 190 :
24 A. W. N. 52 :
I. L. R. 26 All. 371.

———S. 148—Questions as to character—Discretion of Court.

Magistrates should confine questions as to character asked in cross-examination to questions which are relevant to the case, and disallow questions which are unnecessary, provocative or merely harassing. *S. Pillay v. G. S. T. Shaik Thumbay Sahib*.

41 Cr. L. J. 790 :
189 I. C. 705 : 13 R. Rang. 60.
A. I. R. 1940 Rang. 113.

———S. 151.

See also Cr. P. C., 1898, S. 526.

———S. 153—Cross-examination to impeach veracity—Rule, importance of.

A witness may be cross-examined with a view to impeaching his veracity or his impartiality. This is regarded as so important that, while with regard to some matters when a witness is cross-examined as to his veracity, the cross-examiner has got to take his answer and is not entitled to rebut them; by exception (1), S. 153, Evidence Act, it is provided that if a witness is asked any question tending to impeach his impartiality, and answers it by denying the facts suggested, he may be contradicted. *E. A. Morley v. Emperor*.

37 Cr. L. J. 927 :
163 I. C. 301 : 9 R. A. 11 :
1936 A. L. J. 340 :
1936 A. W. R. 441 :
A. I. R. 1936 All. 360.

———S. 154.

See also Cr. P. C., 1898, S. 288.

———S. 154—Cross-examination of party's own witness, effect of—Permission, when to be granted.

When a witness who has been called by the prosecution is permitted to be cross-examined on behalf of the prosecution under the provisions of S. 154 of the Evidence Act, the result of that course being permitted is to discredit that witness altogether and not merely to get rid of a part of his testimony, so that the accused is deprived of the benefit of any statement which the witness may have made in his favour. For this reason the law has enacted that a party desiring to cross-examine its own witness has to take the permission of the Court, implying thereby that there is a discretion in the Court whether it would permit the witness to be cross-examined or not. That discretion must always be exercised with caution by the Court before which the matter

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—S. 133—Corroboration—Sufficiency of.

Though confessions of co-accused cannot, strictly speaking, be a corroboration of an approver's evidence, they cannot be disregarded altogether and as the accused in making them implicate themselves, they should be taken into consideration according to S. 30 of the Evidence Act, as strengthening that of the accomplice and should not be rejected as tainted evidence. The corroboration of the Evidence of an accomplice may be circumstantial. *Daulat v. Emperor*. 31 Cr. L. J. 153 : 120 I. C. 721 : A. I. R. 1930 Nag. 97.

—S. 133—Corroboration extent and nature.

Prosecution must prove that accomplice of the approver was the accused and no other person ; corroboration must make it reasonably certain that it was the accused who actually committed the offence. *Amar Nath v. Emperor*. 32 Cr. L. J. 1049 : 133 I. C. 639 : I. R. 1931 Lah. 815 : A. I. R. 1931 Lah. 406.

—S. 133—Corroboration, extent and nature.

To justify conviction on approver's evidence, it is sufficient if corroboration is merely circumstantial evidence of accused's connection with the crime. *Sher Singh v. Emperor*.

33 Cr. L. J. 916 :
140 I. C. 19 : 14 Lah. 111 :
34 P. L. R. 285 : I. R. 1932 Lah. 679 :
A. I. R. 1932 Lah. 621.

—S. 133—Corroboration, extent and nature of.

The evidence in corroboration must be independent testimony which affects the accused by connecting or tending to connect him with the crime. *Emperor v. Eddula Venkata Subba Reddi*.

33 Cr. L. J. 51 (2) :
134 I. C. 1143 : 34 L. W. 128 :
61 M. L. J. 608 : 1931 M. W. N. 1177 :
54 Mad. 931 : I. R. 1932 Mad. 7 :
A. I. R. 1931 Mad. 689.

—S. 133—Corroboration, extent and nature of.

The nature of corroborative evidence required is independent testimony which affects the accused by connecting or tending to connect the accused with the crime. *Dalip Singh v. Emperor*.

35 Cr. L. J. 641 :
148 I. C. 379 : 6 R. L. 547 :
A. I. R. 1933 Lah. 294.

—S. 133—Evidence of accomplice—Corroboration—Necessity of.

Though the rule about the necessity of corroboration in material particulars of the evidence of an accomplice has become a rule of practice of such universal application that it has almost acquired the force of law, there may still be cases in which the rule should not be applied, as it will result in rendering inoperative S. 133, Evidence Act, which cannot be entirely nullified by judicial decision. *Daulat v. Emperor*.

31 Cr. L. J. 153 :
120 I. C. 721 : A. I. R. 1930 Nag. 97.

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—S. 133—Evidence of accomplice—Corroboration—Necessity of.

Under S. 133, Evidence Act, an accomplice is a competent witness against an accused and a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice. But by a series of judicial decisions, the rule as to the necessity of substantial corroboration of this sort of tainted evidence has become a rule of practice of such universal application that it has almost acquired the force of law. The evidence of an accomplice must be confirmed not only as to the material circumstances of the case but also as to the identity of each prisoner. *Daulat v. Emperor*.

31 Cr. L. J. 153 :
120 I. C. 721 : A. I. R. 1930 Nag. 97.

—S. 133—Evidence of accomplice—Value of.

There is nothing improper in tendering an accomplice as a witness, apart from any question of pardon. Such a person is a competent witness, and there is no irregularity in not sending up for trial every person against whom any suspicion appears to exist. It may, on occasions, be desirable to include the evidence of an accomplice for what it is worth without tendering him a pardon. The question of the weight of such a person's evidence is, of course, important ; since the man who does not know what may happen to him will naturally have a strong motive for minimizing his own part in any criminal transaction ; his evidence must be treated with even greater caution than that of an established approver. *Nga Thein Pe v. The King*.

41 Cr. L. J. 44 :
184 I. C. 545 : 12 R. Rang. 155 :
A. I. R. 1939 Rang. 361.

—S. 133—Evidence of accomplice—Value of—Principles of.

While dealing with a question to be decided under S. 133 and S. 114, Illus. (b), the following propositions should be taken into consideration. First: Provided it has been established by extraneous evidence or matters appearing on the record that the accomplices are not acting in collusion with one another, the cumulative effect of the evidence of two or more of them may be sufficient to remove the *prima facie* presumption of the individual unworthiness of credit of their statements, and, if this be the case, a conviction may legitimately be recorded upon their statements alone, if the Court is convinced of their truth. Secondly : that evidence from a source which is not *prima facie* unworthy of credit may prove a fact which displaces in a particular case the presumption that an accomplice is unworthy of credit. Thirdly : that corroboration must proceed from a source extraneous to the person whose testimony it is sought to corroborate. *The King v. Nga Myo*. (F. B.)

39 Cr. L. J. 581 :
175 I. C. 465 : 1938 Rang. 190 :
10 R. Rang. 494 : A. I. R. 1938 Rang. 177.

—S. 133—Evidence of accomplice—Appreciation of.

In spite of all that has been said to the

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comes up for consideration. *Khijir-ud-Din v. Emperor*. 27 Cr. L. J. 266 : 92 I. C. 442 : 42 C. L. J. 504 : 53 Cal. 372 : A. I. R. 1926 Cal. 139.

S. 154—Discretion of Court.

Right to permit cross-examination is one for Court's discretion. Witness need not be declared hostile before he can be cross-examined. *Mohan Banjari v. Emperor*.

35 Cr. L. J. 577 : 147 I. C. 1122 : 30 N. L. R. 55 : 6 R. N. 159 : A. I. R. 1933 Nag. 384.

S. 154—Discretion of Court.

The circumstances in which a witness may be cross-examined by the party calling him are left to the discretion of the Court. *Sachchindanand Prasad v. Emperor*. 34 Cr. L. J. 892 : 144 I. C. 936 : 14 P. L. T. 580 : 6 R. P. 130 : A. I. R. 1933 Pat. 488.

S. 154—Discretion of Court.

The power given by S. 154 is a discretionary one, and will not be reviewed by the Appellate Court. *Nga Nyein v. Emperor*.

34 Cr. L. J. 286 : 142 I. C. 87 : 11 Rang. 4 : I. R. 1933 Rang. 29 : A. I. R. 1933 Rang. 57.

S. 154—Discretion of Court—Exercise of.

S. 154, Evidence Act, in no way fetters the discretion of the Court to permit leading questions to be put by a party to his own witness, and it is not at all desirable that the discretion of the Court in this matter should be fettered. *Deodhari Koeri v. Emperor*.

38 Cr. L. J. 271 : 166 I. C. 726 : 9 R. P. 342 : 3 B. R. 216 : A. I. R. 1937 Pat. 34.

S. 154—Discretion of Court—Exercise of.

The discretion allowed by S. 154 should not be exercised without sufficient reason, and the reason should be stated. *Emperor v. Suar Goala*.

36 Cr. L. J. 262 : 152 I. C. 1021 : 16 P. L. T. 95 : 7 R. P. 289 : A. I. R. 1934 Pat. 533.

S. 154—Evidence of witness cross-examined by party calling him, if can be relied on by either party.

The circumstances in which a witness may be cross-examined by the party calling him, are not laid down in S. 154, Evidence Act, which leaves the matter entirely to the discretion of the Court and there is no legal objection to such permission being freely granted. Once the mischief of considering the grant of permission to be equivalent to an adjudication or expression of opinion of the Court adverse to the veracity of the witness is got rid of, it is harder to justify the refusal than the grant to any party of permission to cross-examine any witness who supports the case of his opponent. *Nebi Mandal v. Emperor*.

41 Cr. L. J. 910 : 190 I. C. 457 : 19 Pat. 369 : 7 B. R. 59 : 13 R. P. 220 : 22 P. L. T. 98 : A. I. R. 1940 Pat. 289.

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S. 154—Hostile witness—Evidence of—Value of.

As regards the evidence of witnesses who have been declared hostile, it is evidence in the case in the same manner and to the same extent as that of any other witnesses whether called by the prosecution or by the defence. *Deodhari Koeri v. Emperor*.

38 Cr. L. J. 271 : 166 I. C. 726 : 9 R. P. 342 : 3 B. R. 216 : A. I. R. 1937 Pat. 34.

S. 154—Hostile witness—Evidence of—Value of.

Evidence of a witness who had been cross-examined by the party calling him, must go to the Jury to decide what it is worth. *Wahid Ali v. Emperor*.

33 Cr. L. J. 604 : 138 I. C. 373 : 36 C. W. N. 356 : I. R. 1932 Cal. 454 : A. I. R. 1932 Cal. 523.

S. 154—Hostile witness—Evidence of—Value of.

There is no rule of law that if a Jury thinks that a witness has been discredited on one point, they may not give credit to him on another. The rule of law is that it is for the Jury to say. *Profulla Kumar Sarkar v. Emperor*. (F. B.)

32 Cr. L. J. 768 : 131 I. C. 575 : 53 C. L. J. 427 : 35 C. W. N. 731 : I. R. 1931 Cal. 463 : A. I. R. 1931 Cal. 401.

S. 154—Hostile witness, evidence of, whether can be relied on in part.

A hostile witness may be defined as one who from the manner in which he gives his evidence within which is included the fact that he is willing to go back upon previous statements made by him, shows that he is not desirous of telling the truth to the Court, and the evidence of such witness cannot, in part, be relied upon and the rest of it discarded or rejected. *Panchanan Gogai v. Emperor*.

31 Cr. L. J. 1207 : 127 I. C. 270 : 51 C. L. J. 203 : 34 C. W. N. 526 : A. I. R. 1930 Cal. 276.

S. 154—Hostile witness—How to be dealt with—Duty of prosecution in such cases.

It is not right to declare a prosecution witness as hostile. The only way in dealing with witnesses who go back on their statements or testify in a way which is frankly against the interest of the party calling them, lies with the Judge of the Court. It is the duty of the Public Prosecutor in such circumstances or of Counsel representing the Crown to formally ask the leave of the Court to cross-examine the offending witness both with regard to the evidence he has already given which is complained about and also, if necessary, to put questions to him to discredit his testimony generally. *Samarali v. Emperor*.

38 Cr. L. J. 176 : 166 I. C. 323 : 9 R. C. 494 : A. I. R. 1936 Cal. 675.

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contrary, in law the evidence of an accomplice stands on the same footing as any other evidence. The Court is not obliged to hold that he is unworthy of credit and must be corroborated. It is for the Court to consider after taking into consideration all the circumstances, one of which being that he is an accomplice, whether it does or does not rely on the evidence. *Emperor v. C. A. Mathews*.

31 Cr. L. J. 809 :
125 I. C. 281 : A. I. R. 1929 Cal. 822.

———S. 133—Evidence of accomplice.

Evidence of an accomplice is tainted evidence and there is, therefore, need of corroboration in order to base a conviction upon such evidence. The evidence of an accomplice cannot be relied on for corroboration of the evidence of another accomplice. It is mainly the duty of the prosecution to bring the accomplice's character of the evidence to the notice of the Court and then invite it to believe it by reference to the corroborative evidence on record. In cases where a Judge combines the function of a Judge and Jury, he is bound under law to scrutinize the accomplice's evidence with the same degree of care and caution, which is required of him in a trial by Jury and just as he is bound to give a warning to the Jury, he must be warned himself that it is unsafe to convict a person on accomplice's evidence in the absence of substantial corroboration by independent evidence, and the Court of Appeal or Revision has to see whether the trying Magistrate or the Judge who heard the appeal weighed the evidence with or without full knowledge and recognition of its accomplice character and the necessity for corroboration. *Muhammad Usuf Khan v. Emperor*. 30 Cr. L. J. 571 : 114 I. C. 457 : I. R. 1929 Nag. 73 : A. I. R. 1929 Nag. 215.

———S. 133—Evidence of approver—Value of.

It is not safe to place any reliance upon the testimony of an approver who was prevailed upon by his relatives, who were members of a faction hostile to the accused, to make a confession and turn King's evidence. *Tanja Singh v. Emperor*.

27 Cr. L. J. 285 :
92 I. C. 461 : 7 L. L. J. 631

———S. 133—Evidence of approver.

Approver—Approver's testimony requires independent corroboration on material particulars. Nature and degree of corroboration varies with the particular circumstances of each case. *Nanak Chand v. Emperor*.

32 Cr. L. J. 1036 :
133 I. C. 545 : 32 P. L. R. 792 :
I. R. 1931 Lah. 785 : A. I. R. 1932 Lah. 73.

———S. 133—Evidence of approver—Necessity of corroboration—Nature of corroboration required.

Although it is not illegal to convict on the uncorroborated evidence of an accomplice, there is a consensus of opinion that a conviction on the uncorroborated evidence of an accomplice is rarely justified. The evidence in

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corroboration must be independent testimony which affects the accused by connecting or tending to connect him with the crime. In other words it must be evidence which implicates him, that is, which confirms in some material particulars not only the evidence that the crime has been committed, but also that the prisoner committed it. The corroboration need not be direct evidence that the accused committed the crime ; it is sufficient if it is merely circumstantial evidence of his connection with the crime. *Bachchu v. Emperor*.

32 Cr. L. J. 162 :
128 I. C. 739 : 7 O. W. N. 862 :
I. R. 1931 Oudh 67 : A. I. R. 1930 Oudh 455.

———S. 133—Evidence of approver—Corroboration—Necessity of.

An accomplice should not be convicted on the statement of an approver who is by nature a liar, unless such testimony is strongly corroborated and the corroboration distinctly implicates the accused in, and connects him with, the crime committed. *Nand Singh v. Emperor*.

18 Cr. L. J. 696 :
40 I. C. 696 : 9 P. W. R. 1917 Cr. :
A. I. R. 1917 Lah. 317.

———S. 133—Evidence of approver—Corroboration—Necessity of.

The evidence of an approver is unworthy of credit unless corroborated in material particular. Where in a case of murder the only evidence to corroborate the evidence of the approver was that of the approver's son, a boy of 7 years, who merely repeated what he had been tutored to say : *Held*, that there was no sufficient corroboration and it was unsafe to convict the accused upon this evidence. *Mehr Singh v. Emperor*.

31 Cr. L. J. 342 :
120 I. C. 91 : 11 L. L. J. 223 :
30 P. L. R. 422 : A. I. R. 1929 Lah. 587.

———S. 133—Evidence of discharged accomplice—Admissibility of.

A and B were sent up for trial together by the police on a charge of murder. The Magistrate discharged A before recording any evidence and without recording any reasons, and subsequently examined him as a witness. It had been argued that the omission to record reasons rendered the discharge illegal, and that consequently A's evidence was inadmissible : *Held*, that whether A's discharge was or was not illegal, his evidence was admissible, but not worthy of credit. *Aung Min v. King-Emperor*.

9 Cr. L. J. 370 :
4 L. B. R. 362.

———S. 133—Offerer of bribe—Whether an accomplice.

A person who offers a bribe to another is not strictly speaking, guilty of the offence committed by the latter and does not come strictly within the meaning of the term 'accomplice' ; and his evidence cannot be entirely ruled out, though uncorroborated. *Emperor v. C. A. Mathews*.

31 Cr. L. J. 809 :
125 I. C. 281 : A. I. R. 1929 Cal. 822.

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———S. 154—*Hostile witness—Prosecution witness making admission in favour of defence, whether hostile.*

A witness is not necessarily hostile because in an absent-minded moment he lets out the truth. It must be shown before a witness can be declared hostile that there is good ground for believing that the statement he has made in favour of the defence is due to enmity to the prosecution. It may be an unfriendly act to let out the truth, but it is not necessarily a hostile act. *Fouzdar Rai v. Emperor.*

19 Cr. L. J. 241 :
44 I. C. 33 : 4 P. L. W. 111 :
3 P. L. J. 419 : 1918 Pat. 254 :
A. I. R. 1918 Pat. 193.

———S. 154—*Hostile witness, reasons for declaring.*

That a prosecution witness is a tenant of a relative of the accused is no reason at all for treating him as a hostile witness. That the statement of a prosecution witness before the Committing Magistrate differs from the statement recorded by the Police shortly after the occurrence, and that the cross-examination of the witness would help the Court to assess the exact value of the different parts of his testimony, is not a sufficient reason for allowing the cross-examination of the witness by the Public Prosecutor as a hostile witness. *Emperor v. Satyendra Kumar Dutt Chowdhry.*

24 Cr. L. J. 193 :
71 I. C. 657 : 37 C. L. J. 173 :
A. I. R. 1923 Cal. 463.

———S. 154—*Hostile witness.*

The fact, that a witness is dealt with under S. 154 even when under that section he is cross-examined as to credit, in no way warrants a direction to the Jury that they are bound in law to place no reliance on his evidence or that the party who called and cross-examined him can take no advantage of any part of his evidence. The evidence of such a witness is not to be rejected either in whole or in part. It is not also to be rejected so far as it is in favour of the party calling the witness, nor is to be rejected so far as it is in favour of the opposite party. *Profulla Kumar Sarkar v. Emperor. (F. B.)*

32 Cr. L. J. 768 :
131 I. C. 575 : 53 C. L. J. 427 :
35 C. W. N. 731 : I. R. 1931 Cal. 463 :
A. I. R. 1931 Cal. 401.

———S. 154—*Party, if bound by evidence of witness called by it—To declare witness hostile, written application, if necessary.*

A party is not bound by the evidence of a witness whom he produces. No part of the statement of such a witness amounts to an admission on behalf of the party producing him. Nor there is any rule of law that a party is not able to say that a witness produced by him is not speaking the truth upon some particular point unless he makes a written application to say that the witness is hostile. *Babu Ram v. Emperor.*

39 Cr. L. J. 152 :
172 I. C. 617 : 1937 A. L. J. 1214 :
10 R. A. 412 : 1937 A. W. R. 885 :
A. I. R. 1937 All. 754.

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———S. 154—*Scope.*

The Court may, in its discretion, under S. 154, Evidence Act, permit the prosecution to cross-examine a witness, even though he had been originally called by them with regard to the matters elicited by the defence. In criminal prosecutions, the witnesses for the Crown are privileged from disclosing the channel through which they have received or communicated information. But the same privilege cannot be claimed by a detective, who cannot refuse on grounds of public policy to answer a question as to where he was secreted. *Amrillool Hazra v. Emperor.*

16 Cr. L. J. 497 :
29 I. C. 513 : 21 C. L. J. 331 :
19 C. W. N. 676 : 42 Cal. 957 :
A. I. R. 1916 Cal. 188.

———S. 154—*Treating witness as hostile, effect of.*

A party who treats his own witness as hostile and cross-examines him, is not thereby prevented from relying on admission made by the witness in his favour. *Sobrai v. Emperor.*

31 Cr. L. J. 721 :
124 I. C. 836 : 11 P. L. T. 148 :
9 Pat. 474 : A. I. R. 1930 Pat. 247.

———S. 154—*Treating witness as hostile, effect of—Duty of Judge to tell Jury that party calling him cannot rely on any portion of his evidence.*

Where a party is allowed to treat his own witness as hostile and to cross-examine him, the effect of that cross-examination is to discredit the witness altogether, and the party cross-examining him cannot rely upon any portion of his evidence. Where the only witness for the prosecution is treated as hostile and cross-examined by the prosecution, the Judge must tell the Jury that there is no evidence on which they could find the accused guilty and direct the Jury to find a verdict of not guilty. Omission on the part of the Judge to do so is a serious misdirection of the Jury. *Makbul Khan v. Emperor.*

30 Cr. L. J. 350 :
114 I. C. 793 : 32 C. W. N. 872 :
I. R. 1929 Cal. 281 : 56 Cal. 145 :
A. I. R. 1928 Cal. 690.

———S. 154—*Witness called by party and cross-examined—Evidence of—Value of.*

Either side may rely upon the evidence of a witness who is cross-examined by the party calling him. *Emperor v. Haradhan.*

35 Cr. L. J. 240 :
146 I. C. 993 (2) : 14 P. L. T. 494 :
6 R. P. 310 (2) : A. I. R. 1933 Pat. 517.

———S. 154—*Witness called by party—Cross-examination of.*

It is not correct to say that unless a witness is "hostile" to the party calling him, that party ought not to be allowed to cross-examine him; and if he is declared "hostile" that amounts to a declaration that his evidence is worthless. *Emperor v. Haradhan.*

35 Cr. L. J. 240 :
146 I. C. 993 (2) : 14 P. L. T. 494 :
6 R. P. 310 (2) : A. I. R. 1933 Pat. 517.

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———S. 133—*Offerer of bribe—Whether an accomplice.*

A person who offers a bribe to a Public Officer or co-operates in the payment of a bribe or is instrumental in the negotiations for the purpose, or with the knowledge that the bribe has to be paid, advances money, is an abettor, and as such, an accomplice, and his evidence must be received with caution. *Muhammad Usuf Khan v. Emperor.* 30 Cr. L. J. 571 : 114 I. C. 457 : I. R. 1929 Nag. 73 : A. I. R. 1929 Nag. 215.

———S. 133—*Retracted confession—Value of.*

When the Court is satisfied that the confession of an accused person is neither voluntary nor true, he cannot be convicted on his own retracted confession especially on a capital charge of murder. *Ghirrao v. Emperor.* 34 Cr. L. J. 1009 : 145 I. C. 470 : 10 O. W. N. 1108 : 6 R. O. 53 : A. I. R. 1933 Oudh 265.

———S. 133—*Scope.*

Under S. 133, Evidence Act, a conviction based merely on the uncorroborated testimony of an accomplice, is not illegal. *In re : Pyasa Rao.* 12 Cr. L. J. 150 : 9 I. C. 897 : 1911, 1 M. W. N. 327 : 21 M. L. J. 283 : 10 M. L. T. 84.

———S. 133—*Statement of accomplice—Corroboration.*

Under S. 133, Evidence Act, the evidence of an accomplice by itself would be sufficient for the purpose of a conviction, but it is a rule of practice founded on experience that in every case where an accomplice has given evidence, the Court must raise a presumption that he is unworthy of credit unless corroborated in material particulars. Failure to raise that presumption is an error of law. *Madan Guru v. Emperor.* 24 Cr. L. J. 723 : 73 I. C. 963 : 4 P. L. T. 381.

———S. 133—*Testimony of accomplice, what is.*

A confession made by an accused person affecting himself and others with whom he is jointly tried may, under S. 30, Evidence Act, be taken into consideration as against the other accused. But a retracted confession is not the testimony of an accomplice within the meaning of S. 133, Evidence Act. *Moyez Sardar v. Emperor.* 26 Cr. L. J. 360 : 84 I. C. 712 : 40 C. L. J. 551 : A. I. R. 1925 Cal. 406.

———S. 133—*Uncorroborated evidence of accomplice—Conviction—Legality of.*

It is, however, open to a Court to depart from that rule if it thinks that there are special circumstances in the case making it safe to do so, and in such cases, S. 133, Evidence Act, makes it clear that a conviction is not illegal merely because it is based upon the uncorroborated testimony of an accomplice or of accomplices. *In re : Surajpalsingh.* 39 Cr. L. J. 818 : 176 I. C. 853 : 1938 N. L. J. 185 : I. L. R. 1938 Nag. 516 : 11 R. N. 81 : A. I. R. 1938 Nag. 328.

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———S. 133—*Uncorroborated testimony of accomplice—Conviction, whether legal.*

An accomplice is a competent witness against an accused and a conviction will not be illegal merely because it proceeds upon the uncorroborated testimony of an accomplice, but this absolute rule of law, as regards the evidence of accomplices, is subject to a rule of guidance contained in Ill. (b) to S. 114 that an accomplice is unworthy of credit unless he is corroborated in material particulars. *Musa v. Emperor.* 30 Cr. L. J. 333 : 114 I. C. 609 : I. R. 1929 Nag. 81 : A. I. R. 1929 Nag. 233.

———S. 133—*Uncorroborated testimony of accomplice—Conviction on—Duty of Court.*

The uncorroborated evidence of an accomplice is admissible in law. It is, however, the duty of the Judge to warn the Jury of the danger of convicting an accused person on the uncorroborated testimony of an accomplice or accomplices, and in the discretion of the Judge, to advise them not to convict upon such evidence; but the Judge should point out to the Jury that it is within their legal province to convict upon such unconfirmed evidence. *Emperor v. Jamalidi Fakir.* 25 Cr. L. J. 1000 : 81 I. C. 712 : 51 Cal. 160 : 28 C. W. N. 536 : A. I. R. 1924 Cal. 701.

———S. 133—*Uncorroborated testimony of accomplice—Conviction on—Legality of.*

A conviction based solely upon the evidence of the accomplices is not illegal. It is not a rule of law but one of mere practice and prudence that an accomplice is unworthy of credit unless he is corroborated in material particulars. The High Court will not, under its revisional jurisdiction, disturb a conviction merely on the ground that the said rule of practice has not been adhered to by the Court which has convicted, unless there are exceptional circumstances calling for the exercise of that jurisdiction in the interests of justice. *Emperor v. Lallubhai.* 10 Cr. L. J. 433 : 3 I. C. 963 : 11 Bom. L. R. 858.

———S. 133—*Uncorroborated testimony of accomplice—Conviction—Legality of.*

A conviction on the evidence of an accomplice is not justified unless it is corroborated. *Pan Gang v. Emperor.* 19 Cr. L. J. 42 : 42 I. C. 1002 : A. I. R. 1917 L. Bur. 5.

———S. 133—*Uncorroborated testimony of accomplice—Conviction—Legality of.*

Although a conviction is not 'illegal' merely because it proceeds on the uncorroborated testimony of an accomplice, the rule of practice is now firmly established that corroboration of such testimony in material particulars connecting each of the individual accused with the crime is necessary to justify his conviction. *Hakam Singh v. Emperor.* 31 Cr. L. J. 517 : 123 I. C. 513 : A. I. R. 1929 Lah. 850.

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———S. 154—*Witness called by party—Cross-examination of.*

No doubt a witness can be contradicted by his previous statements recorded in writing under S. 154, but before this is done, it must be shown that the statements were voluntary. *Nayeb Shahana v. Emperor.*

35 Cr. L. J. 1479 :
152 I. C. 44 : 38 C. W. N. 659 :
61 Cal. 399 : 7 R. C. 225 (2) :
A. I. R. 1934 Cal. 636.

———S. 154—*Witness called by party—Cross-examination of.*

S. 154, Evidence Act, gives a very wide discretion to the Courts, and the proper course in such a case is to give permission to the prosecution to ask the witness a leading question and then to read out the evidence before the Committing Magistrate and so obtain an admission or a denial of its truth. *Moti Ram v. Emperor.*

24 Cr. L. J. 904 :
75 I. C. 152.

———S. 154—*Witness called by party—Cross-examination of—Permission for.*

If a counsel is given permission to cross-examine his own witness, it must be done to discredit the witness altogether and not merely to get rid of part of his testimony, because if that which is suggested shall be elicited, it will show that he is not trustworthy at all. Therefore, his whole evidence must be rejected and it cannot be believed in part and disbelieved in part. *Emperor v. Satyendra Kumar Dutt Chowdhury.*

24 Cr. L. J. 193 :
71 I. C. 657 : 37 C. L. J. 173 :
A. I. R. 1923 Cal. 463.

———S. 154—*Witness called by party—Cross-examination of—Permission for, when granted.*

In order to obtain leave to cross-examine a witness under S. 154, all that is necessary is that the witness's testimony should have been adverse to the party calling him. *Emperor v. Haradhan.*

35 Cr. L. J. 240 :
146 I. C. 993 (2) : 6 R. P. 310 (2) :
14 P. L. T. 494 :
A. I. R. 1933 Pat 517.

———S. 154—*Witness tendered by prosecution but not examined—Cross-examination by prosecution, whether permissible.*

Where the prosecution merely tenders a witness as 'gained over' without examining him, he cannot be allowed to be cross-examined by the prosecution under S. 154, Evidence Act. *Ramjag Ahir v. Emperor.*

29 Cr. L. J. 466 :
109 I. C. 114 : 7 Pat. 55 :
9 P. L. T. 567 : I. L. T. 40 Pat 102 :
A. I. R. 1928 Pat. 203.

———S. 155.

See also (i) Cr. P. C., 1898, S. 162.

(ii) Evidence Act, 1872, S. 157.

———S. 155—*Character of prosecutrix—Relevancy of—Charge of rape—Evidence as to general repute of prosecutrix—Specific acts of immorality—Evidence as to—Admissibility of.*

In a prosecution for rape, it may be shown

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that the prosecutrix was of immoral character, S. 155 (4) refers to such evidence. *Wahid Ali v. Emperor.*

33 Cr. L. J. 604 :
138 I. C. 373 : 36 C. W. N. 358 :
I. R. 1932 Cal. 454 :
A. I. R. 1932 Cal. 523.

———S. 155—*Evidence of bad character—Admissibility.*

S. 155, Evidence Act, does not allow evidence of witness's general bad character to be brought in. *Maung San Myin v. Emperor.*

31 Cr. L. J. 303 :
121 I. C. 715 : 7 Rang. 771 :
A. I. R. 1930 Rang. 49.

———S. 155—*Evidence of test identification—Admissibility.*

It cannot be said that the evidence of a test identification is only admissible under Ss. 155 and 157. *Krishna Chandra Dhenki v. Emperor.*

36 Cr. L. J. 1470 (1) :
158 I. C. 843 : 39 C. W. N. 488 :
62 Cal. 918 : 8 R. C. 221 (1) :
A. I. R. 1935 Cal. 317.

———S. 155—F. I. R.—*Value of statements in.*

Statements made in the First Information Reports are admissible under S. 155, Evidence Act, to impeach the credit of a witness who made them or under S. 157 to corroborate the testimony of the witnesses who made them if the reports were made about the time when the fact took place or before any authority legally competent to investigate the fact. It may be that there are other sections of the Evidence Act under which these statements may, in circumstances, become relevant, but there can be no doubt that they are not substantive evidence in the case and Court should be clear about the relevancy of the statements before they use them. *Ram Naresh v. Emperor.*

40 Cr. L. J. 559 :
181 I. C. 646 : 11 R. A. 597 :
1939 A. L. J. 107 :
I. L. R. 1929 All. 377 :
A. I. R. 1939 All. 242.

———S. 155—*Impeaching credit of witness.*

Even the fact that a witness has not been believed in a judgment in another case, does not impeach the credit of a witness, for such a judgment cannot be given in evidence for the purpose ; judgments in other cases are in fact relevant only under Ss. 40 to 43. *Mirjawali v. Emperor.*

37 Cr. L. J. 619 :
162 I. C. 300 : 8 R. Pesh. 194 :
A. I. R. 1936 Pesh. 106.

———S. 155—*Impeaching credit of witness.*

It is not necessary to make the previous statement of a witness in inquiry admissible for purpose of impugning his credit that accused should have had an opportunity to examine him.

27 Cr. L. J. 1061 :
97 I. C. 37 : 28 Bom. L. R. 775 :
A. I. R. 1926 Bom. 404.

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———S. 133—*Uncorroborated testimony of accomplice—Conviction—Legality of.*

Although it is not illegal to convict on the uncorroborated evidence of an accomplice, there is a consensus of opinion that a conviction on the uncorroborated evidence of an accomplice is rarely justifiable. The evidence in corroboration must be independent testimony which affects the accused by connecting or tending to connect him with the crime; but the corroboration need not be direct evidence that the accused committed the crime. It is sufficient if it is merely circumstantial evidence of his connection with the crime. *Hazari v. Emperor.*

31 Cr. L. J. 1210 :
127 I. C. 247 : 7 O. W. N. 527 :
A. I. R. 1930 Oudh 353.

———S. 153—*Uncorroborated testimony of accomplice—Conviction—Legality of.*

The uncorroborated testimony of an accomplice should not be accepted unless for special reasons. But where such reasons exist, a conviction based on this evidence is not illegal. *In re : Talari Narainswami.*

12 Cr. L. J. 170 :
9 I. C. 978 : 9 M. L. T. 503.

———S. 133—*Uncorroborated testimony of accomplice—Conviction on—Legality of.*

The view that a Court cannot act on the evidence of an accomplice, unless it is corroborated, is not the law either of England or of India. As regards India, the substantive enactment is to be found in S. 133 of the Evidence Act. S. 114 deals with presumptions of fact and the illustration would seem to mean that a presumption of fact may be drawn, having regard to the facts of a particular case, that the uncorroborated evidence of an accomplice in that case is untrue. The High Courts in this country have always professed, as a matter of practice rather than of law, to act upon the principles established in England. Just as in England the Judge has no power to withdraw a case from the Jury on the ground that there is no corroboration, so in India, where a Court is Judge of fact as well as of law, the Court as the Judge of fact is not precluded from considering the question whether the unsupported evidence of an accomplice is true or not. In a case where the Court is both Judge and Jury, it has to direct itself thus: consider the evidence of the approver, always bear in mind that it is tainted evidence, scrutinise it with the utmost care and accept it with the greatest caution. Then, if you believe it, act on it even if there is no corroboration in the strict sense of the word. If you do not believe it, reject it. *Emperor v. Nilakanta.*

13 Cr. L. J. 305 :
14 I. C. 849 : 1912 M. W. N. 207 :
22 M. L. J. 490 : 35 Mad. 247.

———S. 133—*Uncorroborated testimony of accomplice—Conviction on—Legality of.*

Where a lower Court for any special reasons,

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convicts a person upon the sole testimony of accomplices after having its attention drawn to the rule that such testimony should not be believed without corroboration, the High Court will not interfere in revision except for very special reasons, but where the lower Court is of opinion that such evidence has been corroborated, the High Court may consider whether the corroboration is what is required by law, and if there is no corroboration, whether the conviction should be sustained on the evidence of accomplices alone. In a charge of bribery against a Judge, proof that money was borrowed by the man who is alleged to have paid the bribe shortly before the alleged payment, is no corroboration of the evidence of an accomplice as to payment. It only shows he had money to pay. There must be proof of some circumstance that affects the person charged with the offence. The general rule that an accomplice should be corroborated in material particulars is a mere rule of practice, the application of which is for the discretion of the Court by which the case is tried. It is a point which should never be lost sight of, in weighing the evidence of a man. But if the Court comes to the conclusion that the evidence of an accomplice is true, effect should be given to it. *In re : Vyasa Rao.*

12 Cr. L. J. 150 :
9 I. C. 897 : 1911, 1 M. W. N. 327 :
21 M. L. J. 283 : 10 M. L. T. 84.

———S. 133—*Uncorroborated testimony of accomplice—Conviction on—Legality of.*

Where there is no sufficient corroboration of the testimony of accomplices, a conviction should not be based on such evidence. *In re : Talari Narainswami.* 12 Cr. L. J. 170 :
9 I. C. 978 : 9 M. L. T. 503.

———S. 133—*Uncorroborated testimony of approver—Conviction on—Legality of—Approver, conviction based on statement of—Corroboration, absence of.*

It is unsafe to base a conviction for a capital offence upon the uncorroborated statement of an approver. *Khushi. Muhammad v. Emperor.*

25 Cr. L. J. 979 :
81 I. C. 627 : 6 L. L. J. 166 :
A. I. R. 1924 Lah. 481.

———S. 133—*Uncorroborated testimony of approver—Conviction on—Legality of—Approver's statement as basis for conviction—Corroboration required, nature of.*

Although under S. 133, Evidence Act, an accomplice is a competent witness against an accused person, and a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of such accomplice, the rule of caution that such testimony should be supported by extrinsic evidence connecting the accused with the crime is now regarded as a rule of law, and although it is not illegal to convict a person on the uncorroborated testimony of an approver, the Courts in point of fact always insist upon the rule being followed. *Barkati v. Emperor.*

28 Cr. L. J. 625 :
103 I. C. 49 : A. I. R. 1927 Lah. 581.

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———S. 155—*Impeaching credit of witness—Method of.*

Previous statements of witnesses made to the Police and to the Committing Magistrate can be used, to impeach their credit, if they are subsequently charged. *Maruti Joti Shinde v. Emperor.*

22 Cr. L. J. 636 :
63 I. C. 332 : 23 Bom. L. R. 820 :
A. I. R. 1922 Bom. 108.

———S. 155—*Impeaching credit of witness—Procedure.*

S. 162, Cr. P. C., allows the credit of a witness to be impeached in the manner provided by the Evidence Act, by the statement which he is alleged to have made to the Police in the course of an investigation under Chap. XIV of the same Code. If a Magistrate finds that a witness is recorded as having made a statement different from that which he has made before him and he considers that in the circumstances of the case the discrepancy should be brought to light, he ought to ask the witness if he has made the statement attributed to him by the Police papers. If the witness admits that he has, he should be given an opportunity of explaining why the contradiction has occurred. If the witness denies that he has made any such statement, the statement must be proved, before it can be used for the purpose of impeaching the credit of the witness. *Nga Pyu v. Emperor.*

18 Cr. L. J. 844 :
41 I. C. 668 : A. I. R. 1917 L. Bur. 12.

———S. 155—*Impeaching credit of witness—Proof of previous statement of witness to the Police—Cr. P. C., S. 162.*

For the purpose of impeaching the credit of a witness who gives evidence in favour of an accused person, it is not illegal to examine the Police Officer who investigated the case with the object of showing that the witness made a different and inconsistent statement before him. *Emperor v. Jagardco Pandc.*

2 Cr. L. J. 152 :
25 A. W. N. 64 : 27 All. 469.

———S. 155—*Impeaching credit of witness.*

The defence can prove the first information to impeach the informant's credit under S. 155 or contradict him under S. 145. *Gajjan Singh v. Emperor.*

33 Cr. L. J. 183 :
135 I. C. 668 : I. R. 1932 Lah. 124 :
A. I. R. 1931 Lah. 103.

———S. 155—*Scope.*

S. 155, Evidence Act, does not render nugatory the clear and explicit provisions of S. 145 but in fact takes for granted the existence and binding effect of those provisions. *Mahla Singh v. Emperor.*

32 Cr. L. J. 522 :
130 I. C. 410 : 32 P. L. R. 259 :
I. R. 1931 Lah. 282 : A. I. R. 1931 Lah. 38.

———Ss. 155, 157—*Hostile witness—Impeaching credit of—Cr. P. C., S. 162—Statements made to Police, whether can be used as corroboration—Hostile witness, whether can be impeached by reference to Police diary.*

If in the course of a trial a witness is called upon to say that he saw the offence committed

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by the accused and when called upon says that the offence was committed by an entirely different person, it is only fair that the Crown should be allowed to use S. 155, Evidence Act, to disabuse the Jury of the effect made by a wilfully false statement. There is nothing in S. 162, Cr. P. C., to prevent this course being adopted. *Ram Chandra Singh v. Emperor.*

19 Cr. L. J. 512 :
45 I. C. 272 : 1918 Pat. 95 :
4 P. L. W. 325 : 5 P. L. J. 568 :
A. I. R. 1918 Pat. 459.

———Ss. 155, 157—*Obstruction to Receiver—Report of Receiver to District Judge, admissibility of.*

A report made by a Receiver to a District Judge by whom he was appointed stating that he was wrongfully confined and obstructed by the accused which is submitted not at or about the time of occurrence but about 24 hours afterwards, cannot be adduced in evidence at the instance of the prosecution under S. 157, Evidence Act, though it can be used by the defence under S. 155 to discredit the Receiver. *Emperor v. Ram Chandra Roy.*

29 Cr. L. J. 823 :
111 I. C. 327 : 55 Cal. 879 :
A. I. R. 1928 Cal. 732.

———Ss. 155, 157—*Previous statement when can be admitted to corroborate or contradict witness.*

A previous deposition made by a witness might be admitted under S. 157, Evidence Act; to corroborate a subsequent statement made by the witness but it cannot be used under that section to contradict the witness. The section under which such evidence may be admitted for the purpose of contradiction is S. 155 of the Act. Where witnesses have changed their statements, it is difficult for a Court to put full reliance on them, even though the previous depositions may be brought forward to show that their present denials are false. *Jamal Momim v. Emperor.*

26 Cr. L. J. 713 :
86 I. C. 153 : 1925 Pat. 29 :
7 P. L. T. 14 : A. I. R. 1925 Pat. 381.

———S. 155 (3)—*Impeaching credit of witness—Method of.*

First information to Police—Reproduction of statements of another—Contradiction by proof of former statement. Where the first information to Police is a reproduction of what is said by another, it cannot be used to contradict under the evidence of the latter who, of course, may be contradicted by the evidence of the former. *Emperor v. Dina Bandhu Moitra.*

1 Cr. L. J. 62 :
8 C. W. N. 218.

———S. 155 (3)—*Impeaching credit of witness.*

Where some of the prosecution witnesses say that the eye-witnesses immediately after the offence was committed did not implicate one of the accused as having helped to strangle the deceased, their evidence can be used under

Cr. P. CODE (1898), S. 307**—S. 307—Interference with verdict—
Grounds for.**

The High Court has undoubted jurisdiction to disregard the verdict of the Jury and to convict the accused if it is of opinion that the verdict of the Jury was perverse. *Emperor v. Sri Kishan*.

37 Cr. L. J. 135 :
159 I. C. 621 : 1935 A. L. J. 1019 :

1935 A. W. R. 988 :

8 R. A. 482 :

A. I. R. 1935 All. 970.

**—S. 307—Interference with verdict—
Grounds for.**

The High Court should exercise the powers vested in it by S. 307 and set aside the verdict of a Jury where the opinion of the Jury is manifestly wrong. The test that has to be applied in estimating the weight of the verdict of Jury, is whether the opinion is such as could, on the particular facts and evidence of the case, have been held by reasonable men, however much the Judge may differ from that view. *Emperor v. Har Mohan Das*.

28 Cr. L. J. 903 :
105 I. C. 231 : 54 Cal. 708 :

A. I. R. 1927 Cal. 848.

**—S. 307—Interference with verdict—
Grounds for.**

The High Court will interfere on a reference under S. 307 only when it is satisfied that the verdict of the Jury is so manifestly wrong that it ought to be set aside. *Emperor v. Nritya Gopal Roy*.

24 Cr. L. J. 897 :
75 I. C. 145 : 38 C. L. J. 1 :

A. I. R. 1924 Cal. 317.

**—S. 307—Interference with verdict—
Grounds for.**

The High Court will interfere with the verdict of the Jury when the verdict is obviously perverse, or manifestly wrong or unreasonable. *Emperor v. Kankaya*.

27 Cr. L. J. 773 :
95 I. C. 309 : 22 N. L. R. 42 :

A. I. R. 1926 Nag. 308.

**—S. 307—Interference with verdict—
Grounds for.**

The High Court will not interfere in a case unless it can be said that it was not possible for the Jury to have arrived at the verdict at which they did arrive. *Emperor v. Golam Kader*.

25 Cr. L. J. 1284 :
82 I. C. 356 : 28 C. W. N. 876 :

A. I. R. 1924 Cal. 956.

**—S. 307—Interference with verdict—
Grounds for.**

The High Court will not interfere in a reference under S. 307 against a verdict of the Jury unless it is of opinion that the verdict of the Jury could not be supported by the evidence on the record. *Emperor v. Gobind Singh*.

27 Cr. L. J. 1308 :
98 I. C. 252 : 5 Pat. 573 :

8 P. L. T. 133 :

A. I. R. 1926 Pat. 535.

**—S. 307—Interference with verdict—
Grounds for.****Cr. P. CODE (1898), S. 307**

The Jury is primarily the Tribunal to find facts and it is not for the High Court to interfere with the verdict of the Jury unless it is unreasonable. *Emperor v. Chapai*.

35 Cr. L. J. 285 :
147 I. C. 53 : 6 R. O. 213 :

10 O. W. N. 971.

**—S. 307—Interference with verdict—
Grounds for.**

The verdict of a Jury can be interfered with by the High Court on appeal only where there has been misdirection on a point of law or where the High Court is satisfied that the Jury must have misunderstood the Judge's direction on a point of law. Where a Sessions Judge remarking that if he had been a Jurymen, he would have been in favour of a verdict of not guilty, accepted the verdict of guilty pronounced by the Jury without making a reference : *Held*, that the procedure was not illegal and the High Court has no power to interfere with the action of the Sessions Judge under its revisional or appellate jurisdiction and direct him to refer the case to the High Court. *Bepin Chandra Mandal v. Emperor*.

29 Cr. L. J. 819 :
111 I. C. 323 : 47 C. L. J. 483 :

32 C. W. N. 673 :

A. I. R. 1928 Cal. 444.

**—S. 307—Interference with verdict—
Grounds for.**

Though it is not the practice of the Chief Court of Oudh to interfere with a Jury verdict if it is in any way a reasonable verdict, the Chief Court will set aside a verdict if it is unreasonable and perverse. *Mohammad Hadi Husain v. Emperor*.

29 Cr. L. J. 983 :
112 I. C. 103 : 5 O. W. N. 581 :

3 Luck. 494 :

A. I. R. 1928 Oudh 277.

**—S. 307—Interference with verdict—
Grounds for.**

When High Court suspects that Jury had not applied their minds in understanding the law to be applied, verdict cannot be relied on. *Sadek Mandal v. Emperor*. (F. B.)

35 Cr. L. J. 496 :
147 I. C. 860 : 38 C. W. N. 254 :

61 Cal. 256 : 6 R. C. 374 :

A. I. R. 1934 Cal. 173.

**—S. 307—Interference with verdict—
Grounds for.**

When the only ground for making reference is that giving effect to the verdict of the majority of the Jury will lead to the anomalous result of letting off the principal offender who evaded a regular trial for a pretty long time ever since the alleged occurrence, it is quite insufficient, and the reference should be rejected. *Emperor v. Abdul Hossian Sikdar*.

38 Cr. L. J. 174 (b) :
166 I. C. 286 : 9 R. C. 490 (2) :

A. I. R. 1936 Cal. 451.

**—S. 307—Interference with verdict—
Grounds for.**

Where a Sessions Judge, who differs from the

Cr. P. CODE (1898), S. 307

verdict of acquittal of the Jury, makes a reference, the High Court has to see whether the verdict of the Jury is perverse. *Emperor v. Sheo Dayal*. 35 Cr. L. J. 360 :

147 I. C. 15 : 55 All. 689 :
6 R. A. 437 : A. I. R. 1933 All. 535.

—S. 307—Interference with verdict—Grounds for.

Where in a trial by Jury, the Jury, having been properly warned and properly directed, deliberately by their verdict came to the conclusion that the circumstantial evidence given in the case connected the accused with the guilt and convicted him : *Held*, that in the absence of misdirection, the High Court would not interfere merely on the ground that the Jury had convicted on circumstantial evidence alone. *Mohini Mohan Ghose v. Emperor*. 21 Cr. L. J. 8 :

54 I. C. 56 : 46 Cal. 635 :
A. I. R. 1920 Cal. 271.

—S. 307—Interference with verdict—Grounds for.

Where one of two interferences is possible upon the evidence, the High Court will not interfere with the finding of the Jury even though it is of opinion that it would have drawn the other inference if it had been a Court of Appeal. Where, however, the interference drawn by the Jury is manifestly inconsistent with the evidence and the conduct of the parties, the law makes it obligatory upon the Court to interfere and set aside the verdict of the Jury. *Emperor v. Zahir Haider*. 27 Cr. L. J. 1041 :

97 I. C. 17 : 7 P. L. T. 367 :
A. I. R. 1926 Pat. 566.

—S. 307—Interference with verdict—Grounds for.

Where the charges against the accused were under Ss. 148, 304-149, and 326-149, Penal Code: *Held*, that conviction under S. 326, Penal Code, was illegal, there being no charge under that section and the Jury having acquitted the accused under S. 148, Penal Code. *Emperor v. Madan Mandal*. 15 Cr. L. J. 155 :

22 I. C. 731 : 18 C. W. N. 668 :
41 Cal. 662 : A. I. R. 1915 Cal. 292.

—S. 307—Interference with verdict of not guilty—Grounds for.

Where the Jury has returned a verdict of not guilty, the High Court will not, in a reference under S. 307, interfere with the verdict and substitute a conviction unless the verdict is plainly unreasonable. *Izazuddin v. Emperor*. 30 Cr. L. J. 804 :

147 I. C. 602 : 32 C. W. N. 894 :
I. R. 1929 Cal. 554.

—S. 307—Interference with verdict—Grounds for.

Where the verdict depends entirely upon the question of whether the witnesses are to be believed or not, weight should ordinarily be

Cr. P. CODE (1898), S. 307

attached to the verdict of the Jury. *Emperor v. Sitahn Ahir*. 34 Cr. L. J. 731 :

144 I. C. 246 : 14 P. L. T. 217 :
I. R. 1923 Pat. 227 :
A. I. R. 1933 Pat. 273 (1).

—S. 307—Interference with verdict—Grounds for.

Where the verdict of the Jury does not appear as perverse, unreasonable or altogether against the weight of evidence, the verdict should be confirmed. *Emperor v. Asghar Hussain*. 35 Cr. L. J. 33 (1) :

146 I. C. 303 (1) : 10 O. W. N. 883 :
6 R. O. 101.

—S. 307—Interference with verdict—Grounds for.

Where the verdict of the Jury turns merely upon the appreciation of oral evidence capable of being viewed either way, but as to which the High Court is inclined to take a different view from that of the Jury, the High Court will not interfere with the verdict in a reference under S. 307. Where, however, the verdict of the Jury is one which no reasonable man could have given and which is not warranted in any view of the evidence, the High Court will reverse the verdict. *Emperor v. Ali Hyder*. 26 Cr. L. J. 856 :

86 I. C. 712 : 4 P. L. T. 425 :
A. I. R. 1923 Pat. 474.

—S. 307—Interference with verdict of not guilty.

High Court should give some weight to Jury's finding. The accused should have the benefit of the Jury's verdict in his favour. *Emperor v. Madan Gopal*. 32 Cr. L. J. 1028 :

133 I. C. 475 : 1931 A. L. J. 695 :
I. R. 1931 All. 683.

—S. 307—Interference with verdict—Onus.

Onus is on party seeking to disturb verdict to show that verdict is wrong : If he so succeeds, Court will reverse the verdict. *Emperor v. Raji Mian*. 33 Cr. L. J. 877 :

139 I. C. 885 : 13 P. L. T. 418 :
11 Pat. 669 : I. R. 1932 Pat. 269 :
A. I. R. 1932 Pat. 246.

—S. 307—Interference with verdict—Suspicious case.

Though great weight attaches to the unanimous opinion of the Jury on questions which are purely questions of fact, yet a Court will not be justified in convicting an accused though the Jury return a unanimous verdict of guilty where the whole case against the accused is a suspicious one, the real facts in connection with the occurrence and the circumstances under which it took place have not been disclosed by the prosecution and conviction of the accused is likely to cause a miscarriage of justice. *Emperor v. Yakub*. 27 Cr. L. J. 1341 :

98 I. C. 413 : 30 C. W. N. 859 :
A. I. R. 1926 Cal. 1034.

—S. 307—Interference with verdict—Suspicious circumstances.

EVIDENCE ACT (I OF 1872)

S. 155 (3) to impeach the credit of the eye-witnesses. *Nanak v. Emperor*.

32 Cr. L. J. 1205 :
134 I. C. 583 : I. R. 1931 Lah. 967 :
A. I. R. 1931 Lah. 189.

—S. 155 (4)—*Character of prosecutrix, whether relevant.*

In a case of rape, evidence as regards the general immoral character of the woman is relevant under S. 155 (4), Evidence Act. *Keramal Mandal v. Emperor*.

27 Cr. L. J. 263 :
92 I. C. 439 : 42 C. L. J. 524 :
A. I. R. 1926 Cal. 320.

—S. 157.

See also (i) City of Bombay Police Act, 1902, S. 63.

(ii) Cr. P. C., 1898, Ss. 107, 154, 161, 288.

(iii) Evidence Act, 1872, S. 145.

—S. 157—Corroboration—Corroboration where principal statement excluded.

If the evidence of a raped girl is excluded from the case, the evidence of her relatives to the effect that she had accused the accused of rape, cannot be used as corroborative evidence under S. 157, Evidence Act. *Emperor v. Phagunia Bhuiyan*. 26 Cr. L. J. 1475 : 89 I. C. 1043 : A. I. R. 1926 Pat. 58.

—S. 157—Entry in Vaccination Register, admissibility of.

An entry in a Vaccination Register containing a statement made by the mother as to paternity of the child, which is made more than three years after the birth of the child, does not satisfy the requirements of S. 157, Evidence Act, and is not admissible in evidence. *Kanniappan v. Kullammal*. 31 Cr. L. J. 1089 : 126 I. C. 613 : A. I. R. 1930 Mad. 194.

—S. 157—Evidence of person hearing statement, value of.

The evidence of a person who hears a statement as direct proof of that statement being made as the evidence of a person who sees a deed, is proof of the deed being done. *Heymardinger v. Emperor*. 21 Cr. L. J. 760 : 58 I. C. 344 : 2 U. P. L. R. Lah. 170 : A. I. R. 1920 Lah. 254.

—S. 157—First Information Report, whether can be used as substantive evidence.

The First Information Report although a document of great importance, is not a piece of substantive evidence and can be used only as a previous statement admissible to corroborate or contradict the author of it and for no other purpose. *In re : Sankuralinga Thevan*. 31 Cr. L. J. 712 : 124 I. C. 506 : 34 L. W. 451 : 58 M. L. J. 397 : 1930 M. W. N. 496 : 53 Mad. 590 : A. I. R. 1930 Mad. 632.

—S. 157—First Information Report, whether substantive evidence.

A First Information Report is not a substantive piece of evidence. It can only be

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used as a previous statement to corroborate or contradict a statement made subsequently in Court. *Chogalla v. Emperor*.

27 Cr. L. J. 121 :
91 I. C. 697 : 1 Lah. Cas. 416 :
A. I. R. 1926 Lah. 179.

—S. 157—Former statement of witness—Test identification—Statement made to Police, admissibility of, at trial, in corroboration.

Where owing to the lapse of time between a test identification by the Police and the trial, a witness, because of defective and uncertain memory, is unable to say whether the person on his trial is the person whom he identified, the statement made by the witness to the Police at the test identification is admissible under S. 157, Evidence Act, if the effect of that statement is not to contradict the evidence of the witness given at the trial. *Sarwar Khan v. Emperor*.

21 Cr. L. J. 257 :
55 I. C. 273 : A. I. R. 1920 Pat. 334.

—S. 157—"Former statement," meaning of.

The words "former statement" in S. 157, Evidence Act, mean a previous statement of the witness who is to be corroborated made on another occasion, i. e., an occasion other than that at which the subsequent statement requiring corroboration is made. *Harendra Kumar Mandal v. Emperor*. 39 Cr. L. J. 395 : 174 I. C. 36 : 66 C. L. J. 196 : 10 R. C. 607 : A. I. R. 1938 Cal. 125.

—S. 157—Interpretation.

The expression "legally competent" in S. 157, Evidence Act, must mean "having powers under some law, statutory or otherwise." An officer of the C. I. D., Police, who investigates a matter under the orders of his superior, is not an officer "legally competent" within the meaning of S. 157, Evidence Act, as he does not derive his power under the Police Act of the Cr. P. C. *Muthukumarsawmi Pillai v. Emperor*.

13 Cr. L. J. 352 :
14 I. C. 896 : 1912 M. W. N. 549 :
12 M. L. T. 1.

—S. 157—Interpretation.

The words 'legally competent' in S. 157, Evidence Act, mean having power under some law, statutory or otherwise. The section is controlled by S. 162, Cr. P. C. Even in the case of statements of a witness recorded in a departmental enquiry by Police Officers, not only should the writing be not used in evidence at a subsequent trial of an accused person, but even oral evidence should be disallowed as to the particulars of such statements, as the use of even oral evidence is opposed to the spirit of the law. *Kumaramathu Pillai v. Emperor*.

20 Cr. L. J. 354 :
50 I. C. 834 : 1919 M. W. N. 199 :
25 M. L. T. 379 : 10 L. W. 239 :
A. I. R. 1919 Mad. 487.

EXCISE ACT (XII OF 1896)

S. 51—Scope of—'No person,' whether singular includes plural—Joint possession of liquor, consequences of.

S. 51, Excise Act, prohibits the joint possession by several persons of more spirit or fermented liquor than may be sold retail to one person. If two persons, having each bought 4 quarts of liquor, put it together and carry it home, each of them is in contemplation of law in possession of the whole. *Empor v. Nga Piu*.

36 I. C. 156; 8 L. B. R. 464;
A. I. R. 1917 L. Bur. 160.

S. 52.

See also Cr. P. C., 1898, S. 556.

S. 52—Master and servant—Licensee—Servant, permitting drunkenness in shop during master's absence—Master, whether liable.

A liquor licensee is responsible under S. 50, Excise Act, for the default of his servants in permitting drunkenness in his shop without his knowledge. *Nga Shin Gyi v. Empor*.

41 I. C. 977; A. I. R. 1917 L. Bur. 25.
18 Cr. L. J. 865;
S. 52—Master's liability, test of.

In S. 52, Excise Act, 1896; the words "Any person who breaks....any condition of a license granted under this Act," refer only to the actual licensee-holder. Where the licensee holder deposes a servant to manage a retail liquor-shop, the former is punishable for any breach of a condition, even if he has expressly forbidden the servant to do the act prohibited by the condition. The test of whether the liability in such cases is whether the servant's act was done in the course of management. *Empor v. Rustonji Pestonji*.

S. 57—Excise Officer, definition of.

A head constable is an Excise Officer within the meaning of S. 57 of the Excise Act, 1896. *Empor v. Lachmi Narain*.

8 Cr. L. J. 5;
28 A. W. N. 157; 30 All. 377;
5 A. L. J. 444.

S. 60—Absence of search warrant, effect of.

The absence of a search warrant does not affect the legality of a case under the Excise Act. Where upon a search made by an Excise Inspector cocaine is found, the conviction of the accused would depend not on the legality of the search but on the fact of his being in illegal possession of the cocaine. *Syed Ahmad v. Empor*.

15 Cr. L. J. 19;
22 I. C. 163; 35 All. 575;
11 A. L. J. 933.

S. 60—Presumption—Oath not record-
ed as administered to witness.
There is no provision of law which requires

EXCISE ACT (I OF 1914)

a Court examining a witness to record the fact that the oath was administered to him. Where the record does not show that the oath was administered to a witness, the reasonable presumption in the absence of any suggestion to the contrary would be, that proper procedure was followed and the oath duly administered. *Syed Ahmad v. Empor*.

22 I. C. 163; 35 All. 575;
15 Cr. L. J. 19;
11 A. L. J. 933.

S. 61, 46—Conviction under.

Where the accused illicitly imported cocaine which was seized by the Customs Authorities in Calcutta and was never delivered to him; Held, that the accused was liable to be convicted of an attempt to commit the offence of importation under S. 61 read with S. 46, Bengal Excise Act, and not of an offence under S. 46 of the Bengal Excise Act of actually importing cocaine into Bengal illegally. *Booth, C. H. v. Empor*.

EXCISE ACT (I. E. B. & A. OF 1910)

S. 53, 72—Bona fide medicated article—"Kameswar Modak"—Mixture containing bhang—Manufacture and sale, whether punishable.

The accused, a Kavraj, was convicted under S. 53, Eastern Bengal and Assam Excise Act for manufacturing and selling an excisable article, namely, a mixture called *Kameswar Modak* which contains bhang. The defence of the accused throughout was that the article in question was a bona fide medicated article prepared by him for medicinal purposes; Held, that the accused was protected by S. 72 of the Act. *Satish Chandra Roy v. Empor*.

14 Cr. L. J. 300;
19 I. C. 956; 17 C. W. N. 939.

Nature of punishment.

Deterrent punishment is necessary. Good family of accused is no ground for light sentence. *Empor v. Dharam Singh*.

34 Cr. L. J. 180;
141 I. C. 592; 34 P. L. R. 552;
I. R. 1933 Lah. 154.

S. 75—Illegality of trial.

Excise offence in Native State—Trial in British India—Accused discharged for want of certificate—Certificate granted after one year—Trial is invalid. *Bhan Singh v. Empor*.

34 Cr. L. J. 578;
143 I. C. 341; I. R. 1933 Lah. 343;
A. I. R. 1933 Lah. 659 (2).

EVIDENCE ACT (I OF 1872)

———S. 157—Method of proof.

Where a statement is admissible under S. 157, Evidence Act, it may be proved by any one to whom it was made. *Heymardinguer v. Emperor*. 21 Cr. L. J. 760 : 58 I. C. 344 : 2 U. P. L. R. Lah. 170 : A. I. R. 1920 Lah. 254.

———S. 157—Previous statement—Corroboration by—Cr. P. C. (Act V of 1898), S. 288—Statement before Committing Magistrate transferred to Sessions record, value of—Statement, whether “testimony”—Statement before Police, whether can be used in corroboration.

The statement of a witness recorded by the Committing Magistrate and transferred under S. 288, Cr. P. C., to the Sessions record is the “testimony” of a witness within the meaning of S. 157, Evidence Act, and, therefore, a statement made by the witness before the Police is admissible to corroborate the statement made in Court. *Mam Chand v. Emperor*. 25 Cr. L. J. 1201 :

82 I. C. 129 : 5 Lah. 324 : 1 Lah. Cas. 127 : A. I. R. 1924 Lah. 609.

———S. 157—Previous statement—Corroboration by—Procedure.

Only the statements of witnesses made to the trying Court can be corroborated in the manner contemplated by S. 157, Evidence Act. Previous statements may be used to corroborate or contradict statements made at the trial, not to corroborate statements made prior to the trial. To allow the Investigating Police Officer to be questioned in examination-in-chief about what the witnesses said to him during the investigation proceedings, opens up an undesirably wide field for cross-examination, and leads to the attention of the Court being diverted and distracted from the true issues. *Emperor v. Akbar Badu*. 11 Cr. L. J. 542 :

7 I. C. 933 : 12 Bom. L. R. 663.

———S. 157—Previous statements—Corroboration by.

There was a litigation between the accused and his uncle in respect of certain land which ended in favour of the former. In spite of this the uncle did not give him possession. The criminal proceedings taken by the accused were also unsuccessful. One day when two sons of the uncle and a third person were bringing sheaves of wheat from the disputed plot of land, one of the sons was shot dead. On behalf of the prosecution, the remaining son and the person accompanying him gave the story that the accused had shot the deceased. On behalf of the prosecution, two other independent witnesses who were in the neighbourhood of the place at the time, said that they heard two shots, went to the scene of murder, found the deceased lying dead and were told by the other son and the third person that the accused had murdered the deceased: Held, that the statements of the two independent witnesses were admissible under S. 157, Evidence Act,

EVIDENCE ACT (I OF 1872)

to corroborate the former witnesses in that they charged the accused at once. *Fakir Jumma Khan v. Emperor*.

40 Cr. L. J. 334 :
180 I. C. 239 : 11 R. Pesh. 63 :
A. I. R. 1939 Pesh. 4.

———S. 157—Previous statement—Jail identification, value of—Failure of witness to identify accused in Court, effect of.

Identification proceedings held in the Jail amount merely to this that certain persons are brought to the Jail or other place and make statements, either express or implied, that certain individuals whom they point out are persons whom they recognise as having been concerned in a particular crime. These statements are not made on oath and are made in the course of extra-judicial proceedings. The law does not allow statements of this kind to be made available as evidence at the trial unless and until the persons who made those statements are called as witnesses. When those persons are called as witnesses, then these previous statements become admissible, not as substantive evidence in the case, but merely as evidence to corroborate or contradict the statements made by these witnesses in Court. *Nagina v. Emperor*. 27 Cr. L. J. 813 :

95 I. C. 477 : 19 A. L. J. 947 :
A. I. R. 1921 All. 215.

———S. 157—Previous statements—Value of.

Where it is sought to contradict the witness by his former statement and he stands contradicted thereby, then the former statement cannot be used as substantive evidence against the accused. *Emperor v. Sanika Munda*. 36 Cr. L. J. 195 :

152 I. C. 832 : 7 R. P. 263 :
A. I. R. 1935 Pat. 19.

———S. 157—Previous statements by accomplice—Corroborative value of.

Previous statements of an accomplice do not, as a general rule, legally amount to such corroboration as is required to rebut the presumption as to the unreliability of an accomplice's evidence, but there may be cases in which the circumstances, under which the previous statement was made, by precluding the possibility of the accused having been falsely named therein by the approver, would lend corroborative force to the accomplice's evidence. *Muthu Kumarsawmi Pillai v. Emperor*. 13 Cr. L. J. 352 :

14 I. C. 896 : 1912 M. W. N. 549 :
12 M. L. T. 1.

———S. 157—Previous statements of accomplice—Corroborative value of.

Under S. 157, Evidence Act, the previous statements of an accomplice are sufficient corroboration of his evidence given at the trial whatever weight may be attached to them. The general rule laid down in S. 157 is not limited in the case of accomplices by a special rule to be inferred from

EXCISE CASES

—————*Punishment — Government Circulars—Reference by Magistrates.*

The object of Government in issuing Circulars is to bring to the notice of the Magistrates certain circumstances mentioned there in which, when relied upon, must be openly stated in Court and the parties allowed to comment thereon. Nothing can be more deleterious to the administration of criminal justice than a notion that the Magistrate conceives himself to be under orders to pass any particular kind of sentence or that any considerations affect his decision but such as are openly stated in a Court and are subject to comment by the prosecution and the defence. *Emperor v. Mustali.*

27 Cr. L. J. 633 :
94 I. C. 409 : 20 S. L. R. 70 :
A. I. R. 1926 Sind 193.

EXCISE OFFICER

See also Evidence Act, 1872, S. 25.

EXECUTION

—————*Decree in a title suit—Land delivered to decree-holder in execution of decree—Crops growing, whether pass.*

Where, in execution of a decree in a title suit, possession of land is given to the decree-holder, the growing crops pass with the land. *Udai Narain Gain v. Ramanath Midda.*

18 Cr. L. J. 732 :
40 I. C. 732 : A. I. R. 1918 Cal. 668.

—————*Maintenance decree.*

It cannot be laid down that a decree for further maintenance is always incapable of execution, and a fresh suit is necessary. That would entirely depend on the nature of the suit, the nature of the relief granted, and the form of the decree. *Jagatram Kuer v. Munder Kuer.*

35 Cr. L. J. 1062 :
150 I. C. 373 : 3 A. W. R. 569 :
56 All. 425 : 6 R. A. 1078 :
A. I. R. 1934 All. 87.

EXECUTIVE ACTS

See also (i) Government of India Act, 1919, S. 72.

(ii) Title to immovable property.

EXPENSES OF WITNESSES

—————*Accused, whether can be asked to pay—Government, when bound to pay.*

In the case of a private prosecution in respect of a bailable offence, the only case in which the Government can be made to pay the expenses of prosecution witnesses in the Central Provinces, is where it appears to the Magistrate that the prosecution is directly in the interests of public justice within the meaning of the rules contained in the Judicial Commissioner's Criminal Circular No. 1-37. S. 544, Cr. P. C. is subject to rules made by the Local Government. *Radhakishan v. Ramkrishan.*

25 Cr. L. J. 912 :
81 I. C. 448 : 7 N. L. J. 57 :
A. I. R. 1924 Nag. 114.

EXPERT

See also Criminal trial.

EXPERT EVIDENCE

See also (i) Criminal trial.

(ii) Evidence.

(iii) Evidence Act, 1872, Ss. 35, 45.

(iv) Penal Code, 1860, S. 565.

—————*Corroboration.*

The statement of a witness made during a search which is subsequently retracted, cannot be taken as evidence. The testimony of a witness given before a Committing Magistrate may, by the special provisions of S. 288, Cr. P. C., be accepted as substantive evidence if he is examined at the trial before the Court of Session and may be preferred to the statement made by him at the trial; but a statement made on any other occasion by him cannot be used except to corroborate or contradict the evidence given at the trial. *In re : Basur Venkata Row.*

13 Cr. L. J. 226 :
14 I. C. 418 : 11 M. L. T. 93 :
22 M. L. J. 270 : 1912 M. W. N. 125.

—————*Cross-examination, absence of—Opinion of expert, whether can be challenged.*

Where there has been no cross-examination of a finger-print expert witness impeaching the examination which he had made of and the test to which he had put a particular finger print impression submitted for his consideration, the value and weight to be attached to such witness's evidence cannot be diminished by applying to it considerations to which the witness's attention was never directed. *Sarwar Khan v. Emperor.*

21 Cr. L. J. 257 :
55 I. C. 273 : A. I. R. 1920 Pat. 334.

—————*Handwriting—Forgery—Comparison of handwriting—Acquaintance with handwriting—Statement of witness at search—Examination of accused.*

In a case of forgery where the chief evidence against the accused consists of the comparison made by an expert of the forged document with documents proved to be in the accused's handwriting, the question whether the standard writings compared by the expert are properly proved is a matter of great importance. In cases where a conclusion is based regarding the authorship of a forged document, on a comparison of handwriting, the expert should generally be able to point to marked peculiarities in the ordinary writing of the accused, which are reproduced in the forged document, the accused being unable to avoid them. A conviction should not ordinarily be based on the mere evidence afforded by a comparison of handwriting by an expert without substantial corroboration. There may be cases in which the peculiarities in the handwriting of a person are so numerous and striking and there are so many mannerisms of the forger that he is unable to avoid in committing his forgery, that the Court may safely conclude on expert evidence alone that the writing is that of a particular person. When it is intended to treat as genuine a letter

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illustration (b) to S. 114. *Mulhu Kumarsawmi Pillai v. Emperor.*
13 Cr. L. J. 352 :
14 I. C. 896 : 1912 M. W. N. 549 :
12 M. L. T. 1.

—S. 157—Proving former statement—
Mode of.

S. 157, Evidence Act, provides an exception to the general rule excluding hearsay evidence, and in order to bring a statement within the exception, the duty is cast on the prosecution to establish by clear and unequivocal evidence the proximity of time between the taking place of the fact and the making of the statement. *Mangat Rai v. Emperor.*

29 Cr. L. J. 740 :
110 I. C. 676 : 10 L. L. J. 262 :
29 P. L. R. 703 : A. I. R. 1928 Lah. 647.

—S. 157—Report to Police—Admissibility—Use of, for corroboration.

A report made to the Police Officer cannot be used or relied upon as positive evidence. The matter is governed by S. 157, Evidence Act; such a statement can be used only to corroborate the testimony of the witness. *Harnam Singh v. Emperor.*

37 Cr. L. J. 1079 :
165 I. C. 146 : 38 P. L. R. 203 :
9 R. L. 218 : A. I. R. 1936 Lah. 833.

—S. 157—Statement, how can be proved.

For a Magistrate or other officer to come into Court and depose that a particular witness in his presence identified one of the accused as having taken part in the offences is nothing more than hearsay evidence. Such a statement can only be proved either to corroborate the evidence which the witness afterwards gives in Court in accordance with S. 157 of the Evidence Act, or under some other provisions of the Evidence Act. *Abdul Wahab v. Emperor.*

27 Cr. L. J. 836 :
95 I. C. 756 : 47 All. 39 :
A. I. R. 1925 All. 223.

—S. 157—Statements made in identification proceedings, admissibility of.

A Magistrate is competent to hold a test identification, and even if he is not empowered to deal with the matter under enquiry, the statements which were made before him can be proved under S. 157, Evidence Act. S. 164, Cr. P. C., covers the case where a Magistrate acts under this section and records a statement made to him. *Samiuddin v. Emperor.*

29 Cr. L. J. 497 :
109 I. C. 225 : 32 C. W. N. 616 :
A. I. R. 1928 Cal. 500.

—S. 157—Statement not being first information, how can be used as evidence.

Where a statement made to a Police Officer, which is not the first information contemplated by S. 154, Cr. P. C., is tendered as evidence in a criminal case, the proper course for the Magistrate is to take a statement from the Police Officer that that particular statement was made to him. *Salim Sardar v. Emperor.*

22 Cr. L. J. 410 :
61 I. C. 650 : A. I. R. 1920 Cal. 988 (b).

EVIDENCE ACT (I OF 1872)

—Ss. 157, 158—Statement, oral, made to Police during investigation, whether can be proved.

Where a person who is alleged to have made an oral statement to the Police during the investigation of a case, denies at the trial that he made any such statement, the alleged statement cannot be proved by the evidence of persons who claim to have heard it at the time when it was made, nor is such evidence admissible. *Chittar Singh v. Emperor.*

26 Cr. L. J. 554 :
85 I. C. 650 : 23 A. L. J. 14 :
47 All. 280 : A. I. R. 1925 All. 303.

—S. 157—Statement taken by equally competent person but not recorded as required under S. 164, Cr. P. C.—Admissibility of.

A Deputy Superintendent of Police is an officer legally competent to investigate the facts of offences of murder and dacoity within the meaning of S. 157, Evidence Act, and a statement of a witness recorded by such an officer is not inadmissible merely because it was not recorded as required by S. 164, Cr. P. C. *In re : Thackroth Hydross.*

25 Cr. L. J. 7 :
75 I. C. 695 : 18 L. W. 113 :
45 M. L. J. 279 : 1923 M. W. N. 860 :
A. I. R. 1923 Mad. 694.

—S. 157—"Testimony," meaning of.

Deposition in the committal inquiry is "testimony" within the meaning of S. 157, Evidence Act, which a prior statement by the witness is admissible in evidence to corroborate. *Velliah Kone v. Emperor.*

24 Cr. L. J. 417 :
72 I. C. 529 : 16 L. W. 239 :
43 M. L. J. 222 : 1922 M. W. N. 506 :
31 M. L. T. 175 : 45 Mad. 766 :
A. I. R. 1923 Mad. 20.

—Ss. 157, 136—Corroboration.

It is objectionable to allow a witness to be corroborated, under S. 157, Evidence Act, before he himself is examined; it is very doubtful whether S. 136 gives the Court any discretion to allow such a course. It can only be very rarely and for very special reasons, if at all, that such a course should be allowed; and when such special reasons exist, they must be recorded by the Judge. *Mi Myin v. Emperor.*

9 Cr. L. J. 576 :
2 I. C. 349 : 5 L. B. R. 4.

—Ss. 157, 136—Corroborative evidence—Order of.

Corroborative evidence under S. 157, Evidence Act, should not be admitted until after the witness sought to be corroborated has himself been examined. *Shwe Kin v. Emperor.*

5 Cr. L. J. 411 :
3 L. B. R. 240.

—Ss. 157, 155 (3) — Counsel—Charge of professional misconduct—Evidence to prove the charge.

The appellant was engaged as junior Counsel with another Advocate (Mr. Eddis) to conduct the prosecution of certain persons charged with

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not proved to have been written by the accused and as a circumstance against him, it would be fair and natural for the Court, under Ss. 289 and 342, Cr. P. C., to examine the accused about it and to put him such questions as would enable him to explain its significance. *In re : Basur Venkata Row.*

13 Cr. L. J. 226 :
14 I. C. 418 : 11 M. L. T. 93 :
22 M. L. J. 270 : 1912 M. W. N. 125.

Expert evidence is alone sufficient for conviction. *See Evidence Act, S. 54.*

———*Opinion formed by expert before examination in Court, use of Opinion of expert in civil case, use of, in subsequent criminal trial.*

The opinion of an expert which is admissible against an accused is one given by him at the trial. The opinion formed by him before the trial in another case is not substantive evidence. It is doubtful if such opinion recorded for the purpose of a previous suit is at all admissible. *Ganda Mal v. Emperor.*

29 Cr. L. J. 778 :
110 I. C. 810 : A. I. R. 1928 Lah. 921.

———*Whether can be contradicted by reference to passages in technical works.*

Where an expert witness has been examined on a scientific subject in support of the prosecution, passages in scientific treatises cannot be used by the defence in refutation of the expert's opinion, unless those passages have been put to the prosecution expert and unless notice has been given to him by cross-examination of the deductions which the defence seek to draw from them, so that he may give an answer if he can. In a prosecution for adulteration of ghee, it would not be safe to rely on technical treatises alone without the aid of an expert to whom their alleged effect may be put. *Grande Venkata Ratnam v. Corporation of Calcutta.*

19 Cr. L. J. 753 :
46 I. C. 593 : 22 C. W. N. 745 :
28 C. L. J. 32 : A. I. R. 1919 Cal. 862.

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———*Value of expert evidence—Examination on commission, impropriety of.*

It is not proper to examine an expert on commission in the absence of the accused. The evidence of the expert has always to be carefully weighed, and when given on commission, its value is very considerably reduced. *Nir Din v. Emperor.*

29 Cr. L. J. 377 :
108 I. C. 369 : 10 L. L. J. 235 :
A. I. R. 1928 Lah. 533.

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———*Licence for Patakhas.*

No license for the manufacture or sale of patakhas is required under the Explosives Act. *Emperor v. Bansidhar.*

11 Cr. L. J. 287 :
5 I. C. 911 : 8 P. R. 1910 Cr. :
9 P. W. R. 1910 Cr.

———*Toy fireworks.*

Patakhas are not explosives within the meaning of the Explosives Act but are toy fire-works, and

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as such, exempt from r. 35, Explosive Rules. *Pritamdas Chellaram v. Emperor.*

34 Cr. L. J. 1046 :
145 I. C. 621 : 6 R. S. 34 :
A. I. R. 1933 Sind 171.

———*“Toy fireworks”—Rules under—Clove-crackers, possession of, without licence, whether legal.*

Clove-crackers or lavangi-crackers are “toy fireworks” within the meaning of rule 3 issued under the Explosives Act and are, therefore, exempt from rule 25 imposing the necessity of a licence for possessing them. *Emperor v. Rachapa Gurappa Hattarvat.*

18 Cr. L. J. 139 (a) :
37 I. C. 491 : 18 Bom. L. R. 556 :
A. I. R. 1917 Lah. 322.

———S. 4 — “Explosive”—Meaning of, includes electric sparklets.

The definition of “explosive” in S. 4, Explosives Act, is wide enough to include electric sparklets since the exemption of “toy fireworks” was removed by the amendment of the rules in 1917. *Kalagaria Sanyasiraju v. Emperor.*

189 I. C. 779 :
1939 M. W. N. 1250 : 13 R. M. 334 :
A. I. R. 1940 Mad. 284.

———S. 4 (1) (2)—*Licence—China crackers, whether explosives—Rules framed under the Act, rr. 3, 71—Toy fireworks—Presumption—Possession of explosives—Licence to possess certain quantity for specified period.*

China crackers are explosives within the meaning of clauses (1) and (2) of S. 4 Explosives Act. The onus is on the person in possession of explosives to show that they are toy fireworks under rule 3 of the rules framed under the Act. The whole scheme of the rules framed under the Explosives Act is to require a separate licence for possession, at any one time and place, of explosives in addition to a licence to import during a particular period. *In re : Guru Murti Chetti.*

20 Cr. L. J. 108 :
48 I. C. 988 : 8 L. W. 626 :
25 M. L. T. 175 : 1919 M. W. N. 351 :
A. I. R. 1919 Mad. 846.

———S. 5.

See also Penal Code, 1860, S. 120-B.

———S. 5—*Burden of proof—Explosives Rules, r. 35—Charge under r. 35—Onus of proving that articles found were explosives—Fireworks, whether explosives.*

Where a person is charged under r. 35, Explosives Rules, with being in possession of explosives not in accordance with the licence granted to him, the burden of proving that the articles which were found in the possession were explosives and were covered by the Rules is upon the prosecution and the mere fact that the accused took possession of and signed for a consignment which was described as fireworks does not amount to an admission by him that these were explosives within the purview of these rules. *Polaki Chidambaram v. Emperor.*

31 Cr. L. J. 851 :
125 I. C. 532 : 1930 M. W. N. 73 :
A. I. R. 1930 Mad. 678.

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a crime, before the Chief Court of Lower Burma. After the trial had ended, the appellant was called upon by an order of the Court to show cause why he should not be dismissed or suspended from his office as Advocate of the Court in the event of the following charge being found to be true. The charge ran as follows: "That you when you were acting as one of the Advocates for the prosecution, suggested or hinted to the said Maung Ohn Ghine that he should influence or attempt to influence Mr. Hardless, a professing expert in handwriting, by improper means in order that Mr. Hardless might be induced to express opinions favourable to the prosecution's case in connection with certain letters produced during the course of the said case, and you were thereby guilty of gross professional misconduct." In support of this charge, Mr. Eddis was examined as a witness. He was corroborated by three persons who severally stated that Mr. Eddis had on the same day repeated to them his impression of the effect of his conversation with the appellant, *Held*, that this evidence was admissible under S. 157, Evidence Act, as it tended to support his credibility. *Bomanji v. Chief Judge, &c.*

5 Cr. L. J. 50 :
9 Bom. L. R. 3 : 5 C. L. J. 123 :
11 C. W. N. 370 : 13 Bur. L. R. 2 :
I. L. R. 34 Cal. 129 : 17 M. L. J. 67 :
2 M. L. T. 96 : 34 I. A. 55.

———Ss. 157, 158 — *Previous statements, whether can be used to contradict other witnesses.*

Statements of witnesses recorded under S. 164, Cr. P. C., and used only as corroborative evidence under S. 157, Evidence Act, cannot be used for the purpose of contradicting the statements of other witnesses made at the trial. S. 158, Evidence Act, places a person whose statement has been used as evidence under S. 32 in the same category as a witness actually produced in Court for the purpose of contradicting his statement by a previous statement made by him. Therefore, a statement of a person made to the Police can be used to contradict his subsequent confession made under S. 164, Cr. P. C., if owing to his death, that confession has been used as evidence under S. 32. *Hari Ram v. Emperor.*

26 Cr. L. J. 1425 :
89 I. C. 897 : A. I. R. 1926 Lah. 122.

———S. 158.

See also Evidence Act, 1872, S. 32.

———S. 159.

See also Evidence Act, 1872, S. 62.

———S. 159—Interpretation.

The word 'writing' as used in S. 159, Evidence Act, includes also printing matter. *Ram Chandra v. Emperor.* 31 Cr. L. J. 168 : 120 I. C. 798 : A. I. R. 1930 Lah. 371.

———S. 159—Refreshing memory.

A list given to implement and complete the first report is admissible. *Amrit Lal v. Emperor.*

35 Cr. L. J. 654 :
148 I. C. 400 : 6 R. L. 550 :
A. I. R. 1933 Lah. 987.

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———S. 159—*Refreshing memory.*

A witness can refresh his memory by referring to any writing or use it to corroborate his oral testimony or to refer to a document and to say that it contains a correct statement of what happened in his presence, but in such a case, he must depose that he is unable to state from memory owing to lapse of time, and that he correctly recorded it in the document. *Jagan Nath Luthra v. Emperor.* 32 Cr. L. J. 1172 : 134 I. C. 486 : I. R. 1931 Lah. 934 : A. I. R. 1932 Lah. 7.

———S. 159—*Refreshing memory.*

It is very doubtful whether a Police Officer can refresh his memory as to oral statements made by witnesses under S. 162, though entered in special diary, unless the writing is already in and has been put to the witness who is alleged to have made the statement. *Dadan Gazi v. Emperor.* 4 Cr. L. J. 79 : 10 C. W. N. 890 : I. L. R. 33 Cal. 1023.

———S. 159—*Refreshing memory.*

Lists of discovery of stolen property can no doubt be used by the persons who actually wrote them in order to refresh their memory at the time of giving evidence, but they are not themselves evidence. *Hazara Singh v. Emperor.* 25 Cr. L. J. 1347 : 82 I. C. 707 : 6 L. L. J. 370 : A. I. R. 1924 Lah. 727.

———S. 159—*Refreshing memory.*

Mashirnama, if it be a statement at all, is a statement in writing to the Police and the admission of such a writing in evidence as corroboration is against the express provisions of S. 162, Cr. P. C., though the writing may, of course, be used under S. 159, Evidence Act, in order to refresh the memory. *Emperor v. Baloch Khan.* 11 Cr. L. J. 498 : 7 I. C. 601 : 4 S. L. R. 38.

———S. 159—*Refreshing memory*—*Panchayatnama prepared by Police during investigation upon information by accused—If substantive evidence in case—It can be used for refreshing memories of witnesses in witness-box.*

There is no provision in the Evidence Act by which *Panchayatnamas* prepared by the Police during investigation embodying the information given by the accused regarding the clothes worn by him at the time of the occurrence or such documents relating to the recovery of clothes discovered upon such information, can be used as substantial evidence, though they can be used by witnesses for the purpose of refreshing their memories in the witness-box. *In re : Kolti Seetha Rami Reddi.*

40 Cr. L. J. 925 :
184 I. C. 327 : 1939 M. W. N. 465 :
12 R. M. 436 : A. I. R. 1939 Mad. 766.

———S. 159 — *Refreshing memory* — *Police diary—Investigating Police Officer permitted to refer to, to refresh memory—Defence, right of, to inspect diary.*

When an Investigating Police Officer appears as a witness for the prosecution, and is permitted by the Magistrate to refresh his memory

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—S. 5, rr. 32, 138—*Breach of condition by servant—Master's liability—Acting 'in the scope of employment', meaning of.*

The accused held a licence under the Explosives Act to manufacture gun-powder, containing a condition that the explosive shall be manufactured in a tent or lightly constructed building exclusively appropriated for the purpose. The accused constructed a building which complied with this condition. One of his servants employed by him to manufacture gun-powder took the necessary ingredients from this building to the accused's house and performed part of the process of manufacture there. An explosion occurred and the servant and another were injured. On a trial for breach of the conditions of the licence: *Held*, that inasmuch as the servant was acting in the course of her employment and inasmuch as the Statute imposed an absolute liability on the holder of the licence, the accused was guilty. *Emperor v. Mahadevappa Hanmantappa.*

28 Cr. L. J. 364 ;

100 I. C. 972 : 29 Bom. L. R. 153 :

51 Bom. 352 : A. I. R. 1927 Bom. 209.

—S. 8—*Occupier, meaning of—"Occupier" means person actually in charge and on spot.*

For the purposes of S. 8, Explosives Act, IV of 1884, the word "occupier" means a person who was in actual occupation of the premises and control of the operations in progress there. The section imposes an obligation on the occupier to give notice of the accident forthwith. It must, therefore, refer to an individual who is actually on the spot and in charge of the factory. An occupier for the purposes of the Factories Act may include an owner if the owner is in actual possession of the factory. In any case when the owner appoints a manager and puts him in charge of the factory, both the owner and the manager cannot be regarded as being occupiers. The person who answers that description is the manager. *Gopal Ambadas Chawre v. Emperor.*

37 Cr. L. J. 839 :

163 I. C. 400 (1) : 9 R. N. 2 :

18 N. L. J. 235.

—S. 8—"Occupier," meaning of.

The word "occupier" in S. 8 refers to some one on the spot at the time of the explosion who must necessarily have become aware of the explosion. *Zeri Khan v. Emperor.*

16 Cr. L. J. 622 :

30 I. C. 446 : 8 Bur. L. T. 288 :

A. I. R. 1915 L. Bur. 105.

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—R. 35.

See also Explosives Act, 1884, S. 5.

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—S. 3—*'Malice,' meaning of.*

The word 'malice' in S. 3 is not used in its ordinary popular sense meaning vindictiveness against a particular individual but in the legal acceptance of the word. Malice in the legal

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acceptance of the word is not confined to personal spite against individuals but consists in a conscious violation of law to the prejudice of another. *Bhagat Singh v. Emperor.*

31 Cr. L. J. 290 :

121 I. C. 726 : 31 P. L. R. 73 :

A. I. R. 1930 Lah. 266.

—S. 4 *Conviction.*

Person having mansal stains on his apparel—It is unsafe to base conviction merely on this evidence. *Indar Datt v. Emperor.*

32 Cr. L. J. 818 :

132 I. C. 185 : I. R. 1931 Lah. 537 :

A. I. R. 1931 Lah. 408.

—S. 4, Cl. (b)—*Criminal conspiracy.*

Supplying shots and red arsenic for making one bomb only—Supplier is guilty. *Bhahananda Banerjee v. Emperor.* (S. B.)

34 Cr. L. J. 1222 :

146 I. C. 186 : 57 C. L. J. 213 :

6 R. C. 183 : A. I. R. 1933 Cal. 747.

—S. 4—*Illegality of conviction.*

Absence of proof that explosions caused brought accused within Act—Conviction is not legal. *Khimji Khetsi v. Emperor.*

36 Cr. L. J. 1037 :

156 I. C. 972 : 8 R. S. 20.

—S. 4—*Lethal weapon—Gramophone needle.*

A gramophone needle can scarcely be regarded as a lethal weapon. *Khimji Khetsi v. Emperor.*

36 Cr. L. J. 1037 :

156 I. C. 972 : 8 R. S. 20.

—S. 4—*Possession.*

In order to constitute an offence under S. 4 (b), possession must be conscious and intelligent possession and not merely the physical presence of the accused in proximity or even in close proximity of the offending object. *Kuldip Chand v. Emperor.*

36 Cr. L. J. 300 (2) :

153 I. C. 139 : 7 R. L. 392 (2) :

37 P. L. R. 132 : A. I. R. 1934 Lah. 718.

—S. 4—*Scope of—"Unlawfully" and "maliciously", definition of—Possession, nature of, to be basis for conviction—Possession defined—Incriminating article found in joint family house.*

In S. 4, Explosive Substances Act, the term 'unlawfully' signifies not for a lawful object and the expression 'maliciously' means and implies an intention to do an act which is wrongful, to the detriment of another person. The mere fact that an article is found in a house belonging to a joint family does not *per se* render every member of the family liable for its possession. Where the portion of the house in which article is found is not in the exclusive possession of a particular member but is used by, or is accessible to, all the members of the family, there is no presumption that the article is in the possession or control of any person other than the house-master or the head of the family. But it is open to the prosecution to prove that the possession was with some other

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in respect of a particular question by referring to the Police diary, the accused is entitled to an inspection of that portion of the diary only from which the witness refreshed his memory, and not the whole diary. *Lachhmi Singh v. Emperor*.

23 Cr. L. J. 591 :
68 I. C. 623 : 3 P. L. T. 562 :
A. I. R. 1922 Pat. 562.

———S. 159 — *Refreshing memory* — Post mortem notes of Medical Examiner, whether can be admitted en bloc.

When there is no discrepancy between the post mortem notes and the evidence of the Medical Officer, the placing of the post mortem notes on the record does not do the accused any harm. Ss. 159 to 161, Evidence Act, only permit a limited use being made of the post mortem notes of the Medical Examiner, namely, that they be used by the witness who made them for the purpose of refreshing his memory or by a party for the purpose of contradicting the witness. *Mahomed Ynsif v. Emperor*.

31 Cr. L. J. 1026 :
126 I. C. 449 : A. I. R. 1930 Sind 225.

———S. 159 — *Refreshing memory* — Proper procedure indicated.

The practice in the Punjab of referring to statements in the First Information Reports, medico-legal reports and so forth as if they were evidence is not justified by law. The proper course is for the witness to refer to the document which he has prepared at the time under S. 159, Evidence Act, and state in Court everything which the prosecution or Counsel for defence or the trying Magistrate or Judge considers material. The Judge should not, therefore, refer to anything in such report which is not sworn to by the witness in Court. *Muhammad Salabat v. Emperor*.

38 Cr. L. J. 869 :
170 I. C. 253 : 39 P. L. R. 290 :
10 R. L. 88 : A. I. R. 1937 Lah. 475.

———S. 159—*Refreshing memory*.

When a witness wants to refresh his memory under S. 159, Evidence Act, he is to do so by referring in Court to the document which he had read at or near the time of the transaction, and it is the fact that he had known it to be correct when he read it, that is the justification for his doing so. It is immaterial that the document to which the witness refers in Court was not printed by the witness himself or in his presence. *Ram Chandra v. Emperor*.

31 Cr. L. J. 168 :
120 I. C. 798 : A. I. R. 1930 Lah. 371.

———S. 159—*Refreshing memory* — Witness, duty of.

A witness before a Court of Justice is under an obligation to tell the truth and the whole truth, to the very best of his power. If upon any question he suffers from a bona fide lapse of memory, and that failure of memory can be remedied by reference to any memorandum or other writing prepared by the witness at the time, and the Court invites the witness to refresh his memory with reference to the writing, the witness is under an obvious obliga-

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tion to do so. It is part of the duty under which he lies to lay the whole truth before the Court to the best of his ability. *Harkhoo v. Emperor*.

23 Cr. L. J. 143 :
65 I. C. 575 : 19 A. L. J. 76 :
A. I. R. 1921 All. 86 (1).

———Ss. 159, 160—*Refreshing memory* — Confession recorded late at night—Effect.

A witness may refresh his memory by referring to a writing even though it neither brings to his mind any recollection of the fact mentioned in it nor any recollection of the writing itself but which, nevertheless, enables him to swear to a particular fact from the conviction of his mind on seeing the writing which he knows to be genuine. The fact that a confession was recorded late at night is not alone a sufficient ground for holding that the confession was not voluntarily made. *Abdul Salim v. Emperor*.

23 Cr. L. J. 657 :
69 I. C. 145 : 35 C. L. J. 279 :
26 C. W. N. 680 : 49 Cal. 573 :
A. I. R. 1922 Cal. 107.

———S. 160.

See also Evidence Act, 1872, S. 60.

———S. 160—Scope.

Where the surrounding circumstances and the length of the period which intervened between the recording of the statement and the trial of the case render it impossible for the witness to recollect and repeat the words used, his statement should be treated as if he had prefaced it by stating categorically that he could not remember what the deceased had said, and the statement can be admitted in evidence under S. 160. *Krishnama Naicken v. Emperor*.

33 Cr. L. J. 115 :
135 I. C. 337 : 60 M. L. J. 404 :
33 L. W. 348 : 1931 M. W. N. 167 :
54 Mad. 678 : I. R. 1932 Mad. 81 :
A. I. R. 1931 Mad. 430.

———S. 162.

The Magistrate is bound to call for them under S. 162 of the Evidence Act, and to allow the accused to cross-examine the witnesses under S. 155 on the statements made whether they are in favour of the accused or against them. *Harbans Sahai v. Emperor*.

13 Cr. L. J. 445 :
15 I. C. 77 : 16 C. W. N. 431.

———S. 162—Production of documents.

It is for the Court to decide the validity of any objection to its production or admissibility. A legal practitioner cannot validly object to the order of the Court to produce the document, at least for the inspection of the Court, before the Court decided whether the objection to its production was or was not valid. These provisions apply in Civil cases also. *Ganga Ram v. Habib Ullah*.

37 Cr. L. J. 113 :
159 I. C. 524 : 8 R. A. 458 :
1935 A. L. J. 1176 :
1935 A. W. R. 1152 :
A. I. R. 1936 All. 212.

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member of the family and that member would be liable to account for it. *Dula Singh v. Emperor*.

29 Cr. L. J. 481 :
109 I. C. 209 : 10 L. L. J. 408 :
9 Lah. 531 : 29 P. L. R. 629 :
A. I. R. 1928 Lah. 272.

—Ss. 4, 7—Committal before obtaining consent, validity of—Prosecution for offence under Act triable by Court of Session—Consent of Government, necessity of.

The committal of a person to a Court of Session for being tried for an offence under the Explosive Substances Act which is exclusively triable by a Court of Session is not vitiated by the omission to obtain the consent of the Government for the prosecution in accordance with the provisions of S. 7 of the Act, inasmuch as in a case exclusively triable by a Court of Session, committal proceedings are only an 'inquiry' and the trial begins only after the commitment and the framing of the charge. The Sessions Judge, however, cannot proceed with the trial on such commitment before obtaining the necessary sanction. *Emperor v. Kallappa Dundappa Rudrannavar*.

28 Cr. L. J. 5 :
99 I. C. 37 : 50 Bom. 695 :
28 Bom. L. R. 1290 : A. I. R. 1927 Bom. 21.

—S. 4 (b)—Scope of.

If A, B and C conspire to make or have in possession or under control an explosive substance, and if in pursuance of such conspiracy, A makes or has in his possession or under his control an explosive substance, they may, if the Court thinks fit, be charged and tried together under S. 120-B, Penal Code, and S. 4 (b) of Act VI of 1908. Where an offence is committed under S. 4 (b), Explosive Substances Act, 1908, in pursuance of a criminal conspiracy, it is open to the Crown to prosecute the accused for such offences, irrespective of the question of the ultimate design of the alleged conspiracy. Any part of any apparatus, machine or implement intended to be used or adapted for causing or aiding in causing any explosive substance is included in the term 'explosive substance' as used in S. 4 (b). To place all the available evidence in the case fairly and fully before the tribunal by which alone the guilt or innocence of the accused is to be determined, and not to secure a conviction, is the main duty of the prosecution. *Amrillal Hazra v. Emperor*.

16 Cr. L. J. 497 :
29 I. C. 513 : 21 C. L. J. 331 : 19 C. W. N. 676 :
42 Cal. 957 : A. I. R. 1916 Cal. 188.

—S. 5—Evidence.

The recoveries of explosives from places accessible to others are not sufficient to prove that the accused was in possession or control of the articles recovered. *Amrik Singh v. Emperor*.

32 Cr. L. J. 585 :
130 I. C. 652 : 32 P. L. R. 150 :
I. R. 1931 Lah. 332 : A. I. R. 1931 Lah. 50.

—S. 5—Power of Sessions Judge.

When sanction has been obtained for prosecution under S. 4 (b) the Sessions

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Judge is competent to frame a charge in the alternative under S. 5. But even if he does not frame the alternative charge, he can, under S. 237, Cr. P. C., convict the accused under S. 5, though he is charged under S. 4 (b) alone. *Nathu Ram v. Emperor*.

36 Cr. L. J. 266 :
153 I. C. 147 : 1934 A. L. J. 1088 :
4 A. W. R. 672 : 7 R. A. 448 :
A. I. R. 1934 All. 982.

—S. 5—Presumption of liability—Bomb found in joint family house—Whose possession—Liability of managing member.

If it is found in a portion of the house of which all the members of the family have the use, then *prima facie*, the managing head of the family is responsible. If the Police act on information showing that an article found in a house is in the exclusive possession of one member of the family and the article is found in a portion of the joint family residence of which all the members of the family have the use, then the head of the family is not liable to arrest merely on the ground that the article is found in a portion of the house to which all the family can resort. *Peary Mohan Das v. Weston*.

13 Cr. L. J. 65 :
13 I. C. 721 : 16 C. W. N. 145.

—S. 6—Offence under.

Primary intention of the accused must be considered. *Bimal Pershad Jain v. Emperor*.

35 Cr. L. J. 752 :
148 I. C. 745 : 6 R. L. 588 :
A. I. R. 1934 Lah. 583.

—S. 7—Consent to prosecution given by Governor—Court, if can consider whether it was given after consulting Ministers.

The executive authority in the province is vested in the Governor, and the question whether he has consulted the Ministers or not in any particular matter is not a question that can be canvassed in Courts of Law. Where the Governor gives consent to the prosecution under S. 7, Explosive Substances Act, the question whether it was given after consultation with the Ministers, cannot be considered by Court of Law. *In re : Lakshmipathi Naick*.

40 Cr. L. J. 317 :
180 I. C. 106 : 1938 M. W. N. 1171 :
11 R. M. 658 : 1939, 1 M. L. J. 426 :
49 L. W. 500 : A. I. R. 1939 Mad. 168.

—S. 7—Procedure—Sanction, under S. 7, form and contents of—Conviction under different sections, whether competent.

The proper course for the Local Government or the Governor-General-in-Council, as the case may be, to adopt, is to state briefly the facts which constitute the offence and to give a consent to the trial of the accused person upon those facts, as constituting, in the opinion of the consenting authority, an offence under one or other of the sections of the Act. It is for the Court and not for the Government to decide finally whether upon a given set of facts a particular

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-----S. 163.

See also Evidence Act, 1872, S. 74.

-----S. 163—Application of—Circumstantial evidence as evidence of guilt.

S. 163, Evidence Act, is applicable also to criminal proceedings and even where the Crown is the prosecutor. In a case dependent upon circumstantial evidence the incriminating facts must be incompatible with the innocence of the accused and incapable of explanation upon any other reasonable hypothesis than that of his guilt. But it is not correct to say that the evidence must be entirely inconsistent with his innocence. *Government of Bengal v. Santiram Mondal*.

32 Cr. L. J. 10 :
127 I. C. 657 : 58 Cal. 96 :
I. R. 1930 Cal. 865 :
A. I. R. 1930 Cal. 370.

-----S. 163—Criminal cases — Applicability.

S. 163, Evidence Act, is applicable to criminal trials as well as to civil actions. Where therefore the Counsel for the accused makes use of the signed statements of the witnesses in the Police diary at the cross-examination in order to contradict their evidence at the trial, the entire signed statement of the witness to the Police excluding only such portions as are not relevant to the case should go in as evidence. This would bring on the record those parts of the signed statement which were corroborative of the witness's evidence at the trial. *Emperor v. Makhan Lal Dutt*.

41 Cr. L. J. 408 :
187 I. C. 138 : 12 R. C. 553 :
I. L. R. 1939, 2 Cal. 429 :
A. I. R. 1940 Cal. 167.

-----S. 163—Power of High Court, to enquire where there was sufficient evidence besides — Evidence improperly admitted, where trivial—Failure of justice—General principle—Re-trial.

Where in a trial by Jury, evidence has been improperly admitted, the High Court has power, under S. 167, Evidence Act, to enquire whether independently of the evidence, there was sufficient evidence to justify the decision. And if it considers that the improperly admitted evidence was so trivial that it could not have occasioned a failure of justice, it should not order a re-trial but should proceed to make such an enquiry as is contemplated by S. 167, Evidence Act. In the present case, a re-trial was ordered. *Hazir Ali v. Emperor*.

11 Cr. L. J. 96 :
5 I. C. 315.

-----S. 163—Scope.

Where notice was given to the Crown on behalf of the accused to produce the statements made by certain witnesses in a previous departmental inquiry conducted by the District Magistrate and the documents were produced and inspected by the defence and used for cross-examining

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the several witnesses : *Held*, (i) that though the documents were not public documents within S. 74, Evidence Act, they were documents to which S. 163, Evidence Act, could properly be applied, and the defence were bound to put them in ; (ii) that it was not necessary to prove them but they could be looked at to see what they included or omitted. *Government of Bengal v. Santiram Mondal*.

32 Cr. L. J. 10 :
127 I. C. 657 : 58 Cal. 96 :
I. R. 1930 Cal. 865 :
A. I. R. 1930 Cal. 370.

-----S. 163.

The provisions of S. 163 entitle the prosecution to make use of them if they turn out to be not in favour of the defence. *Harbans Sahai v. Emperor*.

13 Cr. L. J. 445 :
15 I. C. 77 : 16 C. W. N. 431.

-----S. 164—Applicability.

S. 164 does not apply to criminal proceedings. *Sham Das Kapur v. Emperor*.

34 Cr. L. J. 283 :
142 I. C. 57 : 36 C. W. N. 1127 :
60 Cal. 341 : I. R. 1933 Cal. 214 :
A. I. R. 1933 Cal. 65.

-----S. 164—Document withheld—Cross-examination.

When a party is called upon to produce a document for inspection and does not do so, he cannot be prevented from putting the document to the other side in cross-examination. *Sham Das Kapur v. Emperor*.

34 Cr. L. J. 283 :
142 I. C. 57 : 36 C. W. N. 1127 :
60 Cal. 341 : I. R. 1933 Cal. 214 :
A. I. R. 1933 Cal. 65.

-----S. 165.

See also (i) Cr. P. C. 1898, S. 162.
(ii) Criminal trial.

-----S. 165—Evidence in Court, whether can be tested by extraneous matter—Judge, duty of.

A Judge has no right to test evidence given in Court by material which has not legally been made evidence. He has the right and the duty to test a witness's evidence by putting questions to him for the purpose of clearing up any matters which may be ambiguous or doubtful. But before he is justified in commenting adversely upon a witness's evidence, he must establish the particular fact warranting such criticism by proper evidence in Court and not by reference to documents which are not properly on the record. *Amar Nath v. Emperor*.

26 Cr. L. J. 463 :
85 I. C. 143 : 3 Lah. 476 :
A. I. R. 1925 Lah. 187.

-----S. 165—Power of Court under—Extent of use.

The power conferred on a Judge under S. 165 cannot be exercised for the purpose of introducing evidence in contravention of the provisions of S. 162, Cr. P. C. *Rahijadi v. Emperor*.

32 Cr. L. J. 841 :
132 I. C. 159 : 58 Cal. 1009 :
35 C. W. N. 317 : I. R. 1931 Cal. 543 :
A. I. R. 1931 Cal. 189.

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offence has been committed, and the mere fact that the consenting authority is of opinion that the facts constitute an offence under one section of the Act, is in itself no bar to a conviction of the accused person of another offence under another section, provided of course that the facts stated in the order giving consent are the same as those upon which the conviction is based. *Amar Singh v. Emperor*.

21 Cr. L. J. 230 :
55 I. C. 102 : 31 P. R. 1919 Cr. :
A. I. R. 1920 Lah. 367.

—S. 7—Sanction of Local Government, necessity of.

It is not necessary for the prosecution to obtain the sanction of the Local Government referred to in S. 7, while the case is in the stage of an inquiry. It is enough if it is obtained before the trial proceeds. *Nathu Ram v. Emperor*.

36 Cr. L. J. 266 :
153 I. C. 147 : 1934 A. L. J. 1088 : 7 R. A. 448 :
4 A. W. R. 672 : A. I. R. 1934 All. 982.

—S. 8—Notice—Accidental explosion—Injury to property—Obligation to give notice to Police—Omission to give notice—Intention.

The primary requisite for the obligation to give notice to the Police under S. 8 of Explosive Substances Act is not "serious injury to property", but an accidental explosion. If the explosion was designed, the obligation to give notice does not arise even if the explosion may have been attended with "serious injury to property." Unless the omission to give notice is intentional, S. 176, Penal Code, does not apply. *Zeri Khan v. Emperor*.

16 Cr. L. J. 622 :
30 I. C. 446 : 8 Bur. L. T. 288 :
A. I. R. 1915 U. Bur. 105.

EXTORTION.

See also Penal Code, 1860, S. 383.

EXTRADITION.

See also Cr. P. C. 1898, S. 253.

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—S. 14—Power of High Court under—Inquiry—Power to transfer—Power to control procedure.

The High Court has no power to order the transfer of an inquiry under the Extradition Act, S. 14, because the competency of a Magistrate to hold an inquiry under that section depends on the authorization of the Executive Government. There is no provision of law which empowers the High Court to request the Government to appoint another Magistrate to whom, if appointed, the High Court could transfer the inquiry. As the High Court does not possess any power to control or interfere in the conduct of an inquiry held under S. 14, Extradition Act, it cannot declare by what procedure the Magistrate should be guided in the further conduct of the inquiry.

In re : *Mohunt Dev Das*. 12 Cr. L. J. 346 :
10 I. C. 946 : 15 C. W. N. 735.

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See also Cr. P. C., 1898, S. 491.

—Applicability of—Berar and Hyderabad State.

A case of extradition from Berar to Hyderabad State is governed by the Extradition Treaty of 1867 between the Indian Government and the State and not by the Extradition Act. *Daddiprasad v. District Magistrate, Yeotmal*.

25 Cr. L. J. 346 :
77 I. C. 234 : A. I. R. 1924 Nag. 313.

—Power of Magistrate—High Court—Power of supervision—Appellate jurisdiction.

A Magistrate acting under the Extradition Act is not subject to any appellate jurisdiction ; he makes inquiry and reports the result to Government. Consequently, the High Court cannot interfere with his order. *Rudolf Stallman v. Emperor*.

12 Cr. L. J. 322 :
10 I. C. 618 : 38 Cal. 547 :
15 C. W. N. 737.

—Rules of Kathiawar of 1902, Rule I and XIII—Extradition Act, S. 3 (3)—Right of cross-examination—Surrender of Criminal—*Maxim audi alteram partem*.

In a *prima facie* proceeding, the accused having asked to be allowed the right of cross-examination and the complainant having protested that the practice of the Agency was not to allow cross-examination and that the expediency was against allowing it : Held (in revision) that the ruling at III K. L. R. 260, did not decide the particular point of cross-examination, that ruling having merely allowed the accused to be properly represented and to explain all the facts alleged against him ; but that, whether explanation and representation included the right of cross-examination or not that ruling was given long before the present Extradition Rules of Kathiawar (of 1902) were drawn up ; that the practice and custom of the Agency could not prevail against recent rules, even if there were any well-established practice and custom in the matter ; that previous to 1902, there was not any well-established rule or custom, but that it was usual to curtail *prima facie* proceedings as far as possible, though the accused was sometimes allowed to be represented ; that certainly it would appear that there was the right of cross-examination just as there was in a commitment case ; that the circumstances in respect of jurisdiction might not be identical, but that the above provisions of law were nevertheless to be applied "as far as possible," that a *prima facie* proceeding could take place without the presence of the accused, but that, if the accused wished to be represented and claimed the right of cross-examination, he was entitled to the exercise of those rights, which were conferred by Rule I, Extradition Rules, read with S. 3 (3), of Act XV of 1903. *K. S. Mansur Khachar v. K. S. Ram Khachar*.

4 Cr. L. J. 136.

—S. 2, Chap. II—Procedure—"Foreign State"—Chandernagore, whether Foreign State—Extradition proceedings.

Chandernagore, an East Indian Possession of

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—S. 165—Power of Magistrate to question witnesses.

Under S. 165, Evidence Act, a Magistrate is entitled to put to a witness any question at any time and in any form. *Pratap Singh v. Emperor.* 31 Cr. L. J. 659 : 124 I. C. 449 : I. R. 1930 Nag. 273.

—S. 165—Power to question witnesses—How to be exercised.

A Judge has no doubt the right to ask any question within limits at any time, but this right should be exercised with discretion. It is unfair to the accused to anticipate or break the thread of cross-examination. It is not the province of the Court to examine the witnesses, unless the pleaders on either side have omitted to put some material question or questions; and the Court should, as a general rule, leave the witnesses to the pleaders to be dealt with as laid down in S. 131 of the Act. *Nga Saw v. Emperar and Nga Po On v. Emperor.*

11 Bur. L. R. 8 :
2 Cr. L. J. 133.

—S. 165—Scope.

The power conferred upon a Judge under S. 165, Evidence Act, cannot be exercised for the purpose of introducing evidence in contravention of the law. *Keramat Mandal v. Emperor.*

27 Cr. L. J. 277 :
92 I. C. 453 : 42 C. L. J. 528 :
A. I. R. 1926 Cal. 147.

—S. 167.

- See also (i) Bombay Prevention of Gambling Act, 1887, S. 4.
(ii) Cr. P. C., 1898, Ss. 162, 350.
(iii) Evidence Act, 1872, Ss. 25, 80.

—S. 167—Appeal—Conviction, whether can be upheld.

Where a confession has been improperly admitted in evidence, it is permissible for an Appellate Court under S. 167, Evidence Act, to uphold the conviction, if independently of the confession the Court is of opinion that there is sufficient evidence on the record to justify the conviction, but where the Court is unable to say how far the judgment of the Trial Court and the opinion of the Assessors was influenced by the improper admission of the confession and where it is probable that if the Assessors had not known of the confession at all they might have looked at the rest of the evidence in an entirely different light, the conviction cannot be upheld. *Mhabli Rama Sail v. Emperor.*

26 Cr. L. J. 984 :
87 I. C. 520 : 26 B. L. Rom. 706 :
A. I. R. 1924 Bom. 480.

—S. 167—Case before High Court Sessions—Applicability.

There is nothing in the Evidence Act to support the suggestion that S. 167 has no application to a case tried by a jury at the High

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Court Criminal Sessions. *Ramanuja Ayyangar v. Emperor.* 37 Cr. L. J. 64 :

159 I. C. 240 : 1935 M. W. N. 5 :
68 M. L. J. 93 Sup. : 42 L. W. 140 :
A. I. R. 1935 Mad. 793.

—S. 167—Improper admission of evidence, effect of.

Under S. 167, Evidence Act, the improper admission of evidence is not of itself a ground for a new trial or reversal of a decision in a case, if it appears to the Court that independently of that evidence there was sufficient evidence to justify the decision. *Badri Choudhury v. Emperor.*

27 Cr. L. J. 362 :
92 I. C. 874 : 6 P. L. T. 620 :
A. I. R. 1926 Pat. 20.

—S. 167—Improper admission of evidence.

Under S. 167, Evidence Act, the improper admission of evidence is not ground of itself for reversal of any decision if it appears to the Court that independently of the evidence improperly admitted, there is sufficient evidence to justify the decision. A Court competent to deal with facts should ignore the evidence wrongly admitted and consider whether there still remains sufficient evidence to support the judgment. If this has not been done, the High Court on revision will ordinarily remand the case for a finding with reference to admissible evidence only. *Kuruba Saukara v. Killi Manappa.*

25 Cr. L. J. 1275 :
82 I. C. 283 : 21 L. W. 87 :
A. I. R. 1925 Mad. 245.

—S. 167—Improper admission of evidence.

Where evidence of bad character or the accused's complicity in other crimes, confessional statements made to the Police and hearsay evidence are admitted, it must be assumed that such admission has prejudiced the accused, and in such a case, the trial must be set aside. A verdict based on such inadmissible evidence cannot be upheld. *Sheikh Abdul v. Emperor.*

26 Cr. L. J. 606 :
85 I. C. 830 : A. I. R. 1925 Cal. 887.

—S. 167—Questions to witness—Disallowed by the Court.

A party asking for redress at the hands of an Appellate or Revisional Court on the ground that the Court below has wrongly excluded a question which the party wished to put to a witness, must state the form and substance of the question proposed to be put to enable the Appellate or Revisional Court, as the case may be, to determine whether the particular question in each case was so framed as to make it admissible under Evidence Act. *Emperor v. Narayan.*

7 Cr. L. J. 24 :
9 Bom. L. R. 1385 : 3 M. L. T. 50.

—S. 167—Re-trial—When can be ordered.

Conviction on evidence wrongly admitted—Conviction upheld by Sessions Judge excluding wrongly admitted evidence—Trial taking different course by admission of inadmissible evidence—Case is outside purview of S. 167

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France, is a Foreign State as defined by Extradition Act, and the procedure provided by Chap. II of that Act should be followed before surrendering an offender to the Authorities of that State. *In re : Celeste Cullington.*

22 Cr. L. J. 691 :
63 I. C. 819 : 48 Cal. 378 :
A. I. R. 1921 Cal. 273.

———Ss. 2 (a), 7—Power of Magistrate—Cr. P. C., Ss. 4 (1), 439, 491—Jurisdiction of Native State to issue extradition warrant—Illegal warrant—Magistrate's power to refuse to take action—Order of Magistrate, whether judicial order—Revision by High Court.

An order under S. 7, Extradition Act, passed by a District Magistrate or a Chief Presidency Magistrate is a judicial order and can be revised by the High Court under S. 439 or S. 561-A, Cr. P. C. The High Court may also, in a proper case, interfere with such an order under S. 491 of the Code. If an extradition warrant is without jurisdiction or there is some other illegality to be found on the face of the warrant, the Magistrate in the exercise of his judicial powers would not be justified in issuing an order for its execution. *In re : Bai Aisha.*

30 Cr. L. J. 772 :
117 I. C. 321 : 31 Bom. L. R. 62 :
53 Bom. 149 : I. R. 1929 Bom. 369 :
A. I. R. 1929 Bom. 81.

———S. 3—Power of High Court—Bail.

The Extradition Act provides for bail to be furnished by persons accused of certain crimes, and the matter is one which must be regulated by the provisions of the Cr. P. C. The High Court has the fullest discretion in the matter but regard must be had to the provisions of S. 496 and the circumstances of the case. *Rudolf Stallman v. Emperor.*

12 Cr. L. J. 358 :
10 I. C. 958 : 15 C. W. N. 736.

———S. 3—Habeas corpus writ of, issue of—Cr. P. C., S. 491—Arrest outside jurisdiction of High Court—Enquiry by Magistrate—Detention in prison pending decision by Government, legality of—Jurisdiction of High Court to interfere.

There is no provision in the Extradition Act under which a fugitive criminal can apply for a writ of *habeas corpus* if the Magistrate commits him to prison. The detention of a fugitive criminal, pending the consideration by the Government of India of the report of the Magistrate who is directed under S. 3, Extradition Act, to make an enquiry is not illegal. The High Court to which an application is made by a fugitive criminal for a writ of *habeas corpus* cannot question the report of the Magistrate. Under S. 491, Cr. P. C., the High Court has no jurisdiction to order the discharge from custody of a person arrested under the Extradition Act, where neither the arrest nor the detention was within the jurisdiction of the Court. The right to issue a writ of *habeas corpus* possessed by the High Court has not been taken away by the special procedure provided by sub-clauses (6)

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and (7) of S. 3, Extradition Act. *Tops, A. C. v. Emperor.*

20 Cr. L. J. 257 :
50 I. C. 17 : 46 Cal. 52 :
A. I. R. 1919 Cal. 509.

———Ss. 3, 4—Legality of arrest—Warrant issued in respect of non-extraditable offence—Proceedings, legality of—Transfer of extradition proceedings, whether can be directed—Bill.

Under S. 4, Extradition Act, a Magistrate issued a warrant for the arrest of a person for the offence of escaping from lawful custody. On being arrested, that person applied to the High Court for discharge from custody on the ground that the offence for which he was arrested was not extraditable: *Held*, that although the warrant was issued for the offence of escaping from lawful custody, inasmuch as the complaint on which the warrant was issued and the direction of the Local Government referred to an offence of theft which was an extradition offence, the arrest was legal. The High Court has no jurisdiction under S. 526, Cr. P. C., to transfer an extradition proceeding. The High Court having no general superintendence over extradition proceedings, has no jurisdiction to grant bail in such proceedings. *Tops A. C. v. Emperor.*

20 Cr. L. J. 241 :
49 I. C. 613 : 48 Cal. 31 :
A. I. R. 1919 Cal. 444.

———S. 3 (1)—Government to whom requisition for surrender of criminal by Foreign State made, can alone issue order of inquiry.

Under S. 3, Sub-s. (1), Extradition Act, the only Government competent to issue the order for inquiry is the Government to whom the Foreign State has made a requisition for the surrender of the fugitive criminal, and where the requisition had been made to the Government of India, that Government alone is competent to issue the order for inquiry to the Magistrate, and that function must be performed strictly in accordance with the Statute and cannot be delegated. *In re : Rudolph Stallman.*

12 Cr. L. J. 505 :
12 I. C. 273 : 15 C. W. N. 1053 :
14 C. L. J. 375 : 39 Cal. 164.

———S. 3 (3)—Duty of Court making inquiry under.

A Magistrate who conducts an inquiry under S. 3, Sub-s. (3), Extradition Act, is bound to afford reasonable opportunity to the person arrested to produce his evidence, and if he declines to do so, he fails to conduct the inquiry in the mode prescribed by the Legislature, and the result is that the issue of a warrant upon such an inquiry is invalid. *In re : Rudolph Stallman.*

12 Cr. L. J. 505 :
12 I. C. 273 : 15 C. W. N. 1053 :
14 C. L. J. 375 : 39 Cal. 164.

———S. 7—Discretion.

Treaty with Nepal—Provision that neither government is bound to surrender implies that each government has discretion in the matter of

EXAMINATION OF WITNESSES

and should be sent back for re-trial. *C. G. Lloyd v. Emperor*. 34 Cr. L. J. 294 :

142 I. C. 274 (2) : I. R. 1933 Cal. 250 :
A. I. R. 1933 Cal. 136.

———S. 167—Scope—Improper admission of evidence—Rest of the evidence enough to justify conviction—Trial, if bad.

Where the inadmissible evidence is received in the form of a confession to a Police Officer, the trial is not vitiated if the rest of the evidence is sufficient to justify the conviction. *Jamna Prasad v. Emperor*.

39 Cr. L. J. 427 (b) :
174 I. C. 523 : 10 R. N. 417 :
A. I. R. 1938 Nag. 325.

EXAMINATION

See also Cr. P. C., 1898, S. 257.

EXAMINATION AND CROSS-EXAMINATION IN BATCHES

———Prolonging trial, desirability of.

Examination and cross-examination of witnesses by batches in the Court of the Presidency Magistrate on various dates at intervals, thereby prolonging the trial, disapproved. *Muhamad Ibrahim v. Emperor*.

18 Cr. L. J. 609 :
39 I. C. 977 : 21 C. W. N. 694 :
A. I. R. 1918 Cal. 588.

EXAMINATION OF ACCUSED

See also Cr. P. C., 1898, Ss. 164, 342, 364.

———Nature of—Nature of questions to be put to accused to explain any circumstances appearing in the evidence against him.

The nature of the questions which may be put to an accused person in his examination is clearly indicated in S. 342, Cr. P. C., namely to explain any circumstances appearing in the evidence against him. *Nga Te v. Emperor*.

2 Cr. L. J. 227 :
11 Bur. L. R. 33.

EXAMINATION OF FEMALE WITNESSES

———Of female witnesses at their own houses.

It is an unusual course that the Police should take a number of women away from their village to the Police Station on the pretext that they wished to examine them. The examination of the women might have been conducted at their own house rather than at the Police Station. *Haladhar Bhumji v. Sub-Inspector of Police*.

2 Cr. L. J. 51 :
9 C. W. N. 199.

EXAMINATION OF WITNESSES

———Time-limit.

Where an attempt was being made to protract the examination-in-chief of the defence witnesses to a most unnecessary extent so as to delay, if not to prevent, the final termination of the case, and the address of the counsel had proceeded for 15 days, it was held, that the Magistrate was not unreason-

EXCISE ACT (XII OF 1896)

able in fixing a time-limit for the examination-in-chief of the remaining witnesses and for the close of the address. *Chintaman Singh v. Emperor*.

7 Cr. L. J. 146 :
7 C. L. J. 177 : 12 C. W. N. 299 :
35 Cal. 243.

EXCISE ACT (XII OF 1896).

———Ss. 3 (1) (n), 51, 52—Applicability of—Licence in possession of liquor more than the amount specified in his licence.

A licensee may possess liquor in excess of the amount specified in S. 3 (1) (n), Excise Act, (XII of 1896) and up to the amount specified in his licence, or pass, and if he is in possession of more than the latter quantity, he is punishable under S. 51, which applies to 'any person,' S. 52 providing a penalty for certain offences not punishable by S. 51. S. 52 does not apply to cases for which a penalty is provided by some other part of the Act. *Mangal Singh v. Emperor*.

11 Cr. L. J. 495 :
7 I. C. 491 : 21 P. R. 1910 Cr.

———Ss. 18, 48 (1) (d)—Intoxicating drug—Hemp—Majun.

Majun or sweetmeat prepared with Indian Hemp is not necessarily an intoxicating drug within the meaning of S. 18, Excise Act. Its possession, therefore, is not an offence. Possession to be punishable must be with knowledge. *Venkatarama Chetty v. Emperor*.

11 Cr. L. J. 77 :
4 I. C. 898 : U. B. R. 1907—09, III Excise p. 1.

———Ss. 20, 21, 49—Sale of intoxicating drug when completed—Sale of charas in bond in the hands of the Excise Authorities to an unlicensed person—Sale defined for the purposes of Act.

For the purposes of the Excise Act of 1896 the sale of an intoxicating drug is not complete until delivery thereof to the purchaser or some one on his behalf, consequently a licensed vendor who holds a "sale-in-bond" charas licence and sells the charas in bond in the hands of the Excise Authorities to an unlicensed person, who cannot take delivery until he takes out a licence, does not break, under S. 21, Excise Act, the condition of his licence and is not liable to be prosecuted under S. 49. *Dhanpat v. Emperor*.

12 Cr. L. J. 192 :
10 I. C. 682 : 5 P. W. R. 1911 Cr. :
4 P. R. 1911 Cr. : 89 P. L. R. 1911.

———S. 21—'Sale'—Sale without licence—Sale not for profits.

One Panna Lal, who had no licence under the Excise Act, purchased some methylated spirits for the Secretary of the Jhansi Club from whom he had received orders for the same. He sent the spirits to the Club and made no profits for himself. Held, that, under the circumstances, the transaction did not amount to a sale under S. 21, Excise Act. *Panna Lal v. Emperor*.

9 Cr. L. J. 503 :
2 I. C. 192 : 31 All. 293 :
6 A. L. J. 238.

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surrender. Act does not take away the discretion. *Moonga Lal Keot v. Emperor*.

34 Cr. L. J. 932 :
145 I. C. 274 : 12 Pat. 347 :
14 P. L. T. 537 : 6 R. P. 151 :
A. I. R. 1933 Pat. 295.

————S. 7—Duty of Chief Presidency Magistrate.

The Chief Presidency Magistrate to whom a warrant under S. 7, Extradition Act, has been issued, has no option in the matter. When he receives the Political Agent's warrant, he is obliged to act in pursuance of it and to obey it. *In re : C. Poulouze Matthen*.

40 Cr. L. J. 540 :
181 I. C. 502 : 1938 M. W. N. 1304 :
11 R. M. 821 : (1939) 2 M. L. J. 169 :
I. L. R. 1939 Mad. 728 :
A. I. R. 1939 Mad. 263.

————S. 7—Extradition, when valid—
Warrant of extradition signed by Assistant British Envoy at Nepal.

A warrant of extradition signed by the Assistant British Envoy of Nepal Court is not a valid warrant when that officer is not empowered as a Political Agent within the meaning of S. 7, Extradition Act. *Sadhak Gir v. Emperor*.

25 Cr. L. J. 687 :
81 I. C. 175 : A. I. R. 1925 Pat. 112.

————Ss. 7, 10—Illegality of order—
Warrant issued without evidence—No report to Political Agent—Inquiry without warrant issued by Political Agent—Procedure unknown to Extradition Act.

The Sub-Inspector of a Police Station in British India sent an inquiry-slip through the Sub-Divisional Officer of Madhubani to the Sub-Divisional Officer of Hanumahnagar in Nepal territory, inquiring if a certain person was wanted by the Nepal authorities in connection with a murder case. The Sub-Divisional Officer of H replied that he was, and asked for his arrest promising to send proof of criminality and nationality. The Sub-Divisional Magistrate of Madhubani caused the person to be arrested and released on bail. With the evidence of criminality and nationality was received a request for the arrest of another person, who also was arrested and released on bail. After examining witnesses for the prosecution and the defence, the Sub-Divisional Magistrate directed the surrender of both the accused to the Nepal authorities : *Held*, on a reference by the Sessions Judge, that the order of the Magistrate was bad ; *firstly*, because he issued the warrant at least in the case of Gulli Sahu on mere information without any evidence, contrary to the provision of Cl. (1), S. 10, Extradition Act, 1903 ; *secondly*, because he did not report the issue of the warrants to the Political Agent in Nepal, as he ought to have done under Cl. (2) of the same section ; *thirdly*, because he made an inquiry into the case without a warrant issued by the Political Agent in or for the Nepal State as required by S. 7 of the Act ; and *fourthly*, because he ordered the surrender of

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the accused on a procedure unknown to the Extradition Act. *Emperor v. Gulli Sahu*.

14 Cr. L. J. 673 :
21 I. C. 993 : 18 C. W. N. 869 :
41 Cal. 400 : A. I. R. 1914 Cal. 22.

————S. 7—Illegality of warrant.

If warrant is illegal; High Court can quash proceedings against accused under S. 491, Cr. P. C. *Sandal Singh v. District Magistrate and Superintendent of Dehra Dun*.

35 Cr. L. J. 1296 :
151 I. C. 279 : 4 A. W. R. 1526 :
1934 A. L. J. 556 : 56 All. 409 :
7 R. A. 128 (2) : A. I. R. 1934 All. 148.

————S. 7.

Personal appearance of applicant and affidavit held sufficient proof of his claim under S. 3, Evidence Act, and proceedings in pursuance of arrest quashed. *A. W. Gouller v. Emperor*.

37 Cr. L. J. 312 :
160 I. C. 115 : 29 S. L. R. 60 :
8 R. S. 120 : A. I. R. 1935 Sind 244.

————S. 7—Power of Political Agent—
Incompetency of Chief Court to interfere—Revision—
—Cr. P. C. (Act V of 1898), S. 439.

The Chief Court has no power to interfere in respect of a warrant, issued by a Political Agent of a Native State under S. 7, Extradition Act, on the ground either (1) that there is no *prima facie* case against the petitioner or (2) that the circumstances, under which that officer was originally moved, do not justify him to exercise his power under the said section. *Giyan Chand v. Mehram*.

9 Cr. L. J. 3 :
1 I. C. 198 : 3 P. R. 1909 :
36 P. W. R. 1908 Cr.

————S. 7—Procedure—Court in Baluchistan
issuing warrant.

The Court in Baluchistan issuing warrant for execution in British India must proceed under S. 7. *Devki Nandan L. Nathuram v. Emperor*.

41 Cr. L. J. 857 :
190 I. C. 203 : 13 R. Pesh. 24 :
A. I. R. 1941 Pesh. 30.

————S. 7—Scope of.

Absconding from jail is not an "extradition offence" as described in the First Schedule to the Extradition Act, and, as S. 7, Extradition Act, applies only to extradition offences, a warrant issued under that section by an authority in a Foreign State for the arrest of a person so absconding in British India is wholly illegal and without jurisdiction, and the arrest of that person in British India is without any authority. *Jaipal Bhagat v. Emperor*.

23 Cr. L. J. 293 :
66 I. C. 517 : 1 Pat. 57 :
3 P. L. T. 786 : A. I. R. 1922 Pat. 442.

————S. 7—Scope of—Warrant issued by Political Agent of Native State for arrest of Person in British India—Magistrate, duty of—Inquiry as to legality of warrant, whether can be made.

S. 7, Extradition Act, lays down that the Magistrate to whom a warrant under that

EXCISE ACT (XII OF 1896)

———Ss. 30, 31, 46 (c)—*Importation of foreign liquor—Illegally importing foreign liquor into the territory to which this Act extends.*

The introduction of any quantity of foreign liquor, however small, and for whatever purpose it may have been imported into any of the territories to which the Excise Act, 1894, extends, is illegal and punishable under S. 46 (c) of the Act. *Sher Singh v. Emperor.*

6 Cr. L. J. 440 :
14 P. R. Cr. 1907 : 2 P. W. R. 117 Cr.

———Ss. 30 (1), 30 (2) (a)—*Meaning of—Possession of permissible quantity of each foreign spirit or liquor—Possession of large quantities of brandy and beer—Accused a well-to-do Chinaman—Presumption of possession for private consumption.*

The meaning of S. 30 (1), Excise Act, is that a man may possess 12 quarts of foreign spirit without reference to any other kind of spirit, or liquor in his possession. The section permits a man to possess without pass or licence 12 reputed quart bottles of foreign spirit, 12 reputed quart bottles of foreign fermented liquor, one reputed quart bottle of country spirit and 4 reputed quart bottles of country fermented liquor, all at the same time. Cl. (a) of S. 30 (2) cannot mean that a man may keep foreign spirit for his private use without a pass or licence only if he has no foreign fermented liquor in his possession at the same time. The accused, a well-to-do Chinaman, who could afford to buy one to two hundred rupees worth of liquor for festive occasions was charged with possessing a large quantity of brandy and beer when the annual Chinese festival was in fact near at hand : *Held*, that the accused was *prima facie* entitled to the benefit of the exception contained in Cl. (a) of S. 30 (2). *Emperor v. Gu Wa.* 12 Cr. L. J. 581 : 12 I. C. 845 : 4 Bur. L. T. 146.

———Ss. 39 (2) and 3 (1) (n)—*‘Private use,’ meaning of—Prohibition against possession of spirits and liquor in excess of specified quantities not applicable to possession for private use.*

Sub-s. 2 of S. 30, Excise Act, enacts that the prohibition against possession of any quantity in excess of specified quantities of spirits and liquor does not extend to the possession of foreign spirits or foreign fermented liquor, purchased by a person for his private use and not for sale. The words “private use” are not confined to the meaning of personal consumption. If an accused alleges that any foreign spirit or any foreign fermented liquor in his possession is for his private use and not for sale, it is for the prosecution to show that he has it for sale. Mere possession of quantities in excess of those specified in Cl. (n) of Sub-s. 1 of S. 3 Act is not sufficient to justify a conviction. *Emperor v. Lipyin.*

2 Cr. L. J. 505 :
11 Bur. L. R. 227.

———S. 38—*Searches.*

Searches to which S. 38, Excise Act, applies are regulated by the special provisions of that

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section and not by the provisions of the Cr. P. C. *Mi Hauk v. Emperor.*

7 Cr. L. J. 87 :
4 L. B. R. 121 : 14 Bur. L. R. 202.

———S. 44—*Scope.*

The use of artificial means to hasten the fermentation of what is already fermented liquor, and to preserve it or make it more palatable, does not amount to making or manufacturing fermented liquor within the meaning of S. 45, Excise Act. *Emperor v. Nga Beik Kyi.*

3 Cr. L. J. 430 :
U. B. R. Cr. 1905.

———Ss. 44, 49, 52, 57—*Extent of authority—Police Officer invested with powers under S. 44—Extent of authority—Competency to lay complaint under S. 49 or S. 52.*

Police Officers invested with powers under S. 44, Excise Act, can only be treated as Excise Officers for the purposes of Ss. 36, 37 and 38 of the Act. A Police Officer so empowered is not an Excise Officer within the meaning of S. 57, so as to be competent to make a report of an offence punishable under S. 49 or S. 52 of the Act. *Emperor v. Naidar Singh.*

11 Cr. L. J. 394 :
6 I. C. 717 : 13 P. R. Cr. 1910.

———Ss. 44, 57—*Excise Officer—Police Officer invested with powers under S. 44, whether Excise Officer for purposes of S. 57.*

A Police Officer invested with powers of an Excise Officer under S. 44, Excise Act, is to be deemed an Excise Officer for the purpose of S. 57 of the Act, because he is an Excise Officer for the purposes of Ss. 36, 37 and 38 of the Act. *Emperor v. Shibban.*

15 Cr. L. J. 336 :
23 I. C. 688 : 2 P. R. 1914 Cr. :
138 P. L. R. 1914 : A. I. R. 1914 Lah. 454.

———S. 45—*Conviction under.*

Where some articles which might have been used for distilling country liquor were found in the yard of an unoccupied house adjoining that of the accused over which the accused had no control and the place could be reached from outside and the accused was convicted of an offence under S. 45, Excise Act : *Held*, that the conviction must be set aside. *Hira Singh v. Emperor.*

1 Cr. L. J. 953 :
5 P. L. R. 428.

———S. 45—*Preparation and attempt—Liquor—Country fermented liquor—Seinbat—Seinye.*

An accused found in possession of three viss of *Seinbat*, which is not country fermented liquor, intended for the manufacture of *Seinye*, which is a kind of country fermented liquor, cannot be punished under S. 45, Excise Act, for the mere intention of manufacturing fermented liquor. Nor can he be punished for an attempt to manufacture, as his act has not proceeded beyond the stage of mere preparation. *Emperor v. Nga Kyaw.*

14 Cr. L. J. 499 :
20 I. C. 745 : 6 Bur. L. T. 140.

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section is addressed shall act in pursuance thereof; it does not require him to take evidence in regard to the legality of the warrant before acting upon it, nor is there any other provision in the Act which requires such evidence to be taken. *Hans Raj v. Emperor*. 27 Cr. L. J. 755 : 95 I. C. 275 : 7 Lah. 159 : 27 P. L. R. 319 : A. I. R. 1926 Lah. 411.

-----Ss. 7 and 8—Power of Magistrate—Power to hold to bail the person arrested to appear before a Tribunal in a Foreign State.

There is no provision in the Cr. P. C. or in the Extradition Act authorizing a Magistrate to hold a person to bail to appear before a Tribunal in a State, to which the Extradition Act applies, unless, the warrant is endorsed under the provisions of S. 8 of the Act. *Balhasar v. Emperor*. 4 Cr. L. J. 366 : I. L. R. 33 Cal. 1032.

-----Ss. 7, 8, 8-A, 18—Cheating—Extradition for, whether permissible—Offence not mentioned in treaty—Bail, power of Magistrate to grant—Cr. P. C., S. 496.

A person accused of cheating in the Hyderabad State can be made the subject of a warrant under S. 7, Extradition Act, notwithstanding that the offence of cheating is not mentioned in Article IV of the Treaty, dated the 8th May, 1867, between the British Government and the Hyderabad State. The provisions of S. 7 (2), Extradition Act, override the provisions of S. 496, Cr. P. C., so that a Magistrate has no power, apart from Ss. 8 and 8-A, Extradition Act, to admit to bail a person arrested under S. 7. *In re : Marlidhar Bhagwan Das*. 20 Cr. L. J. 34 : 48 I. C. 674 : 20 Bom. L. R. 1009 : 43 Bom. 310 : A. I. R. 1918 Bom. 70.

-----Ss. 7, 15—Cr. P. C., S. 54 (7)—Preliminary inquiry by British Magistrate—Warrant by the Political Agent—High Court, jurisdiction of.

In all cases where inquiries are held by Magistrates with a view to extraditing accused persons, it would be desirable that they should, if possible, be present thereat. S. 15, Extradition Act, ousts the jurisdiction of the High Court to inquire into the propriety of the warrant, but leaves open the question of the High Court's power to interfere with a Magistrate's action, if it was proved that such action was consequent upon a warrant issued by a Political Agent which was plainly illegal. *Per Aston, J.*—There is no provision in the Indian Extradition Act or in Cr. P. C. or in any other law, making an inquiry by a competent British Court in British India into the truth of the accusation, whether in the presence of the accused or otherwise, a condition precedent to the issue and execution of the warrant of a Political Agent under S. 7, Extradition Act. *Emperor v. Huscinnally Niazally*. 2 Cr. L. J. 439 : 7 Bom. L. R. 463.

-----Ss. 7, 22 (3)—Presumption—Rules under S. 22 (3)—R. 4—Warrant issued by Political Agent under S. 7—Presumption as regards compliance with Rules.

When a Political Agent issues a warrant

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under S. 7, Extradition Act, it is right to presume that he has complied with the rules framed under the Act in general and made an inquiry as prescribed by r. 4 in particular, before the issue. *In re : C. Poulouze Matthen*.

40 Cr. L. J. 540 : 181 I. C. 502 : 1938 M. W. N. 1304 : 11 R. M. 821 : 1939, 2 M. L. J. 169 : I. L. R. 1939 Mad. 728 : A. I. R. 1939 Mad. 263.

-----S. 7 (1)—Compliance with.

Warrant under Act—No indefiniteness as to person to be arrested—Place at which an authority to whom delivery was to be made also mentioned—Warrant complied with S. 7 (1). *Baij Nath v. Emperor*. 32 Cr. L. J. 1243 : 134 I. C. 594 : 8 O. W. N. 933 : I. R. 1931 Oudh 386 : A. I. R. 1931 Oudh 394.

-----S. 7 (2)—Applicability of.

In a case where the warrant is in connection with an offence under S. 395, Penal Code, which is an extradition offence mentioned in the First Schedule, it is S. 7 (2) and not S. 8, which is applicable. *Madan Sahu v. Emperor*.

36 Cr. L. J. 375 : 153 I. C. 580 : 15 P. L. T. 493 : 7 R. P. 355 : A. I. R. 1934 Pat. 553.

-----Ss. 7 (2), 15—Warrant under, execution of, by District Magistrate—Revisional power of High Court—Habeas Corpus—Cr. P. C., S. 491.

Where a warrant is issued by a Political Agent under S. 7, Extradition Act, its execution by a District Magistrate in accordance with the Act is an executive act and the High Court has no power to interfere in the exercise of its revisional powers. There is nothing in this view which in any way conflicts with the power of the High Court to interfere otherwise than by way of revision. Thus, the power of the Court to interfere under S. 491, Cr. P. C., is untouched by this decision. If a fugitive criminal arrested under S. 7, Extradition Act, considers himself aggrieved, he can invoke the action of the Government under S. 5 of the same Act. *Gullu Sahn v. Emperor*.

16 Cr. L. J. 31 : 26 I. C. 335 : 19 C. W. N. 221 : 21 C. L. J. 112 : 42 Cal. 793 : A. I. R. 1915 Cal. 426.

-----S. 8.

See also Extradition Act, 1903, S. 7.

-----S. 8—Illegality of order—Warrant issued by Political Agent, endorsement on—Jurisdiction of Magistrate to release arrested person on bail, where no such endorsement.

Where a person was arrested upon a warrant issued by a Political Agent under Extradition Act and is placed before a Magistrate, and such Magistrate passed an order releasing him on bail and directing him to appear before the Political Agent on a certain date, although there was no endorsement on the warrant, giving the Magistrate power to pass such an order: Held, that in the absence of such an endorsement under S. 8, the Magistrate had

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S. 45—Tapping a tari tree.

Tapping a *tari* tree, or leaving sweet *tari*, to ferment, is not manufacturing *tari*. *Emperor v. Mi Thil*.

2 Cr. L. J. 470 :

4 B. R. 1905 Excise 3.

Ss. 45, 51—Distilling and possessing spirit, not distinct offences—Separate convictions for distilling and possessing spirits, legal but not desirable.

Distilling spirit and possessing the spirit obtained by such distillation are not distinct offences within the meaning of S. 35, Cr. P. C., and a double sentence is prohibited by S. 71, Penal Code. Although under S. 235 (1), Cr. P. C., separate convictions for the two offences are legal; yet it is neither necessary nor desirable to convict for possessing spirit when the manufacture is proved. *Emperor v. Nga San Dun*.

1 Cr. L. J. 552 :

4 B. R. 1904, 1st Qr. P. C. 1.

Ss. 45, 51—Evidence—Emptying a vessel containing *lahan*—Evidence of general repute not admissible.

B was neither guilty under S. 45 nor under 51, Excise Act, 1906, where the implements for preparing fermented liquor were found in the house of *M* and everything that happened took place on his premises and the only fact found against *B* was that he assisted *M* to empty a vessel containing *lahan* specially when there was no proof of this fact independent of the evidence of the *Darogah* and two constables: *Held*, also, that the evidence of general repute that *B* was in the habit of selling illicit liquor was not admissible against him. *Bhagat Singh v. Emperor*.

5 Cr. L. J. 119 :

2 P. W. R. Cr. 5.

S. 48 (c)—Importing cocaine—Presumption regarding.

A registered postal parcel containing cocaine addressed to accused's daughter aged 10 years and to a house, in which accused was not living was received by appointment by the accused from the postman in charge; the parcel remained unopened for about 10 minutes when the Excise Officers entered and arrested the accused for importing cocaine. She pleaded that she had ordered some toys for her girl, that she took delivery of the parcel thinking it to be the expected one containing toys: *Held*, that, in the absence of evidence that the accused was at the time expecting a parcel, addressed identically with that seized but with different contents, the inference was that the parcel seized was the one expected and it contained what she had ordered. *Emperor v. Stella*.

14 Cr. L. J. 440 :

20 I. C. 600 : 6 Bur. L. T. 129.

S. 49—Scope—Liquor, sale of—Licence, breach of conditions of—Abetment.

The accused, who had purchased liquor for a British soldier from a licensed vendor in contravention of a condition of the vendor's licence, was guilty of abetment of the breach of the condition, though the vendor himself, having no guilty knowledge or intention, com-

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mitted no offence. *Emperor v. Mukhtar Khan*,
3 Cr. L. J. 135 :
6 P. L. R. 673 : 55 P. R. 1905 Cr.

S. 49—Scope of—Selling medicine containing brandy.

A medical practitioner who puts a little brandy into one of the medicine prescribed and sold by him to a patient does not thereby sell brandy and contravene the provisions of the Excise Law. *Emperor v. Bhagwan Das*.

16 Cr. L. J. 218 :

28 I. C. 842 : 33 P. R. 1914 Cr. :

224 P. L. R. 1915 : A. I. R. 1914 Lah. 564.

S. 50—Liability of licensee.

A liquor licensee under the Excise Act is responsible under S. 50 for the default of his servants in permitting drunkenness in his shop without his knowledge. *Shin Gyi v. Emperor*.

19 Cr. L. J. 49 :

43 I. C. 81 : 9 L. B. R. 81 :

10 Bur. L. T. 262 : A. I. R. 1919 L. Bur. 156.

S. 51.

See also Excise Act, 1896, S. 45.

S. 51—Conviction under—Possession of over 4 quarts of *tari*.

Where an accused had affixed ten receiving pots to his two toddy trees the previous night and the Excise Officer early next morning found that these pots contained over four quarts of *tari* allowable under the Excise Act: *Held*, that the accused was in possession of the *tari* and was rightly convicted under S. 51, Excise Act. *Emperor v. Nga Aw*.

17 Cr. L. J. 62 :

32 I. C. 654 : 8 Bur. L. T. 246 :

8 L. B. R. 217 : A. I. R. 1916 L. Bur. 8.

S. 51—Conviction under.

The accused, a Burman, was convicted under S. 51, Excise Act, of illegal possession of 18 quart bottles of Younger's Monk Brand Beer: *Held*, that the possession of more than 12 quart bottles of beer being *prima facie* illegal, it was for the accused when charged with the illegal possession to prove that he purchased the beer for his private use and not for sale. *Emperor v. Nga Chi*.

4 Cr. L. J. 133 :

U. B. R. Cr. 1906 :

12 Bur. L. R. 295.

S. 51—Finding of *Lahan* in premises outside village under suspicious circumstances.

The finding of articles suggesting illicit distillation in a place easily accessible, such as an ordinary cattleshed, which usually remains open and is situate outside the village, is not sufficient for convicting the owner of the shed under S. 51 of Act XII of 1896, particularly where the search was made at the instigation of that person's enemy, and no other incriminating article was found in any part of his dwelling house. *P. Wasakhi v. Emperor*.

15 Cr. L. J. 176 :

22 I. C. 752 : 98 P. L. R. 1914 :

43 P. W. R. 1913 Cr. :

A. I. R. 1914 Lah. 111.

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no authority to pass such an order. *Raj Kumar Dutt v. Emperor*. 7 Cr. L. J. 198 : 7 C. L. J. 171 : 12 C. W. N. 602.

—S. 8-A—Procedure.

If the person whose extradition is sought is a British subject in whose favour this discretion might possibly be exercised by the Local Government, he should raise the point before the District Magistrate, who would then refer the matter for the orders of the Local Government under S. 8-A of the Act. *Moonga Lal Keot v. Emperor*. 34 Cr. L. J. 932 :

145 I. C. 274 : 12 Pat. 347 :
14 P. L. T. 537 : 6 R. P. 151 :
A. I. R. 1933 Pat. 295.

—S. 9—Procedure.

The procedure for requisitioning the surrender of any person accused of having committed any offence, not necessarily an extradition crime, is laid down in S. 9, but the requisition in such a case has to be made "to the Government of India or to any Local Government." Where such requisition is not made and the warrant is addressed to the District Magistrate, the latter has no jurisdiction to make an arrest under it. *Jaipal Bhagat v. Emperor*.

23 Cr. L. J. 293 :
66 I. C. 517 : 1 Pat. 57 : 3 P. L. T. 786 :
A. I. R. 1922 Pat. 442.

—Ss. 9, 18—Procedure—Extradition of fugitive criminal of Chandernagore—Treaties of 1815 and 1876—Extradition proceedings, nature of.

The East Indian possessions of France and Britain are entirely excluded from the Treaty arrangements of 1876. In regard to them, the arrangement established between the two countries by the Treaty of 1815 is preserved. Consequently the provisions of Chapter II, Extradition Act, have no application to a fugitive criminal of Chandernagore. In accordance with the terms of the Treaty of 1815, procedure for the extradition from British India of a fugitive criminal of Chandernagore is to be summary and no preliminary enquiry is necessary before his extradition. Extradition on any condition is an invasion of the common law right and when there is a Treaty followed by a Statute recognising the Treaty, the procedure must be in accordance with the Treaty and Statute and no further condition can be imposed by the Court. *Rahmat Ali v. Emperor*. 20 Cr. L. J. 739 :

53 I. C. 147 : 30 C. L. J. 24 : 47 Cal. 37 :
A. I. R. 1920 Cal. 636.

—Ss. 9, 18—Scope of.

Where a Treaty with a Foreign State prohibits extradition for offences not specified therein, such prohibition overrides the provisions of the First Schedule to the Extradition Act by virtue of S. 18 of the Act; but where there is no such provision in the Treaty, S. 9 of the Act would not in any way derogate from the Treaty. *Jaipal Bhagat v. Emperor*. 23 Cr. L. J. 293 :

66 I. C. 517 : 1 Pat. 57 : 3 P. L. T. 786 :
A. I. R. 1922 Pat. 442.

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—S. 10—Jurisdiction of Magistrate.

Under S. 10, Extradition Act, 1903, jurisdiction is distinctly conferred on the Magistrates in British India to make preliminary enquiries and to take evidence on the information given or complaint laid in regard to offence alleged to have been committed by Native Indians or British Subjects of His Majesty within and beyond the limits of British India not being in a Foreign State as defined in that Act and to order issue of warrant for the arrest of such accused persons. *Emperor v. Mahamadbukhsh*.

4 Cr. L. J. 49 :
8 Bom. L. R. 507.

—S. 10—Power of Magistrate to issue warrant.

When neither a warrant nor a requisition has been received, the Magistrate is not empowered to issue a warrant, as under S. 10, it is an essential ingredient of this procedure that there should be a warrant. *Santabir Lama v. Emperor*. 36 Cr. L. J. 794 :

155 I. C. 537 : 39 C. W. N. 285 :
62 Cal. 399 : 7 R. C. 598 :
A. I. R. 1935 Cal. 122.

—Ss. 10 (4), 23—Jurisdiction—Cr. P. C., Ss. 54 (7), 497—Arrest without warrant—Detention for purposes of extradition—Magistrate, jurisdiction of, to entertain application for bail.

Where a person is arrested in pursuance of the provisions of S. 54 (7), Cr. P. C., or under S. 33 (g), Bombay City Police Act, without an order from a Magistrate and without a warrant, and is detained under the provisions of S. 23, Extradition Act, the Magistrate under whose orders he is detained has jurisdiction to entertain an application for his bail. *In re : Shriram Shamshudayal*.

26 Cr. L. J. 948 :
87 I. C. 100 : 26 Bom. L. R. 984 :
A. I. R. 1925 Bom. 104.

—S. 15.

See also Extradition Act, 1903, S. 7.

—S. 15—Jurisdiction of High Court.

Although S. 15, Extradition Act, empowers the Government of India and the Local Government to stay any proceeding taken under Ch. III of the Act, and to direct any warrant to be cancelled and the person arrested to be discharged, yet in a case where action is taken under the Act under a warrant, which is not valid, the jurisdiction of the High Court to interfere is not necessarily ousted. *Jaipal Bhagat v. Emperor*. 23 Cr. L. J. 293 :

66 I. C. 517 : 3 P. L. T. 786 :
1 Pat. 57 : A. I. R. 1922 Pat. 442.

—S. 15—Jurisdiction of High Court.

Where it is sought to justify the order of a Magistrate under an authority supposed to be derived from the law but which order was, in fact, made without jurisdiction, it must be assumed that the Magistrate has acted in his general jurisdiction, and as such, his order is open to revision by the High

Cr. P. CODE (1898), S. 307

In a reference under S. 307, the High Court may, in view of suspicious circumstances, tend- ing to prove that the prosecution case was false and all the other circumstances of the case, dissent from the unanimous verdict of a jury and acquit an accused. *Mamul Ali v. Emperor*. 28 Cr. L. J. 19 : 99 I. C. 51 : 44 C. L. J. 233.

—S. 307—Jury trial—Questions of fact—Interference by High Court on reference.

If persons are put on their trial before juries, on questions of fact, the decisions of the jury should always be accepted, unless it is possible to demonstrate that the acquittals have been arrived at perversely. The Court will view unsympathetically the reference under S. 307 unless it is shown unmistakably that the jury failed to do their duty in considering the evi- dence brought before them properly. *Emperor v. Sher Ali Badayakar*. 38 Cr. L. J. 758 : 169 I. C. 342 : 63 C. L. J. 140 : 9 R. C. 926.

—S. 307—Miscellaneous—English and Indian Courts.

Trial by jury—Provisions of Ss. 306 and 307 are mandatory—English Courts position is different from that of Indian Courts. *Emperor v. C. Barwick*. 33 Cr. L. J. 220 : 136 I. C. 533 : P. L. R. 443 : 13 Lah. 573 : I. R. 1932 Lah. 181 : A. I. R. 1932 Lah. 345.

—S. 307 (3)—Powers of High Court—High Court considering verdict of jury as not sustain- able though it is not perverse or wrong—Verdict, if can be reversed.

Powers of the High Court under S. 307 (3) are not limited by the provisions of Sub-s. (2) of S. 423. In cases where there has been a ver- dict of not guilty, it is the practice of High Court not to reverse the verdict of a jury unless it is perverse or manifestly wrong. On the other hand, where the jury has returned a verdict of guilty, the matter stands on a different footing and it cannot be said that so long as the verdict is not perverse or palpably erroneous, the High Court must act against its own judgment and in the teeth, as it were, of its own appreciation of the evidence, must con- vict a person in respect to whose guilt it enter- tains grave doubts. It is the clear duty of the High Court in the interests of justice to reverse the verdict of a jury when it considers that the prosecution has failed to establish the charge and that the verdict of the jury is not sustain- able upon the evidence. *Emperor v. Bansri*. 39 Cr. L. J. 559 : 175 I. C. 130 : 1938 A. L. J. 282 : 10 R. A. 645 : I. L. R. 1938 All. 483 : 1938 A. W. R. 217 : A. I. R. 1938 All. 227.

—S. 307—Powers of High Court on refer- ence.

High Court has only to see whether opinion of the Judge, that the verdict of the jury is mani- festly wrong, is supported by evidence. *Venkatachala Goundan v. Emperor*. 33 Cr. L. J. 215 : 136 I. C. 33 : 1931 M. W. N. 1053 : 35 L. W. 44 : I. R. 1932 Mad. 241 : A. I. R. 1932 Mad. 21.

Cr. P. CODE (1898), S. 307.

—S. 307—Power of High Court on refer- ence—High Court's power to go into evidence on of—Practice.

When a case is referred to the High Court under S. 307, it will form its own opinion on the evidence. The word opinion in S. 387 is used or grounds for such conclusions. Expedient as it may be, in references under S. 307 to have before the High Court the reasons of the jury, when any have been given for the view taken by them in a particular case, the circumstances that no such reasons have been given by or ascertained from the jury for their conclusions does not warrant the High Court to decline to go into the evidence and to arrive at its own judgment after giving due weight to the views taken by the Judge and jury as to the guilt or innocence of the accused. *Emperor v. Chellan*. 3 Cr. L. J. 371 : I. L. R. 29 Mad. 91.

—S. 307—Power of High Court on refer- ence.

Jury influenced by their private knowledge obtained outside Court—Indications of their bias in Prosecution's favour—Verdict cannot be sustained. *Dharamdhar Mandal v. Emperor*. 35 Cr. L. J. 1311 : 151 I. C. 365 : 59 C. L. J. 15 : 7 R. C. 110 : A. I. R. 1934 Cal. 432.

—S. 307—Power of High Court on refer- ence.

On a reference under S. 307, the High Court has all the powers of an Appellate Court, and it is the duty of the High Court to form its opinion upon the entire evidence after giving due weight to the opinions of the Judge and the jury, and the High Court may set aside the verdict of the jury even though it is not perverse. *Emperor v. Abdul Rahman*. 10 Cr. L. J. 57 : 21 C. 593 : 9 C. L. J. 422.

—S. 307—Power of High Court on refer- ence.

On a reference under S. 307, the High Court is to consider the whole of the evidence and to give due weight to the opinions of the Judge and also the jury. *Emperor v. Suar*. 36 Cr. L. J. 262 : 152 I. C. 1021 : 16 P. L. T. 95 : 7 R. P. 289 : A. I. R. 1934 Pat. 533.

—S. 307—Powers of High Court on refer- ence.

Powers of High Court—High Court can exer-

Cr. P. CODE (1898), S. 297

ercise all powers of the Court of Appeal. *Emperor v. Raji Mian*. 33 Cr. L. J. 877 :
139 I. C. 885 : 13 P. L. T. 418 :
11 Pat. 669 : I. R. 1932 Pat. 269 :
A. I. R. 1932 Pat. 246.

—S. 307—Powers of High Court on reference.

Quære.—Whether the Full Bench ruling in *Veerappa Goundan v. Emperor*, 114 I. C. 353, that on a reference to the High Court under S. 307, by a Sessions Judge differing from the verdict of a Jury, the High Court is precluded from going into any matter of misdirection or interfering in any way with the result of the trial unless it is satisfied that the Jury's verdict on the evidence is unreasonable or such that a reasonable man could not have arrived at on the evidence before him is correct. *In re : Mottaya Pillai*. 30 Cr. L. J. 843 :
117 I. C. 787 : 1929 M. W. N. 194 :
29 L. W. 396 : I. R. 1929 Mad. 723 :
56 M. L. J. 103 : A. I. R. 1929 Mad. 135.

—S. 307—Power of High Court on reference.

Where a Jury has given its verdict on the facts of the case, it is open to the High Court to revise that verdict on a reference by the trial Judge made under S. 307, even in cases where it is not alleged that there has been any misdirection by the Judge or any misunderstanding by the Jury of the law as laid down by the Judge. The High Court sitting under S. 307, is not sitting as a Court of Appeal, and in strict phraseology, is not asked to reverse or alter the verdict of a Jury. The words "subject thereto" in Sub-s. (3) of S. 307 should be taken to refer not merely to the word "powers" which precedes them but to the exercise of the powers. *Emperor v. Shera*. 29 Cr. L. J. 353 :
108 I. C. 225 : 26 A. L. J. 321 :
I. L. T. 40 All. 94 : 50 All. 625 :
A. I. R. 1928 All. 207.

—S. 307—Power of High Court on reference.

The Court in a reference under S. 307, is entitled to go into the evidence irrespective of whether there was any misdirection or misunderstanding of the law or not. *Emperor v. Dulla Kuer*. 41 Cr. L. J. 557 :
187 I. C. 387 : 6 B. R. 465 :
21 P. L. T. 943 : 12 R. P. 613 :
A. I. R. 1940 Pat. 533.

—S. 307—Power of High Court on reference.

The discretionary powers of the High Court are really untrammelled under S. 307 and it can exercise all the powers of an Appellate Court and the whole case is open to it. *Dattu v. Emperor*. 38 Cr. L. J. 355 :
167 I. C. 241 : 9 R. N. 170 :
A. I. R. 1937 Nag. 33.

—S. 307—Power of High Court on reference.

The High Court can substitute its own opinion for that of the majority of the Jury only where it is able to say that in the legal sense

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of the expression the Jury's verdict is against the weight of evidence, that is to say, it is not such a verdict as reasonable men properly instructed could have arrived at. *Emperor v. Khuday Gazi*. 30 Cr. L. J. 125 :
113 I. C. 285 : 48 C. L. J. 541 :
I. R. 1928 Cal. 121.

—S. 307—Power of High Court on reference—Re-trial.

The High Court has power on a reference under S. 307 to direct a re-trial, though there are some difficulties arising from the language in which S. 307, is expressed. *Emperor v. Mahamed Adam Chohan*. 38 Cr. L. J. 327 :
167 I. C. 43 : 38 Bom. L. R. 1186 :
9 R. B. 274 : A. I. R. 1937 Bom. 60.

—S. 307—Power of High Court on reference.

The High Court is not bound to act in accordance with the verdict of the Jury even where it is unanimous. *Emperor v. Punit Chain*. 23 Cr. L. J. 421 :
67 I. C. 581 : 3 P. L. T. 413 :
1922 Pat. 218 : 4 U. P. L. R. Pat. 53 :
A. I. R. 1922 Pat. 348.

—S. 307—Power of High Court on reference—Weight attaching to Jury's verdict.

Under S. 307 the High Court can exercise all the powers which it may exercise in an appeal. It has to consider the entire evidence in the case and has to come to a finding of its own upon that evidence both on questions of fact as well as on questions of law and though it has to give due weight to the opinions of the Sessions Judge and the Jury, it is entitled to come to an independent finding of its own and is not bound to accept the verdict of the Jury in so far as it has been accepted by the Sessions Judge. *Emperor v. Wazira Mahto*. 30 Cr. L. J. 390 :
115 I. C. 229 : 9 P. L. T. 618 :
I. R. 1929 Pat. 197 :
A. I. R. 1928 Pat. 596.

—S. 307 (3)—Power of High Court on reference.

Under S. 307 (3) the High Court has, upon a reference, all the powers which it may exercise on appeal, and subject thereto has to consider the entire evidence and, after giving due weight to the opinions of the Sessions Judge and the Jury to acquit or convict the accused of any offence of which the Jury could have convicted him upon the charge framed and placed before it. *Emperor v. Sristidhar Mazumdar*. 25 Cr. L. J. 748 :
81 I. C. 236 : 37 C. L. J. 30 :
A. I. R. 1923 Cal. 97.

—S. 307—Power of High Court on reference.

Under Sub-s. (3), S. 307, the High Court has ample power in a case, in which there has been no proper or adequate trial, to make an order that the accused persons should be re-tried. *Rafiquddin Ahmad v. Emperor*. 36 Cr. L. J. 808 :
155 I. C. 687 : 39 C. W. N. 368 : 62 Cal. 572 :
7 R. C. 606 : A. I. R. 1935 Cal. 184.

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Court at the instance of the party whose liberty is affected by it. *Emperor v. Gulli Sahu*.

14 Cr. L. J. 673 :
21 I. C. 993 : 18 C. W. N. 869 :
41 Cal. 400 : A. I. R. 1914 Cal. 22.

————S. 18—*Extradition in East Indian possessions of French and British.*

Extradition in the East Indian possessions of the French and the British is governed by the Treaty of 1815 and Art. IX of the said Treaty contemplates summary delivery at the request of any authority of either High Contracting Party. *Muthu Reddi v. Emperor*.

32 Cr. L. J. 426 :
129 I. C. 626 : 53 Mad. 1023 :
59 M. L. J. 278 : 32 L. W. 265 :
1930 M. W. N. 381 :
I. R. 1931 Mad. 290 :
A. I. R. 1930 Mad. 981.

————S. 18—*Government exercising powers under Act.*

Court cannot interfere. *Moonga Lal Keot v. Emperor*.

34 Cr. L. J. 932 :
145 I. C. 274 : 12 Pat. 347 :
14 P. L. T. 537 : 6 R. P. 151 :
A. I. R. 1933 Pat. 295.

————S. 18—*Legality of — Extradition for offence not mentioned in treaty.*

There is no derogation of the rights of the parties to a treaty by allowing one Government with the consent of the other to obtain extradition of a criminal who has committed an offence not mentioned in the treaty. A Government or a State is entitled, if it so wishes, to hand over persons subject to the law of another State at the request of that State. There is, in such a case, no derogation to the Sovereign rights of either party. All that S. 18, Extradition Act, provides is that the Act shall not work against the will of either party so as unduly to impose any liability on such party. It does not prevent their co-operation in a friendly action according to the comity of nations. *Jamna v. Emperor*.

27 Cr. L. J. 37 :
91 I. C. 69 : 20 S. L. R. 128 :
A. I. R. 1926 Sind 126.

————S. 19 (c)—*Which Magistrate can enforce provisions of Fugitive Offenders Act.*

S. 19, Cl. (c), Extradition Act, empowers only a first class Magistrate or any Magistrate empowered by the Local Government in that behalf, to enforce the provisions of the Fugitive Offenders Act. *Khadi Hussain v. Emperor*.

11 Cr. L. J. 622 :
8 I. C. 301 : 1 M. W. N. 568.

————S. 22.

See also Penal Code, 1860, S. 76.

————S. 22—*Rules under.*

The rules framed by the Governor-General-in-Council under S. 22 and published in

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the Gazette of India have the force of law. *Bajnath v. Emperor*.

32 Cr. L. J. 1243 :
134 I. C. 594 : 8 O. W. N. 933 :
I. R. 1931 Oudh 386 :
A. I. R. 1931 Oudh 394.

————Ss. 22, 7, 8-A—*Warrant under Act—Form of—Warrants held legal.*

The accused obtained a writ of *habeas corpus* from the Single Judge of the High Court, whereupon the District Magistrate, Trivandrum, presented a petition to the High Court, under S. 561-A, Cr. P. C., and S. 223 of the Government of India Act, 1935, praying that the orders of the Single Judge should be quashed as having been made without jurisdiction: *Held*, that the applicant was entitled to intervene in the accused's petition for the issue of the writ and was entitled to vindicate his right to obtain the custody of the accused. *Held*, also that r. 4 made under S. 22, Extradition Act, provides that the Political Agent shall, in all cases, before issuing a warrant under S. 7 of the Act, satisfy himself, by preliminary inquiry or otherwise, that there is, *prima facie*, a case against the accused person. The accused did not suggest that the Resident did not so satisfy himself in the present case. But if such a suggestion were to be made, it would not be properly the subject of inquiry by the Court, but should be stated to the Magistrate on an application to him to report to the Local Government under S. 8-A of the Extradition Act: *Held*, further that no form of warrant is prescribed in the Extradition Act or the rules, and the warrants clearly described the offences with which the accused were charged, which was all that was required by the ordinary form of warrant of arrest prescribed by S. 75 and Form II of Sch. V of the Cr. P. C. *Matthen v. District Magistrate of Trivandrum*.

40 Cr. L. J. 675 :
182 I. C. 551 : 12 R. P. C. 4 :
5 B. R. 841 : 50 L. W. 48 :
1939 O. L. R. 433 : 43 C. W. N. 981 :
20 P. L. T. 597 : 70 C. L. J. 270 :
1939 A. L. J. 836 :
1939 O. W. N. 602 :
41 Bom. L. R. 1119 :
1939 M. W. N. 744 :
1939, 2 M. L. J. 406 :
I. L. R. 1939 Mad. 744 :
1939 Kar. P. C. 324 Sup. P. C. :
A. I. R. 1939 P. C. 213.

————S. 23.

See also Cr. P. C., 1898, S. 54.

————S. 23—*Arrest.*

Where the arrest is made in pursuance of an order of a Magistrate, it is that order which must determine the legality or otherwise of the arrest. *Santabir Lama v. Emperor*.

36 Cr. L. J. 794 :
155 I. C. 537 : 39 C. W. N. 285 :
62 Cal. 399 : 7 R. C. 598 :
A. I. R. 1935 Cal. 122.

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party to ascertain the new date. *In re : Jannabai Meghji.*
150 I. C. 58 : 36 Bom. L. R. 105 :
7 R. B. 23 : A. I. R. 1934 Bom. 130.
S. 247—Applicability—Duty to be present.

When a date is fixed for the hearing of the case, it is the duty of the parties to be present at any time in the course of the day, when the Court may call on the case for hearing. *In re : Jannabai Meghji.*
150 I. C. 858 : 36 Bom. L. R. 105 :
7 R. B. 23 : A. I. R. 1934 Bom. 130.
S. 247—Applicability—Transfer of case—Absence of complainant from transfer of Court.

S. 247, Cr. P. C. does not apply where the complainant is present in Court with his witnesses on the date fixed for trial but being unaware that his case has been transferred to another Court, fails to appear in that Court when the case is called on for hearing later on in the day. *Elim Haji v. Hamid.*
18 Cr. L. J. 104 :
37 I. C. 312 : 24 C. L. J. 444 :
A. I. R. 1917 Cal. 314.
S. 247—Day fixed for hearing, meaning of.

Day referred to in Ss. 247 and 259 is day fixed for hearing and not day where there is no chance of case being taken out and case is fixed only nominally for hearing. *In re : Jannabai Meghji.*
150 I. C. 858 : 36 Bom. L. R. 105 :
7 R. B. 23 : A. I. R. 1934 Bom. 130.
S. 247—Duty of Magistrate.

S. 247 allows a discretion and S. 259 requires that a discretion should be exercised. It is not contemplated that the order of acquittal or discharge should be a mere matter of routine and follow automatically upon the absence of the complainant. *In re : Jannabai Meghji.*
150 I. C. 858 : 36 Bom. L. R. 105 :
7 R. B. 23 : A. I. R. 1934 Bom. 130.
S. 247—Procedure—Composite case—Warrant case procedure adopted.

Where there are two offences complained of, one of which is triable as a summons-case and the other as a warrant case, both arising out of the same transaction, the Court cannot separate the two applying two kinds of procedure, but should adopt the procedure relating to the graver charge, i. e., the warrant case. *Raghuvallu Natchar v. Singa Ram.*
19 Cr. L. J. 613 :
45 I. C. 517 : 34 M. L. J. 369 :
7 L. W. 520 : 41 Mad. 727 :
1918 M. W. N. 827 : A. I. R. 1918 Mad. 371.
S. 247—Procedure.

Section 247 overrides previous provisions of Chap. 20. Procedure under S. 247 should be

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(1) the order of acquittal was strictly in accordance with law; (2) it is a sound rule of practice not to interfere in revision when there is no error in law on the face of the record; (3) there was an appeal from an acquittal. *In re : Singu Goundan.*

15 Cr. L. J. 236 :
38 Mad. 1028 : 23 I. C. 188 : 26 M. L. J. 160 :
1914 M. W. N. 273 :
A. I. R. 1914 Mad. 628.
Ss. 247, 439—Acquittal not based on merits—Revision.

Upon an application in revision by the complainant, the Court of the Judicial Commissioner can set aside an order of acquittal, not based upon merits of the case at all but one made under S. 247, Cr. P. C., and order the case to proceed according to law. *Soni v. Krishnomal Manghandas.*
40 Cr. L. J. 524 :
180 I. C. 989 : 11 R. S. 198 :
1939 Kar. 385 : A. I. R. 1939 Sind 75.
S. 247—Applicability—Case closed and adjourned for judgment—Complainant, absence of—Acquittal, not legal.

After a case was closed for the defence and arguments had been heard, the Magistrate adjourned it for judgment. On the adjourned date, instead of delivering judgment, the Magistrate acquitted the accused under S. 247, Cr. P. C. on the ground that the complainant was absent without any reasonable excuse. *Held*, that the case did not fall within the provisions of S. 247 inasmuch as the hearing of the case had already been concluded and the attendance of the complainant had not been specially directed. *Girish Chandra Das v. Bhusan Das.*
20 Cr. L. J. 492 (a) :
51 C. 476 : 29 C. L. J. 387 :
23 C. W. N. 954 : 46 Cal. 867 :
A. I. R. 1919 Cal. 201.
S. 247—Applicability.

S. 247 is not applicable to proceedings under S. 107. *Asarfaali Sayal v. Narsu Sarkar.*
28 Cr. L. J. 479 :
101 I. C. 607 : 31 C. W. N. 338 :
45 C. L. J. 211 : A. I. R. 1927 Cal. 343.
S. 247—Applicability.

S. 247 applies only to a summons case. When the complaint is under a warrant case, the correct section to apply is S. 259. *Surya Bai v. Emperor.*
36 Cr. L. J. 65 :
152 I. C. 249 : 56 All. 750 :
7 R. A. 320 : A. I. R. 1934 All. 340.
S. 247—Applicability.

Conditions of applicability stated. *Bhupati Bhusan Mukerji v. Amio Bhusan Mukerji.*
36 Cr. L. J. 1238 :
157 I. C. 670 : 62 C. L. J. 240 :
62 Cal. 1119 : 39 C. W. N. 919 :
8 R. C. 122 : A. I. R. 1935 Cal. 491.
S. 247—Applicability—Duty of absent party.

Whether parties are present or not, a new date should be fixed and published on the Notice Board. It will be duty of the absent

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———S. 23—Construction.

Constructions should be in favour of the subject. *Santabir Lama v. Emperor*.

36 Cr. L. J. 794 :
155 I. C. 537 : 39 C. W. N. 285 :
62 Cal. 399 : 7 R. C. 598 ;
A. I. R. 1935 Cal. 122.

———S. 23—Scope of.

S. 23, Extradition Act, covers the case of an arrest under S. 33 (g), Bombay City Police Act. *In re : Shriram Shambhudayal*.

26 Cr. L. J. 948 :
87 I. C. 100 : 26 Bom. L. R. 984 :
A. I. R. 1925 Bom. 104.

———S. 23—Scope of.

S. 23 refers to the case when a person has been arrested not only without a warrant but also without an order from a Magistrate. *Santabir Lama v. Emperor*.

36 Cr. L. J. 794 :
155 I. C. 537 : 39 C. W. N. 285 :
62 Cal. 399 : 7 R. C. 598 :
A. I. R. 1935 Cal. 122.

———Ch. III—Effect of English Act—Case falling under Ch. III.

EXTRADITION PROCEEDINGS

India has its own Extradition Act, namely Act XV of 1903, which has been drafted on the assumption that the Native States in India are not foreign within the meaning of the English Act of 1870. The Indian Act contains no reference to *habeas corpus* and only Ch. II has been incorporated in the English Act. Ch. III of the Indian Act relates to surrender of fugitive criminals in case of States other than Foreign States, and is intended to apply only to the surrender of fugitive criminals to Native States in India. As this chapter has not been made part of the English Act under S. 18 of the English Act, the English Act cannot be deemed to apply to a case falling under Ch. III. *District Magistrate, Trivandrum v. K. C. Mammen Mappillai*. (F. B.)

40 Cr. L. J. 320 :
180 I. C. 216 : 1938 M. W. N. 1289 :
11 R. M. 663 : 1939, 2 M. L. J. 135 :
I. L. R. 1939 Mad. 708 :
A. I. R. 1939 Mad. 120.

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See also Evidence Act, 1872, S. 21.

(END OF VOLUME II.)

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is quite insufficient. In the matter of *Sakhi Chand Kumhar*. 30 Cr. L. J. 210 :

113 I. C. 694 : 9 P. L. T. 649 :

I. R. 1929 Pat. 86 : A. I. R. 1929 Pat. 16.

—S. 307—Reference—Duty of Sessions Judge—Jury.

An essential condition of a reference under S. 307, is that the Judge must disagree with the verdict of the jurors, on all or any of the charges on which the accused have been tried and that the Judge should be clearly of opinion that it is necessary for the ends of justice to submit the case to the High Court. *Emperor v. Irya Doddappa Katagi*. 1 Cr. L. J. 743 :

6 Bom. L. R. 599.

—S. 307—Reference—Function of High Court.

When a case is referred to the High Court under S. 307, the High Court is not to judge of the case on the merits, all that it has to consider is whether the verdict of the Jury ought to be set aside. *Emperor v. Sukhu Bawa*. 25 Cr. L. J. 165 :

76 I. C. 389 : 38 C. L. J. 155.

—S. 307—Reference—Validity of.

Unless Judge dissents completely from opinion of Jury, case should not be referred. *Emperor v. Raji Mian*. 33 Cr. L. J. 877 :

139 I. C. 885 : 13 P. L. T. 418 :

11 Pat. 669 : I. R. 1932 Pat. 269 :

A. I. R. 1932 Pat. 246.

—S. 307—Reference—High Court, duty of—Reasons of Jury for their verdict, how ascertained.

In dealing with a reference under S. 307, the High Court has got to give due weight to the verdict of the Jury and also to the opinion of the Judge. If the Judge wishes to ascertain from the Jury their reasons for their verdict, he should put them specific questions with regard to the issues of fact arising in the case and also as to the evidence of particular witnesses. *Emperor v. Nishi Kanta Banikya*. 26 Cr. L. J. 805 :

86 I. C. 453 : 41 C. L. J. 35 :

A. I. R. 1925 Cal. 525.

—S. 307—Reference—High Court, duty of—Unanimous verdict, when can be reversed—Reconstruction of verdict.

S. 307, requires the High Court to give due weight to the opinion of the Sessions Judge and of the Jury after considering the entire evidence and then to convict or acquit the accused. It does not require the High Court to reconstruct the verdict of the Jury. In giving due weight to the opinion of the Jury, the High Court should always hesitate to reverse a unanimous verdict unless it holds it to be unreasonable. *Emperor v. Sagramai*. 25 Cr. L. J. 1217 :

82 I. C. 145 : 28 C. W. N. 947 :

40 C. L. J. 135 : 1925 A. I. R. Cal. 960.

—S. 307—Reference—High Court not confined to points of difference, but can consider the whole case.**Cr. P. CODE (1898), S. 307**

In hearing a case, which is referred to the High Court under S. 307, the Court is not to be confined to points of difference between the Judge and the Jury; but the whole case is thrown open to the Court, and it must be decided after giving due weight to the opinions of the Judge and the Jury. *Emperor v. Chanāra*. 8 Cr. L. J. 143 :

10 Bom. L. R. 632.

—S. 307—Reference, grounds for.

It is no longer the law that before making a reference under S. 307, a Sessions Judge must be satisfied that the verdict of the Jury is perverse. It is sufficient that he should be clearly of opinion that a reference is necessary for the ends of justice. *Ismail Sarkar v. Emperor*. 19 Cr. L. J. 830 :

46 I. C. 846.

—S. 307—Reference—Judge agreeing with verdict on charge framed—Disagreement as to verdict on minor offence—Reference, legality of.

The accused was charged with an offence punishable under S. 459, Penal Code. The trial Judge when charging the Jury directed them if they found that the accused was not guilty of the offence charged, to find whether he was guilty of the minor offence under S. 325. The Jury found that the accused was not guilty of any offence. The Judge agreed with the verdict of the Jury on the charge framed but disagreed with their verdict as to the minor offence, and referred the case under S. 307 : *Held*, that the reference was not incompetent even though the Judge had agreed with the verdict on the charge framed. *Emperor v. Hari Lal Tamboli*. 30 Cr. L. J. 793 :

117 I. C. 284 : I. R. 1929 Nag. 236 :

A. I. R. 1929 Nag. 114.

—S. 307—Reference—Judge disagreeing with Jury with respect to some counts.

Where an accused person is found not guilty by the Jury on all the counts of a charge, and the Sessions Judge agrees with the verdict of the Jury in respect of some of the Counts and disagrees with the verdict in respect of others, he should, if he considers that the interests of justice require a reference to the High Court, refer the whole case, leaving it to the High Court to consider the whole of the evidence that was placed before the Jury, instead of referring the case only in regard to those Counts on which he disagrees with the verdict of the Jury, as by so doing he precludes the High Court from questioning or going behind that part of the verdict of the Jury with which he agrees and thus prevents it from considering the whole evidence that was placed before the Jury. *Emperor v. Annada Charan Roy*. 18 Cr. L. J. 551 :

39 I. C. 695 : 21 C. W. N. 435 :

A. I. R. 1917 Cal. 833,

—S. 307—Reference—Judge of Judicial Commissioner's Court sitting in Sessions—Disagreement with Jury—Power to refer to High Court.

Cr. P. CODE (1893), S. 345

—S. 345 (6)—*Compromise outside Court—Duty of Magistrate—Complaint under S. 500, Penal Code (Act XLV of 1860)—Party resiling from it before it is filed—Effect—Acquittal of accused, if must be ordered.*

A composition arrived at between the parties of offence under S. 500, I. P. C., which is compoundable without the permission of the Court is complete as soon as it is made and has the effect of an acquittal in spite of the fact that one of the parties subsequently resiles from the compromise. If it is proved that the parties signed the document and understood its contents, it is incompetent for any party to it to withdraw from it. Since the compromise has immediate effect of acquittal so as to deprive the Magistrate of his jurisdiction to try the case, the subsequent withdrawal from it even before the filing of the compromise in the Court by any party can neither affect the acquittal nor revive the jurisdiction of the Magistrate to proceed with the case. The simple question for the Magistrate in such a case is to find whether or not the parties signed the document and understood its contents. *Mst. Rambai v. Mst. Chandra Kumari Devi.* 41 Cr. L. J. 287 : 186 I. C. 370 : 12 R. N. 202 :

1940 N. L. J. 25 : A. I. R. 1940 Nag. 181.

—S. 345—*Compromise with some of several accused, effect of.*

Where more persons than one are charged with an offence and a compromise is entered into with some of them, the Court will accept the compromise in respect of the persons with whom it is effected, and will proceed to hear the case against rest of the accused. *Baldeo Misser v. Deputy Inspector-General of Police, Bengal.* 26 Cr. L. J. 238 : 84 I. C. 62 : 16 S. L. R. 149.

—S. 345—*Compromise with some of several accused—Effect on others.*

The compounding of an offence with some of the accused does not effect the acquittal of the rest. *Emperor v. Mohna.* 27 Cr. L. J. 576 : 94 I. C. 144 : 7 Lah. 344 :

2 L. Cas. 329 : 27 P. L. R. 493 ; A. I. R. 1926 Lah. 424.

—S. 345 (2)—*Discretion—Proper exercise by Magistrates.*

The Secretary of a Co-operative Society was put upon his trial on a charge of criminal misappropriation. The matter was subsequently settled out of Court and the parties applied for leave to compromise. The Magistrate refused leave on the ground that the matter should not be hushed up as the petitioner was a clerk in the *touzi* department: *Held*, that there was no question of hushing up as the accused had already been charged, that the accused was a clerk in the *touzi* department had no bearing on the case and the Magistrate did not exercise a proper discretion in refusing leave. *Singheshwar Prasad v. Ali Hasan.* 31 Cr. L. J. 507 : 124 I. C. 95 : 11 P. L. T. 492 : A. I. R. 1929 Pat. 512.

Cr. P. CODE (1898), S. 345

—Ss. 345, 439—*Revision—Compromise—Sanction.*

A Court of revision has power to sanction a compromise under S. 345, Cr. P. C. S. 439; Cr. P. C. sets forth the powers of a Court in revision. It only grants certain fixed powers and does not mention S. 345 (5).

14 Cr. L. J. 46 : 18 I. C. 270 : 11 A. L. J. 13.

—S. 345 (6)—*Revision against acquittal—Acquittal of person under S. 315 (6) in respect of whom charge for wrongful confinement has been framed and who has not compounded case—High Court will interfere though Local Government has not appealed.*

Ordinarily the High Court will interfere but rarely in revision with acquittals, whether put forward on behalf of Government or on behalf of private individuals, particularly so in cases where the correctness of the acquittal cannot be considered without a consideration of the evidence, but when a case comes to the notice of the High Court where the acquittal has depended not on an appreciation of the evidence, but has occurred in complete disregard of Cr. P. C., the High Court should interfere despite the fact that no appeal has been preferred by Government. The High Court will interfere with an acquittal not on merits but under S. 345 (6), Cr. P. C. of a person in respect of whom a charge for wrongful confinement has been framed and who has not compounded the case. *Khilwan Singh v. Emperor.* 38 Cr. L. J. 334 : 166 I. C. 926 : 9 R. N. 154 : I. L. R. 1937 Nag. 286 : A. I. R. 1937 Nag. 72.

—S. 345—*Scope of.*

A compromise arrived at after the hearing of the appeal does not come within S. 345. *Emperor v. J. M. Chatterjee.* 34 Cr. L. J. 926 : 145 I. C. 126 : 1933 A. L. J. 1493 : 6 R. A. 47 : A. I. R. 1933 All. 434.

—S. 345—*Scope of—Magistrate permitting compromise of, not compoundable offence—Magistrate's permission ultra vires.*

A Magistrate has no power to allow the non-compoundable offence of rioting to be compounded. *Emperor v. Hira Singh.* 6 Cr. L. J. 336 :

11 P. R. Cr. 1907 : 2 P. W. R. Cr. 93 : 9 P. L. R. 115.

—S. 345—*Scope of—Penal Code (Act XLV of 1860), S. 417—Cheating—Complaint by wife of party cheated—Composition—Subsequent complaint by husband, whether barred—Composition with person not authorised to compound, effect of.*

In order to apply S. 345, Cr. P. C., there should be real composition by a person who is authorised to compound under Sub-s. (2) of S. 345. Composition with a complainant who is not authorised to compound is no bar to a fresh complaint by the person competent to compound. *Dajiba Ramji Patil v. Emperor.* 28 Cr. L. J. 581 :

102 I. C. 549 : 29 Bom. L. R. 718 : 51 Bom. 512 : A. I. R. 1927 Bom. 410.

Cr. P. CODE (1898), S. 307**—S. 307—Reference—Procedure.**

Judge making reference should not record judgment of acquittal or conviction respect of any of the charges. *Emperor v. Bishan Chandra Das* (F. B.)

34 Cr. L. J. 918 :
145 I. C. 236 : 37 C. W. N. 1180 :
6 R. C. 81 : A. I. R. 1933 Cal. 665.

—S. 307—Reference—Procedure—Verdict, when to be reversed.

Where a reference is made to the High Court under S. 307, it is the duty of the Court to consider the evidence on the record as it stands, to weigh the respective opinions of the Sessions Judge and the Jury, and then to form its own conclusions. When this process has been carried out and the opinions of the Judge and Jury have been measured, in the result, the verdict of the Jury should stand unless the evidence and the opinion of the Judge show clearly that it is wrong, and that in the interests of justice, it ought to be reversed. *Emperor v. Jamaludin Fakir*.

25 Cr. L. J. 1000 :
81 I. C. 712 : 51 Cal. 160 :
28 C. W. N. 536 :
A. I. R. 1924 Cal. 701.

—S. 307—Reference—Procedure.

When a Judge makes a reference under S. 307 with regard to the charges which are triable by Jury, he is not absolved from the duty of proceeding with the aid of Assessors under S. 309 in respect of offences triable with the aid of Assessors. *Chanbassappa v. Emperor*.

33 Cr. L. J. 172 :
135 I. C. 495 : 33 Bom. L. R. 1571 :
I. R. 1932 Bom. 111.
A. I. R. 1932 Bom. 61.

—S. 307—Reference—Procedure.

Where some of the offences with which the accused are charged are triable by Jury and some with aid of assessors, the proper procedure is to dispose of the charges triable with the aid of assessors and then to consider whether the interests of justice require that he should make a reference under S. 307. *In re : Pachaimuthu*.

33 Cr. L. J. 533 :
137 I. C. 810 (1) : 62 M. L. J. 571 :
35 Sind 671 : 55 Mad. 715 :
I. R. 1932 Mad. 466 (1) :
A. I. R. 1932 Mad. 512.

—S. 307—Reference—Reasons for.

A reference must be made by a Sessions Judge to the High Court only where in the opinion of the Judge the verdict of the Jury is perverse or unreasonable or involves a miscarriage of justice or is altogether against the weight of the evidence. *In re : Verrappa Goundan*.

30 Cr. L. J. 317 :
114 I. C. 353 : 28 L. W. 575 :
55 M. L. J. 591 :
51 Mad. 956 : 1929 M. W. N. 185 :
I. R. 1929 Mad. 273 :
A. I. R. 1928 Mad. 1186.

—S. 307—Reference—Reasons for.

In making a reference, under S. 307 dis-

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agreeing with the verdict of Jury, the Sessions Judge should ask for their reasons for the verdict. *Emperor v. Punit Chain*.

23 Cr. L. J. 421 :
67 I. C. 581 : 3 P. L. T. 413 :
1922 Pat. 218 :
4 U. P. L. Pat. 53 :
A. I. R. 1922 Pat. 348.

—S. 307—Reference—Record of reasons for.

An order of reference under S. 307 must be in the nature of a judgment giving a proper summary of the evidence and the reasons for the opinion of the Judge making the reference. The words 'recording the grounds of his opinion' in S. 307 mean that the Judge making a reference to the High Court should, in effect, show the reasons for his opinion in as clear a manner as he would have done if the case had been a Jury case, and he had had to write a judgment. *Emperor v. Sheo Din*.

29 Cr. L. J. 342 :
108 I. C. 159 : 26 A. L. J. 296 :
50 All. 540 : A. I. R. 1928 All. 622.

—S. 307—Reference—Reference of academic interest not to be made.

Where in a Sessions case an accused is found guilty by the Jury under S. 326, Penal Code, and the Court thinks that the conviction should be under S. 304, as the Court has power under S. 326 to impose a sentence of transportation for life or rigorous imprisonment for ten years, the question whether accused ought to be convicted under S. 326 or S. 304, is in the nature of an academic one and hardly worth a reference under S. 307. *Emperor v. Mahomed Adam Chohan*.

38 Cr. L. J. 327 :
167 I. C. 43 : 38 Bom. L. R. 1186 :
9 R. B. 274 : A. I. R. 1937 Bom. 60.

—S. 307—Reference—Reference, principles of—Jury returning verdict of conviction—Sessions Judge in favour of acquittal—Sole prosecution witness unreliable—Reference, whether competent.

A reference under S. 307 is not incompetent where the only witness for the prosecution upon which the Jury have based their verdict, is, in the opinion of the Sessions Judge, unreliable. Such a case is quite different from a case where the Sessions Judge merely takes a view of the evidence as a whole different from the view which the Jury are supposed to have taken in the matter. It is not in every case in which the verdict of the Jury is one which does not commend itself to the Sessions Judge that he is entitled to refer the case to the High Court. The principle applicable in cases under S. 307 is that where the verdict is a verdict which would not be come to by a reasonable man, then a reference under S. 307, is competent. *Emperor v. Lal Mohammad*.

30 Cr. L. J. 1114 :
119 I. C. 898 : I. R. 1929 Pat. 626 :
A. I. R. 1930 Pat. 174.

—S. 307—Reference—Reflections on Jury, propriety of.

It is open to a Sessions Judge to disagree

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—S. 307—*Power of High Court on reference.*

Under the provisions of S. 307, a High Court has very full powers to re-open all matters in connection with a verdict of acquittal of a Jury with which the Sessions Judge has disagreed and which he has referred to the Court under the provisions of that section. But in dealing with such a case, the High Court will not interfere with a verdict of acquittal unless it is perverse and clearly and manifestly wrong. *Emperor v. Panna Lal.*

25 Cr. L. J. 981 :
81 I. C. 629 : 22 A. L. J. 162 : 46 All. 265 :
A. I. R. 1924 All. 411.

—S. 307—*Power of High Court on reference.*

When a case is referred to the High Court under S. 307, it is open to that Court to consider the entire evidence in the case and to give due weight to the opinions of the Sessions Judge and the Jury, and acquit or convict the accused of any offence of which the Jury could have convicted upon the charge framed and placed before it. *Emperor v. Zohra.*

21 Cr. L. J. 278 :
55 I. C. 294 : 1 P. L. T. 657 :
A. I. R. 1920 Pat. 674.

—S. 307—*Power of High Court on reference.*

When the whole case is referred on disagreement as to some of the charges, the High Court may convict even on a charge on which the unanimous verdict of 'not guilty' was accepted by the Sessions Judge. *Emperor v. Dwarka Nath Goswami.*

34 Cr. L. J. 164 :
141 I. C. 578 : 60 Cal. 427 : 37 C. W. N. 91 :
I. R. 1933 Cal. 138 : A. I. R. 1933 Cal. 47.

—S. 307—*Procedure—Case having some offences triable with aid of Jury and some with aid of Assessors—Sessions Judge must dispose of latter case before referring under S. 307.*

In a case where there are some offences triable with the aid of Jury and others with the aid of Assessors, the Sessions Judge is bound to dispose of the case in so far as the offences triable with the aid of assessors are concerned. He is not competent to refer the case of those offences to the High Court, nor can his reference give High Court jurisdiction to dispose of them. He cannot refer to High Court under S. 307, the case of anybody in regard to whom he is in agreement with the verdict of the Jury. *In re : Bojji Reddi.*

39 Cr. L. J. 864 (a) :
177 I. C. 288 : 47 L. W. 740 :
1938 M. W. N. 581 : 1938 1 M. L. J. 871 :
11 R. M. 304 (1) : A. I. R. 1938 Mad. 686.

—S. 307, 269 (3)—*Procedure—Sessions Judge—Trial by Jury—Charges under Ss. 304 and 325, I. P. C.—Verdict of Jury on the minor charge—Disagreement between Judge and Jury—Reference to High Court.*

The accused were tried by the Judge with Jury on charges under Ss. 304 and 325, Penal Code. The Jury found the accused guilty with respect to the charge under S. 325 ; with

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this verdict the Judge disagreed and he referred the case to the High Court under S. 307 : *Held*, that the case should be sent back to the Judge who tried it, with a direction that he should pass orders and dispose of it as in a case tried by him with the aid of Assessors on the minor charges against the accused, under S. 325. *Emperor v. Vyankatsing Sambhusing.*

7 Cr. L. J. 236 :
9 Bom. L. R. 1057.

—S. 307—*Reference against verdict of Jury—High Court's power and duty.*

In a reference under S. 307, although the High Court is bound in dealing with it to give due weight to the opinion of the Sessions Judge and the verdict of the Jury, still it can decide for itself the question of guilt or otherwise of the accused. *Emperor v. Sri Narain.*

5 Cr. L. J. 484 :
11 C. W. N. 715.

—S. 307—*Reference—Assistant Sessions Judge trying part of case with aid of Assessors—Decision appealable to Sessions Judge—Case should be referred to High Court in entirety.*

The High Court, if it is to exercise its functions properly in a reference, cannot approach the transaction as a whole with its hands tied as to one or more aspects. For the same reason cases tried by Assistant Sessions Judges in which the part tried with the aid of Assessors is appealable to the Courts of Sessions should, if possible, be referred to the High Court in their entirety if an impossible position is to be avoided in dealing with references under S. 307. *Emperor v. Horia Dhobi.*

39 Cr. L. J. 156 :
172 I. C. 780 : 18 P. L. T. 857 : 10 R. P. 346 :
4 B. R. 165 : A. I. R. 1937 Pat. 662.

—S. 307—*Reference—Case under S. 304, I. P. C.*

A Judge thinking that the verdict under S. 304 is wrong and should be under S. 302 must make reference to High Court and not question Jury as to intention, and for this purpose he can question them to find out the reason for their verdict. He can, if he wants to get special verdict as regards the particular part of S. 304 under which they gave verdict, question them after explaining the law. General questions should be avoided. *Sadek Mandal v. Emperor.* (F. B.).

35 Cr. L. J. 496 :
147 I. C. 860 : 38 C. W. N. 254 : 61 Cal. 256 :
6 R. C. 374 : A. I. R. 1934 Cal. 173.

—S. 307—*Reference—Court of the Judicial Commissioner of Sind—Unanimous verdict of Jury—Judge's disagreement—Reference, legality of.*

A Judge of the Court of the Judicial Commissioner in Sind trying a Sessions case has no power to make a reference to the Judicial Commissioner's Court in its High Court Jurisdiction under S. 307, where such Judge disagrees with the unanimous verdict of the Jury and considers that reference to the High Court is necessary. *Emperor v. Jind.*

29 Cr. L. J. 945 :
111 I. C. 865 : 22 S. L. R. 349 :
A. I. R. 1928 Sind 149.

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duty is to acquit the prisoner. *In re : Nanni Kudumban.* 25 Cr. L. J. 145 :

76 I. C. 289 : 45 M. L. J. 406 :
18 L. W. 482 : 1923 M. W. N. 695 :
A. I. R. 1924 Mad. 232.

—S. 307—Reference—Validity of.

A disagreement with the Jurors within the meaning of S. 307, is one of the conditions precedent to a reference. *Emperor v. Mahan Lal Garodia.* 34 Cr. L. J. 965 :

145 I. C. 365 : 37 C. W. N. 591 :
6 R. C. 102 : A. I. R. 1933 Cal. 472.

—S. 307—Reference—Validity of.

Accused charged with several charges—One charge triable with Jury—Other charges triable with aid of Assessors—Judgment on latter charges not given—Reference to High Court of whole case—Reference is premature. *Emperor v. Lachman Gangota.* 36 Cr. L. J. 469 :

154 I. C. 16 : 15 P. L. T. 367 :
7 R. P. 441 : A. I. R. 1934 Pat. 424.

—S. 307—Reference—Validity of.

In referring a case under S. 307, it is not sufficient for the Sessions Judge to say merely that he believes the evidence of witnesses on whose evidence the Jury has returned a verdict of not guilty ; he should give reasons for his opinion in sufficient detail to enable the High Court to appreciate it and to give due weight to it. *Emperor v. Punit Chain.*

23 Cr. L. J. 421 :
67 I. C. 581 : 3 P. L. T. 413 :
1922 Pat. 218 : 4 U. P. L. R. Pat. 53 :
A. I. R. 1922 Pat. 348.

—S. 307—Reference—Validity of.

It is necessary that the trial Judge should for himself appreciate the evidence and form his own opinion on the case so as to see whether it is necessary for the ends of justice to make a reference against the verdict. *Ilu v. Emperor.*

36 Cr. L. J. 358 :
153 I. C. 454 : 62 Cal. 337 :
7 R. C. 378 : A. I. R. 1934 Cal. 847.

—S. 307—Reference—Validity of.

It is not open to a Court of Session to accept the verdict of the Jury on one charge and disagree with the Jury on another charge and refer the matter to the High Court under S. 307. *Ramjanam Tewari v. Emperor.*

36 Cr. L. J. 856 :
155 I. C. 866 : 16 P. L. T. 348 :
14 Pat. 717 : 7 R. P. 634 :
A. I. R. 1935 Pat. 357.

—S. 307—Reference—Validity of.

Jury finding accused guilty on admissible evidence—Jury refusing to accept Judge's view as to amount of corroboration required—Reference to High Court held not proper. *Haris Chandra v. Emperor.* 34 Cr. L. J. 432 :

142 I. C. 896 : 1932 A. L. J. 1089 :
I. R. 1933 All. 144 : A. I. R. 1933 All. 94.

Cr. P. CODE (1898), S. 307**—S. 307—Reference—Validity of—Practice.**

A Sessions Judge who refers a case under S. 307 should state exactly what material portions of the evidence he believes to be true, and his reasons for arriving at his conclusions. He should not content himself with repeating any remarks in his charge to the Jury adding merely such a vague remark as "for these and other reasons I submit the case for the orders of the High Court." *Emperor v. Dyamanaiik Annappanaiik.* 1 Cr. L. J. 586 :

6 Bom. L. R. 519.

—S. 307—Reference—Validity of.

S. 307 does not contemplate that a Sessions Judge, who does not happen to agree with the verdict of a Jury, should necessarily make a reference to the High Court especially where pure questions of fact are involved, which are matters for the decision of the Jury and the Jury alone, unless there is something to show that the verdict of the Jury was manifestly wrong and definitely contrary to the weight of the evidence. *Meajan Howladar v. Emperor.*

31 Cr. L. J. 698 :
124 I. C. 523 : A. I. R. 1929 Cal. 737.

—S. 307—Reference—Validity of.

S. 307 requires that Judge should be clearly of opinion that ends of justice require submission to High Court. *Emperor v. Panchanon Surkar.* 34 Cr. L. J. 608 :

143 I. C. 600 : 37 C. W. N. 341 :
I. R. 1933 Cal. 448 :
A. I. R. 1933 Cal. 404.

—S. 307—Reference—Validity of—Trial of certain offences with Jury and of others with jurors as assessors—Difference of Judge in verdict and opinion—Reference to the High Court.

A Sessions Judge tried the accused with the aid of a jury. The accused were charged with offences, some of which were triable with jury and others were not so triable. At the conclusion of the trial, the Sessions Judge took the verdict of the jury in respect of offences triable with jury ; and with regard to other charges, took the opinion of the jurors as assessors, and disagreeing with their verdict and opinion, the Sessions Judge referred, under S. 307, the whole case to the High Court. The High Court upheld the verdict of the Jury ; and with regard to other charges, returned the case to the Sessions Judge so that he might deal with it according to law, remarking that the Sessions Judge should not have joined them in the reference. *Emperor v. Vishwanath.*

4 Cr. L. J. 192 :
8 Bom. L. R. 589.

—S. 307—Reference—Validity of.

Verdict of Jury justified on evidence—Reference ought not to be made. *Emperor v. Naweshwar Lal.* 34 Cr. L. J. 828 :

144 I. C. 872 : 6 R. P. 12 :
A. I. R. 1933 Pat. 481.

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—S. 307—*Reference—Disagreement between members of Jury—Duty of High Court to consider verdict of minority.*

Where the Sessions Judge under the Jury differ and there is a division in the opinion of the Jury, the High Court will consider not only the opinion of the majority but also that of the minority of the Jury. *Emperor v. Punit Chain.*

23 Cr. L. J. 421 :
67 I. C. 581 : 3 P. L. T. 413 :
1922 Pat. 218 : 4 U. P. L. R. Pat. 53 :
A. I. R. 1922 Pat. 348.

—S. 307 (1)—*Reference—Duty of Judge—Disagreement of Judge with verdict—Duty of Judge before making reference.*

Where in a trial by Jury, a brief verdict of 'not guilty' is given and the Sessions Judge disagrees, he should, before making a reference under S. 307, put such further questions to the Jury as may bring out their meaning more precisely. *Emperor v. Walter Turner.*

16 Cr. L. J. 587 :
30 I. C. 139 : 35 P. W. R. 1915 Cr. :
A. I. R. 1915 Lah. 135.

—S. 307—*Reference—Discretion—Ends of justice.*

The decision as to whether a case tried by a Jury should or should not be referred to the High Court under S. 307, is a matter entirely within the discretion of the Judge and it is only when he is clearly of opinion that it is necessary for the ends of justice to submit the case to the High Court that he should submit it. Where the Judge is not clearly of opinion that he should submit a case under S. 307 and does not submit it, the High Court in appeal will not interfere with his decision. *Ramdas Rai v. Emperor.*

30 Cr. L. J. 721 :
117 I. C. 173 : 8 Pat. 344 :
10 P. L. T. 409 : I. R. 1929 Pat. 381 :
A. I. R. 1929 Pat. 313.

—S. 307—*Reference—Duty of High Court.*

Case referred—High Court has to decide after giving due weight to verdict of Jury and Court—Verdict need not necessarily be perverse. *Emperor v. C. Barwick.*

33 Cr. L. J. 220 :
136 I. C. 5 : 33 P. L. R. 443 :
13 Lah. 573 : I. R. 1932 Lah. 181 :
A. I. R. 1932 Lah. 345.

—S. 307—*Reference—Duty of High Court.*

On a reference under S. 307, the High Court has to consider the entire evidence in the case and to give due weight to the opinions of the Sessions Judge and of the Jury. *Emperor v. Punit Chain.*

23 Cr. L. J. 421 :
67 I. C. 581 : 3 P. L. T. 413 :
1922 Pat. 218 : 4 U. P. L. R. Pat. 53 :
A. I. R. 1922 Pat. 348.

—S. 307—*Reference—Duty of High Court.*

Under S. 307 (3), it is not to the opinion of the Jury alone that the High Court have to give due weight, but also to the opinion of the Sessions Judge. *Emperor v. Neamatulla.*

14 Cr. L. J. 556 :
21 I. C. 156 : 17 C. W. N. 1077.

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—S. 307—*Reference—Duty of High Court on reference.*

In a reference under S. 307, all that the High Court has got to decide is whether the verdict of the Jury was a reasonable verdict, which a body of reasonable men could arrive at having regard to the evidence irrespective of the question whether the High Court itself would arrive at the same conclusion after hearing the case. *Emperor v. Annada Charan Roy.*

18 Cr. L. J. 551 :
39 I. C. 695 : 21 C. W. N. 435 :
A. I. R. 1917 Cal. 833.

—S. 307—*Reference—Duty of High Court on reference.*

Where a Jury have convicted, the High Court has to see not merely that there is evidence of guilt but that the evidence is strong enough to preclude any reasonable doubt in the minds of the Jury as to the guilt of the accused. *Dagdu Kondaji v. Emperor.*

34 Cr. L. J. 660 :
143 I. C. 495 : 35 Bom. L. R. 183 :
I. R. 1933 Bom. 276 : A. I. R. 1933 Bom. 144.

—S. 307—*Reference—Duty of High Court to consider entire evidence—Interference with verdict—Principles.*

In a reference under S. 307, the High Court has to consider the entire evidence, and to decide after giving due weight to the opinion of the Sessions Judge and the Jury whether the charge was made out against the accused, and whether the verdict was right or not and it will not interfere with the verdict of a Jury unless it is shown that the verdict was manifestly wrong and that there were no sufficient materials to justify it. *Emperor v. Balai Ghose.*

31 Cr. L. J. 667 :
124 I. C. 486 : 50 C. L. J. 518 :
A. I. R. 1930 Cal. 141.

—Ss. 307, 342—*Reference—Duty of High Court—Verdict manifestly wrong or perverse, finding as to.*

Where in a case tried by a Jury, the Sessions Judge disagreeing with the unanimous verdict of the Jury makes a reference to the High Court under S. 307, the question to be decided by the High Court is whether the verdict of the Jury is manifestly wrong or perverse. The High Court has not to decide what would appeal to it as true or false, but has to consider whether the view taken by the Jury was such as could not be supported on any consideration of the case whatsoever. *Emperor v. Mohammad Shafi.*

26 Cr. L. J. 1576 :
90 I. C. 536 : A. I. R. 1926 Oudh 57.

—S. 307—*Reference—Duty of Judge to state his own opinion referring to material evidence.*

In a reference under S. 307, the Judge should set out in some detail his own opinion regarding the evidence and should state more particularly which part of the evidence, in his opinion, would entitle the Court in the interests of justice to convict the accused upon the charges, referred. A mere statement that the reasons for the reference are indicated in the charge to the Jury

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—S. 307—Reference—When competent.

Where a Sessions Judge disagrees with the verdict of a Jury, S. 307 gives him a discretion to submit the case to the High Court; it is only when he is clearly of opinion that it is necessary for the ends of justice to submit the case to the High Court, that he is bound to do so, if he is not clearly of that opinion, his failure to submit the case to the High Court is not a subject for interference by the High Court on appeal. *Eran Khan v. Emperor.*

24 Cr. L. J. 888 :
44 I. C. 950 : 50 Cal. 658 :
A. I. R. 1924 Cal. 47.

—S. 307—Reference—When to be made.

Though on the one hand reference should not be made in every case in which the Judge finds himself in disagreement with the Jury, on the other, the power of reference is not confined to those cases only in which the opinion of the Judge the verdict of the Jury is entirely perverse. No hard and fast rule can be laid down. The Judge must apply his mind and decide whether the ends of justice demand a reference. The decision whether a reference should or should not be made depends upon the extent of disagreement which the Judge alone can feel. The High Court in a case in which the Judge has not thought it fit to refer a case to High Court under S. 307 cannot direct him to do so. The Judge should leave the case in the hands of the executive authorities if he thinks that injustice had been done and he cannot interfere under the law. *Rameshwar Singh v. Emperor.*

38 Cr. L. J. 919 :
170 I. C. 464 : 16 Pat. 413 : 18 P. L. T. 607 :
3 B. R. 734 : 10 R. P. 128 :
A. I. R. 1937 Pat. 440.

—S. 307—Reference—Whether trying officer can refer—Reference by the Judge.

A reference made under S. 307 is not invalid in consequence of its having been made by an officer, who had laid the trial, but who, at the date of the reference, had ceased to be a Judge. *Emperor v. Dil Mohammad Sheikh.*

2 Cr. L. J. 386 :
2 C. L. J. 48.

—Ss. 307, 310—Reference—Stage for plea of previous conviction.

A case referred under S. 307, there is no conviction or acquittal in the Sessions Court. It is the High Court which in such case can acquit or convict and it is not until after conviction by the High Court that the accused can be asked to plead to the prior convictions. *Emperor v. Kandasami.*

5 Cr. L. J. 422 :
I. L. R. 30 Mad. 134.

—Ss. 307, 439—Reference—Reference, when to be made—Failure to make reference—Power of High Court to direct reference.

It is ordinarily a matter entirely within the discretion of the Sessions Judge as to whether he should make a reference to the High Court under S. 307. This discretion, however, should always be exercised when the Judge thinks that the verdict is not supported by the evidence; it is the only way in which

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a miscarriage of justice by a perverse verdict of a Jury can be remedied by the High Court. It is not necessary that before making a reference, the Sessions Judge should be satisfied that the verdict is perverse, it is sufficient that he should be clearly of opinion that a reference is necessary for the ends of justice. If in a case in which for the ends of justice a reference is necessary, the Sessions Judge fails to make the reference and thus deprives the High Court of an opportunity to deal with the case on its merits, he does something more than merely acting in the erroneous exercise of his discretion. He fails to exercise his jurisdiction and this failure operates to the prejudice either of the Crown or of the accused, and it is well within the power of the High Court under S. 439 to direct the Sessions Judge in such a case to submit the case to the High Court for its consideration under S. 307. *Sarada Charan Mistri v. Emperor.*

26 Cr. L. J. 1006 :
87 I. C. 606 : 41 C. L. J. 320 :
A. I. R. 1925 Cal. 795.

—S. 307—Scope.

Judge thinking verdict of Jury wrong but not expressing disagreement can give judgment without referring to High Court. *Mhasku Malu Kudale v. Emperor.*

37 Cr. L. J. 26 :
156 I. C. 1090 : 37 Bom. L. R. 109 :
8 R. B. 159 : A. I. R. 1935 Bom. 165.

—Ss. 307, 423 (2) — Scope—Reference—Appeal and reference or distinction between—Powers of High Court—Power of High Court on reference.

The Court to which the case is submitted is not hearing an appeal though it has the powers of an Appellate Court. There is nothing to appeal from. There has been no judgment passed. There has been no verdict accepted. There has been no judgment based on that verdict. The Court on the hearing of a submitted case is free to acquit or convict without its being necessary to alter or reverse any verdict. It cannot, however, acquit or convict without considering the Jury's opinion. It has to give that opinion in its proper form unaltered and unreversed proper weight but it can leave an opinion which, if accepted, would amount to a verdict of acquittal completely untouched and still convict and vice versa. As that tribunal is not concerned with the alteration or reversal of a verdict (which alteration or reversal is not a necessary step before it can proceed to its conclusion). S. 423 (2) does not come into play. *Dattatraya Sadashiv Karve v. Emperor.* (F. B.).

41 Cr. L. J. 289 :
186 I. C. 402 : I. L. R. 1940 Nag. 394 :
12 R. N. 204 : A. I. R. 1940 Nag. 17.

—S. 307 (2)—Scope, whether includes charges triable by Judge with aid of Assessors.

S. 307 is part of a group of sections dealing with trials by Jury and when Sub-s. (2) refers to acquittal or conviction on 'any of the charges on which such accused has been tried,' it means, any of the charges on which the accused has been tried by Jury. It does not include those charges which were not

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A Judge of the Court of the Judicial Commissioner of Sind sitting in Sessions has under S. 307, no power to differ from the verdict of a Jury and refer a case to the Court sitting in its High Court jurisdiction. *Emperor v. Mithoo*.

25 Cr. L. J. 428 :
77 I. C. 604 : A. I. R. 1925 Sind 34.

—S. 307—Reference—Jurors returning verdict giving accused benefit of doubt—Procedure—Reference.

Where the Jury returned an unanimous verdict to the effect that they would give the accused the benefit of doubt, and thereupon the Sessions Judge questioned the Jury "on what point do you feel a doubt?" Held, that the procedure had no warrant in law. The fact that a Sessions Judge might and does take a different view of the evidence from that which the Jury took is no ground for a reference under S. 307. *Emperor v. Bhukhan Dubey*.

31 Cr. L. J. 54.
120 I. C. 290 : 11 P. L. T. 605 :
A. I. R. 1930 Pat. 208.

—S. 307—Reference.

Jury returning their unanimous verdict of guilty in spite of warning by the Judge.—Reference, proper, where the learned Judge, in delivering his charge placed before the Jury all the evidence and pointed out the grave defects in the case for the prosecution, and where, in spite of his warning, the Jury were unanimous in finding all the accused guilty. *Emperor v. Komoruddin Sheikh*.

A. I. R. 1928 Cal. 233.

—S. 307—Reference—Nature of—Case against accused must be referred as a whole—Particular charges alone cannot be referred.

Where a Sessions Judge refers a case by virtue of the powers given by S. 307, he must refer the whole of the case against the particular accused, and not merely those charges on which there happens to be a finding with which he disagrees. *Emperor v. Naval Bchari Lal*.

32 Cr. L. J. 81 :
128 I. C. 2 : 1939 A. L. J. 1168 :
I. R. 1931 All. 2 : 52 All. 881 :
A. I. R. 1930 All. 489.

—S. 307—Reference, nature of.

Judge must submit whole case to High Court and not individual charge as to which there is disagreement between him and the Jury. *Emperor v. Hazari Lal*.

33 Cr. L. J. 505 :
137 I. C. 190 : 13 P. L. T. 93 :
11 Pat. 395 : I. R. 1932 Pat. 148 :
A. I. R. 1932 Pat. 156.

—S. 307—Reference, nature of—Procedure.

In making a reference to the High Court under S. 307 (2), the Sessions Judge should not enter his finding on any of the charges but should refer the entire case for consideration. *Emperor v. Ekabbor*.

27 Cr. L. J. 617 :
94 I. C. 361 : A. I. R. 1926 Cal. 925.

—S. 307—Reference, nature of.

Sub-s. (2), S. 307, does not intend that when

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the Judge is not prepared to accept the verdict of the Jury in its entirety, the whole case is to be referred to the High Court. It only contemplates a reference in the case of those persons in respect of whom the Judge declines to accept the verdict. *Emperor v. Babar Ali Gazi*.

16 Cr. L. J. 321 :
28 I. C. 657 : 19 C. W. N. 584 :
21 C. L. J. 492 : 42 Cal. 789 :
A. I. R. 1915 Cal. 731.

—S. 307—Reference—Necessity of.]

It is no necessary part of the function of the Judge to have an opinion of his own about mere questions of fact and to assert it. His power only arises when having an opinion contrary to that of the Jury he thinks that it is necessary for the ends of justice to submit the case to the High Court and this power should always be exercised with due regard to the fact that the constitutional tribunal to decide questions of fact is the Jury and not the Judge. *Bepin Chandra Mandal v. Emperor*.

29 Cr. L. J. 819 :
111 I. C. 323 : 47 C. L. J. 483 :
32 C. W. N. 673 : A. I. R. 1928 Cal. 444.

—S. 307—Reference—Oral evidence, appreciation of—Procedure.

Where a case rests entirely on oral evidence, the Jury who saw the witnesses and heard them are most competent to judge the value of such evidence, and effect should be given to their verdict in a reference under S. 307 of the Cr. P. C. *Emperor v. Faratula Mondal*.

26 Cr. L. J. 677 :
86 I. C. 53 : 40 C. L. J. 592 :
A. I. R. 1925 Cal. 394.

—S. 307—Reference—Points of reference.

In referring a case to the High Court, under S. 307, the Sessions Judge must say in his reference in clear and unambiguous terms what is the offence which has, in his opinion, been committed by the accused, and on what grounds in that respect, he differs from the Jury. When a reference, under the section, is made by the Sessions Judge, he should state with some fulness his view of the evidence and the credibility of the more important witnesses, because not being in a position to pronounce any opinion upon the demeanour of the witnesses, the High Court has to attach more or less weight to the opinion of the Judge who saw and heard the witnesses. *Emperor v. Chandra Krishna*.

7 Cr. L. J. 192 :
10 Bom. L. R. 173.

—S. 307—Reference—Powers of High Court—Opinions of Judge and Jury, weight to be attached to.

In a reference under S. 307, the High Court is not bound to put the opinion of the Jury on a higher plane than the opinion of the Judge; both should be given due weight, and as a general rule, the opinion of the Sessions Judge should carry more weight as he is trained to weigh and appreciate evidence and is bound to give reasons for his opinion. *Emperor v. Ram Chandra Roy*.

29 Cr. L. J. 823 :
111 I. C. 327 : 55 Cal. 879 :
A. I. R. 1928 Cal. 732.

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———S. 307—*Verdict of Jury, what is.*

The opinion of a Jury is its verdict and not the reasons on which the verdict is based. *Emperor v. Punit Chain.*

23 Cr. L. J. 421 :
67 I. C. 581 : 3 P. L. T. 413 :
1922 Pat. 218 : 4 U. P. L. R. Pat. 53 :
A. I. R. 1922 Pat. 348.

———S. 308—*Discharge of Jury.*

Misconduct of Juror alleged at end of trial—Discharge of Jury and fresh trial of accused should not be allowed. *Superintendent and Remembrancer of Legal Affairs, Bengal v. Ajit Munshi.*

33 Cr. L. J. 869 :
140 I. C. 18 : I. R. 1932 Cal. 683 :
A. I. R. 1932 Cal. 750 (2).

———S. 308—*Discharge of Jury, forum of—Exercise of power.*

Where the question of misconduct on the part of the Jury or other similar sufficient cause arises, the Sessions Judge has inherent power to discharge the Jury and empanel another. The Cr. P. C. does not provide for such circumstances, but the presumption that Jurors will discharge their duties without impropriety may explain the omission. The power to discharge a Jury on such grounds is discretionary, but must not be exercised lightly, nor until the Judge has satisfied himself by such form of enquiry as, in the circumstances, he can adopt that reasonable grounds exist for exercising the power. *Rahim Sheikh v. Emperor.*

24 Cr. L. J. 677 :
73 I. C. 773 : 50 Cal. 872 :
37 C. L. J. 595 :
A. I. R. 1924 Cal. 724.

———S. 308—*Verdict of "not guilty," effect of—Order under S. 308 implying guilt and suggesting departmental action against accused, legality of—Presumption of innocence.*

It is not open to a Sessions Judge to construe a verdict of "not guilty" of the Jury or the majority of them, as being open to the hypothesis that they have considered that the accused was guilty of some misconduct not amounting to an offence: the only legitimate inference is that in the opinion of the Jury or the majority of them, as the case may be, it is not established that the accused had committed the offence with which he was charged. Where a Jury has returned a verdict of 'not guilty,' it is not open to a Sessions Judge in an order under S. 308 to pass remarks implying guilt of the accused and suggesting, for the consideration of the Police Department, that severe departmental action in such manner as they might think fit should be taken against him. The accused having undergone a criminal trial, and having had an order passed in his favour, which operated as an acquittal, is entitled to the benefit of the order and all the consequences which it implies. *Ahmed Shah Sikander Shah v. Emperor.*

30 Cr. L. J. 877 :
118 I. C. 195 : I. R. 1929 Sind 163 :
A. I. R. 1929 Sind 145.

———S. 309.

See Penal Code, S. 302.

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———S. 309—*Assessors differing with Sessions Judge—Duty of Court to record opinions of Assessors.*

When a Sessions Judge differs from the Assessors in his view of a case, he should always record carefully the grounds on which the Assessors base their opinions and should make some reference to the matter in the judgment. *Guranditta v. Emperor.*

3 Cr. L. J. 132 :
6 P. L. R. 657 : 48 P. R. Cr. 1905.

———S. 309—*Assessors, opinion of, necessity of taking—Judgment, requisites of.*

In a trial with assessors, it is the duty of the presiding Judge to ascertain the opinion of the Assessors after summing up the evidence to them if he thinks it necessary, and then to deliver a judgment. That judgment must conform to the provisions of S. 367 and must accordingly contain the reasons for the Judge's decision. The section is not complied with if the Judge merely states that he agrees with the opinion of the assessors. *Nirmal Kumar Bhosmik v. Emperor.*

39 Cr. L. J. 835 :
177 I. C. 29 : 42 C. W. N. 896 :
11 R. C. 209 : A. I. R. 1938 Cal. 551.

———S. 309—*Assessors, opinions of, delivered in writing—Irrregularity.*

Where in a Sessions trial held with the aid of Assessors, the Assessors delivered their opinions in writing, instead of orally to the Judge, this contravention of the provisions of S. 309 does not affect the legality of the trial in the absence of a finding that it led to a miscarriage of justice. *Begu v. Emperor.*

26 Cr. L. J. 1059 :
88 I. C. 3 : 2 O. W. N. 447 :
48 M. L. J. 643 : 41 C. L. J. 437 :
27 Bom. L. R. 707 :
6 Lah. 226 : 23 A. L. J. 636 :
1925 M. W. N. 418 :
7 L. L. J. 324 : 52 I. A. 191 :
A. I. R. 1925 P. C. 130.

———S. 309—*Cross-examination of Assessors, legality of.*

The cross-examination of the Assessors is entirely contrary to law. S. 309 does not give power to the Judge to question the Assessors until they have delivered their opinions orally and he has recorded such opinions. *Nazimuddi v. Emperor.*

13 Cr. L. J. 497 :
15 I. C. 641 : 40 Cal. 163.

———S. 309—*Duty of Court.*

The fact that the accused is charged in the same trial with another offence triable by Jury and that the Judge disagrees with the verdict of the Jury on that charge and desires to make a reference to the High Court, does not absolve the Sessions Judge from his duty to give judgment on the charge tried by him with the aid of Assessors. *In re : Kambala Narayana.*

20 Cr. L. J. 352 (a) :
50 I. C. 832 : 9 L. W. 376 :
36 M. J. 452 :
26 M. L. T. 45 : A. I. R. 1919 Mad. 19.

———S. 309—*Duty of Court.*

Under S. 309, Cr. P. C., the Sessions Judge

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with the Jury; it is incumbent upon him to do so if he is clearly of opinion that such a course is necessary for the ends of justice; but this does not require that he should make reflections upon the conduct of the Jurors, which are not supported by the evidence on the record. *Manfru Chowdhury v. Emperor*.

25 Cr. L. J. 776 :

81 I. C. 264 : 38 C. L. J. 397 :

51 Cal. 418 : A. I. R. 1924 Cal. 323.

—————**S. 307—Reference, test of—Validity of.**

The real test that has to be applied in a reference under S. 307 when the Judge disagrees with the verdict of the Jury, is to see whether the verdict is so unreasonable that seven reasonable men could not have arrived at that verdict. *Emperor v. Golam Kader*.

25 Cr. L. J. 1284 :

82 I. C. 356 : 28 C. W. N. 876 :

A. I. R. 1924 Cal. 956.

—————**S. 307—Reference—Trial on several charges—Acquittal by Jury—Magistrate agreeing in respect of graver charges—Reference on minor charges, propriety of.**

There is nothing to prevent a Judge who has accepted the findings of the Jury in favour of the innocence of the accused in respect of certain graver charges, from making a reference under S. 307 with the object of having some of the accused convicted on minor charges, where the prosecution has failed not because of the evidence happening to be false but because of the facts alleged being insufficient to support the graver charges. *Emperor v. Hari Das Mitra*.

24 Cr. L. J. 674 :

73 I. C. 770 : 37 C. L. J. 34 :

A. I. R. 1923 Cal. 108.

—————**S. 307—Reference to High Court—Duty of Court.**

When a reference is made to the High Court under S. 307, the language of the section does not justify any undue preference being given to the opinion of the Jury over that of the Judge. The High Court must weigh both the opinions and consider the entire evidence on the record just as it would consider in any other criminal matter coming before it for decision. *Emperor v. Ram Charan*.

25 Cr. L. J. 785 :

81 I. C. 305 : 11 O. L. J. 210 :

27 O. C. 29 : A. I. R. 1924 Oudh 314.

—————**S. 307—Reference to High Court—Duty of Sessions Judge to ask Jury reasons of verdict—Duty of High Court to go into evidence.**

Upon a reference under S. 307, a High Court is bound to consider the entire evidence and give weight to the opinions of the Sessions Judge and the Jury. In such a case, the Sessions Judge should ask the Jury the reasons for their verdict, but his failure to do so does not debar the High Court from entertaining the reference. The absence of the reasons of the Jury in such a case only enhances the responsibility of the High Court in the matter

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and requires it to go more carefully into the evidence. *Emperor v. Bhutilalan Singh*.

23 Cr. L. J. 11 :

64 I. C. 379 : 6 P. L. J. 264 :

2 P. L. T. 655.

—————**S. 307—Reference to High Court—Duty of High Court.**

In case of a reference to the High Court under S. 307, it is not within the province of the High Court to examine the evidence and decide for itself whether in its opinion the evidence justifies the verdict arrived at, but it should examine the evidence to see whether upon that evidence the verdict is such as a reasonable man could give : *In re : Veerappa Gonudan*.

30 Cr. L. J. 317 :

114 I. C. 353 : 28 L. W. 575 :

55 M. L. J. 591 : 51 Mad. 956 :

1929 M. W. N. 185 : I. R. 1929 Mad. 273 :

A. I. R. 1928 Mad. 1186.

—————**S. 307—Reference to High Court—Procedure.**

In ordinary cases tried by Jury, there is no appeal except on a matter of law under S. 418. Where, however, a case is tried by Jury under the provisions of Chap. XXXIII of the Code, an appeal lies to the High Court on matters of fact as well as on matters of law under S. 449. In such a case, the findings of the Jury on questions of fact are not final, and if there is a disagreement between the Judge and the Jury and the case is referred to the High Court under S. 307, the High Court must consider all the evidence in the case and give judgment after considering it as well as the opinions of the Judge and the Jury. *Emperor v. Bimal Parshad*.

26 Cr. L. J. 1241 :

88 I. C. 857 : 1 L. Cas. 567 :

6 Lah. 98 : A. I. R. 1925 Lah. 401.

—————**S. 307—Reference to High Court—Procedure—Powers of High Court.**

Where a Judge hears a case with a Jury and disagrees with them to such an extent that he feels that he cannot accept their verdict, he is entitled to refuse to accept that verdict and submit the case with his reasons to the High Court. The High Court then has thrown upon it the burden of examining for itself the entire evidence in the case deriving such assistance, as it can by giving due weight to, without being bound by, the opinion of the Sessions Judge and the Jury. The opinion of the Sessions Judge is that as expressed in the reference or at the hearing, and the opinion of the Jury is usually found expressed in the verdict. In such a case as the above, the High Court must make up its own mind, realising that it has a disadvantage in not having seen the witnesses, but has a freer hand than a Court of Appeal generally has. If it comes to the conclusion on the evidence that it should not convict if the case came before it in the capacity of a Trying Judge—and in arriving at that conclusion, it must give due weight to the fact that other persons have taken other views and have seen the witnesses—then its

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must give judgment after recording the opinion of the assessors. *In re: Kambala Narayana.*

20 Cr. L. J. 352 (a) :
50 I. C. 832 : 9 L. W. 376 :
36 M. L. J. 452 : 26 M. L. T. 45 :
A. I. R. 1919 Mad. 19.

———**S. 309—Duty of Judge—Rioting, charge of—Right of private defence—Duty of Judge.**

In a case of rioting where the dispute arises over the possession of a piece of land and the Crown admits the possession of the accused and the accused themselves urge the plea of private defence, it is the duty of the Sessions Judge to explain to the Assessors the legal aspect of the plea put forward by the accused, and to direct their attention to it by putting specific questions to them on the point. In such a case general questions such as "Has the offence of rioting been proved against any of the accused?" are utterly insufficient. *Sunder Buksh Singh v. Emperor.*

19 Cr. L. J. 983 :
48 I. C. 163 : 3 P. L. J. 653 :
1918 Pat. 359 : A. I. R. 1918 Pat. 308.

———**S. 309—Judgment—Delivery of opinions of Assessors—Judge, whether competent to view scene of offence afterwards.**

Under S. 309 (2) a Sessions Judge is bound to give judgment after the Assessors have given their opinions and he is not competent to take into account his observations of the locality where the crime was committed and which is visited by him alone after the Assessors have given their opinions. *Dey v. Emperor.*

19 Cr. L. J. 54 :
43 I. C. 86 : 9 L. B. R. 88 :
A. I. R. 1918 L. Bur. 22.

———**S. 309—Procedure—Assessors, opinion of, necessity of taking.**

At a joint trial held with the aid of Assessors, one of the accused was charged with the offence of abetment of murder, while the other two accused were tried for the offence of murder. The Assessors found the first accused not guilty of the offence charged and the Judge while acquitting him on the charge of abetment of murder, convicted him of an offence under S. 201, Penal Code: *Held*, that inasmuch as the opinion of the Assessors has not been asked on the minor charge, the conviction was illegal. *Appaya Baslingappa Honnapur v. Emperor.*

26 Cr. R. J. 394 :
84 I. C. 938 : 25 Bom. L. R. 1318 :
A. I. R. 1924 Bom. 246.

———**S. 309—Procedure—Evidence taken and Assessors discharged—Sessions Judge taking evidence thereafter, legality of.**

In a Sessions trial with the aid of his Assessors, a Sessions Judge has no power to take evidence after the Assessors have been discharged, and if he does so, the trial is vitiated. *Jaisukh v. Emperor.*

22 Cr. L. J. 127 (a) :
59 I. C. 559 : 19 A. L. J. 1 :
43 All. 125 : A. I. R. 1921 All. 284.

———**S. 309—Procedure—Plea of guilty—Trial.**

The accused at a trial, pleaded not guilty, and the trial proceeded on that footing. At the

———**S. 309—Record of opinion—Necessity of—Compliance with, manner of.**

In order to comply with the provisions of S. 309, the Judge ought to record at the time in writing the opinion actually given in his own words by each of the Assessors. *Fulu Santal v. Emperor.*

23 Cr. L. J. 417 :
61 I. C. 705 : 6 P. L. J. 147 :
2 P. L. T. 288 : A. I. R. 1921 Pat. 109.

———**S. 309.**

Requirements of—Stated. *Ditto v. Emperor.*

36 Cr. L. J. 504 :
154 I. C. 138 : 28 S. L. R. 295 :
7 R. S. 154 : A. I. R. 1935 Sind 23.

———**S. 309—Re-trial—Assessor when expressing opinion that accused is guilty adding that he had personal knowledge of it, acquired during investigation—Other Assessors holding accused not guilty.**

At the end of a criminal trial, the Sessions Judge invited the opinion of the Assessors. Three of them expressed the view that the accused were not guilty; the fourth said: "All the three accused are guilty. I have personal knowledge about this matter. My knowledge was derived about three months ago while the case was under investigation": *Held*, that this expression of opinion did not necessitate a *de novo* trial with the aid of other Assessors. The proper course for the Judge was simply to ignore the opinion of the Assessor if he came to the conclusion that it was improperly expressed, or that he had been improperly influenced by extrajudicial considerations. There was nothing illegal in a Judge acting in that manner. *Emperor v. Pahu.*

41 Cr. L. J. 55 :
184 I. C. 549 : I. L. R. 1940 Lah. 243 :
41 P. L. R. 731 : 12 R. L. 234 :
A. I. R. 1939 Lah. 475.

Cr. P. CODE (1898), S. 307**S. 307—Reference.**

When a Sessions Judge finds it necessary to disagree with the verdict of the Jury, he should extract from the Jury their reasons for disbelieving the evidence and should record the same for their information and guidance of the High Court. *Emperor v. Kankaya*.

27 Cr. L. J. 773 :
95 I. C. 309 : 22 N. L. R. 42 :
A. I. R. 1926 Nag. 308.

S. 307—Reference—Validity of.

When Judge need not refer illustrated. *Haris Chandra v. Emperor*.

34 Cr. L. J. 432 :
142 I. C. 896 : 1932 A. L. J. 1089 :
I. R. 1933 All. 144 : A. I. R. 1933 All. 94.

S. 307—Reference—Validity of.

Where on a disagreement between a Judge and Jury a reference is made to the High Court under S. 307, it is not sufficient to show that another Jury might have formed a different opinion ; it must be shown that no reasonable body of men would have returned the verdict complained of. *Emperor v. Zahur Haider*.

27 Cr. L. J. 1041 :
97 I. C. 17 : 7 P. L. T. 367 :
A. I. R. 1926 Pat. 566.

S. 307—Reference—Use of—Verdict of Jury, when to be disturbed.

The power of making references on the part of Judges engaged in criminal work in the districts is one, that should be used very sparingly. It is an artificial power which is the creature of statute only. It is most often utilised by Judges zealous indeed to perform their duties but usually somewhat inexperienced in the principles of criminal procedure. As long as it is the policy of the Government to rely on the verdicts of juries in the district, a policy which is supported by both the profession and the public and a policy which is cherished by the accused persons who are brought up for trial, so long must reliance be placed upon the decisions of juries and they must not be disturbed unless it can be shown beyond a peradventure that a perverse verdict has been arrived at, which can be demonstrated clearly from a perusal of the proceedings of the Court. *Emperor v. Abdul Hossain Sikdar*.

38 Cr. L. J. 174 (b) :
166 I. C. 286 : 9 R. C. 490 (2) :
A. I. R. 1936 Cal. 451.

S. 307—Reference, when competent.

A Sessions Judge may refer a case to the High Court under S. 307, even if in his charge to the Jury, he drew their attention in particular to one peculiar circumstance in the evidence for the prosecution and told them that having regard to that circumstance, they should certainly pause and consider it carefully before returning their verdict, and it was, therefore, fairly open to the Jury, having regard to this weak link in the prosecution evidence, to acquit the accused. *Emperor v. Abdul Rahman*.

10 Cr. L. J. 57 :
9 C. L. J. 422 : 2 I. C. 593.

S. 307—Reference—When competent—Judge's duty to ask Jury to give reasons.**Cr. P. CODE (1898), S. 307**

A Sessions Judge is competent to make a reference to the High Court under S. 307 even when on the force of his charge to the Jury, it does not appear that the verdict was an unreasonable one; and in the reference, the High Court is not bound to act in accordance with the unanimous verdict of the Jury even if it is not shown to be perverse or manifestly wrong. In such a reference the High Court will form its own opinion on the evidence after giving due weight to the opinions of the Judge and Jury. A Sessions Judge after arriving at his conclusion to refer the case to the High Court under S. 307, and after telling the Jury that such was his intention, should invite the Jury to give the reasons of their verdict. But the circumstance that no such reasons have been recorded by the Judge does not warrant the High Court to decline to go with the evidence and arrive at its own judgment. *Emperor v. Annada Charan*. 10 Cr. L. J. 32 : 2 I. C. 497 : 13 C. W. N. 757 : 9 C. L. J. 638.

S. 307—Reference—When competent.

In order to justify a reference under S. 307 of the Cr. P. C., it is not necessary that the Judge should be able to describe the Jury's finding as perverse. *Jahur Sheikh v. Emperor*.

27 Cr. L. J. 1402 :
98 I. C. 714 : 30 C. W. N. 912 :
45 C. L. J. 20 : A. I. R. 1926 Cal. 1107.

S. 307—Reference—When competent.

Under S. 307 a reference should be made only when the verdict of the Jury is manifestly wrong and not in every case of doubt nor in every case in which a different view from that of the Jury can be entertained. There is no difference in this regard between the case where the Jury acquits and the case where the Jury convicts and the Judge disagrees with the verdict. *Ramdas Rai v. Emperor*.

30 Cr. L. J. 721 :
117 I. C. 173 : 8 Pat. 344 : 10 P. L. T. 409 :
I. R. 1929 Pat. 381 : A. I. R. 1929 Pat. 313.

S. 307—Reference—When competent.

What S. 307 requires is that the Judge must not only disagree, but must think it necessary to express disagreement, otherwise, *i. e.*, if he does not so think, his clear duty is to act as laid down in S. 306, namely to give judgment according to the verdict. *Afsar Shaikh v. Emperor*.

38 Cr. L. J. 1075 :
171 I. C. 320 : 41 C. W. N. 1020 :
10 R. C. 263 : I. L. R. 1937 2 Cal. 694 :
A. I. R. 1937 Cal. 540.

S. 307—Reference—When competent.

Where a Judge stated that, although he still thought that the conviction of the accused was possibly against the weight of evidence, he had modified his original view and was satisfied that the accused took part in the crime, and that there was thus no reason why a reference should be made and accepted the verdict and convicted the accused : *Held*, that the case was not a fit one for reference under S. 307. *Bajit Mian v. Emperor*.

29 Cr. L. J. 81 :
106 I. C. 673 : 6 Pat. 817 : 9 P. L. T. 191 :
A. I. R. 1928 Pat. 120.

Cr. P. CODE (1898), S. 324

he has been convicted on the charge under trial. *Emperor v. Kandasami*.

5 Cr. L. J. 422 :
I. L. R. 39 Mad. 134.

———S. 311—*Previous conviction—Proof that accused is member of criminal tribe, stage for.*

Where in the first information the accused is referred to as a "member of a criminal tribe" this portion of the information should be excluded when reading it out to the Jury. When there was no indication that such a precaution was taken and as the trial proceeded, the prosecution were allowed to examine a clerk of the Police Office to prove that the accused was entered in the criminal tribes register: *Held*, that this evidence certainly ought not to have been admitted until after the verdict had been taken or the accused convicted. *Mosaheb Dome v. Emperor*.

40 Cr. L. J. 833 (b) :
183 I. C. 660 : 5 B. R. 978 : 12 R. P. 177 :
20 P. L. T. 879 : A. I. R. 1940 Pat. 14.

———S. 315.

See Penal Code, 1860, S. 426.

———S. 315—*Applicability.*

S. 315 (3) does not apply to the choosing of a Jury in a particular case where a deficiency of one or more members has appeared within the meaning of Ss. 276 and 279 (2), and the trial has already begun. *Shewaram Jethanand Shivdasani v. Emperor*.

41 Cr. L. J. 28 :
184 I. C. 474 : 1940 Kar. 249 : 12 R. S. 107 :
A. I. R. 1939 Sind 209.

———Ss. 315 (5) (a), 439—*Compounding in revision.*

The High Court has now power under Cl. 5 (a) of S. 315, Cr. P. C., to allow cases to be compounded in revision. *Singheshwar Prasad v. Ali Hasan*.

31 Cr. L. J. 507 :
124 I. C. 95 : 11 P. L. T. 492 :
A. I. R. 1929 Pat. 512.

———S. 319—*Exemption—Long absence, effect of.*

Prolonged absence of an Assessor from a District exempts him from being an Assessor under S. 319. *Mohammad Ejaz Hussain Khan v. Emperor*.

32 Cr. L. J. 740 :
131 I. C. 540 : 12 P. L. T. 209 :
I. R. 1931 Pat. 220 :
A. I. R. 1931 Pat. 160.

———S. 319—*Liability to serve.*

The mere fact that a person's name is on the list of Jurors and Assessors, does not render him liable to serve as a Juror or Assessor unless he is liable under S. 319. *Muhammad Ejaz Hussain Khan v. Emperor*.

32 Cr. L. J. 740 :
131 I. C. 540 : 12 P. L. T. 209 :
I. R. 1931 Pat. 220 :
A. I. R. 1931 Pat. 160.

———S. 324—*Order under—Whether judicial.*

An order restoring the names of the Jurors which were cancelled from the list is not a

Cr. P. CODE (1898), S. 326

judicial order.—*Nagendra Chandra Ganguli v. Benamali Das*.

36 Cr. L. J. 68 :
152 I. C. 210 : 38 C. W. N. 363 :
7 R. C. 255 : A. I. R. 1934 Cal. 487.

———S. 326

See also (i) Cr. P. C. 1898, Ss. 274, 276, 277, 279, 326, 537.

———S. 326—*Construction—Selection of Assessors.*

S. 326, Cr. P. C., lays down the procedure which "shall ordinarily" be followed and is not mandatory. Where under S. 326, a usual precept is issued to the District Magistrate, but on the date of the trial only three Assessors remain present but a gentleman who is present in the Court and who is one of the qualified person to serve as assessor is served with summons and the Judge chooses him as an assessor on the date of the trial, the trial is not contrary to law. *Rami Babu Jadav v. Emperor*.

39 Cr. L. J. 302 :
173 I. C. 418 : 18 P. L. T. 964 :
4 B. R. 266 : 10 R. P. 402 :
A. I. R. 1938 Pat. 60.

———S. 326—*Non-compliance, effect of.*

A neglect of the strict provisions of S. 326 will not make the constitution of the Jury illegal or render the trial a nullity, if no failure of justice is caused thereby. S. 537 applies to such a case. *Lalu v. Emperor*.

35 Cr. L. J. 668 :
148 I. C. 339 : 1933 A. L. J. 1446 :
56 All. 210 : 6 R. A. 683 :
A. I. R. 1933 All. 941.

———S. 326—*Number of Assessors—Requisite number not present—Court choosing person present in Court whose name was on Assessors' List without serving formal summons—Trial, if legal.*

A requisite number of Assessors was not present at the trial and the Court chose a gentleman present in the Court compound whose name was in the List of Assessors and Jurors and asked him to serve as an Assessor without any formal summons having been served upon him: *Held*, that the trial was not illegal. *Emperor v. Ramsiddh Rai*.

39 Cr. L. J. 725 :
176 I. C. 530 : 4 B. R. 724 :
11 R. P. 79 : A. I. R. 1938 Pat. 352.

———S. 326—*Number of Jurors.*

The irregularity of summoning not less than double the number of Jurors required for a particular trial may be cured, provided it does not occasion any failure of justice. *Lala v. Emperor*.

35 Cr. L. J. 668 :
148 I. C. 339 : 1933 A. L. J. 1446 :
56 All. 210 : 6 R. A. 683 :
A. I. R. 1933 All. 941.

———S. 326—*Number of Jurors to be summoned—Irregularity, effect of.*

Assuming that it is incumbent on the Judge under S. 326, to summon a minimum of 18 Jurors for a murder of trial, mere failure on the part of the Judge to summon the full number will not, by itself, vitiate the trial. It is a mere irregularity which would

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triable by the Jury at all, but were triable by the Judge with the aid of the Assessors. *Emperor v. Ganga Ram*. 41 Cr. L. J. 676 :

188 I. C. 767 : 1940 A. L. J. 155 :
1940 A. W. R. 187 : I. L. R. 1940 All. 365 :
13 R. A. 74 : A. I. R. 1940 All. 260.

—S. 307—*Verdict—High Court's power to set aside.*

The verdict of a Jury must not be lightly disregarded by the High Court. Due weight must be given to it, and whenever it is set aside, it must be upon a very substantial ground and not merely upon the ground that another view of the evidence might have been taken. *Emperor v. Punit Chain*.

23 Cr. L. J. 421 :
67 I. C. 581 : 3 P. L. T. 413 :
1922 Pat. 218 : 4 U. P. L. R. Pat. 53 :
A. I. R. 1922 Pat. 348.

—S. 307—*Verdict erroneous—Remedy.*

Where, however, the Jury return an erroneous verdict by misunderstanding the law, the verdict can be corrected only by the Judge disagreeing with the Jury and referring the case to the High Court under S. 307. *Emperor v. Kondlu Dhondiba*.

1 Cr. L. J. 331 :
6 Bom. L. R. 361 : I. L. R. 28 Bom. 412.

—S. 307—*Verdict of not guilty—Reasons to be recorded—Reference—Weight to be given to verdict of Jury.*

Where a Jury returns a unanimous verdict of not guilty, which is wrong in the opinion of the Judge, he ought to ask the Jury to state their reasons for disbelieving the prosecution evidence and ought to record them for the information of the High Court. The Cr. P. C. does not put the opinion of the Jury on any higher plane than the opinion of the Judge and both should be given due weight in deciding a reference. *Emperor v. Tukaram*.

30 Cr. L. J. 310 :
114 I. C. 453 : I. R. 1929 Nag. 69 :
A. I. R. 1929 Nag. 84.

—S. 307—*Verdict unanimous, interference.*

The High Court, upon a reference under S. 307, will not interfere with the unanimous verdict of a Jury, and if that verdict is not unreasonable, and can, upon the evidence be supported, the High Court will accept the verdict even though it may not wholly agree therewith. *Emperor v. Pramatha Nath Bagchi*.

21 Cr. L. J. 266 :
55 I. C. 282 : 30 C. L. J. 503 :
A. I. R. 1920 Nag. 108.

—S. 307—*Verdict of Jury—Meaning of.*

Verdict of 'benefit of doubt' is not a verdict known to the law though Jurors sometimes express a verdict of guilty in that way. *Emperor v. Panchanon Sarkar*.

34 Cr. L. J. 608 :
143 I. C. 600 : 37 C. W. N. 341 :
I. R. 1933 Cal. 448 :
A. I. R. 1933 Cal. 404.

—S. 307—*Verdict of Jury—Reference—Interference with verdict—Principles.*

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In a reference under S. 307 the verdict of the majority of the Jury should not be interfered with unless it is apparent that the case is a very clear one. Where on a reference under the said section one of the Judges agrees with the verdict of the Jury, the fact of such agreement is, in itself, sufficient to show that the case is not one for interference with the verdict of the Jury. *Emperor v. Yunus Ali*.

30 Cr. L. J. 826 :
117 I. C. 680 : 32 C. W. N. 783 :
I. R. 1929 Cal. 568.

—S. 307—*Verdict of Jury—Reference by Judge—Power to interfere with perverse verdict.*

Ordinarily, the verdict of the Jury is entitled to very great weight and their verdict is not liable to displacement upon the mere ground that upon a consideration of all the evidence, a Judge would have arrived at a conclusion different from that arrived at by the Jury. But where the verdict of the Jury is perverse and patently erroneous, and it is established that the verdict amounts to a gross miscarriage of justice, the Court is entitled to draw its conclusions from the evidence as to the guilt of the accused. *Emperor v. Jukhan*.

30 Cr. L. J. 1078 :
119 I. C. 443 : 1929 A. L. J. 509 :
I. R. 1929 All. 1019 :
A. I. R. 1929 All. 338.

—S. 307—*Verdict of Jury—Reference—Interference with verdict—Principles.*

In a reference under S. 307 what the High Court has to consider is whether the verdict of the Jury is perverse or unreasonable. The High Court will not re-try the case and form an opinion of the value of the evidence. An unreasonable verdict is one which is contrary to the evidence or at least totally unjustified by the evidence. *Emperor v. Bhagwan Din*.

30 Cr. L. J. 570 :
116 I. C. 207 : 6 O. W. N. 40 :
I. R. 1929 Oudh 319 :
A. I. R. 1929 Oudh 280.

—S. 307—*Verdict of Jury—Verdict not unreasonable—Interference.*

In a reference under S. 307, the High Court will not interfere with the verdict of a Jury which is not unreasonable. *Emperor v. Nagar Ali*.

30 Cr. L. J. 584 :
116 I. C. 171 : 32 C. W. N. 952 :
56 Cal. 132 : I. R. 1921 Cal. 459 :
A. I. R. 1929 Cal. 287.

—S. 307—*Verdict of Jury, weight of—Interference.*

The verdict of a Jury has more weight than the opinion of Assessors and should not be set aside unless no sensible man could have arrived at their verdict, particularly in the case of a verdict of acquittal. *Emperor v. Vidya Sagar Pande*.

29 Cr. L. J. 1035 :
112 I. C. 363 : 9 P. L. T. 683 :
8 Pat. 74 : A. I. R. 1928 Pat. 497.

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commencement of trial—Accomplice—Evidence of accomplice thus pardoned not admissible against co-accused.

A pardon granted by Government is not granted under S. 337. The evidence of an accomplice who has been given pardon after commencement of the trial is inadmissible, as he does not cease to be an accused person and his position as such is not altered in spite of the pardon given at this stage. *Alladad v. Emperor.*

4 Cr. L. J. 282 :
9 P. R. Cr. 1906.

———**S. 337—Accomplice—No tender of pardon—Conviction of.**

The Police have no right to take upon themselves not to charge a person against whom they have evidence because they require him as a witness. Where this improper course is adopted, the evidence of the accomplice so obtained is entitled to very little weight. When he has been granted no pardon although, if compelled to answer incriminating questions by the Court, he cannot be prosecuted for those answers and can claim the protection of S. 132, Evidence Act, still he may be prosecuted on the strength of any other evidence which may be available, and he is, therefore, at the mercy of the Police. *Keshav Vasudeo Kirtikar v. Emperor.*

36 Cr. L. J. 837 :
156 I. C. 392 : 59 Bom. 355 :
37 Bom. L. R. 179 : 7 R. Bom. 511 :
A. I. R. 1935 Bom. 186.

———**S. 337—Accomplice, promise of pardon to, effect of—Accomplice, when competent as witness against co-accused.**

A promise of immunity by the prosecution made to an accomplice provided he speaks the truth, does not amount to a discharge, and unless he is formally discharged by an order in writing, he cannot be a competent witness against his co-accused and his evidence is inadmissible. The mere fact that although he was arrested by the Police, he was not sent up for trial, would not take him out of the category of an accused person. *Mahandu v. Emperor.*

21 Cr. L. J. 599 :
57 I. C. 167 : 1 Lah. 102 :
89 P. L. R. 1920 : A. I. R. 1920 Lah. 215.

———**S. 337—Admissibility.**

The evidence of an accused taken under a conditional pardon so offered is wholly inadmissible. *Paban Singh v. Emperor.*

4 Cr. L. J. 44 :
10 C. W. N. 847.

———**S. 337—Amendments.**

Under S. 337, as amended, it is essential that at the trial of the persons against whom the approver is testifying, the approver must be examined as a witness. *Ram Nath v. Emperor.*

29 Cr. L. J. 413 :
108 I. C. 514 : 29 P. L. R. 165 :
9 Lah. 608 : A. I. R. 1928 Lah. 320.

———**S. 337—Amendments, effect of.**

Under the old Code the act terminating a

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pardon was the withdrawal by the granting authority, under the present law, it is the forfeiture by the approver. *Sashi Rajbanshi v. Emperor.*

16 Cr. L. J. 65 :
26 I. C. 657 : 19 C. W. N. 295 :
42 Cal. 856 : A. I. R. 1915 Cal. 667.

———**S. 337—Amendments—Object of.**

Object of amendment by Act XVIII of 1923 of S. 337, stated. *Emperor v. Nana Amrita Savant.*

36 Cr. L. J. 499 :
154 I. C. 327 : 36 Bom. L. R. 1211 :
7 R. B. 325 (2) : A. I. R. 1935 Bom. 70.

———**S. 337—Applicability.**

If the manner in which the tender of pardon is made, follows in substance, the method prescribed in S. 337 then the section must apply. Minor and immaterial irregularities or variations cannot be taken to affect the operation of the section. *Faqir Singh v. Emperor.*

40 Cr. L. J. 360 :
176 I. C. 898 : 1938 O. W. N. 809 :
19 P. L. T. 717 : 42 C. W. N. 1252 :
40 P. L. R. 876 : 1938 M. W. N. 969 :
48 L. W. 537 : 1938 2 M. L. J. 780 :
68 C. L. J. 328 : 1938 A. W. R. 170 :
40 Bom. L. R. 1254 : 1 I. L. R. 1938 Lah. 628 :
32 S. L. R. 937 : 11 R. P. C. 81 (P. C.) :
1938 O. L. R. 405 : 4 B. R. 850 :
65 I. A. 388 : A. I. R. 1938 P. C. 266.

———**S. 337—Applicability—Release of Approver.**

S. 337 (3) contemplates only a case where there has been a commitment made by the Magistrate to the Court of Session or the High Court. It omits to consider the case where the Magistrate himself on his own responsibility discharges the accused person. The meaning of the sub-section is that the approver shall not be set at large until the judicial proceedings pending against the accused are finished. It is immaterial whether the proceedings are finished by a Magisterial order of discharge before a trial or by a Judge's order of acquittal after trial. In the case of the Magisterial discharge, the sub-section would be satisfied if the approver were detained in custody or on bail until the order of discharge was made, and the provisions of the sub-section would be inapplicable to any proceedings held thereafter. *Emperor v. Intya Salabatkhan.*

13 Cr. L. J. 842 :
17 I. C. 714 : 14 Bom. L. R. 897.

———**S. 337—Applicability.**

S. 337 applies where there is a *bona fide* enquiry into what it is believed at the time may prove to be an offence triable by the Court of Session. Even if the subsequent proceedings show that the offence was of a less serious nature, the section still applies provided that a case under such section materialises and is committed to Sessions. *Sardara v. Emperor.*

22 Cr. L. J. 676 :
63 I. C. 612.

———**S. 337—Applicability.**

S. 337 is available for obtaining the evidence of approvers not in all trials but only as

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decided to be a trial within S. 403. *Bhupali Bhushan Mukerji v. Amto Bhushan Mukerji*.

36 Cr. L. J. 1238:

39 C. W. N. 919 : 157 I. C. 670 :

62 Cal. 1119 : 8 R. C. 122 : A. I. R. 1935 Cal. 491.

—Ss. 247, 438—*Revision—Dismissal of complaint for default of complainant—Discretion of Court—Interference.*

The High Court will interfere in revision with an order dismissing a complaint under S. 247, Cr. P. C., only in cases where it finds that the Magistrate has exercised his discretion improperly. *Golla Pullama v. Sangyoti Reddi*.

28 Cr. L. J. 118 : 99 I. C. 326 : 24 L. W. 715 : A. I. R. 1927 Mad. 172.

—S. 247—Scope.

When case is taken up on a day for which it is not fixed, dismissal of complaint is not under S. 247. *Mahadev v. Emperor*.

36 Cr. L. J. 328 :

153 I. C. 407 : 1934 A. L. J. 1061 :

7 R. A. 489 : 4 A. W. R. 794 :

A. I. R. 1934 All 1025.

—S. 247—Scope and object of—Complainant's failure to appear when case is called—*Acquittal—Appearance of complainant during course of day, whether sufficient—Pleadant's presence effect of.*

The absence of the complainant at the time when a case is taken up for hearing is sufficient to justify the Magistrate in dealing with the case under S. 247, and acquitting the accused.

The Magistrate is not bound to wait till the close of the day and see if the complainant appears, before taking action under the section.

A complainant cannot be represented by a Pleader in order to take away the jurisdiction of the Magistrate to proceed under S. 247 and the presence of the complainant's Vakil alone is not sufficient compliance with the requirements of S. 247. It is not sufficient for the complainant to appear at some time during the course of the day to which the hearing of the case is posted. He must be present at the time when the case is called on for hearing. The object of S. 247 is to prevent the complainant from being dilatory in the prosecution of the case, and if he does not care to be present when the case is called on, the accused is entitled to an acquittal unless the Magistrate chooses for reasons he thinks proper to adjourn the case.

Nagarambilli Tonkya v. Malia Jagannatha. 27 Cr. L. J. 988 :

96 I. C. 652 : 1926 M. W. N. 928 :

49 Mad. 883 : 24 L. W. 669 :

51 M. L. J. 730 : A. I. R. 1926 Mad. 1009.

—S. 247—Trial, commencement of.

The trial in a summons case commences when the Magistrate takes cognizance under S. 190.

Rhupali Bhushan Mukerji v. Amto Bhushan Mukerji.

157 I. C. 670 : 62 C. L. J. 240 :

62 Cal. 1119 : 39 C. W. N. 919 :

8 R. C. 122 : A. I. R. 1935 Cal. 491.

—S. 248.

See Calcutta Municipal Act, 1923, S. 537

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—Ss. 248, 345, 333—*Acquittal without charge having been framed.*

An order of acquittal, without a charge having been framed against the accused, is justified only (1) in summons-cases by the operation of S. 248 ; (2) under S. 345, when there has been a composition ; and (3) under S. 333, when the Advocate-General withdraws from the case, and where the Court considers it proper, even though a charge has not been framed, to acquit the accused. The last is a rare contingency. *Harjans Singh v. Satn Das*.

24 Cr. L. J. 120 : 71 I. C. 248.

—S. 248—*Applicability—Withdrawal—Person competent to withdraw—Application to withdraw complaint by person not complainant—Permission cannot be granted.*

In a summons-case may apply for permission to withdraw his complaint, and this section can have application only when the Magistrate has taken cognizance of a case upon a complaint preferred to him by the person who seeks to withdraw the complaint. A Magistrate cannot, therefore, grant permission to withdraw the complaint when application for withdrawal is made by a person who is not the complainant.

Emperor v. Elias Ali Muhammad. 41 Cr. L. J. 694 :

188 I. C. 870 : 1940 Kar. 429 :

13 R. S. 13 : A. I. R. 1940 Sind 112.

—S. 248—*Compromise of compoundable case, effect of.*

Once a compromise petition is accepted by the Magistrate in a compoundable case, he becomes *functus officio* and ceases to have any jurisdiction over the matter and if the entire case is compounded, the compromise absolves not only the accused present in Court but all the accused in the case. *Amur Ali v. Emperor*.

22 Cr. L. J. 675 : 63 I. C. 611 : 2 P. L. T. 584 :

1921 Pat. 304 : A. I. R. 1921 Pat. 290.

—Ss. 248, 345—*Compromise, effect of—Cattle Trespass Act, S. 24, offence under, whether compoundable—Penal Code, S. 323, offence under, but where that offence is charged along with an offence under S. 323, Magistrate is entitled to deal with the compromise as a withdrawal of the complaint in respect of the alleged offence under the Cattle Trespass Act, for if no evidence were forthcoming on which to convict, an order of acquittal would result. *Emperor v. Jula*.*

—Ss. 248, 345—*Partial withdrawal.*

S. 248, Cr. P. C. contemplates the withdrawal of a complaint as a whole. Where a complaint against several accused persons is withdrawn as against one of them, the withdrawal amounts to a withdrawal of the whole complaint in

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pardon is on the Crown. *Sashi Rajbanshi v. Emperor.* 16 Cr. L. J. 65:

26 I. C. 657 : 19 C. W. N. 295 :
42 Cal. 856 : A. I. R. 1915 Cal. 667.

—S. 337—Approver—Prosecution of—Power of High Court.

Action can be taken by the High Court under S. 399 (3) against an approver in respect of a statement made by him, which is *prima facie* false, even though the approver has not been examined as a witness in the case in connection with which he made his statement. The High Court can sanction the prosecution of an approver for an offence under S. 193 or S. 194, Penal Code, in respect of such statement. *Emperor v. Raja.* 14 Cr. L. J. 64 :

18 I. C. 352 : 17 P. W. R. 1913 Cr. :
227 P. L. R. 1913.

—S. 337—Approver—Prosecution of—Validity of—Discrepancies introduced into statement intentionally—Pardon, forfeiture of.

When a pardon has been tendered to any person under S. 337, he should not be tried for the offence in respect of which the pardon has been tendered "unless the prosecution establishes a breach of the condition on which the pardon was tendered and there is proof that the accused has either wilfully concealed material facts or given false evidence. Where, however, the person to whom the pardon has been tendered purposely introduces discrepancies into his statement in order that the Court might hold that he is not a reliable witness, he forfeits his pardon and is liable to be prosecuted for the offence in respect of which the pardon was granted. *Ahmed v. Emperor.*

27 Cr. L. J. 77 :
91 I. C. 253 : 1 Lah. Cas. 33.

—S. 337—Approver—Release on bail.

S. 337 is a special section dealing with approvers and controls the general S. 498 and a Court is not competent to release an approver on bail. *Mahomed Abdul Majid v. Emperor.*

28 Cr. L. J. 439 :
101 I. C. 471 : A. I. R. 1927 Sind 173.

—S. 337—Approver—Release on bail.

S. 337 (3) only provides that the approver shall be detained by the Magistrate granting the pardon and it only controls the powers of such Magistrate to grant bail and not those of a superior Court. This clause does not mean that an accomplice who is in custody when he obtains pardon must be detained in prison nor does it imply the negative that he shall not be released from custody. But the discretionary powers of the Court to grant bail to approvers must be very sparingly exercised. *Mahomed Abdul Majid v. Emperor.* 28 Cr. L. J. 439 :

101 I. C. 471 : A. I. R. 1927 Sind 173.

—S. 337—Approver, released—Subsequent trial under Arms Act, legality of.

Where in the course of his statement an approver in a case of gang dacoity discloses the fact of being in illegal possession of a carbine and some ammunition which were used by him as implements of his trade of crime, and having fulfilled the conditions of his pardon is released,

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it is illegal on his release to prosecute him for an offence under S. 220 Arms Act, for the possession of carbine and ammunition, as without referring to the arms possessed by the gang, of which the carbine was one, he could not make full and true disclosure within his knowledge of the circumstances relative to the offence with which he had been concerned. *Shiam Sundar v. Emperor.* 22 Cr. L. J. 699 :

68 I. C. 827 : 19 A. L. J. 717 :
A. I. R. 1921 All. 234.

—S. 337—Approver, status of.

An approver is, after all, an accused person and though he is declared to be a competent witness after acceptance of pardon under S. 337, the pardon is only conditional and the approver does not entirely cease to be an accused person until and unless the conditions of the pardon are duly fulfilled. *Kundan Lal v. Emperor.* 32 Cr. L. J. 785 :

131 I. C. 625 : 32 P. L. R. 423 :
I. R. 1931 Lah. 481 :
A. I. R. 1931 Lah. 353.

—S. 337—Approver, statement of—Corroboration, necessity of.

In order to support a conviction the statement of an approver, especially of one whose initial statement was very long delayed, requires material corroboration connecting each individual accused with the crime committed. *Sarda v. Emperor.* 22 Cr. L. J. 676 :

63 I. C. 612.

—S. 337—Approver—Tender of pardon—Discharge, order of, absence of—Evidence, whether admissible.

A pardon was tendered to an accused person by the Local Government, who was examined as an approver but no formal order of discharge was passed in respect of him. On the other hand, his name did not appear among those of the accused actually challaned, and it was expressly stated in the *challan* that no proceedings were being taken against them: *Held*, that as the Magistrate was not exercising jurisdiction over him, he did not come within the definition of an accused person and was, therefore, a competent witness in the case. *Darya Singh v. Emperor.* 25 Cr. L. J. 520 :

77 I. C. 984 : A. I. R. 1923 Lah. 666.

—S. 337—Approver.—Trial with others when valid.

There is no provision of law in the Cr. P. C., which lays down that an approver to whom pardon has been tendered and who does not fulfil the conditions on which the pardon was tendered cannot be tried at the same trial with the other accused. Where, therefore, an approver whose pardon was forfeited was tried along with the other accused: *Held*, that the joint trial did not vitiate the proceedings. *Sultan Khan v. Emperor.* 8 Cr. L. J. 445 :

5 A. L. J. 691 : 1908 A. W. N. 259.

—S. 337—Approver, whether criminal prisoner.

An approver detained in custody under S. 337, Cr. P. C. comes within the definition of a criminal.

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him under the provisions of law to hold that the statement made by the approver before the Magistrate was a correct statement and that it should be relied upon in spite of the statements which the approver introduced before him in the Court of Session. *Bhola Nath v. Emperor*.

40 Cr. L. J. 856 :
184 I. C. 191 : 1939 A. L. J. 785 ;
12 R. A. 189 : I. L. R. 1939 All. 736 :
1939 A. W. R. 464 :
A. I. R. 1939 All. 567.

—S. 337 (3) — *Custody of approver, nature of.*

The custody contemplated by S. 337 (3), in the case of persons who have been tendered and have accepted pardon is judicial custody or confinement in a 'prison' and Criminal Courts have no discretion to order the detention of such persons in Police custody. *Kundan Lal v. Emperor*.

32 Cr. L. J. 785 :
131 I. C. 625 : 32 P. L. R. 423 :
I. R. 1931 Lah. 481 :
A. I. R. 1931 Lah. 353.

—S. 337—*Dacoity cases—Statement of accomplice, value of.*

When persons are charged with belonging to a gang associated for purposes of habitually committing offences, the only direct evidence that can be tendered is that of accomplices. Other witnesses can testify to association on certain isolated occasion, but the man who gives evidence of habitual association for a particular purpose must almost inevitably be an accomplice. *Chhaprolia v. Emperor*.

24 Cr. L. J. 696 :
73 I. C. 808 : A. I. R. 1924 Lah. 235.

—S. 337—*Detention of approver—When valid.*

Where the accused to whom the Magistrate tenders a pardon is already on bail there is no necessity for the approver to be remanded to custody thereafter, but if he is not on bail, the Magistrate is bound by the provisions of Sub-s. 3 to retain the approver in custody until the termination of the trial. *Ali Mahomed v. Emperor*.

33 Cr. L. J. 906 :
140 I. C. 153 : I. R. 1932 Sind 174 :
A. I. R. 1932 Sind 40.

—S. 337—*Discharged accused—Prosecution witness—Procedure.*

There is nothing illegal in the procedure of withdrawing a criminal case against one of the accused and examining him as a prosecution witness after his discharge against the other accused, though the more rational and reasonable procedure would be to offer a pardon to him and make him an approver. *Mahadeo v. Emperor*.

27 Cr. L. J. 807 :
95 I. C. 471 : A. I. R. 1926 Nag. 426.

—S. 337—*District Magistrate—District Magistrate sanctioning tender of pardon whether can try case.*

Under S. 337 (4), Cr. P. C. it is only the Magistrate tendering the pardon who is debarred from trying the case, and not the District

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Magistrate who sanctions the tender of pardon. *Akhar v. Emperor*. 21 Cr. L. J. 306 :
55 I. C. 466 : 30 P. R. 1919 Cr :
A. I. R. 1920 Lah. 364.

—S. 337—*Evidence of accomplice—Admissibility.*

The corroboration must be independent of the accomplice and the evidence of one accomplice cannot corroborate the evidence of another; the evidence of either requires corroboration before it can be acted upon. *Hafijuddi v. Emperor*. (F. B.) 35 Cr. L. J. 1357 :
151 I. C. 486 : 38 C. W. N. 777 :
7 R. C. 136 : A. I. R. 1934 Cal. 678.

—S. 337 (2)—*Examination of approver as witness—Examination of accused—Refusal to testify—Remand to custody.*

Under S. 337 (2), Cr. P. C., an accused accepting a pardon should be examined and then dealt with under S 339, if necessary, but should not be put back into the dock when he shows an intention of not testifying. Where the result of putting the accused back into the dock is that the statement which he has made as an accused can be taken into consideration against the other accused and this statement has proved to be in effect the same as that which he was expected to make when a pardon was tendered him, the commitment of all the accused must be quashed and fresh inquiry held at which the accused pardoned should be examined as required by S. 337 (2), Cr. P. C. *In re : Arunachellam*. 8 Cr. L. J. 153 :
3 M. L. T. 407 : 31 Mad. 272.

—S. 337—*Examination of approver as witness—Necessity of.*

The provisions of S. 337 (2), are imperative in their nature and a failure to comply with them is not a mere irregularity but an illegality which vitiates the trial. *Mahta v. Emperor*.

31 Cr. L. J. 111 :
12. I. C. 489 : 11 Lah. 230 :
31 P. L. R. 496 : A. I. R. 1930 Lah. 95.

—S. 337—*Examination of approver—Necessity of.*

Under S. 337 (2), any person who has accepted a tender of pardon must be examined as a witness in the Court of Committing Magistrate and at the subsequent trial of every person tried for the same offence, whether tried at one and the same trial or at trials more than one, and the fact that the approver appears to the Court to be an untrustworthy witness does not absolve the Court from complying with the statutory provisions. *Mahla v. Emperor*.

31 Cr. L. J. 111 :
120 I. C. 489 : 11 Lah. 230 :
31 P. L. R. 496 : A. I. R. 1930 Lah. 95.

—S. 337 (2)—*Examination of approver as witness in Sessions Court, necessity of.*

The requirement of Cl. 2, S. 337, that a person accepting a tender of pardon under that section must be examined as a witness in the case is satisfied by his examination in the preliminary enquiry, and the prosecution is not bound to put him forward as a witness in the Sessions Court if it is of opinion that his evi-

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generally be condoned under S. 537, and a re-trial would not be ordered unless it has occasioned a failure of justice. *Bihari Mahton v. Emperor*.

32 Cr. L. J. 797 :
131 I. C. 107 :

12 P. L. T. 798 : 10 Pat. 107 :

I. R. 1931 Pat. 241 : A. I. R. 1931 Pat. 152.

—S. 326—Number of Jury.

At the time of summoning Jurors, nine is to be regarded as the 'number required for such trial' within the meaning of S. 326, and, under that section the number summoned should not be less than double that number. *Amir Khan v. Emperor*.

31 Cr. L. J. 425 :
122 I. C. 557 : 33 C. W. N. 1053 :
51 C. L. J. 574.

—S. 326—Number of Jury—Number of Jurors summoned less than eighteen—Effect of.

In the case of an offence punishable with death, the number of Jurors to be summoned must not be less than eighteen. Where the number summoned is less than eighteen there is a breach of the mandatory provisions of S. 326, Cr. P. C., and even if nine Jurors are chosen, the Jury is not properly constituted and the trial will be illegal. *Emperor v. Tamiz-ud-Din Ahmad*.

31 Cr. L. J. 426 :
122 I. C. 558 : 33 C. W. N. 1054 :

—S. 326—Number of Jury.

Under S. 326, Cr. P. C., the number of persons summoned to act as Jurors should not be less than double the number required for the trial. *Serajul Islam v. Emperor*.

29 Cr. L. J. 927 :
111 I. C. 735 : 55 Cal. 794 :
A. I. R. 1928 Cal. 645.

—S. 326—Number of Jury.

Where in a trial for murder, 14 Jurors were summoned, 11 of them appeared, and only 7 were empanelled and the trial proceeded: *Held*, (1) that there was a failure to comply with S. 326, Cr. P. C. *Dwarika Malo v. Emperor*.

31 Cr. L. J. 377 :
122 I. C. 219 : 33 C. W. N. 692 :
56 Cal. 1154 : A. I. R. 1930 Cal. 60.

—S. 326—Number of Jury.

Where 14 Jurors were summoned for the trial of a charge under S. 302, Penal Code, and 9 were chosen to form the Jury and the accused was unanimously found guilty: *Held*, that there was a non-compliance with the provisions of S. 326, Cr. P. C., and the trial was illegal, even though the accused had not been prejudiced in any way. *Emperor v. Tamiz-ud-Din Ahmad*.

31 Cr. L. J. 426 :
122 I. C. 558 : 33 C. W. N. 1054.

—S. 326—Selection of Jury.

The accused were charged in Case No. 1 under Ss. 147 and 325 read with S. 149, Penal Code. Ten persons were summoned to serve on the Jury. Of these, six attended. One of the six was discharged. The Judge chose one man from among the by-standers and from the six thus formed, a Jury of five was chosen by lot. In Case No. 2, the

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accused were charged under S. 302, Penal Code. Seven Jurors appeared on summons. Two of them were discharged. Two others were chosen from among the by-standers and a Jury of seven was constituted. In Case No. 3, the accused were charged under Ss. 304, 147 and 304 read with S. 149, Penal Code. Twelve persons were summoned. Seven of these attended, of whom one was excused but of the remaining six, five Jurors were chosen by lot: *Held*, that the Jury was not empanelled as required by law in Case No. 1 and was empanelled according to law in Cases Nos. 2 and 3. *Kedar Nath Mahato v. Emperor*.

29 Cr. L. J. 437 :
108 I. C. 577 : 47 C. L. J. 43 :
32 C. W. N. 221 : I. L. T. 40 Cal. 1 :
55 Cal. 371 : A. I. R. 1928 Cal. 83.

—S. 333.

See Cr. P. C. S. 403.

—S. 333—Nolle prosequi—Effect of—Accused, whether can be tried on some charge subsequently.

A *nolle prosequi* entered by the Advocate-General in respect of a charge pending against an accused person puts an end to the particular indictment on which he has been brought before the Court and he cannot thereafter be proceeded against on the same charge. *Emperor v. Jitendra Nath Bose*.

26 Cr. L. J. 1397 :
89 I. C. 709 : 52 Cal. 590 :
A. I. R. 1925 Cal. 902.

—S. 337.

- Accomplice.
- Admissibility.
- Amendments.
- Applicability.
- Approver.
- Commitment.
- Contradictory Statements.
- Custody.
- Dacoity Cases.
- Detention of Approver.
- Discharged Accused.
- District Magistrate.
- Evidence of Accomplice.
- Examination of Approver as Witness.
- Inquiry.
- Miscellaneous.
- Pardon.
- Procedure.
- Prosecution of Approver.
- Scope.
- Scope and Object.
- Statement of Approver.
- Tender of Pardon.

—S. 337.

See also (i) Bengal Suppression of Terrorist Outrages Act, 1937, S. 24.

(ii) See Cr. P. C., 1898, Ss. 162, 163, 164, 196-A, 215, 298, 337, 494.

(iii) Prisons Act, 1894, S. 3 (2).

—S. 337 — Accomplice, evidence of—Admissibility—Pardon granted by Government not under the section—Pardon given after com-

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respect of all the accused. The compounding of an offence in regard to one of several accused persons amounts to a compounding of the offence in regard to all. *Shyam Behari Singh v. Sagar Singh*. 20 Cr. L. J. 824 : 53 I. C. 824 : 1 P. L. T. 32 : A. I. R. 1920 Pat. 828.

—Ss. 248, 438—Partial withdrawal.

The withdrawal of a complaint against one person out of several accused does not amount to a withdrawal of the complaint against others. *Rohiti Singh v. Makhdam Kalwar*. 23 Cr. L. J. 271 : 66 I. C. 335 : 9 O. L. J. 54 : A. I. R. 1922 Oudh 145.

—S. 248—Partial withdrawal.

There is nothing in S. 248, Cr. P. C., which involves a withdrawal of the whole complaint merely because the complaint is withdrawn as against some of the accused. *South Indian General Assurance v. The Registrar of Life Insurance Companies, Madras*. 41 Cr. L. J. 454 : 187 I. C. 220 : 1920 M. W. N. 104 : 51 L. W. 515 : 12 R. M. 732 : A. I. R. 1940 Mad. 623.

—S. 248—Partial withdrawal of complaint—Withdrawal and composition distinguished.

The withdrawal of a case is by no means the same as compounding an offence, for cases can be compounded which cannot be withdrawn and *vice versa*. However numerous may be the offenders or the offences alleged to have been committed, the complaint is one, and S. 248, Cr. P. C. does not contemplate a partial withdrawal of the complaint or a withdrawal against one of several alleged offenders, in spite of the fact that complainant may compound with one of the accused and so automatically bring about his acquittal while continuing his case against the remainder. *Anantia v. Emperor*. 25 Cr. L. J. 629 : 81 I. C. 117 : 5 Lah. 239 : A. I. R. 1924 Lah. 595.

—Ss. 248, 345—Partial withdrawal—Withdrawal and compromise, distinction between.

There is nothing in S. 248, Cr. P. C. which involves a withdrawal of the whole complaint merely because the complaint is withdrawn as against one of the accused. Whenever a complaint is withdrawn under S. 248, Cr. P. C., it is a question of fact whether it is withdrawn as a whole or in part. Whether a petition is one for compromise or withdrawal is to be judged from the fact whether the accused consented to it or not. *Anantia v. Emperor*. 25 Cr. L. J. 629 : 81 I. C. 117 : 5 Lah. 239 : A. I. R. 1924 Lah. 595.

—S. 248—Withdrawal.

It is always open to the prosecution to withdraw a case with the permission of the Court. *Meher Singh v. Emperor*. 35 Cr. L. J. 86 : 146 I. C. 387 : 34 P. L. R. 1020 : 6 R. L. 222 : A. I. R. 1933 Lah 884.

—S. 248—Withdrawal—Duty of Court.

Where a Magistrate permits the withdrawal

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of a case, he should place sufficient materials on the record to satisfy the High Court that *prima facie* there was some good ground for the same. But the failure is not by itself sufficient to justify the interference. *Abdul Majid v. Arababshah*. 35 Cr. L. J. 142 : 146 I. C. 542 : 6 R. S. 68 (1) : A. I. R. 1933 Sind 357.

—S. 248, 345—Withdrawal of complaint, effect of—Duty of Magistrate—Compromise—Warrant case.

The Police submitted a charge-sheet against the accused under S. 342, I. P. C. On the day fixed for the hearing of the case, the complainant filed a petition in the following terms : "The case.....by the intervention of arbitrators has been compromised. Hence the petitioner does not want to proceed with the case and to get his witnesses examined, so the petition is filed and it is prayed that the case may be struck off without hearing." The Magistrate examined the complainant and found that there had been no compromise : *Held*, that it was the duty of the Magistrate to examine the complainant in order to satisfy himself that the petition was really one of compromise ; (2) that the petition was one of withdrawal under S. 248, and not one of compromise under S. 345 Cr. P. C., and, therefore, the trial did not come to an end on its presentation. *Bayan Ali v. Emperor*. 18 Cr. L. J. 107 : 37 I. C. 315 : 20 C. W. N. 1209 : 1 P. L. W. 21 : A. I. R. 1916 Pat. 200.

—S. 249—Applicability—Warrant cases—Magistrate's power to stop case and release accused—Starting case afresh on complaint—Legality.

S. 249 is inapplicable to warrant cases. Therefore, an order by a Magistrate stopping a warrant case and releasing the accused under the section is illegal. Where a Magistrate stops a warrant case and releases the accused purporting to act under S. 249, the case is still on the pending file of the Magistrate and can be re-opened either by an application by the Crown or *suo motu* by the Magistrate but cannot be started *de novo* upon a private complaint, the Police case being already on the pending file. *Firangi Singh v. Durga Singh*. 27 Cr. L. J. 698 : 94 I. C. 890 : 5 Pat. 243 : 7 P. L. T. 449 : A. I. R. 1926 Pat. 292.

—S. 249—Cancellation of summons—Power of Magistrate—Penal Code, S. 182, prosecution under.

Where upon receipt of a Police report that one J. had given false information to the Police against certain persons, a Magistrate ordered the prosecution of J. under S. 182, Penal Code, but subsequently upon receipt of another report in another case that the information given by J. was true, he ordered the summons issued for the attendance of J. to be cancelled : *Held*, that the Magistrate had full power to cancel the summons under S. 249, Cr. P. C. *Nathu Thakur v. Emperor*. 21 Cr. L. J. 184 : 54 I. C. 888 : 1 P. L. T. 28 : 2 U. P. L. R. Pat. 27 : A. I. R. 1920 Pat. 469.

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regards trials concerning some graver offences.
Harihar Sinha v. Emperor. (F. B.)

37 Cr. L. J. 758 :
163 I. C. 9 : 40 C. W. N. 876 :
63 C. L. J. 307 : 8 R. C. 698 :
A. I. R. 1936 Cal. 356.

S. 337—Applicability.

S. 337 has no application to a case not triable exclusively by a Court of Sessions
Mahandu v. Emperor. 21 Cr. L. J. 599.

57 I. C. 167 : 1 Lah. 102 :
89 P. L. R. 1920 : A. I. R. 1920 Lah. 215.

S. 337—Applicability.

Tender of pardon—Withdrawal of case against some accused—Magistrate not tendering pardon *suo motu* but Government withdrawing case through Magistrate—S. 337 does not apply.
Faqir Singh v. Emperor. 37 Cr. L. J. 515 :

162 I. C. 180 : 37 P. L. R. 715 :
16 Lah. 594 : 8 R. L. 867 :
A. I. R. 1936 Lah. 353.

S. 337—Approver—Breach of conditions of pardon—Prosecution.

Where an approver resiles from his statement, the proper course is to proceed with his trial for the substantive offence which he is alleged to have committed under S. 339 (1), Cr. P. C. on the certificate of the Public Prosecutor that the approver has not complied with the conditions of his pardon. *Emperor v. Ngo Bo Gyi.* 26 Cr. L. J. 1396 :

89 I. C. 708 : 3 Rang. 224 :
A. I. R. 1925 Rang. 286.

S. 337—Approver—Conditions of pardon.

An approver in order to satisfy the conditions of his pardon is called upon to make a full and true disclosure of the whole of the circumstances within his knowledge relative to the offence or offences which are being enquired into, and not relative to offences which are at the time not being enquired into. *Suraj Bhan v. Emperor.* 19 Cr. L. J. 926 :

47 I. C. 442 : 24 P. R. 1918 Cr. :
36 P. W. R. 1918 Cr. : A. I. R. 1919 Lah. 449.

S. 337—Approver, detention of.

After the trial has terminated, the Court has no authority, to order the detention of the approver in anticipation of any possible order from the Court of Appeal. *Sultan Ahmad v. Emperor.* 36 Cr. L. J. 1308 :

157 I. C. 1059 : 39 C. W. N. 233 :
62 Cal. 430 : 8 R. C. 163 :
A. I. R. 1935 Cal. 545.

S. 337—Approver—Pardon—Validity of.

All that S. 337, Cr. P. C. requires is that there should be an investigation in progress regarding an offence triable exclusively by the High Court or the Court of Session or an offence punishable with imprisonment which may extend to ten years. Where on the date of the tender of pardon to an approver, proceedings were going on against the accused under Ss. 467, 471, Penal Code, the pardon granted to the approver is perfectly legal and the approver is a competent witness against the accused. *Ismail Panju v. Emperor.* 26 Cr. L. J. 1115 :

88 I. C. 283 : A. I. R. 1925 Nag. 337.

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S. 337—Approver—Prosecution on forfeiture of pardon, when valid.

S. 339 must be construed strictly, and a person to whom pardon has been tendered can only be tried for the offence in respect of which he was pardoned, if it is shown that he has forfeited the pardon, either (a) by wilfully concealing anything essential, or (b) by giving false evidence. *Maung Po Hla v. Emperor.* 17 Cr. L. J. 391 :

35 I. C. 823 : 9 Bur. L. T. 76 :
8 L. B. R. 357 : A. I. R. 1916 L. Bur. 111.

S. 337—Approver—Prosecution of—Plea of Pardon.

At the termination of the trial in which the pardon is given, the accomplice must be discharged by the Court. Then if so advised, the Crown may re-arrest and proceed against him for the offence in respect of which he was given a conditional pardon. When put upon his trial for that offence, he may plead to a competent Court his pardon, in bar. And that is a plea that the Court would be bound to hear and decide upon before going further and putting him on his defence. In deciding it the Court would have to raise the issues whether he had or had not complied with the conditions of the pardon and whether he had or had not made a full and a true disclosure of the whole facts, and where after having admittedly done that, he had at a later stage recanted, whether that recantation amounted to giving false evidence within the meaning of S. 339 and worked a forfeiture of the pardon. *Emperor v. Kothia.* 4 Cr. L. J. 346 :

8 Bom. L. R. 740 : I. L. R. 30 Bom. 611.

S. 337—Approver—Prosecution—Plea of pardon.

The tender of a pardon does not prevent the prosecution from proceeding against an approver as an accused person. If the prosecution is so revived, it is for the approver to plead the pardon as a defence. *In re : Dagadu Bapu.* 22 Cr. L. J. 620 :

63 I. C. 156 : 23 Bom. L. R. 839 :
A. I. R. 1922 Bom. 177.

S. 337—Approver, prosecution of—Plea of pardon.

When an approver is put on his trial, he may plead his pardon. The plea should be taken at the commencement of the proceedings before the Magistrate, for it strikes at the jurisdiction to take any proceedings at all against the approver and it would then be necessary for the Magistrate to consider whether the pardon had been forfeited. But if he decides against the approver, or even if the plea is not taken before the Magistrate, it can be pressed in the Sessions Court and that Court ought to try the question whether the pardon has been forfeited before trying the general issue. If, however, there is a possibility of the evidence on the two issues overlapping or being identical, the Judge may use his discretion and order the approver to be tried separately from the other accused. The onus of proving forfeiture of

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Court or Sessions Court. *Faqir Singh v. Emperor*.

- 40 Cr. L. J. 360 (P. C.) :
 176 I. C. 898 : 1938 O. W. N. 809 :
 19 P. L. T. 717 : 42 C. W. N. 1252 :
 40 P. L. R. 876 : 1938 M. W. N. 969 :
 48 M. L. W. 537 :
 1938 2 M. L. J. 780 :
 68 C. L. J. 328 : 40 Bom. L. R. 1254 :
 I. L. R. 1938 Lah. 628 :
 32 S. L. R. 937 : 11 R. P. C. 81 :
 1938 O. L. R. 405 :
 4 B. R. 850 : 65 I. A. 388 :
 1938 A. W. R. 170 :
 A. I. R. 1938 P. C. 266.

————S. 337—Pardon—Tender of—Object of.

The object of tendering a pardon is to obtain the evidence of the person to whom the pardon is tendered and the "full and true disclosure" in S. 337 (1) refers to a full and true disclosure in the evidence which the approver is required to give. *Local Government v. Mullu*.

- 16 Cr. L. J. 417 :
 28 I. C. 993 : 11 N. R. 59 :
 A. I. R. 1915 Nag. 92.

————S. 337—Pardon—Tender of—Power of Local Government.

The Local Government has no power to offer a conditional pardon to an accused, within the meaning of Ss. 337, 338, Cr. P. C. *Paban Singh v. Emperor*.

- 4 Cr. L. J. 44 :
 10 C. W. N. 847.

————S. 337—Pardon—Tender of—Reasons for—Absence of—Effect of.

The fact that the Magistrate has not recorded his reasons as required by Sub-s. 1-A of S. 337 is merely an irregularity on the part of the Magistrate. The right of the accused or the approver cannot be affected because the Magistrate has failed to comply with a requirement imposed for the benefit of the accused. Nor it is material that the Magistrate in tendering the pardon did so after consulting the Local Government and with its authority. The essential fact is that the pardon is tendered to the approver by the Magistrate. Even if the Local Government did not intend to act under S. 337, in sanctioning grant of pardon to the approver but if their overt acts are such as to be only capable of being referred to that section, their intention not to act under it cannot matter. It is not necessary to consider whether the prosecution had a desire to reap the benefits of S. 337, while also desiring to evade the consequence of having to try the case before the High Court or Court of Session, because it is impossible thus to make the best of both words. *Faqir Singh v. Emperor*.

- 40 Cr. L. J. 360 (P. C.) :
 176 I. C. 898 : 1938 O. W. N. 809 :
 19 P. L. T. 717 : 42 C. W. N. 1252 :
 40 P. L. R. 875 : 1938 M. W. N. 969 :
 48 L. W. 537 : 1938 2 M. L. J. 780 :
 68 C. L. J. 328 : 40 Bom. L. R. 1254 :
 I. L. R. 1938 Lah. 628 :
 32 S. L. R. 937 : 11 R. P. C. 81 :
 1938 O. L. R. 405 :
 4 B. R. 850 : 65 I. A. 388 :
 A. I. R. 1938 P. C. 266.

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————S. 337—Pardon—Tender of—Reasons for—Necessity of recording.

According to Cl. (3) of S. 337 reasons must be stated for tendering a pardon and not for sanction to tender a pardon; consequently, a District Magistrate is not required by law to state his reasons for recording his sanction to tender of a pardon. *Emperor v. Waryam Singh*.

- 25 Cr. L. J. 174 :
 76 I. C. 398 : 5 L. L. J. 407 :
 A. I. R. 1924 Lah. 90.

————S. 337—Pardon—Tender of—Record of—Reasons.

Where the facts which led up to the tender of pardon to an accused person appear on the record, the omission by the Magistrate, who was not Presidency Magistrate, to state reasons for tendering the pardon, is neither an illegality nor an irregularity which may vitiate the proceedings held subsequent to such tender and acceptance of pardon, and render the evidence of such person inadmissible. *Emperor v. Anada Charan*.

- 10 Cr. L. J. 32 :
 2 I. C. 497 : 9 C. L. J. 638 : 13 C. W. N. 757.

————S. 337—Pardon—Tender of—When valid.

All that Ss. 337 and 338 require is that there should be an offence that is triable exclusively by the Court of Session under inquiry or trial. The fact that there may be other offences alleged or charged which are not so triable will not invalidate the grant of any pardon. *Harunul Parinnand v. Emperor*.

- 16 Cr. L. J. 632 :
 33 I. C. 456 : 9 S. L. R. 43 :
 A. I. R. 1915 Sind 43.

————S. 337—Pardon—Validity of.

A pardon tendered under S. 337 at a time when no inquiry is being conducted into the case, is not a valid pardon and a statement made by the person to whom such pardon is tendered, is not admissible in evidence and cannot form the basis of an alternative charge in respect of an offence under S. 103, Penal Code. *Motilal Hira Lal v. Emperor*.

- 22 Cr. L. J. 728 :
 64 I. C. 40 : 43 Bom. L. R. 884.

————S. 337—Pardon, validity of.

Pardon granted to an accused is not rendered illegal or ineffective by the fact that the trial or inquiry was not in progress at the time when the pardon was granted. *Bal Chaud v. Emperor*.

- 27 Cr. L. J. 1369 :
 98 I. C. 489 : 24 A. L. J. 1050 :
 A. I. R. 1927 All. 90.

————S. 337—Pardon—Who can tender.

A Special Magistrate has power to tender a pardon to an accused person. *Mohammad Saleuddin v. Emperor*.

- 36 Cr. L. J. 884 :
 156 I. C. 238 : 39 C. W. N. 698 :
 7 R. C. 695 : A. I. R. 1935 Cal. 281.

————S. 337—Pardon, withdrawal of—Previous confession of approver whether evidence against him.

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nal prisoner in S. 3 (2) of the Prisons Act.
Kundan Lal v. Emperor. 32 Cr. L. J. 685 :
 131 I. C. 625 : I. R. 1931 Lah. 481 :
 A. I. R. 1931 Lah. 353.

————S. 337 — Approver, whether criminal prisoner.

An approver is not a convicted prisoner, but when his detention is ordered by a Court under S. 337 (3), he comes within the category of "Criminal Prisoner" as defined by S. 3 (2) of the Prisons Act, IX of 1894. *In the matter of : Khairati Ram.* 32 Cr. L. J. 913 :

132 I. C. 519 : 12 Lah. 635 :
 32 P. L. R. 493 : I. R. 1931 Lah. 615 :
 A. I. R. 1931 Lah. 476.

————S. 337 (2-A) — Approver—Committal of approver to Sessions, legality of—Sessions Judge, duty of—Omission to refer to High Court—Legality of trial.

Under Cl. (2-A) of S. 337, where pardon has been granted to an accused, the case against the other accused alone should be committed to the Sessions. Where an approver was committed to the Sessions along with the other accused and the Sessions Judge, instead of referring the matter to the High Court in order to get the commitment quashed, proceeded with the case as though there had been no commitment: *Held*, that the procedure adopted by the Sessions Judge, though wrong, was not an illegality but a mere irregularity which could not vitiate the trial where no prejudice has been caused thereby. *Bhagwandin v. Emperor.* 30 Cr. L. J. 567 :

116 I. C. 193 : 6 O. W. N. 218 :
 I. R. 1929 Oudh 305 : 4 Luck. 679 :
 A. I. R. 1929 Oudh 190.

————S. 337—Commitment along with other accused.

It does not mean that the approver should be committed for trial along with the accused persons. *Emperor v. Peru.*

26 Cr. L. J. 1216 :
 88 I. C. 736 : 2 O. W. N. 464 :
 12 O. L. J. 542 : A. I. R. 1925 Oudh 472.

————S. 337—Commitment—Approver—Pardon, conditional, grant of—Commitment to Sessions—Procedure.

Where a conditional pardon is granted to an approver under S. 337, Cr. P. C., in a case under S. 394, Penal Code, and the Magistrate is satisfied that there is a *prima facie* case against the accused, he is bound under the provisions of S. 337 (2) (a) to commit the case to the Court of Session for trial and has no jurisdiction to try the case himself. *Nga Kin v. Emperor.* 26 Cr. L. J. 829 :

86 I. C. 477 : 4 Bur. L. J. 11 :
 A. I. R. 1925 Rang. 207.

————S. 337—Commitment—Necessity of.

When a Deputy Commissioner tries a case exclusively triable by the Court of Sessions under powers conferred upon him by S. 30, Cr. P. C., he does so as a Magistrate, and if he tenders conditional pardon to one of the

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accused, he is precluded from trying the case himself. *Paban Singh v. Emperor.*

4 Cr. L. J. 44 :
 10 C. W. N. 847.

————S. 337 — Commitment to—Accused refusing to make a statement—Revocation of pardon—Legality of commitment—Commitment—Illegality of.

An accused who had opportunity of cross-examining the prosecution witnesses was tendered pardon on condition of his making a true disclosure. After accepting that pardon he refused to make any statement saying that he knew nothing. The Magistrate revoked the pardon and committed him to the Court of Sessions: *Held*, that the commitment was perfectly legal. *Emperor v. Budhan.*

4 Cr. L. J. 142 :
 3 A. L. J. 615 : I. L. R. 29 All. 24 :
 26 A. W. N. 258.

————S. 337—Commitment of accused.

Dishonest Magistrate framing charge under S. 395, Penal Code, must commit accused. He cannot retain jurisdiction by reducing charge to one under S. 384. *Public Prosecutor, Peshawar v. Emperor.* 34 Cr. L. J. 212 :

141 I. C. 881 : I. R. 1933 Pesh. 1 :
 A. I. R. 1933 Pesh. 3.

————S. 337 (2-A)—Commitment to Sessions—Necessity of.

The meaning of the provision contained in S. 337 (2-A) is that whenever an approver is examined the Magistrate has no jurisdiction to proceed with the trial, but must commit the accused persons for trial to the Court of Session. *Emperor v. Peru.* 26 Cr. L. J. 1216 :

88 I. C. 736 : 2 O. W. N. 464 :
 12 O. L. J. 542 :
 A. I. R. 1925 Oudh 472.

————S. 337 (2-A)—Commitment to Sessions—Necessity of.

A case under S. 401, Penal Code, in which there was an approver, was being tried by a Magistrate with powers under S. 30, Cr. P. C. After evidence had been recorded and arguments were heard, but before judgment was pronounced, the amended Cr. P. C., 1923, came into force. The Magistrate nevertheless pronounced judgment in the case: *Held*, that having regard to the provisions of S. 337 (2-A) and 347, the jurisdiction of the Magistrate to try the case had been expressly taken away, and he was bound to commit the accused for trial before the Court of Session. *Jimun Shah v. Emperor.* 26 Cr. L. J. 549 :

85 I. C. 645 : A. I. R. 1925 Lah. 378.

————S. 337—Statement of approver in Court of Committing Magistrate and another in Sessions Court—Former statement, if can be admitted and relied upon in Sessions Court.

Where an approver has made one statement before the Committing Magistrate and another statement before the Sessions Court, the Sessions Judge is competent to admit in evidence the statement made by the approver in the Court of the Committing Magistrate and to treat it as evidence. It is also open to

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—S. 337 (4)—*Pardon—Reasons for—Record of.*

The recording of reasons by the inquiring Magistrate is not a condition precedent to the tender of pardon and its acceptance by the approver. *Emperor v. Shama Charan.*

13 Cr. L. J. 588 :
15 I. C. 1004.

—S. 337 — *Procedure—Approver—Name not removed from category of accused by mistake—Plea taken in Sessions Court—Evidence of approver, admissibility of.*

Although a pardon has been tendered to and accepted by an accused in the Committing Magistrate's Court, by some mistake, his name was not removed from the category of the accused and at the opening of the trial in the Sessions Court, his plea was taken by the Sessions Judge. But the mistake was soon found out and the Sessions Judge directed that he should be removed from the dock: *Held*, that the evidence given by this accused in the Sessions Court was not inadmissible in evidence. *Ayub Mandal v. Emperor.*

28 Cr. L. J. 689 :
103 I. C. 545 : 54 Cal. 539 :
A. I. R. 1927 Cal. 680.

—S. 337 (4)—*Procedure—Presumption of due compliance.*

When a Magistrate tendering a pardon states that he has explained the law on the subject to the person to whom pardon has been tendered, it may be presumed that the Magistrate fully observed the procedure laid down in S. 337 which he explained to the accused, and that the latter accepted the tender of pardon before making his statement. *Emperor v. Waryam Singh.*

25 Cr. L. J. 174 :
76 I. C. 398 : 5 L. L. J. 407 :
A. I. R. 1924 Lah. 90.

—S. 337—*Prosecution of approver—Defence of pardon.*

S. 339 contemplates a pardon being forfeited under it, but neither in it nor in any other part of the Code is it enacted that the forfeiture of a pardon depends upon the opinion of the Judge or Magistrate trying a case in which the occasionally pardoned accomplice has agreed to make a full and true disclosure. It is therefore open to a pardoned accomplice, if placed on trial as an accomplice who has forfeited the pardon already accepted by him, to plead in bar of trial that he did comply with the condition on which the tender of pardon was made, and such plea in bar of trial would have to be gone into and decided before the accused is called on to enter his plea in defence to the charge of having committed the offence in respect of which the pardon was tendered. The section does not enact that a person who has accepted a tender of pardon, renders himself liable to be tried for the offence in respect of which pardon was tendered, if he gave false evidence. What the section says is that he renders himself so liable (or forfeits the pardon) if by giving false evidence he has not complied with the

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condition on which the tender was made. *Emperor v. Kolhia.*
4 Cr. L. J. 346 :
8 Bom. L. R. 740 : I. L. R. 30 Bom. 611.

—S. 337—*Prosecution of approver—Pardon given to accomplice—Discharge of approver when there is no trial—Principal offender absconder—Inquiry—Trial.*

The principal accused in a murder case having absconded, his accomplice was granted pardon in the course of inquiry and examined as a witness under S. 512. There being no prospect of the principal offender's arrest and trial, the prosecution desired to discharge the approver from custody, while the trying Magistrate considered that the pardon was invalid, as it was not tendered for the purpose of an inquiry but for the purposes of securing evidence under S. 512: *Held*, (1) that the offence of murder was under inquiry, that in order to secure the approver's evidence as to that offence a pardon was tendered, and that the proceeding under S. 512, was only ancillary to that inquiry, (2) that it was open to the prosecution to proceed against the approver on the ground that he had not performed the condition of the pardon in that he had given false evidence under S. 512, and (3) that if the prosecution did not desire to proceed further with the case against the principal offender, the Magistrate had power to discharge the approver. *In re : Dagadu Bapu.*

22 Cr. L. J. 620 :
63 I. C. 156 : 23 Bom. L. R. 839 :
A. I. R. 1922 Bom. 177.

—S. 337—*Prosecution of approver—Pleading pardon in bar of trial—Duty of Court to determine first whether pardon had been forfeited.*

When a person, who has been pardoned, is afterwards placed on his trial for the offence on the ground that he had forfeited the pardon, it is open to him to plead the pardon in bar of trial and the Court (*i.e.*, the Jury in a jury case and the Judge in other cases) must first try the issue as to whether the accused has forfeited his pardon. *In re : Aligiriswami Naicken.*

11 Cr. L. J. 254 :
5 I. C. 831 : 7 M. L. T. 121 :
1 M. W. N. 5.

—S. 337—*Prosecution of approver—Procedure.*

The accused, under a pardon given to him by the Committing Magistrate under S. 337, made "a full and true disclosure of the whole of the circumstances" within his knowledge relative to" the offence. He stuck to his story in his examination-in-chief before the Court of Sessions, but during his cross-examination he resiled from his statement. At the conclusion of the trial, which ended in the conviction of his accomplices, the accused was sent by the Sessions Judge in custody to the Committing Magistrate with an order directing that he should be committed for trial for the principal offence. The Magistrate accordingly withdrew the pardon and committed the accused to the Court of Sessions, where he was convicted on what was described as his plea of guilty: *Held*, (1) that the Sessions Judge had no authority under Cr. P. C. to order the accused to be committed for trial for the principal offence in respect of which a pardon

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dence would not be truthful. *In re : Aligiri-swami Naicken.*

11 Cr. L. J. 254 :
5 I. C. 831 : 7 M. L. T. 121 :
1 M. W. N. 5.

————S. 337—"Inquiry," meaning of—Pardon tendered during investigation, validity of.

The word "inquiry" in S. 337, Cr. P. C., is meant to include everything done in a case by a Magistrate, whether the case has been *challaned* or not. When a case has been reported to a Magistrate by the Police, and he is asked to tender a pardon and does so, there is an "inquiry" within the meaning S. 337, Cr. P. C. and the tender of a pardon is perfectly valid. *Sher Muhammad v. Emperor.*

24 Cr. L. J. 941 :
75 I. C. 365 : 3 Lah. 431 :
A. I. R. 1923 Lah. 270.

————S. 337—Inquiry—Nature of.

The expression "any Magistrate of the First Class inquiring into the offence" used in S. 337 (1) ordinarily indicates a Magistrate holding an inquiry under Chap. XVIII of the Code. The word "inquiry" is used to indicate a judicial proceeding as distinguished from 'investigation' and 'trial.' *Motilal Hirralal v. Emperor.*

22 Cr. L. J. 728 :
64 I. C. 40 : 43 Bom. L. R. 884.

————S. 337—Miscellaneous.

If it is intended not to adopt the procedure under S. 337, care should be taken to make the fact clear to all concerned. *Faqir Singh v. Emperor.*

37 Cr. L. J. 575 :
162 I. C. 180 : 37 P. L. R. 715 :
16 Lah. 594 : 8 R. L. 867 :
A. I. R. 1936 Lah. 353.

————S. 337—Pardon—Acceptance of—Test of.

It is not necessary that the acceptance of the pardon should be in writing or that it should be expressed in any other manner. It is to be gathered from the circumstances. The fact that the person to whom the pardon is tendered appears before the various Magistrates in the capacity of the witness, and not that of an accused person, is a clear indication of the fact that he has accepted the pardon tendered to him. *Emperor v. Amar Singh.*

40 Cr. L. J. 543 :
181 I. C. 509 : 40 P. L. R. 758 (2) :
1 L. R. 1939 Lah. 38 : 11 R. L. 855 :
A. I. R. 1938 Lah. 796.

————S. 337—Pardon—After charge—Validity of.

There is nothing in S. 337 to prevent a pardon being tendered to a person after a charge has been framed against him. *Mangu v. Emperor.*

22 Cr. L. J. 255 :
60 I. C. 607.

————S. 337—Pardon, breach of conditions of—Action when can be taken.

No action can be taken against a person who has accepted a pardon for breach of conditions on which the pardon was tendered until after the case in the Court of Session is concluded. The proper course is to detain

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the approver in custody till the conclusion of the trial of his co-accused, and then to proceed against him, if necessary. *Emperor v. Mohan.*

10 Cr. L. J. 418 :
3 I. C. 922 : 5 N. L. R. 134.

————S. 337—Pardon—Breach of conditions of—Commitment—Necessity of.

Where an approver fails to act up to the condition of his pardon before the inquiring Magistrate, the Magistrate can re-commence the inquiry as against the approver and commit him to take his trial along with the other accused. *Sashi Rajbaushi v. Emperor.*

16 Cr. L. J. 65 :
26 I. C. 657 : 19 C. W. N. 295 :
42 Cal. 856 : A. I. R. 1915 Cal. 667.

————S. 337—Pardon—Conviction of co-accused for minor offence—Pardon, whether affected—Approver—Committal of co-accused alone to Sessions—Examination of approver as witness, legality of.

The validity of a pardon given under S. 337 to an accused person charged with an offence, specified in that section cannot be affected by the fact that the co-accused against whom his evidence was afterwards recorded was ultimately convicted of a minor offence and even if the pardon was invalid against the approver, it would not prevent the approver being examined in the Sessions Court as a witness where he is not committed for trial along with the accused. *Bhawani Prasad v. Emperor.*

27 Cr. L. J. 1103 :
97 I. C. 367 : A. I. R. 1926 All. 590.

————S. 337—Pardon—Conditions for.

A pardon is offered upon two main conditions, first, that an accomplice shall make a full, second, a true disclosure of all he knows about the crime, and the pardon is forfeited by his failure to comply with these two conditions in two corresponding ways, first by concealing some material fact, that is to say, by not making a full, or by giving false evidence, that is by not making a true disclosure. The words "false evidence" must be read subject to the limitations of their context, as defining one of the modes of non-compliance with the conditions of the pardon, and not in their fullest literal sense. *Emperor v. Kothia.*

4 Cr. L. J. 346 :
8 Bom. L. R. 740 :
I. L. R. 30 Bom. 611.

————S. 337—Pardon—Forfeiture of—Effect of.

It is not obligatory upon the prosecution to examine an accomplice as a witness after he has forfeited his pardon. *Nayeb Shahana v. Emperor.*

35 Cr. L. J. 1179 :
152 I. C. 44 : 38 C. W. N. 659 :
61 Cal. 390 : 7 R. C. 205 :
A. I. R. 1934 Cal. 636.

————S. 337—Pardon — Forfeiture—Approver proving untrustworthy in Magistrate's Court—Examination in Sessions Court, before forfeiture.

The requirement that an approver is to be examined as a witness in the case, is satisfied when he is examined as a witness in the Magistrate's Court. It is not compulsory either

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———**S. 337—Statement of approver, admissibility of.**

Held, by the Full Bench, that when a pardon has been tendered and accepted by a person under S. 337 and a statement is made by him before a Magistrate which is materially incomplete or false and he is subsequently tried for the offence of which pardon was granted to him, without being examined as a witness under S. 337 (2), the statement made by him is admissible in evidence against him at his trial for the offence. *Suba v. Emperor*.

3 Cr. L. J. 55 :

6 P. L. R. 529 : 41 P. R. Cr. 1905.

———**S. 337—Statement of approver, admissibility of.**

No analogy exists between the case of a confession obtained from an accused person by an inducement and the case of an approver, and the evidence of an approver does not become inadmissible merely because it is shown that some inducement was offered to the approver to give evidence. *Ismael Panju v. Emperor*.

25 Cr. L. J. 1115 :

88 I. C. 283 : A. I. R. 1925 Nag. 337.

———**S. 337—Statement of approver, admissibility of.**

The evidence of an approver is admissible where the pardon given was in respect of an offence triable exclusively by a Court of Session with which the accused were charged, but the offence for which the accused are tried and for which they are ultimately convicted is not an offence exclusively triable by a Court of Session. *Kauromal v. Emperor*.

25 Cr. L. J. 1057 :

81 I. C. 881 : A. I. R. 1925 Sind 105.

———**S. 337—Statement of approver—Corroboration.**

The evidence of an accomplice may be deemed to be unworthy of credit unless it is corroborated in material particulars. The mere fact that the accused were seen with the approver a few days before the dacoity is not material corroboration of the evidence of the approver to the effect that the accused joined him in the dacoity. *Hazara Singh v. Emperor*.

25 Cr. L. J. 1347 :

82 I. C. 707 : 6 L. L. J. 370 :

A. I. R. 1924 Lah. 727.

———**S. 337—Statement of approver, use of.**

The evidence of an approver in the committal proceedings is a statement within the meaning of S. 339 (2) and is not governed by S. 24. Evidence Act, and can be used against him in evidence when the pardon has been forfeited. *Local Government v. Mullu*.

16 Cr. L. J. 417 :

28 I. C. 993 : 11 N. R. 59 :

A. I. R. 1915 Nag. 92.

———**S. 337—Statement of approver, value of.**

An accomplice witness against whom the case has been withdrawn under S. 494, Cr. P. C., is less reliable than one to whom a pardon has been tendered under S. 337. The latter is pardoned conditionally and has before him, as an inducement to stick to the truth, the

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constant apprehension that his statement may be used against him in a trial hereafter if he is proved to have given false evidence on any point. Moreover, there is at least one previous statement by which his veracity can be tested. On the other hand, the accomplice witness, who has not received a conditional pardon, is a freer man in the witness-box since he is not pinned down to a previous statement which may be based on tutored material, by the fear of the prosecution for perjury if his deposition in Court does not correspond exactly with that previous statement. *Chhaprolia v. Emperor*.

24 Cr. L. J. 696 :

73 I. C. 808 : A. I. R. 1924 Lah. 235.

———**S. 337 (2)—Statement of approver—Magistrate competent to record.**

Although Sub-s. (2) of S. 337 contemplates that every person accepting a tender shall be examined as a witness in the Court of the Magistrate taking cognizance of the offence and in the subsequent trial, if any, it is open to a Magistrate other than the Magistrate taking cognizance of the offence to record statement of the person to whom the pardon has been tendered. *Emperor v. Amar Singh*.

40 Cr. L. J. 543 :

181 I. C. 509 : 40 P. L. R. 758 (2) :

I. L. R. 1939 Lah. 38 : 11 R. L. 855 :

A. I. R. 1938 Lah. 796.

———**S. 337—Tender of pardon, reasons for, necessity of.**

S. 337 requires a Magistrate who tenders a pardon to record his reasons for so doing. Where, however, the facts which led up to the tender appear on the record, the omission to state reasons is not only not an illegality but not even an irregularity which vitiates the proceedings. *Deputy Legal Remembrancer v. Banu Singh*.

5 Cr. L. J. 142 :

5 C. L. J. 224.

———**S. 337—Tender of pardon—Reasons for—Absence of, effect of.**

The omission of a Magistrate tendering a pardon to record his reasons is neither an illegality nor an irregularity which vitiates the proceeding. *Emperor v. Waryam Singh*.

25 Cr. L. J. 174 :

76 I. C. 398 : 5 L. L. J. 407 :

A. I. R. 1924 Lah. 90.

———**S. 338.**

See Cr. P. C., S. 337.

———**S. 338—Pardon—Validity of.**

Where a woman took no part in the actual murder of her husband committed by her father and uncle, but failed to prevent the final act of tragedy and omitted to give information of the crime and assisted in the disposal of the dead body : *Held*, that though it was not to be expected that she could restrain the violence of her father and uncle or that she would dare to give information in face of threats or that she could venture to disobey her father's order to assist in concealing the crime, she could not legally plead compulsion and might be held liable under Ss. 201, 202 and 203, I. P. C., but that in a case like this she might be grant-

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for the prosecution or for the defence to examine him in the Sessions Court if he has shown by his evidence in the Magistrate's Court that he is an untrustworthy witness. *Sashi Rajbanshi v. Emperor*. 16 Cr. L. J. 65 : 26 I. C. 657 : 19 C. W. N. 295 : 42 Cal. 856 : A. I. R. 1915 Cal. 667.

———**S. 337—Pardon, forfeiture of—Commitment of approver, necessity of.**

S. 337, Cl. (2-A) as amended by Act XVIII of 1923, does not enable the Sessions Court to deal with an approver, in case he does not comply with the conditions of his pardon and forfeits it, without a fresh enquiry and commitment by a Magistrate. *Emperor v. Nana Amrita Savant*. 36 Cr. L. J. 499 :

154 I. C. 327 : 36 Bom. L. R. 1211 : 7 R. B. 325 (2) : A. I. R. 1935 Bom. 70.

———**S. 337—Pardon, forfeiture of.**

Even when an approver first makes a full and true disclosure, he forfeits his pardon if he contradicts his statement or denies its truth subsequently. *In re : Aligiriswami Naicken*.

11 Cr. L. J. 254 : 5 I. C. 831 : 7 M. L. T. 121 : 1 M. W. N. 5.

———**S. 337—Pardon, forfeiture of—What Court to decide question of forfeiture.**

A Committing Magistrate granted pardon to an approver under S. 337. At the hearing of the case before a Session of the Special Bench, the approver resiled from his deposition given before the Magistrate : *Held*, that the Special Bench cannot take any action against the approver for the offence in respect of which pardon was accorded to him, but can only discharge him. *Emperor v. Abani Bhushan*.

11 Cr. L. J. 702 : 8 I. C. 721 : 37 Cal. 845 : 15 C. W. N. 25.

———**S. 337—Pardon—Forfeiture of, withdrawal or declaration, whether necessary before prosecution.**

Under the present Cr. P. C., no formal withdrawal of a pardon and no formal declaration that the pardon has been forfeited are required. If the person who has accepted a conditional pardon be subsequently proceeded against, it is open to him to plead on his trial that the pardon has not in fact been forfeited, that is to say, that he has not violated the conditions on which the pardon was tendered and accepted. *Emperor v. Saber Akunji*.

16 Cr. L. J. 120 : 27 I. C. 184 : 19 C. W. N. 179 : 42 Cal. 756 : A. I. R. 1915 Cal. 397.

———**S. 337—Pardon granted after adjournment, whether valid.**

A Magistrate who adjourns a case under the provisions of S. 526 (8), Cr. P. C., does not become *functus officio* and is not incompetent to grant pardon to an accused after such adjournment. *Bal Chand v. Emperor*.

27 Cr. L. J. 1369 : 98 I. C. 489 : 24 A. L. J. 1051 : A. I. R. 1927 All. 90.

———**S. 337—Pardon—Offences exclusively triable by Sessions Court—Pardon relating to other offences, validity of.**

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A pardon can be granted under S. 337 by a Magistrate inquiring into a case exclusively triable by a Court of Session along with one not so triable and the fact that there may be other offences which are not so triable will not invalidate the pardon granted in respect of the offence exclusively triable by the Sessions Court. But once the pardon is granted, the approver is an approver with regard to the whole case and not with regard to the accused only. *Ismail v. Emperor*.

26 Cr. L. J. 1045 : 87 I. C. 965 : A. I. R. 1925 Nag. 409.

———**S. 337—Pardon—Once tendered whether can be affected subsequently.**

A valid pardon once given is not affected in way by the subsequent proceedings in the case. *Kanurmal v. Emperor*.

25 Cr. L. J. 1057 : 81 I. C. 881 : A. I. R. 1925 Sind 105.

———**S. 337—Pardon—Reasons for—Omission to state—Effect of.**

Omission to record the reasons for granting a pardon under S. 337 (1) (a) is a mere irregularity which would be cured by S. 537 where no prejudice has been caused thereby. *Emperor v. Dukhu*.

30 Cr. L. J. 1157 : 120 I. C. 126 : 1929 A. L. J. 227 : I. R. 1930 All. 14 : A. I. R. 1929 All. 321.

———**S. 337—Pardon—Tender of—Duty of Court.**

All that the officer who can grant pardon under the provisions of S. 337 has to see is whether on the information at his disposal there is a *prima facie* case against the person to whom pardon is going to be tendered for an offence which is exclusively triable by a Court of Sessions. If that is so, he is competent to grant a pardon. It is no part of the duty of the Magistrate to take upon himself the task of making a thorough and searching inquiry in order to find out whether the offence which has been committed by the person is one which will be triable by the Court of Session or by a Magistrate. As soon as the Magistrate is informed that the offence is one which, according to the investigating authority, is exclusively triable by the Court of Session, then his duty is to record the statement after granting pardon to the person put before him. *Bhola Nath v. Emperor*.

40 Cr. L. J. 856 : 184 I. C. 191 : 1939 A. L. J. 785 : 12 R. A. 189 : I. L. R. 1937 All. 736 : 1939 A. W. R. 474 : A. I. R. 1939 All. 57.

———**S. 337—Pardon—Tender of—Effect of.**

The pardon under S. 337 is tendered as a judicial act. One of the consequences, perhaps the most important, is that when a Magistrate has tendered the pardon, the trial must not be by another Magistrate even though he is vested under S. 80 of the Code to try such an offence, but by the High

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rated in material particulars. *Faqir Shah v. Emperor*. 35 Cr. L. J. 1242 :

151 I. C. 110 : 7 R. Pesh. 9 :
A. I. R. 1934 Pesh. 46.

S. 339—Approver—Statement by—Admissibility.

The words "the statement made by a person who has accepted the tender of pardon" in Sub-s. (2) of S. 339 are wide enough to cover a statement before the pardoning Magistrate. It is not, however, fair to use such statements of approver against him unless they are put to him in his examination as accused person and he is asked if he has any explanation to offer regarding them. *Gangaram v. Emperor*.

25 Cr. L. J. 1355 :
82 I. C. 715 : A. I. R. 1925 Nag. 172.

Ss. 339-A, 537—Applicability.

S. 339-A does not apply at all to the case of an approver who has stated that his statement as an approver was completely false. The section applies to a case in which the approver's case is still that he was one of the persons who had committed the offence but that the Public Prosecutor was in error in considering that he had in any way failed to comply with any of the conditions upon which the tender of pardon was made. *Gurdil Singh v. Emperor*.

40 Cr. L. J. 614 :
181 I. C. 924 : 41 P. L. R. 290 :
11 R. L. 899 : I. L. R. 1939 Lah. 216 :
A. I. R. 1939 Lah. 66.

S. 339 (2)—Approver—Confession by—Admissibility.

Any statement made by an accused person before he receives pardon under S. 327 must, if it is of a confessional nature, be recorded strictly in accordance with the procedure prescribed for the record of confession by Ss. 164 and 364, or the statement of the accused after he has been pardoned may be recorded in his character of a witness under S. 164, or his statement may be one which is recorded formally as that of a witness examined in the course of an enquiry or trial. The word "statement" contemplated in Sub-s. 2 of S. 339, appears primarily to refer to a statement made by him as a witness as contemplated in Sub-s. 2 of S. 337 in the course of an enquiry or trial. It may also include a statement recorded under S. 164 after the tender of pardon but it can in no case include a confessional statement made by an accused person before the tender of pardon unless it was recorded in accordance with the strict procedure provided for recording confessions. Hence a statement made by the accused, of a confessional nature before he had been tendered pardon and after he was put on solemn affirmation, is inadmissible against him in his trial after he has forfeited the pardon if it is not recorded as a confession in the manner prescribed by Ss. 164 and 364. It is also otherwise inadmissible for the reason that the accused was induced to make that statement implicating himself and others on the promise of a pardon. *Horilal v. Emperor*.

41 Cr. L. J. 433 :
187 I. C. 203 : 1940 N. L. J. 286 :
12 R. S. 283 : A. I. R. 1940 Nag. 218.

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S. 339 (2)—Approver—Statement by—Admissibility.

Accused stating he confessed because of fear of being beaten and got confessed and thought that murder will come out—Statement induced by promise of pardon—Statement is admissible against him under S. 339 (2). *Anup Singh v. Emperor*.

35 Cr. L. J. 168 :
146 I. C. 677 : 6 R. L. 265 :
A. I. R. 1933 Lah. 910.

S. 339—Certificate—Validity of.

The certificate granted under S. 339 cannot be said to be defective because it does not mention the particulars in regard to which the pardon was alleged to have been forfeited. *Indar Pal v. Emperor*.

37 Cr. L. J. 732 :
162 I. C. 969 : 38 P. L. R. 1128 :
8 R. L. 978 : A. I. R. 1936 Lah. 409.

S. 339—Certificate—Validity of.

The person who is authorized to grant a certificate under S. 339, is the Public Prosecutor and he need not necessarily occupy the position of Public Prosecutor on the date on which he grants the certificate. *Indar Pal v. Emperor*.

37 Cr. L. J. 732 :
162 I. C. 969 : 38 P. L. R. 1128 :
8 R. L. 978 : A. I. R. 1936 Lah. 409.

S. 339—Certificate—Who can issue.

The certificate under S. 339 (1) cannot be said to be without jurisdiction, if it was not issued by the Assistant Public Prosecutor who was originally in charge of the case but by the Public Prosecutor who subsequently took charge of the case. The general powers of control which the District Magistrate and the Public Prosecutor exercise are sufficiently wide to justify a prosecution being taken out of the hands of a particular Assistant Public Prosecutor at any stage of the proceedings, and there is nothing in the Cr. P. C. which requires that, when a particular Public Prosecutor has once appeared in a case, all further proceedings must be conducted by him. *Emperor v. Shahdino Dhaniparto*.

41 Cr. L. J. 747 :
189 I. C. 452 : 13 R. S. 30 :
A. I. R. 1940 Sind 114.

S. 339—Commitment—Committal of approver for joint trial with other accused—Procedure, legality of.

A Committing Magistrate tendered pardon to one of the accused and examined him, though not on oath. He denied all knowledge of the matter and he was committed to the Sessions Court along with the other accused, and the accused were convicted chiefly on the basis of the confession of this approver: *Held*, that the joint trial of the approver with the other accused was a serious and material error of law which vitiated the entire trial. *Ram Lotan v. Emperor*.

32 Cr. L. J. 91 :
128 I. C. 209 : 7 O. W. N. 972 :
I. R. 1931 Oudh 17 : 6 Luck. 386 :
A. I. R. 1931 Oudh 113.

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The provisions of S. 337 are very salutary provisions, the neglect of which may lead to difficulties. But where a confession was made before a Magistrate who with the oral sanction of the District Magistrate tendered the accused confessing his guilt, a pardon which was accepted but which was subsequently withdrawn: *Held*, that the statement made by such an approver on oath could be used in evidence against him when he was subsequently tried: *Held* further, that the tender of pardon although irregular was legal. *Sultan Khan v. Emperor*. 8 Cr. L. J. 445 :

5 A. L. J. 691 : 1908 A. W. N. 259.

S. 337—Pardon—Withdrawal of.

Tender of pardon—Retraction of confession—Withdrawal of pardon—Confession, cannot be made basis of conviction. *Chauhan v. Emperor*. 35 Cr. L. J. 889 :

148 I. C. 1192 : 11 O. W. N. 765 :
6 R. O. 500 (2) : A. I. R. 1935 Oudh 226.

S. 337—Pardon, withdrawal of—What Court to withdraw pardon.

If the approver be proceeded against for the original offence, the Magistrate who accorded the pardon should determine whether he has complied with its terms or not and whether he has forfeited the pardon : the question cannot be re-opened before the Special Bench at his trial for such offence. *Emperor v. Abani Bhusan*. 11 Cr. L. J. 702 (a) :

8 I. C. 721 : 37 Cal. 845 :
15 C. W. N. 25.

S. 337—Pardon—Withdrawal or revocation and forfeiture of—When the question of forfeiture should be taken up and the approver tried.

A pardon is forfeited by the approver's own act in concealing a material fact or giving false evidence ; if this is clearly established after he has been examined before the Committing Magistrate, it is not necessary that he should be examined as a witness in the trial. Ordinarily proceedings against an approver who has forfeited his pardon should be taken after his co-accused have been tried. *Nga Po Hnan v. Emperor*. 7 Cr. L. J. 245 :

U. B. R. Cr. 1907 : 09 Cr. P. C. 7.

S. 337—Pardon—Reasons for.

While tendering a pardon under S. 337 (1), the Magistrate stated "in order to connect the accused with the offence of the murder, it is essential to make an approver in this case. I therefore tender pardon under S. 337" : *Held*, that there was sufficient compliance with S. 337 (1-A) as no clear reason for tendering pardon could be imagined. *Emperor v. Amar Singh*. 40 Cr. L. J. 543 :

181 I. C. 509 : 40 P. L. R. 758 (2) :
I. L. R. 1939 Lah. 38 :

11 R. L. 855 : A. I. R. 1938 Lah. 796.

S. 337 (1) (2)—Pardon, whether Additional District Magistrate competent to grant.

When the Legislature used the words 'the District Magistrate' in S. 337 (1), it did not intend to exclude an Additional District Magistrate upon whom the ordinary powers of a District Magistrate had been conferred under Sub-s. (2) of S. 10. The Additional District Magistrate is

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not in any way affected by the Proviso to S. 337 (1) and he is in his own right empowered under the law to tender a pardon to the accused without the sanction of the District Magistrate. *Emperor v. Amar Singh*. 40 Cr. L. J. 543 :

181 I. C. 509 : 40 P. L. R. 758 (2) :
I. L. R. 1939 Lah. 38 : 11 R. L. 855 :
A. I. R. 1938 Lah. 796.

S. 337—Pardon—Contradictory statements in Sessions and Committing Court—Compliance with conditions of pardon.

In the interests of justice, the Legislature requires that where the case is committed to Sessions, the approver whatever statements he has made in the Court of the Committing Magistrate, should be examined as a witness in the Sessions trial. With the exception of evidence admitted under S. 288, it is upon evidence led in the Sessions Court that the guilt or innocence of the accused is determined, and it is in the Sessions Court that the approver has his main duty to perform. It cannot be said that an approver who denies all knowledge before the Committing Magistrate but who makes a full disclosure of facts in the Sessions Court is to be commended above one who makes a full disclosure in both Courts. But when the evidence given by the approver in the Sessions Court is in accordance with the conditions of his pardon, and is evidence upon which, in the circumstances, reliance might very well be placed, then the fact that in the Committing Magistrate's Court the approver gave false evidence should not necessarily be taken to be non-compliance with the conditions of pardon. *Emperor v. Shahdino Dhaniparto*. 41 Cr. L. J. 747 :

189 I. C. 452 : 13 R. S. 30 :
A. I. R. 1940 Sind 114.

S. 337 (2)—Pardon—Forfeiture—Approver's refusal to make statement before Magistrate—Examination in Sessions Court before forfeiture.

Where an accused after accepting pardon denies all knowledge of facts before the Committing Magistrate and the case is committed to Sessions Court, the pardon cannot be forfeited before the accused is examined in Sessions Court. Once a pardon has been tendered and accepted, Cl. (2) of S. 337 renders it obligatory for the prosecution to examine the approver both in the Committing Magistrate's Court and in the Sessions Court, should the case be committed. The failure of the prosecution to examine the approver in the Sessions Court vitiates the trial. *Emperor v. Shahdino Dhaniparto*. 41 Cr. L. J. 747 :

189 I. C. 452 : 13 R. S. 30 :
A. I. R. 1940 Sind 114.

S. 337 (2)—Pardon withdrawn—Production of approver.

Under S. 337 (2) the prosecution is bound to produce a person who has accepted a pardon even though the tender of pardon was withdrawn before the trial in the Sessions Court. *Chet Singh v. Emperor*. 32 Cr. L. J. 1126 :

134 I. C. 193 : 31 P. L. R. 1010 :
I. R. 1931 Lah. 897 :
A. I. R. 1931 Lah. 102.

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when examined-in-chief if he withdraws it in cross-examination. *Kullan v. Emperor*.

9 Cr. L. J. 571 :
2 I. C. 343 : 32 Mad. 173.

—S. 339—*Pardon—Forfeiture—Trial Procedure*.

As regards the procedure to be followed, where a pardon has been tendered and the approver is afterwards put on trial, he should be asked if he relies on it and if he says 'yes,' which is a plea of pardon, the issue as to the pardon should be tried first. It is for the prosecution to prove that the pardon has been forfeited. *Kullan v. Emperor*.

9 Cr. L. J. 571 :
2 I. C. 343 : 32 Mad. 173.

—S. 339—*Pardon—Tender of—Forfeiture whether a bar to trial*.

Where the evidence of an approver in the Sessions Court is not a compliance with the conditions of his pardon, the fact that he gave evidence in accordance with those conditions before the Committing Magistrate does not save him from being treated as a person who has forfeited his pardon within the meaning of S. 339. Such a person cannot plead the pardon as a bar to his trial. *Local Government v. Mullu*.

16 Cr. L. J. 417 :
28 I. C. 993 : 11 N. R. 59 :
A. I. R. 1915 Nag. 92.

—S. 339—*Pardon—Withdrawal—Forfeiture*.

Under the present Cr. P. C. a pardon once granted cannot be withdrawn, it can only be forfeited; and whether or not it has been forfeited, is a question of fact to be tried and decided by the Court which tries the charge in regard to which a pardon was tendered. *Emperor v. Kadu*.

1 Cr. L. J. 1082 :
31 P. R. Cr. of 1904.

—S. 339-A—*Pardon, tender of—Admissions in cross-examination—Pardon, whether forfeited*.

Where a person of low intellect who has accepted a tender of pardon complies with the terms of the pardon in his examination-in-chief but makes damaging admissions in his cross-examination, though he does not resile from his previous statement, and in re-examination returns even more towards his previous statement, he cannot be said to have failed to comply with the conditions of the pardon within the meaning of S. 339-A. *Emperor v. Jagannath*.

27 Cr. L. J. 768 :
95 I. C. 288 : 3 O. W. N. 474 :
13 O. L. J. 663.

—S. 339—*Procedure*.

Court proceeding to determine complicity of approver before deciding he had forfeited his pardon—Trial is not vitiated. *Anup Singh v. Emperor*.

35 Cr. L. J. 168 :
146 I. C. 677 : 6 R. L. 265.

—S. 339—*Procedure—Necessity of*.

Trial under S. 396, Penal Code—No certificate of Public Prosecutor before trying Magistrate—certificate produced before Sessions Court—

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Provisions of S. 339 are complied with. *Emperor v. Sadanand*.

36 Cr. L. J. 377 :
153 I. C. 596 : 1935 O. W. N. 44 :
7 R. O. 363 : A. I. R. 1935 Oudh 116.

—S. 339 (3)—*Prosecution—Absence of sanction—Illegality*.

The absence of sanction of the High Court required by S. 339 (3) to a prosecution for giving false evidence in respect of a statement made by a person who has accepted a tender of pardon, is an illegality which invalidates the trial. *Emperor v. Huktalwe*.

1 Cr. L. J. 1021 :
2 L. B. R. 302.

—S. 339—*Prosecution of approver—Certificate of Public Prosecutor, necessity of*.

It is illegal to institute proceedings against an approver for the offence in respect of which pardon was tendered to him without the certificate of the Public Prosecutor. *Emperor v. Maria Basappa*.

26 Cr. L. J. 469 :
85 I. C. 149 : 26 Bom. L. R. 1240 :
A. I. R. 1925 Bom. 135.

—S. 339—*Prosecution of approver—Certificate—Necessity of*.

Under S. 339 as amended in 1923, the certificate by the Public Prosecutor that in his opinion the approver has not complied with the conditions on which the tender of pardon was made, is a condition precedent to the validity of trial of the approver. But this does not apply to a case in which the pardon had been declared forfeited by the Magistrate and the proceedings against the approver, after the forfeiture commenced before the amended section came into force. *Gangaram v. Emperor*.

25 Cr. L. J. 1355 :
82 I. C. 715 : A. I. R. 1925 Nag. 172.

—S. 339—*Prosecution of approver—Certificate of Public Prosecutor, absence of*.

The absence of certificate by the Public Prosecutor, that in his opinion an approver has not complied with the condition on which the tender of the pardon was made to him, as required by S. 339, vitiates the trial of the approver. *Ali v. Emperor*.

26 Cr. L. J. 237 :
84 I. C. 61 : 5 Lah. 379 :
A. I. R. 1925 Lah. 15.

—S. 339—*Prosecution of approver—Issue requiring determination—Proof*.

The first issue to be tried on trial of a person alleged to have forfeited his pardon is whether he has actually forfeited it by giving false evidence or by wilfully concealing anything essential. Until this issue is found against him, he cannot be tried and convicted for his offence. The acquittal of the other accused is not conclusive that the accused, to whom the pardon was tendered, has forfeited it. It must be found as a fact whether the statement made by him while under pardon is materially or substantially true or not. *Bahadur v. Emperor*.

3 Cr. L. J. 342 :
59 P. R. Cr. 1905 : 7 P. L. R. 125.

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had been tendered, and that his trial was conducted with material irregularity which seriously prejudiced the accused and occasioned a failure of justice; (2) that the question whether the pardon was in fact forfeited should have been inquired into and decided at the trial of the accused before he was called upon to plead to the charge of the principal offence; (3) that the Sessions Judge had no power to pass an order directing the forfeiture of pardon granted to the accused; (4) that the procedure adopted by the Sessions Judge was wrong and illegal. *Emperor v. Kothia*.

4 Cr. L. J. 346 :

8 Bom. L. R. 740 : I. L. R. 1930 Bom. 611.

—S. 337—Prosecution of approver—Procedure—Defence of pardon.

If the trying Magistrate thinks that an approver has not made a full disclosure of the facts and that he should forfeit his pardon, he must discharge him at the termination of the trial; he has no power to direct his prosecution. He can only record his opinion that the approver has wilfully concealed something essential or given evidence which is positively false, and let the District Magistrate take action to prosecute the approver under S. 339, if he thinks fit. If so advised, the Crown may proceed against him for the offence in respect of which he was given a conditional pardon. When put on his trial for that offence he may plead to a competent Court his pardon in bar, and that is a plea that the Court is bound to hear and decide upon before going further and putting him on his defence. If he be committed to the Sessions, he can plead it again in the Sessions Court and the Judge will decide it before putting him on trial for the substantive offence. *Emperor v. Nga Po Ket*.

17 Cr. L. J. 337 :

35 I. C. 513 : 8 L. B. R. 447 :

A. I. R. 1917 L. Bur. 143.

—Ss. 337, 339 (3)—Prosecution of approver—Public Prosecutor's certificate, necessity of.

Where pardon has been tendered to a person under S. 337, sanction for prosecuting him for giving false evidence cannot be given unless the Public Prosecutor certifies that in his opinion the person who has accepted such tender has, either by wilfully concealing anything essential or by giving false evidence, not complied with the condition on which the tender was made. *Emperor v. Ghasitay*.

31 Cr. L. J. 204 :

121 I. C. 83 : 6 O. W. N. 901 :

5 Luck. 452 : A. I. R. 1929 Oudh 527.

—S. 337—Scope.

S. 337 empowers certain Courts of Justice, viz., Magistrates exercising certain powers of especially empowered *ad hoc* by an order of sanction, to pass a judicial order, the effect of which is that a "person supposed to have been directly or indirectly concerned in or privy to, the offence under inquiry" who chooses to accept the pardon tendered by the said order, can give his evidence "as a witness in the case," with the knowledge and assurance that the order will operate as a bar to his own subsequent prosecution or trial for the offence

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in respect of which the pardon was tendered, or for any other offence of which he appears to have been guilty in connection with the same matter. *Emperor v. Har Prasad*.

25 Cr. L. J. 497 :

77 I. C. 961 : 21 A. L. J. 42 : 45 All. 226 :

A. I. R. 1923 All. 91.

—S. 337—Scope.

S. 337 is merely an enabling section that empowers a Magistrate to grant a pardon to any person supposed to be concerned in, or privy to, the offence and the word 'accused' in Ss. 342 and 343 must mean a person who is accused in the case that is proceeding before the Magistrate. *Amdu Miyan v. Emperor*. (F. B.)

38 Cr. L. J. 237 :

166 I. C. 582 : I. L. R. 1937 Nag. 315 :

9 R. N. 126 : A. I. R. 1937 Nag. 17.

—S. 337—Scope.

The proceedings to be taken under S. 337 are different in character from those to be taken under S. 494. The former section deals with the action of a judicial, the latter with that of an executive officer. *Fagir Singh v. Emperor*.

40 Cr. L. J. 360 P. C. ;

176 I. C. 898 : 1938 O. W. N. 809 :

19 P. L. T. 717 : 42 C. W. N. 1252 :

40 P. L. R. 876 : 1938 M. W. N. 969 :

48 M. L. W. 537 : 1938 2 M. L. J. 780 :

68 C. L. J. 328 : 40 Bom. L. R. 1254 :

I. L. R. 1938 Lah. 628 : 32 S. L. R. 937 :

11 R. P. C. 81 : 1938 O. L. R. 405 :

4 B. R. 850 : 65 I. A. 388 : 1938 A. W. R. 170 :

A. I. R. 1938 P. C. 266.

—Ss. 337, 338—Scope.

Under Ss. 337, 338 Cr. P. C., it is not necessary that the person to whom a pardon is tendered should himself be charged with an offence triable exclusively by the Court of Sessions, all that is required is that the person to whom pardon is tendered, who need not even be an accused, should be supposed to have been directly or indirectly concerned, in or privy to, an offence triable exclusively by the Court of Sessions with which another person is charged. *Kashiram v. Emperor*.

24 Cr. L. J. 566 :

73 I. C. 262 : 6 N. L. J. 144 :

A. I. R. 1923 Nag. 248.

—S. 337 (2-A)—Scope.

It does not mean that the approver must also be committed for trial to the Court of Sessions with the others. *Emperor v. Raja Ram*.

33 Cr. L. J. 802 (1) :

139 I. C. 408 : 1932 A. L. J. 754 :

I. R. 1932 All. 566 : A. I. R. 1932 All. 581.

—S. 337—Scope and object—Discharge of approver..

Sub-s. (3) of S. 337 implies that there is a trial in progress and its object is to secure the evidence of the approver for such trial. If there is no such trial and no likelihood of such a trial, then, the Magistrate has power to discharge the approver from custody. *In re : Dagadu Bapu*.

22 Cr. L. J. 620 :

63 I. C. 156 : 23 Bom. L. R. 839 :

A. I. R. 1922 Bom. 177.

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S. 339—Prosecution of approver—
Power of Sessions Judge to direct prosecution—
Plea not taken before Committing Magistrate—
Taken before Sessions Judge, legality of.

In a case of duceity one of the accused G was given a conditional pardon. The Sessions Judge, being of opinion that he had not spoken the truth, directed his prosecution under S. 397, Penal Code. G pleaded pardon before the Sessions Judge, but not before the Magistrate: *Held*, the Sessions Judge had no authority to direct the prosecution of G on any specific charge and that if he came to the conclusion that the approver had wilfully concealed anything essential or given evidence on any point which was positively false, he was entitled to record an opinion to that effect and to invite the attention of the District Magistrate to his opinion or possibly to suggest the propriety of his prosecution: *Held*, further, that G was entitled to plead pardon before the Sessions Judge, although he had not done so before the Committing Magistrate. *Emperor v. Gangua*.
29 I. C. 323; 13 A. L. J. 424;
37 All. 331; A. I. R. 1915 All. 245.

S. 339—Prosecution of approver—
Sanctioning grant of.
Discretion to sanction prosecution of approver should be exercised with extreme caution. High Court should consider whether confession was or was not voluntary. *Emperor v. Malhura*.
147 I. C. 653; 1933 A. L. J. 1389;
6 R. A. 531; A. I. R. 1934 All. 43.

S. 339—Prosecution of approver—
Sanction should be granted.
It is clearly not necessary that an approver should be punished for perjury if he can be punished sufficiently both for that and the original crime on a conviction for that original crime. Sanction, therefore, ought to be refused unless it appears that a conviction for the original crime is unlikely or a prosecution for it is undesirable for any other reason, or that on a conviction for the original crime the sentence that could be passed would be too light to cover both offences. Before sanction can be granted, therefore, it must be shown that there is no intention of prosecuting the approver for the original crime, or that he has already been prosecuted for it and either has been acquitted or has received or is likely to receive such a light sentence that it is not sufficient to cover his further crime of perjury. *Local Government v. Gambhir Bhujia*.
28 Cr. L. J. 645;
103 I. C. 101; 23 N. L. R. 35;
A. I. R. 1927 Nag. 189.

S. 339—Prosecution of approver—
Withdrawal not provided for—Forfeiture—Approver cannot be tried for original offence unless definite finding recorded after inquiry as to forfeiture.

The present Cr. P. C. contains no provision for the withdrawal of pardons. The question whether the pardon has been forfeited in each case a question of fact. The proper course in cases of alleged forfeiture is to draw up an order setting forth specifically the alleged breach of the condition of pardon, and to call upon the approver to show cause on a future date why he should not be tried for the offence for which he was pardoned. On the date fixed for the hearing, unless the approver admits the alleged breach of condition, the Magistrate or Judge should hear the evidence relied upon as establishing the breach and any rebutting evidence which the approver may offer, and should then record a definite finding as to whether there has been a breach or not. A definite finding arrived at in this manner is essential before the approver can be placed on his trial for the original offence. *Aga To Galle v. Emperor*.
14 Cr. L. J. 401;
20 I. C. 225; 6 Bur. L. T. 96;
7 L. B. R. 1.

S. 339—Prosecution of approver—
Contradictory statements—Alternative charge for perjury.
If a witness makes a statement and later in the course of the same deposition contradicts it and says it was untrue, the whole deposition amounts to no more than the second statement. He cannot be convicted of perjury in the alternative; in one or the other of the two statements and if the first can be proved to be false, he cannot be convicted of more than an attempt to commit perjury. Resort to the expedient of an alternative charge is only justified when it is difficult to establish the falsity of one of the two statements. *Local Government v. Gambhir Bhujia*.
28 Cr. L. J. 645;
103 I. C. 101; 23 N. L. R. 35;
A. I. R. 1927 Nag. 189.

S. 339—Prosecution of approver—
Charges read and accused asked to plead to it before and not after he has been asked to plead whether or not he has complied with terms of pardon—Irregularity curable.
Where the provisions of S. 339-A, are not carried out in case of an approver who has forfeited his pardon and he is put up for trial and the charge has been read out to him and he has been made to plead to it before and not after he has been asked to plead whether or not he had complied with the terms of his pardon, it is an irregularity curable under S. 537. *Gurdil Singh v. Emperor*.
40 Cr. L. J. 614;
181 I. C. 924; 41 P. L. R. 290;
11 R. L. 899; 1 L. R. 1939 Lah. 216;
A. I. R. 1939 Lah. 66.

S. 339-A—Prosecution of approver—
Duty of Judge to find whether pardon has been forfeited.
Where an accused person pleads before the

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ed a pardon and her evidence recorded as a witness after withdrawal of the minor charges. And where a pardoned accused was found to have taken part only in the disposal of the dead body, *Held*, that, though the evidence of an accomplice required corroboration in material particulars, yet the accused pardoned in this case was, as a matter of fact, not an accomplice in the actual murder at all, that even supposing that she could be considered as partly an accomplice as being subsequently implicated, less strong corroboration would be required and that there was very ample corroboration of her evidence in the discovery of bloodstains and in the production of deceased's property. *Emperor v. Pragji*.

5 Cr. L. J. 256.

—————**S. 338—Pardon by Sessions Judge—Procedure—Examination as witness.**

If under S. 338, Cr. P. C., a Sessions Judge himself tenders pardon to an accused who accepts it, he can at once examine him as a witness and it is not necessary that such accused should be sent to the Committing Magistrate for his statement to be recorded on oath. *Kashiram v. Emperor*.

24 Cr. L. J. 566 :
73 I. C. 262 : 6 N. L. J. 144 :
A. I. R. 1923 Nag. 248.

—————**S. 338—Prosecution of approver—Jurisdiction—Pardon, defence—Plea of pardon.**

At the conclusion of a Sessions trial the Sessions Judge directed the commitment for trial of two of the accused to whom a pardon had been tendered by the District Magistrate : *Held*, (1) that the Sessions Judge had jurisdiction to make the order ; (2) that on being placed on trial the accused would first plead their pardons and it would be for the trial Court to decide whether or not the pardons had been forfeited. *Chanan Singh v. Emperor*.

21 Cr. L. J. 518 :
56 I. C. 774 : 1 Lah. 218 :
108 P. L. R. 1920 : 9 P. W. R. 1920 Cr. :
A. I. R. 1920 Lah. 326.

—————**S. 339.**

- Applicability.
- Approver.
- Certificate.
- Commitment.
- Joint trial.
- Pardon.
- Procedure.
- Prosecution.
- Prosecution of approver.
- Sanction of High Court.
- Scope.
- Statement by approver.
- Trial of approver.
- Witness.

—————**S. 339.**

See also (i) Cr. P. C., 1898, Ss. 193, 337.

—————**S. 339—Applicability—Pardon, tender of—Statement of accused, necessity of.**

Sub-s. 2 of S. 339 has to be read in conjunction with S. 337. S. 337 itself does not contemplate and authorise the recording of any

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statement by the accused as a preliminary to the tender of pardon. *Horilal v. Emperor*.

41 Cr. L. J. 433 :
187 I. C. 203 : 1940 N. L. J. 286 :
12 R. N. 283 : A. I. R. 1940 Nag. 218.

—————**S. 339—Approver, confession by—Admissibility.**

Accused made a confession to a Magistrate with respect to his participation in a certain dacoity. More than a month afterwards he was tendered a pardon in respect of some other dacoities in which he had participated and he gave evidence as a prosecution witness in the cases arising out of these latter dacoities. He was subsequently tried in respect of the dacoity with regard to which he had made a confession and the confession was put in evidence against him : *Held*, that there was nothing in S. 339 which rendered the confession inadmissible in evidence against the accused. *Sardara v. Emperor*.

25 Cr. L. J. 956.
81 I. C. 604 : 22 A. L. J. 85 :
46 All. 236 : A. I. R. 1924 All. 220.

—————**S. 339—Approver failing to adhere to confession, whether proof of guilt.**

Where an approver is put on trial for the original offence, the mere fact that he had not adhered to his confession should not lead to the conclusion that he has failed to comply with the condition on which the pardon was granted to him. False confessions, wrongfully extorted or induced are not unknown and no man must be led to adhere a false confession for fear of his pardon being forfeited. *Nga Wa Gyi v. Emperor*.

27 Cr. L. J. 254 :
92 I. C. 430 : 3 Rang. 55 :
4 Bur. L. J. 23 : A. I. R. 1925 Rang. 219.

—————**S. 339—Approver—Prosecution—Appeal hearing of—Magistrate, personally interested, whether competent.**

A Judge who has directed a prosecution, should not hear the appeal of the accused when convicted, even although it is not against the conviction but only against the severity of the sentence. *Emperor v. Htuktawee*.

1 Cr. L. J. 1021 ;
2 L. B. R. 302.

—————**S. 339—Approver, prosecution of—Plea of pardon.**

A pardon tendered to an approver need not be withdrawn, nor has such withdrawal any effect. After the approver has given evidence, the prosecution can proceed with the case against him if they choose and he can plead pardon in bar of the trial. *Kullan v. Emperor*.

9 Cr. L. J. 571 :
2 I. C. 343 : 32 Mad. 173.

—————**S. 339—Approver—Statement by—Admissibility.**

Although under S. 339, Cl. 2, the statement of an approver may be admitted in evidence, yet it requires corroboration by extrinsic evidence. It is in the nature of a confession and when it is withdrawn, it should be regarded in the light of a retracted confession and must be corrob-

Cr. P. CODE (1898), S. 340**—S. 339 (3)—Witness—Sanction to prosecute.**

A witness, who is in any way induced to make a false statement in connection with a capital charge, should be allowed every possible *locus paenitentiae*. The sanction to prosecute him should not be given merely on the ground that he contradicted himself before the Committing Magistrate. *Emperor v. Bodha*. 15 Cr. L. J. 76 : 22 I. C. 428 : 11 A. L. J. 964.

—S. 340.

See also Cr. P. C., 1898, Ss. 4 (r), 167, 202.

—S. 340—Accused person—Meaning of.

A person against whom a complaint is preferred does not become an accused person for the purposes of S. 340, until the Magistrate acting under Chapter XVI, has decided to issue process against him. *Sheikh Chand v. Mohamed Hanif*. 8 Cr. L. J. 20 : 4 N. L. R. 81.

—S. 340—"Inquiry," when begins.

When a Magistrate directs under S. 202 inquiry by another Magistrate or Police Officer or other person, he is doing so in the course of his own enquiry into the offence and his own enquiry is, therefore, already begun under S. 346. It is not necessary that the Magistrate should begin to take evidence before the enquiry can be said to begin. *In re : T. R. Balakrishna Reddiar*. 28 Cr. L. J. 384 : 100 I. C. 992 : A. I. R. 1927 Mad. 591.

—S. 340—Legal advice—Accused, right of, to be defended by Pleader—Magistrate, power of, to permit a person to appear for accused—Discretion, exercise of.

Every Magistrate has a discretion to permit a person, including a Pleader not otherwise authorised to practise in his Court to appear for a person accused before the Court. This discretion, however, should be exercised judicially, and a permission should be given only in cases in which the Magistrate or the presiding officer considers that it is for the interest of the accused that it should be given. *In re : W. Calogreedy*. 18 Cr. L. J. 345 : 38 I. C. 729 : U. B. R. 1916 II, 121 : 10 Bur. L. T. 117 : A. I. R. 1918 U. Bur. 56.

—S. 340—Legal advice—Accused's right to legal assistance—Police, if can disallow access to legal advisers—Criminal Courts, power of, to order Police to permit access—Inherent power to prevent abuse of process.

In view of the provisions of S. 340, Cr. P. C., an accused should be at liberty to be defended by a Pleader not only at the time the proceedings are actually going on but should be allowed a reasonable opportunity, if in custody of getting into communication with his legal adviser for the purpose of preparing his defence. The Police cannot legitimately claim that an unconvicted prisoner who has been remanded to their custody should not be allowed to see his legal adviser until they

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choose to permit the same. In the exercise of its inherent power to prevent an abuse of its process, a Criminal Court can order the Police to permit an accused, who has been remanded to Police custody to have access to his legal advisers. Such a procedure is warranted by the provisions of S. 561-A, Cr. P. C. *In re : Llewelyn Evans*. 27 Cr. L. J. 1169 : 97 I. C. 801 : 28 Bom. L. R. 1043 : 50 Bom. 741 : A. I. R. 1926 Bom. 551.

—S. 340—Legal advice—Right of accused person to be represented by Pleader and to cross-examine prosecution witnesses.

The spirit of the law requires that if an accused person wishes to be represented by a Pleader he should be given an opportunity of being so represented and should also have an opportunity of cross-examining the witnesses for the prosecution. *Pita v. Emperor*. 26 Cr. L. J. 575 : 85 I. C. 719 : 47 All. 147 : A. I. R. 1925 All. 285.

—S. 340—Legal advice.

Where at the commencement of a trial the accused desires to be given an opportunity to engage a Pleader and there has not already been a sufficiently long period given to him for this purpose, the Magistrate may proceed up to the end of recording his evidence of the prosecution witnesses and from that stage he should allow an adjournment in order to enable the accused to appoint a Pleader and that adjournment must be long enough to enable the Pleader to get proper instructions and to prepare himself for cross-examination. *Pita v. Emperor*. 26 Cr. L. J. 575 : 85 I. C. 719 : 47 All. 147 : A. I. R. 1925 All. 285.

—Ss. 340, 476—Legal advice—Accused person—Pleader—Right to be heard—Practice—Civil Procedure Code (Act V of 1908); O. III, r. 1.

A Civil Court making a preliminary inquiry under S. 476, is not a Criminal Court and person against whom the inquiry is made is not an accused person. Therefore, a pleader has no right under S. 340 to appear for such a person. The general practice is to hear pleaders on behalf of persons in Civil or Criminal matters, and to secure their assistance as *amicus curiae* even where parties have no right to be heard either personally or by pleader. *Ram Nihore Umar v. Emperor*. 12 Cr. L. J. 231 : 10 I. C. 740 : 8 A. L. J. 237.

—S. 340—Scope—Whether proceedings under S. 167, fall under this section.

A Magistrate does not act in a purely executive capacity in proceedings under S. 167, and there is no good reason why the proceedings before a Magistrate under S. 167 should not be considered to fall within the provisions of S. 340. *Sunder Singh v. Emperor*. 32 Cr. L. J. 339 : 129 I. C. 481 : 12 Lah. 481 : 31 O. L. R. 780 : I. R. 1931 Lah. 193 : A. I. R. 1930 Lah. 945.

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—S. 339—*Commitment of approver, who can make.*

A Sessions Judge is quite competent to order the commitment of an accused person to whom a conditional pardon has been tendered, on the ground that the pardon has been forfeited by non-compliance with its conditions. *Emperor v. Kadu.*

1 Cr. L. J. 1082 :
31 P. R. Cr. 1904.

—S. 339—*Commitment—Who can order.*

A Sessions Judge is competent to order the commitment of an accused person to whom a conditional pardon has been tendered if he finds that the conditions of the pardon have not been fulfilled. *Dil Bahadur v. Emperor.*

25 Cr. L. J. 121 :
76 I. C. 185 : A. I. R. 1924 Lah. 568.

—S. 339—*Commitment—Who can order.*

If a Sessions Judge, before whom an approver has given evidence, finds that the approver has not told the truth, he has power himself to pass an order committing the approver to stand his trial. *Daulat v. Emperor.*

22 Cr. L. J. 128 :
59 I. C. 560.

—S. 339—*Joint trial—Accused resiling from pardon before giving evidence—Joint trial with other accused, legality of.*

It is open to an accused, who has accepted pardon in the first instance, to renege from that pardon and to say that he does not want the pardon and that he is not willing to give evidence, but wishes to be tried so that his character may be cleared. An acceptance of pardon must continue in force till the person pardoned actually give evidence and then only any question can arise whether he has forfeited his pardon by not giving true evidence in the case. A pardon, which, though accepted for a time, is rejected by the accused himself before it really takes effect, cannot be treated as falling under S. 339, and therefore, there can be no objection to such an accused being jointly tried along with the other accused in the case. *In re : Basireddi Naiappa.*

25 Cr. L. J. 210 :
76 I. C. 642 : 1923 M. W. N. 697 :
18 L. W. 606 : 45 M. L. J. 613 :
33 M. L. T. 77 and 156 :
A. I. R. 1924 Mad. 391.

—S. 339—*Joint trial—Legality of.*

The joint trial of a person to whom pardon has been tendered and subsequently withdrawn along with other accused is an illegality. *Chauhan v. Emperor.*

35 Cr. L. J. 889 :
148 I. C. 1192 : 11 O. W. N. 765 :
6 R. O. 500 (2).

—S. 339—*Pardon, acceptance of, meaning of—Accused expressing ignorance of facts after tender—Pardon, whether accepted.*

A pardon can be said to be accepted when the person to whom it is tendered does volunteer to make some statement with reference to the crime. When, therefore, the person to whom pardon was tendered expressed complete ignorance and stated that he was

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indifferent whether a pardon was granted or not ; *Held*, that he did not accept the pardon and the provisions of S. 339 of the Cr. P. C. did not apply. *Palati Rai v. Emperor.*

26 Cr. L. J. 336 :
84 I. C. 560 : L. R. 5 All. 89 Cr. :
A. I. R. 1924 All. 564.

—S. 339—*Pardon, conditional, forfeiture of—Withdrawal, whether necessary, before trial—Plea of bar—Accused, right of.*

Where an approver has forfeited the conditional pardon tendered to him and is ordered to be tried for the offence in respect of which the pardon was tendered, there is no necessity of withdrawing the pardon, and such withdrawal is of no effect. The accused is at liberty to plead his pardon as a bar to his trial. *Khiali v. Emperor.*

18 Cr. L. J. 444 :
38 I. C. 1004 : 15 A. L. J. 120 : 39 All. 305 :
A. I. R. 1917 All. 316.

—S. 339—*Pardon—Conditions of.*

The making of a full and true disclosure by an approver is not a condition precedent which the approver has to prove to establish his right to pardon, but the failure to make such full and true disclosure is a condition subsequent determining or forfeiting the pardon which had previously been granted. *Kullan v. Emperor.*

9 Cr. L. J. 571 :
2 I. C. 343 : 32 Mad. 173.

—S. 339—*Pardon, forfeiture of—Commitment of approver for offence in respect of which pardon tendered—No order revoking pardon necessary—Duty of Court trying approver.*

Where it is intended to prosecute an approver for the offence in respect of which a pardon was tendered to, and accepted by him, an order revoking the pardon is not necessary. The question whether a pardon has in fact been forfeited by an approver having, by either wilfully concealing anything essential or by giving false evidence, failed to comply with the condition on which the tender of pardon was made, is to be decided by the Court that is asked to try him for the offence in respect of which the pardon was tendered. *Emperor v. Kachri.*

12 Cr. L. J. 326 :
10 I. C. 622 : 7 N. L. R. 65.

—S. 339—*Pardon—Forfeiture of—Practice.*

Where an accomplice forfeits the pardon offered to him, it is the duty of the Sessions Judge to record a finding as to the forfeiture. It is not enough that the Committing Magistrate does so. *In re : Madiga Pothugadu.*

16 Cr. L. J. 234 :
27 I. C. 906 : A. I. R. 1916 Mad. 290.

—S. 339—*Pardon—Forfeiture of.*

The approver commits a breach of the condition of pardon if he fails to make a full and true disclosure throughout. It is not enough for him to make such disclosure before the Committing Magistrate if he withdraws it in the Sessions Court or to make it

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assistance of his relations. In a case reported to the High Court under S. 341, Cr. P. C., the High Court has full discretion to do whatever the circumstances of the case require. The section gives the High Court power to pass sentence on the Magistrate's finding. Want of speech and hearing do not imply want of capacity either in the understanding or memory but only a difficulty in the means of communicating knowledge. There may be mental deficiency at the same time but it is not necessarily involved in the deaf-mute condition. The law of India does not provide for a sane deaf-mute who has never been instructed being exempted from punishment. A sane deaf-mute cannot generally live to a mature age without learning something of his duty towards his neighbour in person and property. A deaf-mute, to whom Ss. 82 and 83, Penal Code, do not apply, in order to escape criminal liability, comes within S. 84; in other words, if his mind is sound, his inability to hear and speak will not excuse him. *Emperor v. Nga San Myin*.

12 Cr. L. J. 386 :

11 I. C. 250 : U. B. R. 1910, 1, 57 :

4 Bur. L. T. 150.

—S. 341 — Deaf-mute — Possession of stolen property—Presumption.

The recent possession of stolen property by a deaf-mute, with whom no one is able to communicate and whose infirmity prevents him from putting forward any explanation he may have to offer, does not justify the presumption that he was either a thief or a dishonest receiver of stolen property. *In re : Oomayan*.

15 Cr. L. J. 578 :

25 I. C. 330 : 1 L. W. 492 : 1914 M. W. N. 821 :

A. I. R. 1915 Mad. 50.

—S. 341—Duty of trial Judge—Accused found to understand proceedings—Duty of trial Judge to decide question of conviction and sentence.

Under S. 341, only when an accused though not insane, cannot be made to understand the proceedings and the trial results in a conviction, that the proceedings are to be forwarded to the High Court with a report of the circumstances for the High Court to pass such orders as it thinks fit. Where, therefore, a Jury finds and the Judge agrees with the Jury that the accused was able to follow the proceedings in Court and to understand the same, the Judge cannot leave the question of conviction and sentence to the High Court but must himself decide the same. *Emperor v. Barkma Singh*.

27 Cr. L. J. 1097 :

97 I. C. 361.

—S. 341—Procedure—Case reported to High Court—Procedure.

In serious cases reported under S. 341, Cr. P. C., it is usually the practice to refer the matter to the Local Government. In the case, however, of a minor offence the High Court itself may pass an appropriate sentence or discharge the accused. *Emperor v. Rahman*.

21 Cr. L. J. 64 (a) :

57 I. C. 285 : 1 Lah. 260 :

A. I. R. 1920 Lah. 333.

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—S. 341—Procedure — Penal Code (Act XLV of 1860), S. 304-A—Power of Magistrate to pass order under S. 562-A, Cr. P. C. on conviction under S. 304-A, Penal Code—Reference to High Court.

A Magistrate convicting an accused person under S. 304-A, Penal Code, cannot pass an order under S. 562, Cr. P. C. He can only report the case for the orders of the High Court under S. 341, Cr. P. C. *Addala Yerrivadu v. District Magistrate of Vizigapatam*.

13 Cr. L. J. 248 :

14 I. C. 600 : 11 M. L. T. 404.

—S. 341—Reference to High Court—Accused deaf mute.

A reference to the High Court under S. 341 cannot be made simply because the accused happens to be a deaf-mute. Such a reference can be made only if the accused, though not insane, cannot be made to understand the proceedings. *Alla Dia v. Emperor*.

29 Cr. L. J. 1104 :

112 I. C. 688.

—S. 341—Reference to High Court—Power of High Court.

Accused were discharged by Magistrate under S. 209, Cr. P. C. Subsequently, the pardon tendered to the approver was withdrawn and he was committed for dacoity to the Court of Session. The material piece of evidence against the approver was his confessional statement incriminating both himself and the other accused. The Sessions Judge referred the case to the High Court for quashing the commitment of the approver and for an order directing re-trial of the discharged accused *along with* the approver: *Held*, (1) that the High Court had power, under S. 437, Cr. P. C. to direct that further inquiry should be held in the case of the discharged accused and that if that inquiry ended in the framing of the charge, the said accused should be committed to the Court of Session : (2) that the provisions of S. 337 (3), Cr. P. C. were fully carried out when they were applicable, namely during the pendency of the Magisterial proceedings, and they did not constitute any bar against the High Court's ordering that, if the inquiry against the discharged persons ended in a commitment, they should be committed to be tried jointly with the approver: (3) that even if the commitment of the approver were not quashed, the High Court could order the joint trial of the discharged accused with the approver by directing that the trial of the approver should be delayed till the Magistrate passed his final orders in the case of the discharged accused. S. 327 (3) contemplates only a case where there has been a commitment made by the Magistrate to the Court of Session or the High Court. It omits to consider the case where the Magistrate himself, on his own responsibility, discharges the accused person. The meaning of the subsection is that the approver shall not be set at large until the judicial proceedings pending against the accused are finished. It is immaterial whether the proceedings are finished by a Magisterial order of discharge before a trial or by a Judge's order of acquittal after trial.

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—S. 249—*Further enquiry—Case challaned by Forest Department—Proceeding stopped by Magistrate, effect of—Further inquiry ordered by District Magistrate—Forests Act (VII of 1878), S. 432.*

The Forest Department challaned a case of an offence punishable under S. 32, Forests Act. The maximum term of imprisonment prescribed for this offence is six months. Acting under S. 249, Cr. P. C., the trying Magistrate stopped the proceedings. The District Magistrate, purporting to act under S. 437, Cr. P. C., set aside the Magistrate's order: *Held*, (1) that the order of the District Magistrate was *ultra vires* as S. 437 did not apply to the case: (2) that the order under S. 249 would not bar further proceedings in accordance with law. *Achhru v. Emperor*. 13 Cr. L. J. 860: 17 I. C. 796: 8 P. W. R. 1913 Cr.

—S. 249—*Further enquiry, Magistrate's jurisdiction to.*

A District Magistrate has no jurisdiction to quash an order under S. 249 and direct further enquiry into the case. *Emperor v. Sripal*.

35 Cr. L. J. 564:
147 I. C. 1028 (2): 1934 A. L. J. 360:
6 R. A. 606: A. I. R. 1934 All. 17.

—S. 250.

—Adjournment.

—Appeal.

—Appellate Court's power to award compensation.

—Applicability.

—Compensation.

—Complainant.

—Complaint.

—Composition of Case.

—Court competent to award compensation.

—Court competent to pass order.

—Discretion.

—Duty of Court.

—False accusation, meaning of.

—False and vexatious case, what is.

—False and vexatious or frivolous, meaning of.

—False charge, meaning of.

—False or vexatious complaint, what is.

—False report, liability for.

—Fine—Limit of.

—Frivolous or vexatious charge.

—Frivolous or vexatious complaint.

—Frivolous or vexatious, meaning of.

—Guardian, liability of.

—Hearing complainant—date.

—Hearing complainant—necessity of.

—High Court whether can award compensation.

—Imprisonment when competent.

—Imprisonment award when competent.

—Imprisonment—Commencement of.

—Imprisonment—Limit of period.

—Informant.

—Information.

—Interpretation.

—Jurisdiction.

—Master and servant.

—Miscellaneous.

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—Record of reasons.

—Restitution.

—Revision.

—Scope.

—Vexatious case.

—Vexatious charge.

—Vexatious complaint.

—S. 250.

See also (i) Compensation to accused.

(ii) Cr. P. C. 1898, Ss. 4 (b),
30, 74 (4), 107, 145, 148
(3), 190, 201, 250.

—S. 250—*Accusation subsequent to original complaint—Compensation.*

The original complainant may not be liable for all accusation made by others but where the original complainant himself is the author of the subsequent accusation he may justly be dealt with under S. 250. *Jagdami Pershad Singh v. Mahadeo Kandoo*.

11 Cr. L. J. 201:
5 I. C. 693: 14 C. W. N. 326.

—S. 250—*Accused released under S. 562—Order of compensation, legality of.*

A person released under S. 562 cannot be ordered to pay compensation to the complainant. *Muhammad Zaman v. Emperor*.

29 Cr. L. J. 38:
106 I. C. 454: A. I. R. 1928 Lah. 134.

—S. 250—*Adjournment—Complainant called upon to show cause—Right of adjournment.*

A complainant who is called upon to show cause why an order directing the payment of compensation should not be made against him under S. 250 is not entitled as a matter of right to an adjournment to enable him to consult a Pleader and to give a written reply. *In re: Ishwarlal Maneklal Trivedi*.

27 Cr. L. J. 430:
93 I. C. 158: 28 Bom. L. R. 98:
A. I. R. 1926 Bom. 225.

—S. 250—*Appeal—Amount of compensation to several accused collectively exceeding Rs. 50—Appeal, whether lies.*

Where the total amount of compensation ordered to be paid by a complainant in one particular case exceeds Rs. 50, there is a right of appeal under Cl. (3) of S. 250, even though the amount of compensation to be paid to each individual accused person may not exceed the sum of Rs. 50. *Sumaria v. Emperor*.

27 Cr. L. J. 146:
91 I. C. 882: 24 A. L. J. 167:
A. I. R. 1926 All. 247.

—S. 250—*Appeal by complainant against order directing payment of compensation—Powers of Court.*

An appeal from an order directing a complainant to pay compensation to the accused under S. 250, is an appeal under Chap. XXXI within the meaning of S. 428 and in an appeal from such an order, the Appellate Court has power to take additional evidence. Omission to record reasons for admitting additional

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be administered to an accused person evidently have reference only to the statement made by him in answer to question put by the Court in accordance with Sub-s. (4) of that section. *Ghulau Muhammad v. Emperor.*

23 Cr. L. J. 399 ;
67 I. C. 351 : 3 Lah. 46 -
4 U. P. L. R. Lah. 71 :
A. I. R. 1922 Lah. 113.

————S. 342—*Applicability—Additional evidence under directions of Appellate Court—Re-examination of accused, whether necessary.*

S. 342, Cr. P. C., is not applicable to evidence taken under the direction of an Appellate Court under S. 428 of the Code, and though there may be cases where the accused could properly be questioned by the Magistrate in regard to the additional evidence so taken, omission to do so is not illegal. *Narayan Keshav Devasthali v. Emperor.*

29 Cr. L. J. 972 :
112 I. C. 60 : 30 Bom. L. R. 651 :
52 Bom. 699 : A. I. R. 1928 Bom. 200.

————S. 342—*Applicability — Maintenance proceedings.*

S. 342, Cr. P. C., does not apply to proceedings under S. 488 of the said Code. Therefore, it is not incumbent on a Magistrate to examine the husband or the father, as the case may be, before an order under S. 488 can be made against him. *Mehr Khan v. Bakht Bhari.*

29 Cr. L. J. 1002 :
112 I. C. 218 : 10 Lah. 406 :
A. I. R. 1929 Lah. 32.

————S. 342 — *Applicability — Maintenance proceedings.*

The mere fact that the opposite party was not examined in proceedings under S. 488 is no ground for sending the case back to trial Court. *J. A. Raspin v. Mrs. Raspin.*

33 Cr. L. J. 640 :
138 I. C. 629 : 36 C. W. N. 380 :
I. R. 1932 Cal. 477 :
A. I. R. 1932 Cal. 488 (2).

————S. 342—*Applicability.*

S. 342 applies both to summons and warrant cases. *Sia Ram v. Emperor.* 36 Cr. L. J. 290 :
158 I. C. 129 : 1935 A. L. J. 257 :
57 All. 666 : 1935 A. W. R. 125 :
A. I. R. 1935 All. 217.

————S. 342—*Applicability—Security proceedings.*

S. 342, is not applicable to Chap. VIII, proceedings. It is merely confined to a person against whom there is a regular complaint, *i. e.*, an accusation that he has committed an offence and has no reference to a person respecting whom information is received of the kind set forth in S. 110 of the Code. *Ibrahim v. Emperor.*

34 Cr. L. J. 591 :
143 I. C. 351 : I. R. 1933 Sind 128 :
A. I. R. 1933 Sind 49.

————S. 342—*Applicability.*

S. 342 applies only to 'accused' not to persons convicted. *Muhammad Yusuf v. Emperor.*

32 Cr. L. J. 667 :
131 I. C. 142 : 35 C. W. N. 490 :
58 Cal. 1214 : A. I. R. 1931 Cal. 341.

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————S. 342—*Applicability—Security proceedings.*

The provisions of S. 342, cannot apply to an inquiry under S. 117 of the Code. *Benode Behari Nath v. Emperor.* 25 Cr. L. J. 1085 :
81 I. C. 909 : 50 Cal. 985 :
A. I. R. 1924 Cal. 392.

————S. 342—*Applicability—Sessions Judge—Trial—Examination of accused.*

The provisions of S. 342 Cr. P. C., apply to the case of an accused tried before a Sessions Judge, even when he has been questioned on the case generally by the Committing Magistrate. *Emperor v. Raju Ahilaji.*

6 Cr. L. J. 74 :
9 Bom. L. R. 730.

————S. 342—*Applicability—Summary cases.*

The provisions of S. 342 apply to summary cases as well and non-compliance with its provisions amounts to an illegality which vitiates the trial. *Karam Din v. Emperor.*

35 Cr. L. J. 1394 :
151 I. C. 748 : 15 Lah. 60 :
35 P. L. R. 295 : 7 R. L. 188 :
A. I. R. 1934 Lah. 96.

————S. 342—*Applicability—Summons case.*

S. 342, Cr. P. C., applies to summons cases. *Bechu Lal Kayastha v. The Injured Lady.*

28 Cr. L. J. 297 :
100 I. C. 377 : 45 C. L. J. 8 :
54 Cal. 286 : A. I. R. 1927 Cal. 250.

————S. 342—*Applicability — Summons cases—Examination of accused.*

S. 342, Cr. P. C., applies to all cases including summons cases, the proviso in S. 245 (1) of the Code only making it unnecessary to examine the accused when he is going to be acquitted. *Mg. Shwe Kyi v. Emperor.* 25 Cr. L. J. 684 :
81 I. C. 172 : A. I. R. 1923 Rang. 135.

————S. 342—*Applicability—Summons cases—Omission to comply with provisions—Trial, whether vitiated—Prejudice to accused.*

S. 342, Cr. P. C., is applicable to summons cases as well as to warrant cases, although it may be that in a summons case an examination of the accused may be dispensed with under the first clause of S. 245 of the Code, if the Magistrate after hearing the evidence finds that there is nothing to answer. An omission to comply with the provisions of S. 342, Cr. P. C., does not necessarily vitiate the trial. It depends on whether the accused has been prejudiced in the trial. *Khachomal v. Emperor.*

27 Cr. L. J. 405 :
93 I. C. 69 : A. I. R. 1926 All. 358.

————S. 342—*Applicability of—Summon cases—Procedure.*

The provisions of S. 342, Cr. P. C., are inapplicable to summons cases, but there is no objection to a Magistrate questioning the accused generally for the purpose of enabling him to explain the circumstances appearing in the evidence against him, and in complicated cases, especially where the accused is not represented by Counsel, it is a desirable course,

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Committing Magistrate that a tender of pardon had been made to him and that he had complied with the conditions of the tender, it is the duty of the Sessions Judge before trying the accused to record his plea and to find whether or not he had complied with the conditions of the pardon. Failure of the Court to comply with this provision of the law vitiates the trial of the accused. *Itwari v. Emperor*.

30 Cr. L. J. 559 :
116 I. C. 64 : 6 O. W. N. 372 :
I. R. 1929 Oudh 304 :
A. I. R. 1929 Oudh 256.

—S. 339-A—Prosecution of approver—Procedure.

Under the proviso to Sub-s. (1) of S. 339 the accused is entitled to plead, before he is tried for the offence in respect of which the pardon was tendered, that he has complied with the conditions of his pardon, in which case the onus lies on the prosecution to prove that such conditions have not been complied with. The trial for the offence in respect of which the pardon was granted, cannot begin until the requirements of S. 339-A were carried out *in limine*. Under S. 339-A, which was newly added, it is imperative on the Court of Sessions to ask the accused, before the charge is read out and explained to him under S. 271 (1), whether he pleads that he has complied with the conditions on which the tender of the pardon was made and to record his plea and proceed with the trial, and the assessors should before judgment is passed be called upon to express their opinion on the question whether or not the accused has complied with the conditions of his pardon. If the Court with the aid of the assessors finds that the accused has complied with the conditions of the pardon, it is incumbent on the Court to pass a judgment of acquittal. The failure to perform this duty vitiates the trial. *Horilal v. Emperor*. 40 Cr. L. J. 956 : 184 I. C. 351 : 12 R. N. 110 : 1939 N. L. J. 497.

—Ss. 339-A—Prosecution of approver—Certificate—Necessity of.

Although an order holding that a pardon had been forfeited and directing the prosecution of the person who has forfeited the pardon had been made at a time when the old Cr. P. C. was in force, yet if the committal and the trial were held after the new Code had come into operation, the want of the Public Prosecutor's certificate under S. 339 (1) would vitiate the trial. *Lal Shah v. Emperor*. 27 Cr. L. J. 940 : 96 I. C. 396 : 8 L. L. J. 305 : 27 P. L. R. 489.

—S. 339-A—Scope.

In order to comply with the provisions of S. 339-A, the accused must be asked whether he pleads that he had complied with the conditions on which the tender of pardon was made to him. The terms of the section should be clearly explained to him and it should be made clear to him that he can plead the pardon as a bar to his trial. The provisions of the section are not complied with by merely asking the accused whether he has fulfilled the conditions on which the pardon was granted

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to him and has given true evidence. *Ali v. Emperor*. 26 Cr. L. J. 237 : 84 I. C. 61 : 5 Lah. 379 : A. I. R. 1925 Lah. 15.

—S. 339 (2)—Scope.

S. 339 (2), Cr. P. C., makes a statement of an approver an exception to the rule of evidence in S. 24, Evidence Act, so far as that section excludes confession made as the result of inducement or promise, inasmuch as an approver is always induced to confess upon a promise of pardon. But should it appear that it was extorted as the result of undue pressure such as threats or violence, to that extent, the provisions of S. 24, Evidence Act, would be applicable. *Ram Nath v. Emperor*.

29 Cr. L. J. 413 :
108 I. C. 514 : 29 P. L. R. 165 : 9 Lah. 608 :
A. I. R. 1928 Lah. 320.

—S. 339 (2).

Statement by approver recorded immediately after tender of pardon is admissible under S. 339 (2). *Hori Lal v. Emperor*.

41 Cr. L. J. 433 :
187 I. C. 203 : 1940 N. L. J. 286 :
12 R. N. 283 : A. I. R. 1940 Nag. 218.

—S. 339—Trial of approver—Withdrawal of pardon—Necessity of.

As a preliminary to the trial of an approver under S. 339, Cr. P. C., it is unnecessary that there should be a formal withdrawal of the pardon. *Suraj Bhan v. Emperor*.

19 Cr. L. J. 926 :
47 I. C. 442 : 24 P. R. 1918 Cr. :
36 P. W. R. 1918 Cr. : A. I. R. 1919 Lah. 449.

—S. 339 (3)—Prosecution of approver—Contradictory statement by—Discretion of High Court, exercise of—Questions to be considered—Prosecution for perjury, sanctioning of—Public policy.

The mere fact that the two statements are contradictory cannot in every case be a warrant for directing the prosecution of the approver. The discretion vested in the High Court must be exercised with extreme caution, and the cardinal question for consideration by the Court is whether the confession and the incriminating statement made by the approver were or were not true. If the circumstances point to the conclusion that the confession and the incriminating statement were not true, the irresistible inference must be that those statements were put in the mouth of the approver by some one and in such a case it would be opposed to public policy to prosecute and punish the approver for perjury. *Emperor v. Prabhu*. 38 Cr. L. J. 1079 : 171 I. C. 368 : 39 P. L. R. 13 : 10 R. L. 192 : A. I. R. 1937 Lah. 551.

—S. 339 (3)—Sanction of High Court—Procedure.

If the sanction of the High Court is desired under S. 339 (3), there should be a motion on behalf of the Crown. *Emperor v. Madiga Nallavadu*. 9 Cr. L. J. 283 : 1 I. C. 207 : 5 M. L. J. 164 : 32 Mad. 47.

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S. 537, Cr. P. C. *Raban Lahi Shaikh v. Emperor*.

39 Cr. L. J. 618 :

175 I. C. 324 : 10 R. S. 296 :

32 S. L. R. 709 :

A. I. R. 1938 Sind 97.

—————**S. 342—Construction— Examination of accused exempted from personal attendance.**

S. 342 must be read subject to the provisions S. 205. Where a Magistrate in exercise of his power under S. 205 dispenses with the personal attendance of the accused and permits him to appear by his Pleader, the Magistrate is not bound to question the accused personally. *Jaffar Cassum Moosa v. Emperor*.

35 Cr. L. J. 1035 :

149 I. C. 1132 : 36 Bom. L. R. 433 :

6 R. B. 414 : A. I. R. 1934 Bom. 212.

—————**S. 342—Counsel's right to advise accused not to answer questions.**

A Counsel may legally advise his client at his trial for an offence not to answer questions put to him by Court. *Mr. A. v. Emperor*.

3 Cr. L. J. 134 :

6 P. L. R. 671.

—————**S. 342—Cross-examination of accused.**

A Judge is not, in his examination of the accused, entitled to put embarrassing questions calculated to draw admissions from accused. Examination of the accused person under S. 342, Cr. P. C., is only to enable the accused to explain any circumstances appearing in the evidence against him and not to supplement the case of the prosecution against him, and not to show that he is guilty, nor to drive him to make self-incriminatory statements. *Topandas v. Emperor*.

25 Cr. L. J. 761 :

81 I. C. 249 : A. I. R. 1925 Sind 116.

—————**S. 342—Cross-examination of accused by Court—Duty of Court.**

When an accused person in answer to a general question or even one or two questions, gives replies which show that he is well aware of all the circumstances appearing in evidence against him and their implications, and attempts to explain them, the Judge may be going beyond his province if he questions him further in detail. He may be open to the criticism of cross-examining the accused, and attempting to elicit contradictory answers. This is more particularly the case when the accused is represented by his own Counsel. But it is the duty of the Court to be satisfied either by his statements or by his answers to questions or by both that the accused explains or has an opportunity to explain circumstances from which hostile inferences may be drawn against him. *In re : Annamalai Mudali*.

41 Cr. L. J. 858 :

190 I. C. 206 : 51 L. W. 206 :

1940 M. W. N. 93 :

1940 2 M. L. J. 39 : I. L. R. 1940 Mad. 514 :

13 R. N. 395 : A. I. R. 1940 Mad. 372.

—————**Ss. 342, 364—Cross-examination of accused, whether permissible.**

A Court has no power to cross-examine an

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accused in order to test the truth of his story. *Nga Chit Ye v. Emperor*.

18 Cr. L. J. 941 :

42 I. C. 173 : A. I. R. 1917 L. Bur. 58.

—————**S. 342—Duty of Court after examination of prosecution witnesses.**

The term "shall" in S. 342, Cr. P. C., makes the duty imposed on the Court to question the accused generally on the case, after the witnesses for the prosecution have been examined and before he is called for the defence, mandatory, and not discretionary, and having regard to the object of the examination specified in the section, namely, that it is intended to enable the accused to explain any circumstances in the evidence against him, the omission by a Court to perform this duty must be presumed to seriously prejudice the accused. *Ghulla v. Emperor*.

19 Cr. L. J. 280 :

44 I. C. 184 : 1 P. R. 1918 Cr.

—————**S. 342—Duty of Court—Examination of accused—Procedure.**

Under S. 342, Cr. P. C., it is incumbent on the Court to ask the accused generally whether he wishes to offer an explanation of any portion of the evidence which has been given against him, and if the Court does so that is a sufficient compliance with the provisions of the section. The section also gives the Court power to put specific questions to the accused with regard to any portion of the evidence adduced for the prosecution, but it is left to the discretion of the Court whether it should, after having put the general question, ask specific questions on particular points in the evidence. *Emperor v. Narayan Sayanna*.

25 Cr. L. J. 1127 :

81 I. C. 951 : 26 Bom. L. R. 109 :

A. I. R. 1924 Bom. 334.

—————**S. 342—Duty of Court.**

It is not obligatory on a trying Magistrate to re-examine an accused under S. 342, after recording the deposition of a witness called under S. 540. *Ibrahim v. Emperor*.

34 Cr. L. J. 591 :

143 I. C. 351 : I. R. 1933 Sind 128 :

A. I. R. 1933 Sind 49.

—————**S. 342—Duty of Court.**

The duty of the Court, in applying S. 342, Cr. P. C. to the cases of an accused person incompetent to initiate his defence, explained. *Emperor v. Katay Kishan*.

1 Cr. L. J. 854 :

17 C. P. L. R. 113.

—————**S. 342—Duty of Court.**

To take the depositions in one case and have them copied and used in another case, is, generally speaking, not a course which should be adopted in trials of criminal cases. A Magistrate who undertakes the trial of a criminal case, and who also hears the witnesses give their evidence should, if possible, finish the case himself. *Mazahar Ali v. Emperor*.

24 Cr. L. J. 198 :

71 I. C. 662 : 36 C. L. J. 417 : 27 C. W. N. 99 :

50 Cal. 223 : A. I. R. 1923 Cal. 196.

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—S. 340—*Vakalatnama—Criminal cases—Appearance by Advocate or Vakil on behalf of accused—Written authority, necessity of filing.*

There is no provision either in the Cr. P. C. or in the rules of the Patna High Court requiring an Advocate or Vakil of that Court to file a duly stamped appointment in writing in order to enable him to present an application or appeal or conduct a criminal case on behalf of the accused. *Subda Santal v. Emperor.*

27 Cr. L. J. 666 :
94 I. C. 714 : 1926 Pat. 125 :
7 P. L. T. 524 : A. I. R. 1926 Pat. 296.

—S. 340—*Vakalatnama—Practice—Procedure—Memorandum of appearance.*

If a pleader, representing a party in any Criminal proceeding, does not file in Court a *vakalatnama* from his client he shall be required to file a memorandum of appearance containing a declaration that he has been duly instructed to appear for the party whom he represents. Even that is not necessary where the party is present in person along with his *vakil*. *In re : Munirama Reddi.*

9 Cr. L. J. 305 :
1 I. C. 546.

—S. 341—*Applicability—Accused deaf and dumb but capable of understanding proceedings, effect of.*

Where the accused understands the proceedings, the mere fact that he is deaf and dumb does not attract the application of S. 341, Cr. P. C. *Emperor v. Gunga.*

28 Cr. L. J. 656 (b) :
103 I. C. 112.

—S. 341—*Applicability of—One out of two accused though not insane unable to understand proceedings—Reference to High Court—Power of High Court to pass order regarding accused able to understand.*

S. 341 applies only to the case of an accused who is deaf and dumb. The proceedings to be forwarded to the High Court under S. 341 are only those relating to an accused person who cannot be made to understand the proceedings though not insane. That section cannot be construed to mean that in a case where there are two accused and one of them though not insane is not able to understand the proceedings, the Magistrate should refer the proceedings of both to the High Court, and the High Court under the provisions of S. 341, would have no jurisdiction to pass any order with regard to the accused who is able to understand the proceedings. *Emperor v. Trimbak Damodar Hirlekar.*

39 Cr. L. J. 866 :
177 I. C. 414 : 40 Bom. L. R. 495 :
11 R. B. 81 (2) : A. I. R. 1938 Bom. 352.

—S. 341—*Deaf and dumb accused—Conviction of accused and submitting of record to High Court—Magistrate's duty to give finding as to conduct of accused.*

Where an accused is deaf and dumb, before a Magistrate can convict him and submit his case to the High Court under S. 341, it is necessary for the Magistrate to give a finding whether the accused was capable of realising the criminal character of the act done by him and

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whether he could understand the purpose or nature of the judicial proceedings that were taken against him. *Emperor v. Gunga.*

30 Cr. L. J. 948 :
118 I. C. 642 : I. R. 1929 Lah. 802 :
— 30 P. L. R. 597 : A. I. R. 1930 Lah. 64.

—S. 341—*Deaf and dumb accused.*

Offence under S. 454, Penal Code—Accused deaf and dumb—Previous convictions : *Held*, case proper for orders of local Government. *Emperor v. Ram Manohar.* 36 Cr. L. J. 880 :
156 I. C. 85 (1) : 1935 O. W. N. 826 :
7 R. O. 653 : A. I. R. 1935 Oudh 414.

—S. 341—*Deaf and dumb accused—Trial of—Procedure—Conviction.*

The law in England as well as in India with regard to the trial of a deaf and dumb person is that though great caution and diligence are necessary in the trial of such a person, yet if it be shown that such person had sufficient intelligence to understand the character of his criminal act, he is liable to punishment. *Emperor v. A Deaf and Dumb Accused.*

18 Cr. L. J. 143 :
37 I. C. 495 : 18 Bom. L. R. 553 :
40 Bom. 598 : A. I. R. 1917 Bom. 288.

—Ss. 341, 471—*Deaf and dumb accused—Practice.*

Where a person charged with murder is, by reason of being deaf and dumb, unable to understand the proceedings of the trial, he should be treated as a lunatic and the case reported for the Local Government under S. 471, Cr. P. C. *Emperor v. Dost Muhammed.*

12 Cr. L. J. 613 :
12 I. C. 989 : 13 P. R. 1911 Cr. :
39 P. W. R. 1911 Cr.

—Ss. 341, 562—*Deaf and dumb accused—Statement by signs—Attempt to commit suicide—Procedure—Sentence.*

A deaf and dumb person was convicted of an attempt to commit suicide. He had attempted suicide apparently because his brother refused to partition the joint lands. He made certain signs to signify what took place but it did not appear how the questions put to him at the trial were communicated to him : *Held*, (1) that the justice of the case would be met by affirming the conviction and directing that he be sentenced to one day's simple imprisonment; (2) that it was not advisable to proceed under S. 562, Penal Code, as it did not appear that the accused would be capable of entering into a bond. *Emperor v. Khushaba Tatyal.*

25 Cr. L. J. 660 :
81 I. C. 148 : 25 Bom. L. R. 43 :
A. I. R. 1923 Bom. 194.

—S. 341—*Deaf-mute accused—Proceedings how to be conducted—Power of High Court—Criminal responsibility of deaf-mutes—Penal Code (Act XLV of 1860), Ss. 82, 83, 84.*

When a person who is a deaf-mute from birth is charged with an offence, the Magistrate should try the case and get into communication with the accused with the

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evidence does not invalidate the proceedings, where no failure of justice has been caused by such omission. *Seemiah Naidu v. Abdul Wahab Sahib*. 31 Cr. L. J. 602 :

123 I. C. 809 : 58 M. L. J. 414 :
31 L. W. 524 : 1930 M. W. N. 534 :
53 Mad. 688 : A. I. R. 1930 Mad. 483.

————S. 250—*Appeal—Compensation collectively exceeding Rs. 50.*

The right of appeal from an order under this section, is not limited to cases where compensation awarded to each accused person exceeds Rs. 50 : it is enough if the aggregate amount of compensation awarded to several accused persons exceeds the said sum. *Assanmal Chatumal v. Dilbar*. 26 Cr. L. J. 1295 :
89 I. C. 159 : A. I. R. 1926 Sind 19.

————S. 250 (3)—*Appeal—Compensation exceeding Rs. 50, meaning of—Compensation, aggregate of, exceeding Rs. 50—Appeal.*

An order directing payment of compensation by a Magistrate of the First Class is appealable to the Sessions Court where the aggregate amount directed to be paid to the several accused exceeds Rs. 50 though the amounts so allowed do not individually exceed that sum. *Sarab Dial v. Bir Singh*. 29 Cr. L. J. 430 :
108 I. C. 617 : 9 Lah. 462 :
29 P. L. R. 550 : A. I. R. 1928 Lah. 638.

————S. 250—*Appeal—Compensation exceeding Rs. 50 distributed amongst several accused—Appeal, competency of.*

A complainant who has been ordered to give compensation under S. 250, has the right of appeal whenever the compensation exceeds Rs. 50 in the aggregate, whether this amount is payable to one accused or distributed amongst several accused, and in such a case, there being a right of appeal, no revision lies. *Shafi Muhammad v. Kamruddin*.

30 Cr. L. J. 905 :
118 I. C. 215 : I. R. 1929 Sind 183 :
A. I. R. 1929 Sind 176.

————S. 250—*Appeal—Refusal of single Judge to interfere with order—Letters Patent—Appeal, whether lies—Letters Patent (Mad), S. 15.*

An order for compensation passed under S. 250 is one passed in a criminal trial, and no appeal lies under S. 15, Letters Patent, to a Division Bench against an order of a single Judge of the High Court refusing to interfere with such order. *In re : Kandasami Pillai*.

19 Cr. L. J. 208 :
43 I. C. 624 : A. I. R. 1918 Mad. 418.

————S. 250—*Appeal—Order directing compensation—Appeal—Notice to accused.*

In cases of appeal under S. 250, against an order directing the payment of compensation by complainant, it is desirable that notice of an appeal by complainant should be given to the accused. But as S. 422 does not make such notice necessary, the High Court will not interfere in revision on the ground of want of notice, unless there is some illegality in the

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order of the Lower Court. *Ambakkagari Nogi Raddi v. Basappa*. 9 Cr. L. J. 150 :

1 I. C. 79 : 5 M. L. T. 262 :
19 M. L. J. 130 : 33 Mad. 89.

————S. 250 (3)—*Appeal—Order of compensation—Appeal, when competent.*

S. 250 (3), means that whenever a complainant or informant has been ordered under Sub-s. (2) to pay compensation exceeding fifty rupees, the right of appeal is given, whether compensation has been awarded only to one accused or has to be distributed amongst a number of accused in sums not exceeding Rs. 50. *Augustin Manwal v. Duming Pascos Demello*.

26 Cr. L. J. 480 :
85 I. C. 160 : 26 Bom. L. R. 1243 :
49 Bom. 440 : A. I. R. 1925 Bom. 129.

————S. 250—*Appeal—Notice.*

There is no provision of law that requires notice to issue to the person to whom compensation has been awarded under S. 250 and there is no practice in the Lahore High Court to issue such notice although very often notice in such cases is desirable. *Lachhman v. Babu*.

34 Cr. L. J. 533 (1) :
143 I. C. 86 : 34 P. L. R. 442 :
I. R. 1933 Lah. 310 (1) :
A. I. R. 1933 Lah. 545 (2).

————S. 250—*Appeal—Notice to accused.*

In an appeal from an order awarding compensation under S. 250, notice to the accused to whom the compensation was ordered to be paid is not necessary.

33 Cr. L. J. 392 :
137 I. C. 129 : 34 Bom. L. R. 289 :
I. R. 1931 Bom. 221 :
A. I. R. 1932 Bom. 177.

————S. 250—*Appeal—Notice to accused and District Magistrate.*

In an appeal against an order under S. 250 awarding compensation to an accused person, it is not necessary that the notice of the hearing of the appeal should be given to the accused; but notice of such appeal should be given to the Magistrate of the District, except in those cases where the hearing of the appeal comes before that officer himself, when no notice is necessary. *Krishna Kone v. Narayan Dass*.

22 Cr. L. J. 583 :
62 I. C. 823 : 13 L. W. 689 :
1921 M. W. N. 387 :
41 M. L. J. 172 :
A. I. R. 1921 Mad. 281.

————S. 250 (3)—*Appeal—Notice to accused—Necessity of.*

On the principle *audi alteram partem*, the accused should have notice of the appeal in order that they should have an opportunity of supporting the order of compensation made in their favour. *Ram Chand v. Jesa Ram*.

25 Cr. L. J. 209 :
76 I. C. 641 : A. I. R. 1924 Lah. 675.

————S. 250—*Appeal—Notice to accused whether necessary.*

Though not legally necessary, it is desirable in general that an accused person should

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In the case of the Magisterial discharge, the sub-section would be satisfied if the approver were detained in custody or on bail until the order of discharge was made, and the provisions of the sub-section would be inapplicable to any proceedings held thereafter. *Emperor v. Intya Salabatkhan*. 13 Cr. L. J. 842 :

17 I. C. 714 : 14 Bom. L. R. 897.

———S. 342.

- Accused, meaning of.
- Admission by accused.
- Affidavit.
- Applicability.
- Charge.
- Co-accused.
- Concession.
- Contruction.
- Counsel's right to advise accused not to answer questions.
- Cross-examination of accused.
- Duty of Court.
- Duty of Magistrate.
- Duty of trial Court.
- Evidence.
- Examination of accused.
- 'Examined', meaning of.
- Exemption under.
- Further examination of accused.
- Joint examination.
- Joint statement.
- Maintenance.
- Miscellaneous.
- Non-compliance.
- Non-curable illegality.
- Object.
- Power of Court.
- Power of High Court.
- Power of Magistrate.
- Presidency Magistrate.
- Previous conviction, proof of.
- Procedure.
- Protection of accused, nature of.
- Revision.
- Scope.
- Security for peace.
- Sessions case.
- Statement.
- Summary trial.
- Summons case.
- Transfer of Magistrate.
- Warrant cases.
- Witnesses for prosecution.
- Written statement.
- S. 342.

See also (i) Admission.

(ii) Bombay Prevention of Gambling Act, 1887, S. 4.

(iii) Calcutta Municipal Act, 1923, Ss. 3, 363.

(iv) Cr. P. C., 1898, Ss. 4 (1) (i), 164, 165, 205, 242, 256, 257, 287, 342, 415-A, 423, 428, 439, 449 (1) (c), 488, 537, 540.

(v) Criminal trial.

(vi) Evidence Act, 1872, S. 30.

(vii) Penal Code, 1860, S. 499.

———S. 342—'Accused', meaning of.

"Accused" in S. 342, Cr. P. C., means the

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accused then under trial and under examination by the Court and cannot include an accused over whom the Court is exercising jurisdiction in another trial. *Emperor v. Karamalli Gulamalli*. 40 Cr. L. J. 118 :

178 I. C. 706 : 40 Bom. L. R. 1092 :

11 R. B. 184 : I. L. R. 1939 Bom. 42 :

A. I. R. 1938 Bom. 481.

———S. 342—'Accused', meaning of.

'Accused' means person under trial—Person not sent up for trial—Mere inclusion of his name in charge-sheet does not make him accused. *In the matter of : Contempt of High Court*. 36 Cr. L. J. 837 :

156 I. C. 392 : 59 Bom. 355 :

37 Bom. L. R. 179 : 7 R. B. 511 :

A. I. R. 1935 Bom. 186.

———S. 342 (2), (4)—Competency as witnesses or against co-accused.

An accused person when not being jointly tried with a co-accused is a competent witness for or against him. The "accused" in S. 342 (4), Cr. P. C. means the accused then under trial and under examination by the Court. *Joseph v. Emperor*. 26 Cr. L. J. 492 :

85 I. C. 236 : 3 Bur. L. J. 265 :

3 Rang. 11 : A. I. R. 1925 Rang. 122.

———S. 342—Admission by accused—Gaps in prosecution evidence not to be filled by answers given by accused.

Admission made by an accused in answer to questions put by the Court, under S. 342, Cr. P. C., cannot be utilized by the prosecution to fill up gaps in its own evidence. *Jeremiah v. Vas*. 12 Cr. L. J. 585 :

12 I. C. 961 : 10 M. L. T. 506 :

1911 2 M. W. N. 576 : 22 M. L. J. 73.

———Ss. 342, 526—Affidavit—False statement in—Penal Code (Act XLV of 1860), S. 193—Transfer of case, application for, by accused—Prosecution for perjury, whether permissible.

An application for transfer of a case made by an accused person is not a part of his defence and statements made by him in an affidavit in support of such an application do not enjoy the immunity conferred by S. 342, Cr. P. C., upon answers to questions put to the accused by the Court trying the case. Where, therefore, a false statement is made in such an affidavit, the accused person is liable to be prosecuted in respect of such statement for an offence under S. 193, Penal Code. *Allah Wasai v. Emperor*. 26 Cr. L. J. 1369 :

89 I. C. 457 : 1 L. C. 522 :

A. I. R. 1926 Lah. 12.

———Ss. 342 (4), 526—Affidavit of accused—Application by accused for transfer—Affidavit of accused, whether competent.

When an accused person makes an application for the transfer of a case against him, he is not precluded by S. 342, Cr. P. C., from making an affidavit in support of such application, nor would there be any bar to his being prosecuted under S. 195, Penal Code, for making a false statement in such an affidavit. The provisions of S. 342 (4) that no oath shall

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———S. 342—*Examination of accused before evidence for prosecution completed, effect of.*

The examination of an accused person before all the witnesses for the prosecution have been examined is illegal, as it contravenes the provisions of S. 342, Cr. P. C. and the illegality is sufficient to vitiate the trial. *Rameshwar Singh v. Emperor.*

22 Cr. L. J. 259 :
60 I. C. 659 : 2 P. L. T. 741 :
A. I. R. 1922 Pat. 299.

———S. 342—*Examination of accused before recording prosecution evidence, legality of.*

An accused cannot be examined under S. 342, Cr. P. C. before any evidence for the prosecution has been recorded, inasmuch as there is no evidence against him and there is no circumstance which he can be called upon to explain. *Bahwala v. Emperor.*

26 Cr. L. J. 1238 :
88 I. C. 854 : 6 Lah. 183 :
A. I. R. 1925 Lah. 432.

———S. 342—*Examination of accused before the completion of prosecution evidence.*

It is against the provisions of S. 342, Cr. P. C., to subject an accused person to a lengthy examination before all the prosecution evidence is over, particularly to cross-examine him regarding the line of defence which he is to adopt. *Ahmad Yar Khan v. Emperor.*

11 Cr. L. J. 171 :
5 I. C. 602 : 1 P. W. R. 1910 Cr.

———S. 342—*Examination of accused.*

Crown witness examined after the defence evidence is over—Accused not examined again—Accused not prejudiced by such failure—Conviction is not vitiated—Irregularity can be cured by S. 537. *Hidayatullah v. Emperor.*

35 Cr. L. J. 1175 (2) :
150 I. C. 906 : 28 S. L. R. 106 :
7 R. S. 38 : A. I. R. 1934 Sind 67.

———S. 342—*Examination of accused—Duty of Court.*

Examination of accused—Duty of Court to ask for explanation of material points appearing against accused, pointed out. *Dwarkanath Varma v. Emperor.*

34 Cr. L. J. 322 :
142 I. C. 325 : 37 L. W. 584 :
64 M. L. J. 466 : 1933 M. W. N. 409 :
10 O. W. N. 522 : 37 C. W. N. 514 :
57 C. L. J. 177 : 14 P. L. T. 305 :
1933 A. L. J. 645 : 35 Bom. L. R. 507 :
I. R. 1933 P. C. 65 (P. C.) : A. I. R. 1933 P. C. 124.

———S. 342—*Examination of accused—Duty of Court.*

S. 342, Cr. P. C., makes it incumbent upon the Magistrate to examine the accused and to give him an opportunity of explaining away whatever may have been decided against him in the evidence for the prosecution. *Emperor v. Harischandra.*

7 Cr. L. J. 194 :
10 Bom. L. R. 201.

———S. 342—*Examination of accused—Duty of Court.*

Where an accused is undefended, the Tribunal may point out to him the elements of the

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evidence adduced against him which seems in his own interest to demand his explanation, but where an accused is defended by a legal practitioner, a Tribunal ought not to enter upon a lengthy examination of an accused person. *Panchu Choudhry v. Emperor.*

23 Cr. L. J. 233 :
66 I. C. 73 : 3 P. L. T. 649 :
A. I. R. 1923 Pat. 91.

———S. 342—*Examination of accused—Examination after further cross-examination of prosecution witnesses, whether necessary—Irregularity—Prejudice.*

Where in a warrant case the accused is examined after the examination, cross-examination and re-examination of the prosecution witnesses, a further examination of the accused is not necessary after the charge and after the prosecution witnesses have been re-called for further cross-examination. Assuming that such further examination is necessary, the omission to make this further examination is a mere irregularity which does not, in the absence of prejudice to the accused, affect the legality of the trial. *Emperor v. Brij Bchari.*

26 Cr. L. J. 1301 :
89 I. C. 245 : 12 O. L. J. 182 :
2 O. W. N. 327 : 28 O. C. 130 :
A. I. R. 1925 Oudh 422.

———S. 342—*Examination of accused—Effect of omission—Recall of prosecution witnesses after charge—Legality of trial—Proceedings prior to stage of examination, whether valid—De novo trial, scope of—S. 342, whether mandatory.*

The words "have been examined" in S. 342, Cr. P. C. mean examined-in-chief, cross-examined and re-examined, and include also any cross-examination of the prosecution witnesses after the charge if the accused has re-called them for such examination under S. 256 of the Code. After this stage is reached, the law makes it obligatory for the Magistrate to question the accused generally on the case, for the purpose of enabling him to explain any circumstances appearing in the evidence against him, i. e., to examine him in the prescribed manner before he is called on his defence. The imperative provisions of law as regards the examination of the accused by the Court must be complied with, irrespective of the question as to whether the non-compliance has or has not prejudiced the accused on the merits. Non-compliance with this provision vitiates the proceedings made subsequent to, but not before, the stage, when the accused was entitled to have been questioned generally on the case, under the latter part of S. 342 (1) of the Code. *Mohammad Hayat Khan v. Emperor.*

29 Cr. L. J. 475 :
109 I. C. 123 : A. I. R. 1928 Nag. 162.

———S. 342—*Examination of accused—Examination before close of prosecution evidence, legality of—Commission to examine after close of evidence, effect of.*

Though it is not desirable that an accused should be examined at great length under S. 342, Cr. P. C., before the prosecution evidence has been closed, examination of the accused at that stage is not illegal and is not

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notwithstanding that it is not obligatory. *Ponnusami Odayar v. Ramansami Thathan.*

24 Cr. L. J. 833 :
74 I. C. 945 : 45 M. L. J. 224 :
1923 M. W. N. 519 : 18 L. W. 478 :
46 Mad. 753 : A. I. R. 1924 Mad. 15.

————S. 342—*Applicability.*

The provisions of S. 342, Cr. P. C., do not apply to a case where evidence is taken on remand made by an Appellate Court. *Mohiuddin v. Emperor.*

26 Cr. L. J. 811 :
86 I. C. 459 : 6 P. L. T. 154 :
1925 Pat. 112 : 3 Pat. L. R. 110 Cr. :
4 Pat. 488 : A. I. R. 1925 Pat. 414.

————S. 342—*Applicability to summary trials*

S. 342, Cr. P. C., is obligatory and applies to summary trials also. *Moyzuddin Mean v. Emperor.*

31 Cr. L. J. 613 :
124 I. C. 70 : 33 C. W. N. 947.

————S. 342—*Applicability, to Summons-cases—Failure to examine accused, effect of.*

The provisions of S. 342, Cr. P. C., are applicable to Summons-cases. These provisions are mandatory, and the omission to examine an accused person after the witnesses for the prosecution have been examined and before the accused is called on for his defence, vitiates the trial. *Gulam Rasul v. Emperor.*

22 Cr. L. J. 427 :
61 I. C. 715 : 6 P. L. J. 174 :
A. I. R. 1921 Pat. 11.

————S. 342—*Applicability—Transfer application.*

S. 342 (2) does not apply to application to High Court for transfer. *Sadasheo Suryabhanji Kunbi v. Emperor.*

34 Cr. L. J. 1035 :
145 I. C. 445 : 29 N. L. R. 338 :
6 R. N. 50 : A. I. R. 1933 Nag. 201.

————S. 342—*Applicability—Trials by Presidency Magistrate—Examination of accused, necessity of.*

A Presidency Magistrate trying an accused person for an offence punishable under S. 352, Penal Code, is bound, before convicting, to examine the accused person in the manner prescribed by S. 342 and an omission to do so, is an illegality which vitiates the proceedings. *Fernandez v. Emperor.*

22 Cr. L. J. 17 :
59 I. C. 129 : 22 Bom. L. R. 1040 :
45 Bom. 572.

————S. 342—*Applicability—Witness called by Court—Accused, if should be examined after such witness.*

S. 342, Cr. P. C., only applies to the prosecution case and not to witnesses called by the Court. No prejudice is caused by the omission to examine the accused again after the examination of a witness called by the Court. *Gurbakhsh Singh v. Emperor.*

39 Cr. L. J. 856 :
177 I. C. 298 : 11 R. L. 289 :
40 P. L. R. 916 : A. I. R. 1938 Lah. 631.

————Ss. 342, 488—*Applicability—Maintenance proceedings—Examination of accused, necessity of.*

S. 342, Cr. P. C., does not apply to proceed-

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ing under S. 488 of the Code. *In re : Vithaldas Bhurabhai.*

29 Cr. L. J. 1051 :
112 I. C. 475 : 30 Bom. L. R. 957 :
52 Bom. 768 : A. I. R. 1928 Bom. 347.

————Ss. 342, 488—*Applicability—Maintenance proceedings—Failure to examine accused at conclusion of complainant's evidence.*

S. 342, Cr. P. C., is applicable to maintenance proceedings under S. 488 of the same Code and non-compliance with its provisions vitiates those proceedings. *Mr. Demello v. Mrs. Demello.*

27 Cr. L. J. 1000 :
96 I. C. 856 : A. I. R. 1928 Lah. 667.

————S. 342 (1), Chap. XXII—*Applicability of—Summons-case tried summarily.*

The provision contained in S. 342, Cr. P. C., is inapplicable to summons-cases whether tried summarily or in the ordinary manner. *Dharma Singh v. Emperor.*

24 Cr. L. J. 847 :
74 I. C. 959 : 45 M. L. J. 230 :
18 L. W. 612 : 46 Mad. 766 :
1923 M. W. N. 893 :
A. I. R. 1924 Mad. 30.

————S. 342—*Charge, alteration and addition of—Fresh examination of accused, necessity of.*

The accused were examined at the proper stage as required by S. 342, Cr. P. C. and were then called upon to enter into their defence. On the date fixed for entering into defence, the prosecution amended the charge and also added a fresh charge whereupon the accused re-called and cross-examined afresh the prosecution witnesses. There was no further examination of the accused. It was contended in the High Court that there should have been a fresh examination of the accused after the prosecution witnesses were cross-examined after the addition and alteration of the new charges: *Held*, that on the addition and alteration of a charge the trial did not commence *de novo* and that if the Court was of opinion, that there would be no prejudice to the accused it was not necessary to examine the accused afresh under S. 342. *Shamlal Kalwar v. Emperor.*

23 Cr. L. J. 146 :
65 I. C. 610 : 3 P. L. T. 94 :
1 Pat. 54 : A. I. R. 1922 Pat. 393.

————S. 342—*Co-accused.*

It is illegal to examine as a witness for the prosecution a person who has also been charged but who has not been offered pardon or discharged under S. 169. *Sohan Lal v. Emperor.*

34 Cr. L. J. 568 :
143 I. C. 467 : 10 C. W. N. 678 :
I. R. 1933 Oudh 174 :
A. I. R. 1933 Oudh 305.

————Ss. 342, 537—*Confession—Confession forming integral part of prosecution case—Failure of Judge to question accused about confession—Serious omission.*

Where the confession has been made an integral and substantial part of the prosecution case, the failure of the Judge to question the accused about it, is clearly a serious omission not covered by the provisions of

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to explain is the most incriminating circumstance against him. The result of the examination may benefit the accused if a satisfactory explanation is offered by him; it may, however, be injurious to him if no explanation, or a false or unsatisfactory explanation, is given. The Court should, therefore, not only have the power to point out to the accused the circumstances appearing in the evidence which require explanation but it must exercise that power in such a way that the accused may know what points in the opinion of the Court require explanation, failure or refusal to give which will entitle the Court to draw an inference against the accused. In examining an accused person under S. 342, Cr. P. C., the Court should always frame questions dealing with such salient points in a case as in its opinion call for explanation. Every precaution should, however, be taken not to entrap the accused to make incriminating answers, and all questions in the nature of cross-examination should be avoided. *Emperor v. Alimuddin Naskar*.

26 Cr. L. J. 631 :
85 I. C. 919 : 29 C. W. N. 231 :
41 C. L. J. 101 : 52 Cal. 522 :
A. I. R. 1925 Cal. 361.

—S. 342—Examination of accused, mode of.

It is not necessary nor is it desirable to examine the accused in great detail or to force him to disclose his defence so as to enable the prosecution to take advantage of it when the witnesses for the accused are examined. Where the act with which the accused is charged is of a simple nature and the accused is examined before the charge is framed, and, after the charge has been framed and prosecution witnesses have been further cross-examined, he is asked whether he has any further statement to make and he replies in the negative, it cannot be said that the requirements of S. 342 have not been complied with. *Mohammad Nasiruddin v. Emperor*.

26 Cr. L. J. 954 :
87 I. C. 106 : 4 Pat. 459 : 6 P. L. T. 588 :
A. I. R. 1925 Pat. 713.

—S. 342—Examination of accused, mode of.

It is not necessary, under S. 342, Cr. P. C., that the purport of evidence of each prosecution witness should be explained to the accused, if he is himself present at the trial and has heard what the witnesses have said. What is necessary is, that he should be given an opportunity before entering upon his defence to state generally what are the real facts in reference to the complaint. If he is defended or if he files a written statement, judicial questioning will generally add but little to the Court's knowledge, nor will a violation of any rule as to the stage at which he is to be examined make such difference. If he has not been prejudiced the error ought not to vitiate the trial. *Mohiuddin v. Emperor*.

26 Cr. L. J. 811 :
86 I. C. 459 : 6 P. L. T. 154 :
1925 Pat. 112 : 3 Pat. L. R. 110 Cr. :
4 Pat. 488 : A. I. R. 1925 Pat. 414.

Cr. P. CODE (1898), S. 342**—S. 342—Examination of accused, mode of—Sessions case.**

The proper method of applying S. 342, Cr. P. C., is to bring to the attention of the accused specific matters which appear in the evidence against him. Merely questioning him generally as to whether he has anything to say or anything to add to what he said before the Committing Magistrate is not a satisfactory method of applying the section. *Shamlal Singh v. Emperor*.

26 Cr. L. J. 572 :
85 I. C. 716 : A. I. R. 1925 Cal. 980.

—S. 342—Examination of accused, mode of—Substantial compliance with section, whether sufficient.

In a case under S. 426, Penal Code, after the examination of the prosecution witnesses, each of the accused was asked whether he had been guilty of the act described by the prosecution witnesses, and the answer of each accused was a statement of his defence case. When the accused were about to be called on for their defence after the charge had been framed, they were asked whether they had any statement to make and they replied in the negative : Held, that the purpose of S. 342, Cr. P. C., to enable the accused to explain any circumstances appearing in the evidence against them had been fulfilled and the provisions of the section had been substantially complied with. *Banamali Kumar v. Emperor*.

26 Cr. L. J. 682 :
86 I. C. 58 : 6 P. L. T. 39 :
3 Pat. L. R. 25 Cr. : A. I. R. 1925 Pat. 389.

—S. 342—Examination of accused, mode of.

The presence of the accused is desirable to enable the Court to come to a correct conclusion as to the truth of his statement under S. 342. *Ishwar Das v. Bhagwan Das*.

35 Cr. L. J. 879 :
148 I. C. 1135 : 1934 A. L. J. 753 :
3 A. W. R. 443 :
6 R. A. 831 : A. I. R. 1934 All. 693 (2).

—S. 342—Examination of accused—Mode of recording.

Statement of accused during trial interpreted as plea of guilty—Duty of Court to record exact words used by accused, pointed out. *Sailabala Dasi v. Emperor*.

36 Cr. L. J. 1460 :
158 I. C. 761 : 39 C. W. N. 990 :
62 C. L. J. 260 : 62 Cal. 1127 :
8 R. C. 216 : A. I. R. 1935 Cal. 489.

—S. 342—Examination of accused, nature of.

A Criminal Court abuses the power of examining the accused under S. 342, if it submits him to a very embarrassing and cruel series of questions intended rather to puzzle him than to elucidate the case, or to enable him to explain the circumstances appearing in the evidence against him. *Emperor v. Anant Narayan*.

1 Cr. L. J. 105 :
6 Bom. L. R. 94.

—S. 342—Examination of accused, nature of.

Magistrate cannot question accused under

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—S. 342—*Duty of Court—Trial Judge not putting to accused matters from which, in the absence of explanation by him, adverse inference can be drawn against him—Trial, if vitiated.*

It is not necessary or practically possible for a trial Judge to put to an accused every piece of evidence or point which has been given or made against him, but he should put matters from which, in the absence of an explanation by him, adverse inferences can be drawn against the accused. Where the Judge has not done this, the Court of Appeal will set aside the conviction and order a re-trial. *Sangama Naicker v. Emperor.*

38 Cr. L. J. 45 :
165 I. C. 743 : 1936 M. W. N. 613 :
44 L. W. 52 : 59 Mad. 622 : 71 M. L. J. 138 :
9 R. M. 295 : A. I. R. 1936 Mad. 715.

—S. 342—*Duty of Court.*

Under S. 342, it is the duty of the Court to call the accused's attention to points which appear against him and ask for an explanation. *Sohan Lal v. Emperor.*

34 Cr. L. J. 568 :
143 I. C. 467 : 10 C. W. N. 678 :
I. R. 1933 Oudh 174 : A. I. R. 1933 Oudh 305.

—S. 342 (1)—*Duty of Court to question accused—Omission to do so, effect of—Procedure.*

The provisions of S. 342, Cr. P. C. are imperative and must be strictly complied with. A failure to give the accused an opportunity of explaining the points against him is an illegality vitiating the whole trial. In all criminal matters, the utmost strictness must be observed and forms must be clearly complied with where the liberty of the subject is at stake, when from the Statute prescribing those forms it appears that they were presented by the Legislature in the interests of the accused. *Basapa Ningapa v. Emperor.*

16 Cr. L. J. 765 :
31 I. C. 365 : 17 Bom. L. R. 892 :
A. I. R. 1915 Bom. 221.

—S. 342—*Duty of Magistrate—Duty to examine accused after prosecution case is closed—Specific question, whether necessary.*

S. 342, Cr. P. C., merely requires that after the witnesses for the prosecution are examined, the accused should be questioned generally on the case. It is not necessary that specific questions should be put to the accused in detail, since the general questioning is followed by the specific charge. *In re : Ramaswami.*

28 Cr. L. J. 383 :
100 I. C. 991 : 26 L. W. 33 :
A. I. R. 1927 Mad. 613.

—S. 342—*Duty of trial Court to call accused's attention to point leading to inference of guilt and to call for explanation—Non-performance of this duty—Fresh trial.*

It is the duty of the examining Judge under S. 342, Cr. P. C., to call the accused's attention to any point which the Jury considers to be vital, or, in other words, to lead to the inference of guilt and to ask for an explanation. In a case of circumstantial evidence it is all the more necessary to perform this duty, because accused cannot be expected to know, when all the evidence against him is of a circum-

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stantial nature and some of it is important while some of it is not, which are the points on which an explanation from him would be necessary to avoid the inference of his guilt. The non-performance of this imperative duty will compel the Appellate Court to order a fresh trial as it is not fair that his case should be decided in the absence of an explanation from him about the points that were urged against him by the prosecution and regarded by the learned Judge as important or vital. *In re : Kimidi Narasimham.*

37 Cr. L. J. 1074 :
164 I. C. 1017 : 1936 M. W. N. 521 :
9 R. M. 212 : A. I. R. 1936 Mad. 629.

—S. 342—*Evidence—Power of High Court.*

High Court will not, as a rule, go into the evidence save in exceptional cases as where the judgment of the facts is manifestly wrong and palpably unjust. *Pitam v. Emperor.*

33 Cr. L. J. 811 :
139 I. C. 636 : 9 O. W. N. 116 :
I. R. 1932 Oudh 369 :
A. I. R. 1932 Oudh 113.

—S. 342 (4)—*Evidence—Accused, whether competent witness—Two persons tried separately, whether can give evidence against each other.*

An accused person actually under trial cannot be sworn as a witness, and if two or more persons are being jointly tried, none of them is a competent witness for or against the others. But this exception to the general rule does not further and has no application to an accused person who is not at the time under trial. Accordingly when two persons, though they may be accused of complicity in the same offence, as tried separately, each is a competent witness at the trial of the other, and the deposition of each may be used against him in his own trial. *Akhoy Kumar Mukerjee v. Emperor.*

19 Cr. L. J. 663 :
45 I. C. 999 : 27 C. L. J. 91 :
22 C. W. N. 405 : A. I. R. 1919 Cal. 1021.

—S. 342—*Examination of accused—Absence of, effect of—Re-trial.*

The record of a case contained the following note :—“Examination of the accused after the cross-examination of the prosecution witnesses and before he is called on for his defence. Pleads :—“Not guilty” : Held, that this was not a substantial compliance with the provisions of S. 342, Cr. P. C., and a re-trial from the point at which the accused should have been examined under the section was necessary. *Sailendra Chandra Singh v. Emperor.*

25 Cr. L. J. 460 :
77 I. C. 812 : 38 C. L. J. 175 :
A. I. R. 1924 Cal. 153.

—S. 342—*Examination of accused, absence of, effect of.*

S. 342, Cr. P. C., is mandatory and the non-examination of the accused under this section is not merely an irregularity but an illegality which vitiates the trial. *Suraj Pandey v. Emperor.*

21 Cr. L. J. 793 :
58 I. C. 521 : 1920 Pat. 281 :
1 P. L. T. 641 : A. I. R. 1920 Pat. 729.

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should note every point which he thinks he will have to put into the scale against the accused and then question him on each point otherwise it will be impossible for the accused to know what is in the Court's mind and he cannot reasonably be expected to be able to explain it. It is not a sufficient compliance with the provisions of S. 342 to put a general question to the accused, such as: "What have you to say regarding the statement of the complainant's witnesses?" *Maung Hman v. Emperor*.

25 Cr. L. J. 487 :

77 I. C. 887 : 2 Bur. L. J. 238 :

1 Rang. 689 : A. I. R. 1924 Rang. 172.

————S. 342—*Examination of accused, object of—Cross-examination of accused, legality of—Consultation between several accused, whether permissible.*

There is no provision of law under which two persons who are being tried jointly for the same offence are debarred from making a consulted statement in their examination under S. 342, Cr. P. C. The object of the examination of an accused under the provisions of S. 342, Cr. P. C. is to enable the accused in his own interests to give an explanation of the circumstances appearing in the evidence against him. It is not open to the Court to examine any accused person for the purpose of filling up gaps in the evidence for the prosecution. An examination of an inquisitorial nature is both improper and illegal. *Mahadeo Singh v. Emperor*.

27 Cr. L. J. 66 :

91 I. C. 242 : 8 N. L. J. 190 :

22 N. L. R. 1 : A. I. R. 1925 Nag. 403.

————S. 342—*Examination of accused, object of—Examination of accused amounting to cross-examination, legality of.*

The object of the examination of an accused under S. 342, Cr. P. C., is only to enable him to explain any circumstances appearing in evidence against him. The examination ought not to be conducted in the manner of cross-examination of an adverse witness and a Judge or Magistrate is not entitled to establish a sort of a Court of inquisition to force a prisoner to commit himself by making some incriminating or embarrassing admissions or statements after a series of questions, the exact effect of which, he may not be able to comprehend. *Faqir Singh v. Emperor*.

29 Cr. L. J. 769 :

110 I. C. 801 : 10 Lah. 223 :

30 P. L. R. 385 : A. I. R. 1929 Lah. 382.

————S. 342—*Examination of accused, object of—Putting mere general question, whether sufficient.*

The object of the examination of the accused under S. 342, Cr. P. C., is to enable him to explain anything appearing in the evidence against him and though it is impossible to lay down any hard and fast rule as to what questions should be put in any particular case, and failure to put even vital questions would not vitiate a trial if the accused were not prejudiced by that failure, yet in complicated cases

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it would be an entirely insufficient compliance with the provisions of the section to put merely a general question asking the accused what he had to say in explanation of the evidence against him. In an ordinary case dependent chiefly on oral evidence, an accused person would, from the very nature of things, have a very clear idea of what evidence was likely to be considered of importance against him by the Court. In such a case a failure to examine him properly might not be of very great importance. But where the case depends mainly on documentary evidence and it is impossible for the accused to know exactly what particular passages from the mass of documents produced, are considered by the prosecution or by the Court as requiring an explanation, proper examination of the accused is a matter of great importance. *Maung Ba Chit v. Emperor*.

31 Cr. L. J. 387 ;

122 I. C. 273 : 7 Rang. 821 :

A. I. R. 1930 Rang. 114.

————S. 342—*Examination of accused, object of.*

The object of an examination under S. 342 is for the purpose of enabling the accused to explain circumstances which appear against him. If the Judge considers that an explanation is necessary regarding this matter, it is his duty to place the matter before the accused and to ask him whether he wishes to give any explanation. It is extremely unfair for a Judge to rely upon a circumstance as being incriminating without giving the accused any notice of it and without giving him an opportunity of explaining the circumstance. *Emperor v. Jit Lal Bahadur*.

41 Cr. L. J. 783 :

189 I. C. 700 : 13 R. C. 120 :

A. I. R. 1940 Cal. 378.

————S. 342 — *Examination of accused — Omission of.*

An omission to examine an accused person under S. 342 in a summons case vitiates the proceedings. *Emperor v. Rustomji Manchharji*.

23 Cr. L. J. 21 :

64 I. C. 501 : 23 Bom. L. R. 984.

————S. 342—*Examination of accused—Omission to examine at proper time—Irregularity.*

An accused should be questioned under S. 342 just before he enters on his defence and produces his witnesses, that is, after all the prosecution witnesses have been completely done with. But an omission to examine him at the proper time is a mere irregularity coming within S. 537 of the Code. *Sudaman v. Emperor*.

28 Cr. L. J. 399 :

100 I. C. 1055 : 25 A. L. J. 379 :

49 All. 551 : A. I. R. 1927 All. 475.

————S. 342—*Examination of accused—Proper time—Omission to examine at the proper stage—Illegality or irregularity.*

The duty of a Magistrate to examine an accused under S. 342, Cr. P. C., arises when the witnesses for the prosecution have been examined, cross-examined and re-examined. The fact that an accused person pleads not guilty and promises to file a written statement, does not, in any way, exonerate or exempt the

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———S. 342—*Examination of accused, absence of—Illegality.*

The provisions of S. 342, Cr. P. C., as to the stage at which the examination of an accused person should take place are imperative, and an omission by the Court to examine an accused person in accordance with the provisions of the section is an illegality which vitiates the entire proceedings. *Nanak Chand v. Emperor.*

25 Cr. L. J. 1020 :

81 I. C. 796 : A. I. R. 1924 Lah. 734.

———S. 342—*Examination of accused—Accused examined after examination of witnesses for prosecution—Examination, absence of, after close of prosecution case—Trial, legality of.*

Where an accused person is examined after only a part of the prosecution evidence has been recorded and is not examined again after all the witnesses for the prosecution have been examined, there is no compliance with the provisions of S. 342, and the whole trial is vitiated. *Ghaza Ali v. Emperor.*

27 Cr. L. J. 87 :

91 I. C. 391 : 1 L. Cas. 12 :

6 L. L. J. 618 : A. I. R. 1925 Lah. 288.

———S. 342—*Examination of accused—After further cross-examination of prosecution witnesses.*

Where an accused person has been examined under S. 342 after the conclusion of the prosecution evidence, a second examination of the accused is not necessary after the further cross-examination of the prosecution witnesses. *Fazal Karim v. Emperor.*

26 Cr. L. J. 1418 :

89 I. C. 842 : 1 L. C. 270 :

A. I. R. 1926 Lah. 154.

———S. 342—*Examination of accused—After further cross-examination, necessity of.*

If an accused has been once examined under S. 342, Cr. P. C.; before the framing of the charge, it is not necessary to examine the accused generally on the case after the further cross-examination of the prosecution witnesses after the framing of charge has been concluded unless fresh prosecution witnesses have been examined after the framing of the charge. *Emperor v. Nadir.*

30 Cr. L. J. 625 :

116 I. C. 455 : I. R. 1929 Lah. 519 :

A. I. R. 1929 Lah. 371.

———S. 342—*Examination of accused—After further cross-examination.*

The examination of a witness means his examination-in-chief, cross-examination and re-examination, and the expression "after the witnesses for the prosecution have been examined" which occurs in S. 342, Cr. P. C., includes any cross-examination of the witnesses for the prosecution after the charge has been framed. It is, therefore, imperative for a Magistrate under this section to examine an accused person after the prosecution witnesses have been, if so desired by the accused, further cross-examined after the charge. *Local Government v. Maria.*

26 Cr. L. J. 971 :

87 I. C. 427 : 20 N. L. R. 174 :

A. I. R. 1925 Nag. 44.

———S. 342—*Examination of accused after*

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taking defence evidence—Conviction, whether void.

If an accused person, whose personal attendance has been dispensed with, is not present in Court on the day on which his examination should have taken place in due course and consequently he is not examined until after the defence evidence is taken, his conviction is not bad on that score, provided he has not been prejudiced. *Balgobind Thakur v. Emperor.*

27 Cr. L. J. 1017 :

96 I. C. 873 : 7 P. L. T. 496 :

A. I. R. 1926 Pat. 393.

———S. 342—*As amended by (Act XVIII of 1923)—Examination of accused—General question, whether sufficient.*

A formal question in general terms is a sufficient compliance with the mandatory provisions of S. 342, relating to the examination of the accused after the cross-examination of the prosecution witnesses, although in a particular case, it may be open to and advisable for the Court in exercise of its discretion, to put more specific questions. *Wasudeo v. Emperor.*

27 Cr. L. J. 181 :

91 I. C. 997 : A. I. R. 1927 Nag. 71.

———S. 342—*Examination of accused before charge—Subsequent re-cross-examination of prosecution witnesses—Second examination of accused, whether necessary—Failure of justice.*

It is desirable that the accused should be asked, if the prosecution witnesses are re-called and further cross-examined subsequent to the framing of a charge, whether he wishes the Court to record any additional explanation, but S. 342 of Cr. P. C. cannot be interpreted as conveying a peremptory direction to that effect, if the Court has already questioned him before the charge, when the case for the prosecution was closed and the prosecution witnesses cross-examined. Even if such a re-examination of the accused is necessary, failure to do so amounts to no more than an omission in the proceedings during the trial within the meaning of S. 537 of the Code of which the accused will obtain advantage if he satisfies the Court of Appeal or Revision that it has occasioned a failure of justice. *Byrne v. Emperor.*

25 Cr. L. J. 801 :

81 I. C. 337 : 4 Lah. 61 :

1 P. W. R. 1923 Cr :

A. I. R. 1924 Lah. 84.

———S. 342—*Examination of accused before conclusion of case for prosecution, legality of.*

Although, under the first part of S. 342, it is discretionary with a Magistrate to examine an accused person before the case for the prosecution is concluded, this would not absolve the Magistrate from the obligation imposed upon him by the latter part of the section, to examine accused after the witnesses for the prosecution have been examined and before he is called on for his defence, and the omission to do this, would vitiate the trial. *Ramnath Rai v. Emperor.*

22 Cr. L. J. 460 :

61 I. C. 844 : 2 P. L. T. 549 :

A. I. R. 1921 Pat. 374.

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provides is that the accused himself should have an opportunity of making his statement directly to the Court and not through the intervention of a Pleader. A statement made by the Pleader on behalf of an accused person does not constitute compliance with the provisions of that section. *Miser. Bepari v. Emperor.*

26 Cr. L. J. 1032 :
87 I. C. 920 : 29 C. W. N. 939 :
A. I. R. 1926 Cal. 430.

———S. 342—*Examination of accused—Taking fresh statement from co-accused, legality of.*

A Judge may take a fresh statement from a co-accused under S. 342, Cr. P. C., after he has taken an explanation from an accused person. *Satya Narain Mohata v. Emperor.*

29 Cr. L. J. 102 :
112 I. C. 350 : 55 Cal. 858 :
32 C. W. N. 319 : A. I. R. 1928 Cal. 675.

———S. 342—*Examination of accused.*

The expression "after the prosecution witnesses have been examined" in S. 342, Cr. P. C., means when the prosecution has finished calling evidence. Cross-examination of the prosecution witnesses under S. 256 is not part of the examination of the prosecution witnesses within the meaning of S. 342, nor does such re-examination generally amount to giving fresh evidence for the prosecution, but is merely explanatory of the cross-examination. If new and material matter in support of the prosecution is elicited in cross-examination or re-examination, it is desirable that the accused should again be questioned on the case and asked generally to explain the circumstances, and if fresh evidence on material matters in support of the prosecution case is elicited in re-examination, it would be obligatory on the Court to question the accused on that. *In re : Varisai Rowther.*

24 Cr. L. J. 547 :
73 I. C. 163 : 44 M. L. J. 567 :
17 L. W. 722 : 32 M. L. T. 385 :
46 Mad. 449 : 1923 M. W. N. 477 :
A. I. R. 1923 Mad. 609.

———S. 342—*Examination of accused—Trial of summons case summarily.*

Even in the trial of summons cases, an examination of the accused under S. 342 is essential and obligatory and an omission to do so would vitiate the whole trial. Neither Ss. 263 and 264, nor any other provision in the Chapter for summary trials does away expressly with the requirement of Ss. 342 and 364 of the Code relating to the examination of the accused. *Parmeshwar Lall Mitter v. Emperor.*

23 Cr. L. J. 440 :
67 I. C. 646 : 3 P. L. T. 347 :
A. I. R. 1922 Pat. 296.

———S. 342—*Examination of accused, what amounts to—Failure to examine, effect of.*

After the witnesses for the prosecution have all been examined and cross-examined and before the accused is called on for his defence, it is compulsory for the Court under S. 342 to question the accused in such a way as to enable him to explain any circumstances which appear in the evidence against him.

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The mere asking the accused as to whether he has anything further to say is not a sufficient compliance with the second part of the section. The questions must be framed in such a way as to enable the accused to know what he is to explain, as to what are the circumstances against him and for which an explanation is needed. The failure to comply with the provision contained in the second part of S. 342 vitiates a trial. *Bhokhari Singh v. Emperor.*

25 Cr. L. J. 711 :
81 I. C. 199 : 1924 Pat. 198 :
5 P. L. T. 445 : A. I. R. 1924 Pat. 791.

———S. 342—*Examination of accused, when necessary.*

The examination of an accused person under S. 342, is obligatory, but only obligatory after the prosecution evidence is finished. *Lalan v. Emperor.*

38 Cr. L. J. 387 :
167 I. C. 175 : 9 R. Pesh. 82 :
A. I. R. 1937 Pesh. 20.

———S. 342—*Examination of accused, when to be made.*

It is not a sufficient compliance with the provisions of S. 342 to examine the accused after the examination-in-chief of the witnesses for the prosecution. The examination of the witnesses cannot be held to have been concluded until they have also been cross-examined. *Jummon v. Emperor.*

25 Cr. L. J. 799 :
81 I. C. 319 : 50 Cal. 308 :
A. I. R. 1923 Cal. 668.

———S. 342—*Examination of accused, when to be made.*

The provisions of S. 342 are intended to afford an opportunity to an accused of explaining the circumstances appearing in the evidence against him. Therefore, such opportunity should be afforded to him after prosecution have examined all their witnesses whom they wish to call in support of the prosecution case and after the prosecution evidence have been concluded. It is immaterial if such prosecution witnesses have been cross-examined or not, or if they are re-called after framing of the charge. If new and material matter in support of the prosecution case is elicited in the cross-examination or re-examination of a prosecution witness, who has been examined after the examination of the accused, the accused should again be questioned on the case and asked generally to explain the circumstances. If the prosecution call fresh or further evidence after the framing of the charge, the section requires that after the taking of such evidence the accused should be examined again. *Jhangli v. Emperor.*

25 Cr. L. J. 662 :
81 I. C. 150 : A. I. R. 1925 Sind 127.

———Ss. 342, 254—*Examination of accused after framing charge—Procedure, how far irregular.*

The examination of the accused before framing charge is not compulsory. What S. 342 says is that the accused shall be questioned after the witnesses for the prosecution have been examined and before he is called on for

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by itself a ground for quashing the proceedings, where the accused has not been prejudiced thereby. Omission to examine the accused under S. 342, after the witnesses for the prosecution have been examined and before he is called upon to make his defence, is a serious illegality sufficient to vitiate the trial, at any rate from the stage at which the accused should have been so examined. *Pritchard v. Emperor*.

30 Cr. L. J. 18 :
112 I. C. 850 : I. R. 1929 Lah. 97 :
A. I. R. 1928 Lah. 382.

———S. 342—*Examination of accused—Examination of accused, after close of prosecution, necessity of.*

An accused person was examined under S. 342, Cr. P. C. before the prosecution witnesses had been cross-examined. After the examination of the latter, he applied for an adjournment to enable him to properly prepare the cross-examination of these witnesses and this was granted. He was not then examined at the close of the prosecution case: *Held*, that technically, the fact of the adjournment being given at the instance of the accused did not relieve the Magistrate from the necessity of examining the accused under S. 342 after the close of the prosecution case. *Baldeo Dubey v. Emperor*.

24 Cr. L. J. 475 :
72 I. C. 891 : 1 P. L. R. 29 Cr.

———S. 342—*Examination of accused—Examination of accused by Session Judge not imperative—Objectionable questions by Committing Magistrate—Answers to such questions to be excluded.*

It is not imperative for a Sessions Judge to examine an accused person under S. 342, Cr. P. C., especially when the accused admits his guilt. The provisions of S. 289, clearly indicate that such an examination is not necessary in all cases. If in an examination under S. 342, some objectionable questions are asked by the Committing Magistrate, such questions and the answers thereto should be omitted but the whole examination should not be excluded from evidence as inadmissible. *Khudiram Bose v. Emperor*.

10 Cr. L. J. 325 :
3 I. C. 625 : 9 C. L. J. 55.

———S. 342—*Examination of accused—Examination of Court witness—Further examination of accused.*

Though a Court may, in its discretion, examine the accused again in order to give him an opportunity to explain the circumstances appearing in the evidence of a witness examined by the Court under S. 510, Cr. P. C. after the case is closed, it is not obligatory on the Court to do so. *Mahadu Raghavji Thakkar v. Emperor*.

29 Cr. L. J. 1057 :
112 I. C. 561 : 30 Bom. L. R. 1086 :
A. I. R. 1928 Bom. 388.

———S. 342—*Examination of accused—Failure to examine accused at proper stage—Effect.*

S. 342 is a provision for the benefit of the accused, and to enable him to obtain the full benefit of the section, he must be examined after the cross-examination and re-examination

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of the prosecution witnesses, is over. Failure to examine an accused person at that stage is not merely an irregularity but an illegality which vitiates the trial. *Mitarjit Singh v. Emperor*.

22 Cr. L. J. 697 :
63 I. C. 825 : 2 P. L. T. 520 :
1922 Pat. 7 : 6 P. L. J. 644 :
A. I. R. 1922 Pat. 158.

———S. 342—*Examination of accused—Filing of written statement.*

The filing of a written statement on behalf of an accused person cannot take the place of an examination of the accused under S. 342 Cr. P. C. nor can it relieve a Criminal Court of its duty to comply with the imperative requirement of the law under that section. *Moinuddin v. Emperor*.

22 Cr. L. J. 442 :
61 I. C. 794 : 2 P. L. T. 455 :
A. I. R. 1921 Pat. 415.

———S. 342—*Examination of accused—Further cross-examination of prosecution witness under S. 257—Further examination.*

S. 342, Cr. P. C. is sufficiently complied with if the accused is examined after the witnesses for the prosecution have been examined-in-chief, cross-examined and re-examined, and no further examination of the accused is necessary if some of the witnesses are allowed to be further cross-examined under S. 257 of the Code. The word 'examination' in S. 342, Cr. P. C. includes cross-examination and re-examination. *Obeder Rahaman v. Emperor*.

31 Cr. L. J. 406 :
122 I. C. 291 : 56 Cal. 1157 :
A. I. R. 1930 Cal. 219.

———S. 342—*Examination of accused in defamation case—Gap in evidence, filling up of—Illegality.*

Where in a defamation case no evidence of the making and publishing of the alleged defamatory statement by the accused was given by the prosecution, and certain statements made by the accused in answer to questions put to them under S. 342 were considered by the trying Magistrate sufficient to relieve the prosecution from the necessity of proving that the accused made and published the alleged libel: *Held*, that a gap in the evidence for the prosecution cannot be filled up by any statement made by the accused in his examination under S. 342 of the Code. The omission to prove the making and publishing by the accused is more than an irregularity. It is a defect which vitiates the conviction. *Mohideen Abdul Kadir v. Emperor*.

1 Cr. L. J. 566 :
I. L. R. 27 Mad. 238 : 2 Weir 408.

———S. 342—*Examination of accused, mode of—Duty of Court.*

S. 342, is for the benefit of the accused, the provisions embodied in the section being meant to enable the accused to explain the circumstances appearing against him in the prosecution evidence. The section is not, however, intended merely for the benefit of the accused. It is a part of a system for enabling the Court to discover the truth and it may happen that the explanation of the accused or his failure

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———**Ss. 342, 537—Examination of accused after cross-examination of prosecution witnesses, absence of—Illegality.**

It is not open to a Magistrate to call upon an accused person to enter upon his defence without first questioning him generally on the whole case after the close of the prosecution evidence, that is to say, after all the prosecution witnesses have been examined-in-chief, cross-examined and re-examined. The examination of accused after the charge and the examination-in-chief of only some of the prosecution witnesses and again after the cross-examination of only some of such witnesses is not a compliance with the mandatory provisions of S. 342, and the trial is vitiated by the omission to question the accused generally after the cross-examination of a re-called witness is finished, although the accused may not have been thereby prejudiced on the merits. *Krishnappa v. Emperor*.

25 Cr. L. J. 713 :
81 I. C. 201 : A. I. R. 1924 Nag. 51.

———**Ss. 342, 537—Examination of accused—Prosecution evidence after framing of charge—Further examination of accused, necessity of—Illegality, whether curable.**

Where some prosecution witnesses are examined after framing of the charge, it is incumbent on the Court to further question the accused under S. 342. The provisions of S. 342 are mandatory and omission to observe the provisions thereof amounts to an illegality which cannot be cured under S. 537 of the Code. *Baz Khan v. Emperor*.

29 Cr. L. J. 382 :
108 I. C. 381 : I. L. T. 40 Lah. 138.

———**Ss. 342, 537—Examination of accused—Proper stage for examination—Examination before charge—Omission to examine after framing charge—Validity of trial.**

The omission to examine the accused under the latter part of S. 342 is an illegality which vitiates the trial, and the examination of the accused before the framing of the charge would not be sufficient to dispense with the examination of the accused after the charge is framed and after he has either declined to examine the prosecution witnesses under S. 256 or has further cross-examined them. *Genu Gopal v. Emperor*.

31 Cr. L. J. 402 :
122 I. C. 424 : 31 Bom. L. R. 1134 :
A. I. R. 1929 Bom. 447.

———**Ss. 342, 540—Examination of accused—Absence of—Effect.**

The Magistrate should strictly follow the provisions of S. 342, Cr. P. C., which applies both to summons and warrant cases. The failure to examine an accused person after examination of witnesses under S. 540 is a mere irregularity which is not fatal to the trial unless the accused has been prejudiced. In certain cases prejudice to the accused may be presumed. *Kandhai v. Municipal Board, Rae Bareilly*.

39 Cr. L. J. 841 :
177 I. C. 56 : 1938 O. W. N. 743 :
11 R. O. 16 (2) : 1938 O. L. R. 365.

———**S. 342, 540—Examination of accused—**

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Additional evidence at Court's instance after defence evidence—Accused's right to be examined further.

S. 342, Cr. P. C., applies even when additional evidence is introduced not by the prosecutor but by the Court itself under S. 540, Cr. P. C., and even if it be after the defence evidence is concluded; but to this general rule there is an exception, namely, when the additional evidence does not really disclose any fresh facts or does not affect the decision of the case and the accused is in no way prejudiced in not having had an opportunity to render a further explanation. *Allah Dito v. Emperor*.

29 Cr. L. J. 982 :
111 I. C. 852 : 23 S. L. R. 1 :
A. I. R. 1929 Sind 5.

———**S. 342 (1)—Examination of accused, stage for.**

The provisions of S. 342 (1), Cr. P. C., are mandatory and the time at which the Court shall question the accused generally on the case is, after the witnesses for the prosecution have been examined, cross-examined and re-examined, that is, after the prosecution case is completed and before the accused is called on for his defence. *Mazahar Ali v. Emperor*.

24 Cr. L. J. 198 :
71 I. C. 662 : 36 C. L. J. 417 : 27 C. W. N. 99 :
50 Cal. 223 : A. I. R. 1923 Cal. 196.

———**S. 342 (1), 256—Examination of accused—Duty of Magistrate.**

A Magistrate is bound to examine an accused after the witnesses for the prosecution have been examined and before he is called on for his defence, irrespective of any examination he may have already made. This defect in procedure may be cured by again questioning the accused and then again calling on him to enter on his defence. *Wasudco v. Emperor*.

26 Cr. L. J. 1425 :
89 I. C. 897 : A. I. R. 1925 Nag. 433.

———**Ss. 342 (1), 537—Examination of accused—Object—Putting inquisitorial questions, legality of—Non-conformity with provisions of S. 342, whether vitiates trial—S. 537, applicability of.**

The Court is entitled to examine an accused person under S. 342 for one purpose only, namely, to enable the accused to explain any circumstances appearing in the evidence against him. It is not entitled under this section to administer an inquisitorial interrogatory to the accused, or to subject him to cross-examination, or to ask any question of him with a view to elicit the truth of the matter, or by a series of supplementary questions to test the accuracy or reliability of the answers that he has been willing to give. When once the Court is satisfied that the accused appreciates the salient features of the evidence against him, its function under S. 342 is exhausted, and no further examination is permissible. Where an accused person has been examined under S. 342, Cr. P. C., but the examination was not in conformity with the provisions of the said section. S. 537 of the Code applies and unless a failure of justice has

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S. 342 to get admission of facts not proved in evidence. Admission made without intimidation should be taken in account. *C. T. N. R. Narayan Chettyar v. Emperor.*

37 Cr. L. J. 328 :
160 I. C. 746 : 8 R. Rang. 424 :
A. I. R. 1935 Rang. 509.

S. 342—Examination of accused, nature of, object of.

Neither a Magistrate nor a Judge is entitled to cross-examine an accused person, but it is their duty to question him generally on the case and give him an opportunity of explaining any point in the evidence against him. *Goli v. Emperor.*

31 Cr. L. J. 8 :
120 I. C. 202 : 1930 A. L. J. 82 :
A. I. R. 1930 All. 17.

S. 342—Examination of accused—Nature of questions to be put.

The nature of the questions which may be put to an accused in his examination is clearly indicated in S. 342, namely to explain any circumstances appearing in the evidence against him. *Nga Te v. Emperor.*

2 Cr. L. J. 227 :
11 Bur. L. R. 33.

S. 342—Examination of accused, nature of.

Under S. 342, Cr. P. C., it is not competent to the Court to cross-examine the accused. *Umar Din v. Emperor.*

23 Cr. L. J. 388 :
[67 I. C. 340 : 2 Pat. 129 :
3 L. L. J. 287.

S. 342—Examination of accused, nature of.

What is necessary for the purpose of S. 342 is that the accused should be brought face to face solemnly with an opportunity given to him to make a statement from his place in the dock in order that the Court may have the advantage of hearing his defence if he is willing to make one with his own lips. The section must not be interpreted so as to give the Court the power to cross-examine the accused. Where a Court asks an accused, "What is your defence," and he replies, "I am innocent," it is sufficient compliance with S. 342, Cr. P. C. *Rez Muhammad v. Emperor.*

26 Cr. L. J. 1510 :
90 I. C. 294 : A. I. R. 1926 Cal. 424.

S. 342—Examination of accused, nature of.

S. 342, Cr. P. C., allows a Court at any stage of an enquiry or trial to put such question to accused as the Court considers necessary, but the object of putting such question is to enable the accused to explain any circumstances appearing in the evidence against him, and the Court has no power under this section to cross-examine an accused person in order to extract a confession from him. *Barhati v. Emperor.*

25 Cr. L. J. 426 :
77 I. C. 602 : A. I. R. 1923 Lah. 539.

S. 342—Examination of accused, nature of.

S. 342, Cr. P. C., enjoins upon the Court the duty of placing before the accused the circumstances appearing against him in

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order that the accused may be given an opportunity of explaining them. This is the main object of the section. The section was never intended for the purpose of cross-examining the accused or for filling up gaps in the case for the prosecution. The primary object of the section is to assist the accused in explaining the circumstances which have appeared against him. Subjecting the accused to a sort of inquisition is against the provisions of the section. *Tehsimuddin Ahmad v. Emperor.*

41 Cr. L. J. 563 :
188 I. C. 288 : 44 C. W. N. 396 (2) :
12 R. C. 678 : A. I. R. 1940 Cal. 250.

S. 342—Examination of accused—Nature of question.

In an examination under S. 342 of a person accused of murder and who had been kept in suspense for several months before the trial began, nearly two printed pages containing a précis of the evidence against the accused were read out as it were in one breath, and the accused was asked whether he wanted to say anything : *Held*, that this kind of question was one which it was impossible for anyone and least of all for a person accused of murder who had been kept in suspense for 16 months before the trial began, to answer. It was impossible for him to have remembered all the points which he was asked to explain. This was certainly not giving a real opportunity to the accused to explain matters appearing in the evidence against him. *In re : Kanakasabai.*

41 Cr. L. J. 369 :
186 I. C. 704 : 1939 M. L. J. 883 :
50 L. W. 452 : 12 R. M. 682 :
A. I. R. 1940 Mad. 1.

S. 342—Examination of accused, necessity of.

In a summons case, where the Magistrate did not examine the accused under S. 342 nor hear him and take the evidence for the defence under S. 244 : *Held*, that the trial was invalidated by these omissions. Conviction set aside and re-trial ordered. *Emperor v. Kyan Baw.*

1 Cr. L. J. 737 :
2 L. B. R. 239.

S. 342—Examination of accused—Object—Nature of question to be put.

Under S. 342, Cr. P. C., the Court is bound to put to the accused the salient facts and circumstances of the case in a succinct form, and to ask him if he has any explanation thereof to offer, but inriminating questions and questions in the nature of a cross-examination must be avoided. *Mohamed Yusif v. Emperor.*

31 Cr. L. J. 1026 :
126 I. C. 449 : A. I. R. 1930 Sind 225.

S. 342—Examination of accused, object and mode of—Duty of Court—General question, whether sufficient.

The object of the procedure laid down in S. 342 is to enable the accused to explain each and every circumstances appearing in evidence against him. A Judge or Magistrate

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been occasioned thereby, the conviction of the accused should not for that reason be disturbed. *Thien v. Emperor*.

32 Cr. L. J. 23 : 127 I. C. 730 : 8 Rang. 372. I. R. 1930 Rang. 410 : A. I. R. 1930 Rang. 351.

S. 342 (2)—*Examination of accused—Defamatory statement—Prosecution for defamation, legality of—Privilege.*

An accused person cannot be prosecuted for defamation in respect of a statement made by him in his examination under S. 342 of the Cr. P. C. *Murti Pathak v. Emperor*.

29 Cr. L. J. 262 : 107 I. C. 561 : 25 A. L. J. 855 : 50 All. 169 : A. I. R. 1927 All. 707.

S. 342—'Examined,' meaning of—*Examination of accused after cross-examination of prosecution witnesses, whether obligatory.*

The word "examined" in S. 342, Cr. P. C., does not merely refer to the examination-in-chief of the prosecution witnesses but includes their cross-examination and re-examination.

In all cases, whether additional witnesses have been called after a charge has been framed or not, the obligatory examination of the accused under S. 342 should take place after all the witnesses for the prosecution have been examined and cross-examined and before he is called on for his defence. *Dibakanta Chatterjee v. Gour Gopal Mukerjee*.

S. 342 (2)—*Exemption under—Voluntary affidavit in support of a transfer application—Penal Code, Ss. 182 and 211.*

50 Cal. 939 : A. I. R. 1923 Cal. 727. 75 I. C. 715 : 27 C. W. N. 743 :

8 Cr. L. J. 378 : 1 S. L. R. 124. Ss. 342, 439—*Failure to examine accused—Objection raised at hearing in revision.*

An objection that the Magistrate has failed to comply with the requirement of S. 342, may be taken at the hearing of revision, although it was not urged in the Courts below, and is not set forth in the application. *Motunuddin v. Emperor*.

61 I. C. 794 : 2 P. L. T. 455 : A. I. R. 1921 Pat. 415. S. 342—*Further examination of accused.*

Fresh evidence—If a fresh witness is called in and examined, the accused must again be questioned according to S. 342. *Nataraja Mudaliar v. Devastigamam Mudaliar*.

32 Cr. L. J. 757 : 131 I. C. 493 : 1930 M. W. N. 914 : 3 Mad. Cr. Cas. 362 : A. I. R. 1931 Mad. 241.

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S. 342—*Further examination of accused.* Where a Magistrate records some evidence after the examination of the accused, he should call for further explanation from the accused. *Mangla v. Emperor*.

29 Cr. L. J. 11 : 106 I. C. 347 : A. I. R. 1927 Lah. 916. Ss. 342, 540—*Further examination of accused—Re-examination of prosecution witnesses by Court—Accused not re-examined—Irregularity, whether fatal—Interference in revision—Retrial.*

If prosecution witnesses are re-called for an examination by the Court after their examination is over, their examination under S. 540, Cr. P. C., is no part of the prosecution case and a Magistrate is not bound to examine the accused under S. 342 of the Code once again after such examination. Mere illegality of the procedure adopted by a Magistrate is no ground for interference in revision and before any revisional action could be taken, it must at least be alleged that the accused has suffered a hardship through the illegality. A failure to make a final examination of an accused at the proper time under S. 342, Cr. P. C., cannot result in acquittal and will necessitate a remand of the case for a correction of the error and a re-trial from the point at which it occurred. *Pai Mohamed v. Emperor*.

27 Cr. L. J. 475 : 93 I. C. 699 : A. I. R. 1926 Nag. 348. Ss. 342, 540—*Further examination of accused after examination if witness called by Court.*

The law does not require that the summoning of a witness by the Court should necessitate a further examination of the accused under S. 342, Cr. P. C., and, although in some cases when a prosecution witness is re-called and re-examined under S. 540, such procedure should be followed. The procedure does not apply to a witness not previously before the Court but subsequently called by the Court itself. And where such witness summoned by the Court, does not introduce any new fact, but only amplifies the statements of the previous witnesses, there can be no prejudice caused whatever to the accused by an omission to do something which the law does not direct, namely, the examination of the accused after the recording of this witness's evidence. *Sheo Ram v. Emperor*.

38 Cr. L. J. 1058 : 171 I. C. 262 : 10 R. N. 102 : I. L. R. 1937 Nag. 541 : A. I. R. 1937 Nag. 285. S. 342—*Joint examination of accused.*

S. 342, Cr. P. C., does not contemplate a joint statement made by the accused, it contemplates statements made by the accused individually. The section applies to summary proceedings as well as to long trials. *Emperor v. Shivdossal*.

39 Cr. L. J. 59 (a) : 172 I. C. 80 : 10 R. S. 135 : 32 S. L. R. 30 : A. I. R. 1937 Sind 304. S. 342—*Joint examination of several accused—Criminal trial—Counter-cases—Compo-*

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Court from examining him at a later stage as required by section. A mere discussion between the Magistrate and the Counsel for the defence as to the number and nature of the witnesses to be examined on behalf of the defence is not a compliance with the provisions of the section, as it is necessary that the accused should be brought face to face solemnly with an opportunity given to him to make a statement in order that the Court may have the advantage of hearing his defence, if he is willing to make one, with his own lips. To ask an accused for his defence before he has the whole of the the prosecution evidence in front of him, is not a compliance with the section. A trial becomes illegal from the moment when, without compliance with S. 342 the Magistrate calls upon the accused to enter on his defence. *Promotha Nath Mukhopadhyaya v. Emperor*.

24 Cr. L. J. 248 :

71 I. C. 792 : 27 C. W. N. 389 :

50 Cal. 518 : A. I. R. 1923 Cal. 470.

———S. 342—*Examination of accused—Sessions Judge—Trial—Forms of trial in Criminal cases—Court not to draw an inference of waiver against an accused where the Court omits to perform a duty imposed by Legislature.*

S. 342 is mandatory, not discretionary. The Legislature intended it to enable the accused to explain any circumstances in the evidence against him, and an omission by the Court, to comply with its provisions must be presumed to have seriously prejudiced the accused. In all criminal matters, the utmost strictness must be observed and forms must be closely complied with where the liberty of the subject is at stake, when from the Statute prescribing those forms it appears that they were prescribed by the Legislature in the interests of the accused. In a criminal trial the Court is bound to draw no inference of waiver against an accused person, especially in the case of omission by the Court to perform a duty imposed on it in express terms by the Legislature in his interest unless the accused waived it expressly. *Emperor v. Savalya*.

5 Cr. L. J. 332 :

9 Bom. L. R. 356.

———S. 342—*Examination of accused, stage for—Compliance with law, what is.*

Where an accused is examined after a part of the prosecution evidence has been recorded but not when the case for prosecution is closed, a note by the Magistrate that the accused does not wish to add to his previous statement does not constitute a proper compliance with the mandatory provisions of S. 342. *Fazal Ahmad v. Emperor*.

27 Cr. L. J. 1021 :

96 I. C. 877 : A. I. R. 1926 Lah. 684.

———S. 342—*Examination of accused, stage for—Examination after entering on defence, whether legal.*

The examination of the accused under S. 342 must take place at the close of the prosecution case and before the accused have entered on their defence, and it is compliance with the section if the examination takes

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place at a later stage. *Surendra Lal Saha v. Ismaddi*.

26 Cr. L. J. 261 :

84 I. C. 325 : 54 Cal. 933 :

A. I. R. 1925 Cal. 480.

———S. 342—*Examination of accused, stage for.*

Examination of accused before all witnesses for prosecution have been examined is a fatal defect, and cannot be cured by the operation of S. 537, Cr. P. C. *Tilak Gope v. Bhaya Ram*.

22 Cr. L. J. 598 :

62 I. C. 870.

———S. 342—*Examination of accused, stage for.*

Examination of investigation officer after examination of accused—Accused should be further examined. *Emperor v. Rahan Dodo*.

34 Cr. L. J. 161 :

141 I. C. 529 : I. R. 1933 Sind 57 :

A. I. R. 1932 Sind 165.

———S. 342—*Examination of accused, stage for—"Examined", meaning of.*

The word "examined" in S. 342 includes the cross-examination and re-examination of the prosecution witnesses and cannot be taken as including only those answers which the witnesses give to questions put to them in the first instance by the prosecuting Counsel or Pleader. The stage in the trial prescribed by S. 342 when the accused has to be questioned generally on the case for the prosecution is after the prosecution evidence is complete and before he is called upon to enter upon his defence. The Code intends that the accused shall be given an opportunity of explaining any circumstances appearing in the evidence against him, that must mean the whole of the evidence against him and any examination of the accused under S. 342 before that evidence is closed cannot possibly fulfil the conditions of the section. The obligation imposed by S. 256, Cr. P. C., on a Magistrate to ask the accused whether he wishes to cross-examine prosecution witnesses is quite distinct from the obligation imposed by S. 342 to question the accused generally for the purposes mentioned therein. *Emperor v. Nalhu Kasturchand Marwadi*.

26 Cr. L. J. 690 :

86 I. C. 66 : 27 Bom. L. R. 105 :

A. I. R. 1925 Bom. 170.

———S. 342—*Examination of accused, stage for—Non-compliance—Effect.*

The provisions of S. 342, Cr. P. C., are mandatory and if not complied with, the trial is vitiated from the stage at which there has been a non-compliance therewith. An accused can only be examined by the Court after the examination, including the cross-examination and re-examination, of the prosecution witnesses has been completed. *Molankhan v. Emperor*.

28 Cr. L. J. 417 :

101 I. C. 449 : A. I. R. 1927 Sind 175.

———S. 342—*Examination of accused—Statement made by Pleader, whether compliance with section.*

One of the essential points for which S. 342

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of that witness, his conviction is illegal. *Gul-zari Lal v. Emperor.*

24 Cr. L. J. 3 :
71 I. C. 51 : 49 Cal. 1075 :
39 C. L. J. 31 :
A. I. R. 1923 Cal. 164.

S. 342—Non-compliance—Effect of.

A trial cannot be held to be void for non-compliance with the provisions of S. 342 where in reply to the query of the Magistrate as to what he had to say, the accused offers a written statement without giving any oral statements. *Emperor v. Harjivan Valji.*

27 Cr. L. J. 1335 :
98 I. C. 407 : 28 Bom. L. R. 115 :
50 Bom. 174 : A. I. R. 1926 Bom. 231.

S. 342—Non-compliance, effect of.

Although it is incumbent on the trial Judge to examine the accused under S. 342, after the witnesses for the prosecution have been further cross-examined by him subsequent to the framing of the charge, the conviction shall not be quashed on appeal or revision, except where it is shown that prejudice has occurred in consequence of the omission to do so. *Hassan v. Emperor.*

38 Cr. L. J. 399 :
167 I. C. 18 : 9 R. Pesh. 85 :
A. I. R. 1936 Pesh. 211.

S. 342—Non-compliance, effect of.

During the trial of a warrant case the Magistrate examined the accused after taking some evidence and then framed a charge against them. He then re-called the witnesses that had already been examined to enable the accused to cross-examine them, and then examined two more prosecution witnesses. After taking the evidence of these two witnesses he did not question the accused as he was required to do by S. 342 of the Cr. P. C.: *Held*, that the failure of the Magistrate to comply with the provisions of S. 342 of the Code amounted to an illegality which vitiated the trial. *Muhammad Sadiq v. Emperor.*

26 Cr. L. J. 1370 :
89 I. C. 458 : 2 L. Cas. 55 :
A. I. R. 1926 Lah. 51.

S. 342—Non-compliance, effect of.

Every failure to comply strictly with the letter of S. 342, Cr. P. C., does not render the conviction of an accused person illegal. No omission to comply strictly with S. 342 can render a conviction liable to be set aside unless it has in fact occasioned a failure of justice within meaning of S. 537. *In re : Annamalai Mudali.*

41 Cr. L. J. 858 :
190 I. C. 206 : 51 L. W. 206 :
1940 M. W. N. 93 :
1940 2 M. L. J. 39 :
13 R. M. 395 : I. L. R. 1940 Mad. 514.
A. I. R. 1940 Mad. 372.

S. 342—Non-compliance, effect of—Examination of accused at conclusion of prosecution evidence, necessity of.

Under S. 342 a Court is bound to examine the accused at the conclusion of the prosecution evidence and before he is called upon

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to enter on his defence and this provision of law cannot be dispensed with on the ground that the accused has already been examined in the course of prosecution evidence. The provisions of S. 342 are mandatory and their non-compliance renders the trial illegal; *Lachman Singh v. Emperor.*

27 Cr. L. J. 1007 :
96 I. C. 863 : 2 L. Cas. 333 :
27 P. L. R. 427 : 7 Lah. 564 :
A. I. R. 1926 Lah. 551.

S. 342—Non-compliance, effect of.

Failure to comply with the mandatory provisions of S. 342 vitiates a trial. *Rememberance of Legal Affairs, Bengal v. Satish Chandra Roy.*

26 Cr. L. J. 15 :
83 I. C. 495 : 39 C. L. J. 441 :
51 Cal. 924 : A. I. R. 1924 Cal. 975.

S. 342—Non-compliance, effect of—Illegality—Re-trial.

A Trial Magistrate took down the statement of the accused after recording the evidence of some of the prosecution witnesses. The evidence of several prosecution witnesses was recorded thereafter and a charge was framed but no further examination of the accused took place: *Held*, that the failure to comply with the provisions of S. 342 had vitiated the trial, and that the trial must be resumed from the point where the Court examined the accused. *Hamid Ali v. Srikrishna Gossain.*

24 Cr. L. J. 943 :
75 I. C. 367 : 37 C. L. J. 413 :
28 C. W. N. 118.

S. 342—Non-compliance, effect of—Inspection of spot and taking fresh prosecution evidence after closing of case—Omission to examine accused and to give opportunity to produce defence evidence, effect of.

Where a Magistrate after closing the defence evidence inspects the spot and records there evidence very material for the decision of the case, an omission to examine the accused again under S. 342, Cr. P. C., and to give him an opportunity to produce evidence in rebuttal constitutes an illegality which vitiates the trial. *Ismail v. Emperor.*

27 Cr. L. J. 1023 :
96 I. C. 879 : 2 L. Cas. 341 :
27 P. L. R. 635 :
A. I. R. 1926 Lah. 683.

S. 342—Non-compliance—Effect of.

Non-compliance with the provisions of S. 342 amounts to an illegality which vitiates the trial altogether, irrespective of whether the accused has or has not been prejudiced by the non-compliance. Before the cross-examination of the prosecution witnesses, the accused were asked as to what was their defence, and subsequently, after the cross-examination of the prosecution witnesses and before the accused were called upon to enter on their defence, they were asked whether they had anything further to say after hearing the cross-examination. The accused replied they did not wish to say anything further: *Held*, that the provisions of S. 342

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his defence. Moreover, S. 254 itself makes it allowable to frame the charge before examining the accused as well as before recording all the evidence. There is, therefore, no irregularity in the procedure where the accused is examined after charge is framed. *Bhanwar-singh v. Sukhramsingh*. 41 Cr. L. J. 585 :

188 I. C. 413 : 1940 N. L. J. 410 :
13 R. N. 2 : A. I. R. 1940 Nag. 283.

———Ss. 342, 256—*Examination of accused—Warrant case—Examination of accused after further cross-examination.*

If S. 342, Cr. P. C., has been violated, it is an illegality and not a mere irregularity. The further examination of the prosecution witnesses under S. 256, Cr. P. C., is not a part of the prosecution case. But the further cross-examination is not part of the defence because the defence for which the accused is called upon within the meaning of S. 342 starts after the further cross-examination of prosecution witnesses. *Mohammad Nazam v. Emperor*.

39 Cr. L. J. 781 :
176 I. C. 678 : 40 P. L. R. 850 :
I. L. R. 1938 Lah. 603 :
11 R. L. 226 : A. I. R. 1938 Lah. 543.

———Ss. 342, 263—*Examination of accused—Plea of accused under S. 263 (g).*

The plea of the accused under Cl. (g) of S. 263 cannot possibly take the place of his examination under S. 342, for the former occurs at the initial stage of the case and the latter after the termination of the prosecution evidence. *Parmeshwar Lall Mittar v. Emperor*.

23 Cr. L. J. 440 :
67 I. C. 646 : 3 P. L. T. 347 :
A. I. R. 1922 Pat. 296.

———Ss. 342, 349, 540—*Examination of accused—After examination of Court witnesses—Submission of case after conviction.*

S. 342 cannot be brought into play after a Court witness is examined, be he the complainant or any other witness. A case under S. 349 is not to be submitted after conviction but only after expression of opinion that the accused is guilty. *Prayag Gope v. Emperor*.

25 Cr. L. J. 1276 :
82 I. C. 284 : 1924 Pat. 247 :
5 P. L. T. 571 : 3 Pat. 1015 :
A. I. R. 1924 Pat. 764.

———Ss. 342, 364, 537—*Examination of accused, necessity of—Omission, effect of.*

A Magistrate is bound to examine the accused under the Ss. 342 and 364, Cr. P. C., and the omission to do so is fatal to the validity of the trial. The provisions of S. 342 are imperative and failure to comply with them is not a mere irregularity curable under S. 537, Cr. P. C. *Emperor v. Nag Po Mya*. 18 Cr. L. J. 944 :

42 I. C. 176 : 3 U. B. R. 1917 18 :
A. I. R. 1918 U. Bur. 43.

———Ss. 342, 370—*Examination of accused—Trial by Presidency Magistrate—Non-appealable case—Entry of 'denies,' whether sufficient.*

A Presidency Magistrate is not bound to record the examination of the accused either in full or in substance, in the case of non-

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appealable cases. In such cases the column provided for the purpose in the form prescribed by S. 370, Cr. P. C., must be filled up, but there is no hard and fast rule as to how it should be done. Where the word 'denies' had been written in this column and there was nothing to show that the accused had made any long statement : *Held*, that the entry was sufficient. *Sadagar Chandhuri v. Emperor*.

30 Cr. L. J. 526 :
115 I. C. 604 : 49 C. L. J. 261 :
I. R. 1929 Cal. 428 : 33 C. W. N. 543 :
56 Cal. 1067 : A. I. R. 1929 Cal. 406.

———Ss. 342, 439—*Examination of accused—Omission to examine accused after charge—Interference by High Court.*

In a warrant case the accused were not further examined after the charge and after prosecution witnesses had been re-called for cross-examination. In revision : *Held*, that substantial justice having been done the Court will not interfere in the case, irrespective of the question of law whether the omission to examine the accused was an illegality or merely an irregularity. *Khuman Singh v. Emperor*.

26 Cr. L. J. 1374 :
89 I. C. 462 : 2 O. W. N. 378 :
A. I. R. 1925 Oudh 603.

———Ss. 342, 537—*Examination of accused before charge—Further cross-examination of prosecution witnesses—Further examination of accused.*

Where an accused person is examined at length after the close of the prosecution evidence and before the framing of the charge and some of the prosecution witnesses are further cross-examined after the charge, the omission to examine the accused, after such further cross-examination does not, in the absence of proof of prejudice to the accused vitiate the proceedings. *Nga Hla U v. Emperor*.

26 Cr. L. J. 1336 :
89 I. C. 312 : 3 Rang. 139 :
A. I. R. 1925 Rang. 258.

———Ss. 342, 526—*Examination of accused, object of—Asking Public Prosecutor to frame questions, legality of—Ground for transfer.*

S. 342 allows the Court and not the complainant to put questions to the accused and the object of the examination is to enable the accused to explain any circumstances appearing in the evidence against him. Questions should not be put under the said section so as to cross-examine the accused or with a view to elicit from him statements which would lead to his conviction. Where a Magistrate asked the Public Prosecutor to frame the question and the latter gave to the Magistrate a typed paper containing the suggested questions and the Magistrate conducted the examination on those questions : *Held*, that the procedure adopted by the Magistrate was illegal and likely to raise a reasonable fear in the mind of the accused that he would not get a fair trial and there was sufficient ground for transferring the case. *Fagir Singh v. Emperor*.

31 Cr. L. J. 560 :
123 I. C. 570 : A. I. R. 1930 Lah. 166.

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comply with the provisions of this section vitiates the trial. *Rameshar Singh v. Emperor.*
 26 Cr. L. J. 927 :
 86 I. C. 991 : 6 P. L. T. 493 :
 A. I. R. 1925 Pat. 723.

—S. 342—Non-compliance—Effect of.

There is in every case an imperative duty upon the Magistrate to put into operation the provisions of S. 342, at the moment when the complainant and all the witnesses called for the prosecution have been examined in the full sense in which the word is used. But the failure to do so does not vitiate the trial unless it has occasioned a failure of justice. *Emperor v. Jhabbar Mal.*

30 Cr. L. J. 530 :
 115 I. C. 872 : 26 A. L. J. 196 :
 I. R. 1929 All. 472 :
 A. I. R. 1928 All. 222.

—S. 342—Non-compliance—Examination of prosecution witnesses after examination of accused—Omission to examine again, whether vitiates trial.

Omission to examine the accused again, when new prosecution witnesses are examined after the examination of the accused under S. 342 is an illegality which vitiates the trial. *Emperor v. Bhau Dharma.*
 29 Cr. L. J. 535 :
 109 I. C. 359 : 30 Bom. L. R. 385 :
 A. I. R. 1928 Bom. 140.

—S. 342—Non-compliance—Grave irregularity—Re-trial.

The failure by a Magistrate to examine an accused person for the purpose of S. 342 is a grave irregularity and might, in a suitable case, be in itself a sufficient ground for setting aside a conviction. The fact that the accused was examined and cross-examined as a prosecution witness in a cross-case would not relieve the Magistrate of the duty imposed on him by the above section or lessen the gravity of the irregularity. Where, however, the irregularity is not such as to prevent the Magistrate from arriving at a correct view of the facts and the accused has said all he has had to say in the capacity of a prosecution witness, and no unfair use has been made of any admission made by him as a witness, the High Court will not order a re-trial. *Nageshar Prasad v. Emperor.*
 24 Cr. L. J. 661 :
 73 I. C. 693 : A. I. R. 1924 Oudh 111.

—S. 342—Non-compliance in Summons case—Irregularity.

The omission by a Magistrate to examine an accused person, in a summons case, under S. 342 is an irregularity which vitiates the conviction. *Gulabjap v. Emperor.*

23 Cr. L. J. 45 :
 64 I. C. 609 : 23 Bom. L. R. 203 :
 46 Bom. 441 : A. I. R. 1922 Bom. 90.

—S. 342—Non-compliance—Irregularity.

The failure to examine an accused for a second time under S. 342 will not vitiate a trial if it has caused no prejudice to the accused. *Sheodatt Roy v. Emperor.*

39 Cr. L. J. 771 :
 110 I. C. 803 : 20 P. L. T. 429 :
 A. I. R. 1929 Pat. 64.

Cr. P. CODE (1898), S. 342**—S. 342—Non-compliance in Summons case—Prejudice.**

Where an accused person in a summons case is prejudiced by the failure of the Magistrate to examine him at the conclusion of the prosecution case, the trial is liable to be set aside and a fresh trial ordered. *Emperor v. Sheopal.*

26 Cr. L. J. 655 :
 85 I. C. 943 : 1 O. W. N. 833 :
 A. I. R. 1925 Oudh 491.

—S. 342—Non-compliance—Miscellaneous.

Accused not examined by Magistrate when written statement filed—Prosecution saying, statement incomplete—Time granted to prosecution for putting questionnaire—Questions not put on record—Ss. 342 and 364, contravened. *Hari Krishnaji Ghate v. Emperor.*

35 Cr. L. J. 1457 :
 151 I. C. 778 : 31 N. L. R. 9 :
 7 R. N. 68 : A. I. R. 1934 Nag. 213.

—S. 342—Non-compliance.

Non-compliance with the requirements of section vitiates trial. *Balkeshwar Singh v. Emperor.*

23 Cr. L. J. 114 :
 65 I. C. 546 : 3 P. L. T. 332 :
 A. I. R. 1922 Pat. 5.

—S. 342—Non-compliance—Non-curable illegality.

A conviction based on important evidence such as the evidence of the complainant without the accused being given an opportunity of explaining that evidence in negligence of S. 342 causes prejudice to the accused which cannot be cured by S. 537. *Anar Gul v. Emperor.*

35 Cr. L. J. 1361 :
 151 I. C. 501 : 7 R. Pesh. 20.
 A. I. R. 1934 Pesh. 75.

—S. 342—Non-compliance—Non-curable, illegality.

So far as the Lahore High Court is concerned, if the Magistrate omits to examine the accused with reference to the evidence given against him after the close of the prosecution case, the trial from that stage is illegal even if the accused had been previously examined. *Anand Parkash v. Emperor.*

36 Cr. L. J. 401 :
 153 I. C. 446 : 35 P. L. R. 525 :
 7 R. L. 436 (2) : A. I. R. 1934 Lah. 631.

—S. 342—Non-compliance—Non-curable illegality.

When accused is not given opportunity to explain away circumstances which weighed heavily with Magistrate, prejudice is caused to accused and trial is illegal. *Onkar Singh v. Emperor.*

35 Cr. L. J. 1417 :
 151 I. C. 840 : 1934 O. L. R. 777 :
 11 O. W. N. 1206 : 7 R. O. 146 (2) :
 A. I. R. 1934 Oudh 457.

—S. 342—Non-compliance—Non-curable illegality.

Where the accused is not examined on the conclusion of the evidence for the prosecution, it is a clear infringement of the law of procedure and amounts to an irregularity which vitiates the trial and hence the conviction of

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have notice of an intended inference with an order of compensation made in his favour under S. 250. *Momoo v. Ibrahim*.

27 Cr. L. J. 248 :
92 I. C. 424 : 20 S. L. R. 41 :
A. I. R. 1926 Sind 143.

———S. 250—*Appeal—Notice to District Magistrate—Omission—Effect.*

In an appeal against an order granting compensation under S. 250, the District Magistrate ought to be served with a notice, but an omission to send him a notice and his consequent non-appearance would not justify the High Court's interference in revision with the Appellate Court's order. *Guruswami Naiken v. Tirumurthi Chetti*.

15 Cr. L. J. 648 :
25 I. C. 848 : 1 L. W. 908 :
16 M. L. T. 426 : 27 M. L. J. 629 :
A. I. R. 1915 Mad. 236.

———S. 250—*Appeal—Power of Appellate Court.*

An Appellate Court has no power to order compensation such as is contemplated by S. 250. S. 250 being confined by its terms to the Courts of Magistrates trying cases in the first instance, does not confer the requisite power. Nor does clause (d) of S. 423 (1), because an order for compensation is not "consequential or incidental" to an order of discharge or acquittal within the meaning of the clause. *Mehi Singh v. Mangal Khanda*. (F. B.)

12 Cr. L. J. 592 :
12 I. C. 297 : 14 C. L. J. 437 :
16 C. W. N. 10 : 39 Cal. 157.

———S. 250—*Appeal—Power of Appellate Court.*

In all judicial proceedings where no specific rule as to notice exists, the rule *audi alteram partem* applies as a principle of natural justice. An Appellate Court can alter or set aside, to the prejudice of an accused, an order awarding compensation to him under S. 250 on proper notice to him. A order under S. 250 can be justified only when the Court finds not merely that the complaint was false but also that it was frivolous and vexatious. *Venkatarama Aiyar v. Krishna Aiyar*.

36 Cr. L. J. 128 :
27 I. C. 192 : 2 L. W. 200 :
28 M. L. J. 204 : 38 Mad. 1091 :
1915 M. W. N. 181 : 17 M. L. T. 164 :
A. I. R. 1915 Mad. 940.

———S. 250—*Appeal—Power of Appellate Court.*

Once it has been decided that a case is a false one and frivolous, or vexatious, then it is a matter within the Magistrate's discretion as to whether it is one in which compensation should be given or not, and the Appellate Court is not entitled to set aside an order for payment of compensation in such a case save for very cogent reasons. Where the Appellate Court altered the Magistrate's order for compensation because, in its opinion, the accused's defence was not a true one, without giving any convincing reason why the defence evidence should be branded as false: *Held*, that the

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Appellate Court had no sufficient justification for setting aside the order. *Abrol v. S. L. Sirpaul*.

39 Cr. L. J. 581 :
175 I. C. 357 : 10 R. Rang. 488 :
A. I. R. 1938 Rang. 200.

———S. 250 (3)—*Appeal—Power of Appellate Court.*

Order directing compensation — Appeal—Appellate Court can go into facts. *Surendra Nath v. Basanta Chandra*.

33 Cr. L. J. 269 :
136 I. C. 140 : 58 Cal. 1436 :
35 C. W. N. 1151 : I. R. 1932 Cal. 188 :
58 Cal. 1436 : A. I. R. 1932 Cal. 120.

———S. 250—*Appeal—Power of Appellate Court to award compensation.*

The legislature intended that only the Magistrate, by whom a case is, in the first instance, heard, can pass an order under S. 250. It would be inconvenient if, when the Tribunal before whom the case is heard, finds a charge to be proved, an appellate tribunal when reversing that finding could pass an order for compensation on the ground that the accusation which was established in the Court below was either frivolous or vexatious. *Emperor v. Chittan*.

3 Cr. L. J. 441 :
26 A. W. N. 145 : 3 A. L. J. 382.

———S. 250—*Appeal or Revision—Notice to accused.*

In an appeal or a revision from an order under S. 250, awarding compensation to the accused, it is not necessary to issue notice to the accused, though the Court may do so. *Rashid Muhammad Khan v. Emperor*.

28 Cr. L. J. 416 :
101 I. C. 192 : 28 P. L. R. 177 : 8 Lah. 568 :
A. I. R. 1927 Lah. 357.

———S. 250 (3)—*Appeal—When lies—Right of appeal depends on total amount of compensation.*

Under S. 250 (3), a complainant's right to appeal depends on the aggregate amount of compensation which he is directed to pay to all the accused. Therefore, an appeal lies where the compensation ordered to be paid to each of the several accused is less than Rs. 50 but the total amount payable to all of them exceeds Rs. 50. *Sobhit Mallah v. Emperor*.

26 Cr. L. J. 1504 :
90 I. C. 160 : A. I. R. 1926 Pat. 70.

———S. 250—*Appellate Court, power to award compensation.*

It is only the Trying Magistrate who, if he discharges or acquits the accused, can order the complainant to pay compensation to the accused. The Appellate Court has no jurisdiction to proceed under S. 250 and award compensation. *Chedi v. Ram Lal*.

25 Cr. L. J. 967 :
81 I. C. 615 : 21 A. L. J. 834 :
46 All. 80 : A. I. R. 1924 All. 224.

———S. 250—*Appellate Court's power to award compensation.*

S. 250 does not authorise a Court of Appeal to

Cr. P. CODE (1898), S. 342**—Ss. 342, 360, 537—Non-compliance.**

The omission to comply with the provisions of Ss. 342 and 360 is an illegality which is not curable by the provisions of S. 537 of the Code. *Haro Nath Malo v. Ala Buz*.

25 Cr. L. J. 289 :
76 I. C. 961 : 38 C. L. J. 281 : 28 C. W. N. 119 :
A. I. R. 1924 Cal. 182.

—Ss. 342, 364—Non-compliance—Effect of.

By not conforming to the provisions of Ss. 342 and 364, a Court deprives the accused person of a valuable right and also deprives itself and the Jury of the opportunity of drawing such inferences from his refusal or answers as they think just, which they are entitled to do under Sub-s. (2) of S. 342. At the close of the prosecution evidence in a Sessions case, the accused were asked by the Judge as to whether they would make any statement or not and they replied in the negative. No record, however, was made of this examination and the only indication of it was to be found in the order sheet where the following remark appeared:—"The accused declined to make any statement in this Court and on being asked whether they would adduce any evidence they replied in the negative": *Held*, that the provisions of S. 342 and S. 364 of the Cr. P. C., had not been complied with and the trial was, therefore, vitiated. *Emperor v. Nani Mandal*.

26 Cr. L. J. 761 :
86 I. C. 345 : 41 C. L. J. 50 :
52 Cal. 403 : A. I. R. 1925 Cal. 575.

—Ss. 342, 537—Non-compliance—Court at trial not questioning accused as to his silence after being denounced—Whether irregularity.

Where an accused kept silence when denounced by the dying person in the presence of the accused and others, if the silence of the accused is to be regarded as an important point for the prosecution, then at the Sessions trial it is necessary by reasons of S. 342, Cr. P. C., for trial Court to put to the accused as part of the case for the Crown the fact that he remained silent, and to invite his explanation as to why he did so. The provisions of this section make it clear that this examination takes place for enabling the accused to explain any circumstances appearing in the evidence against him. The omission to ask such a question is an irregularity. The question for the Court in every case in which an irregularity of this kind has been committed is whether in fact a failure of justice has been occasioned by reason of the irregularity which has occurred. *Emperor v. U. Damapala*. (P. B.)

38 Cr. L. J. 524 :
168 I. C. 193 : 14 Rang. 666 :
9 R. Rang. 340 : A. I. R. 1937 Rang. 83.

—Ss. 342, 537—Non-compliance—Omission to examine accused after further prosecution evidence and cross-examination of prosecution witnesses, effect of.

Where after the examination of the accused under S. 342, Cr. P. C., further prosecution witnesses are examined and some prosecution witnesses are re-called and cross-examined, the accused should be re-examined under that section. But the failure to do so unless it has prejudiced the accused or occasioned a failure

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of justice is a mere irregularity curable under S. 537, Cr. P. C. *Subbaya Naidu v. Emperor*.

30 Cr. L. J. 1164 :
120 I. C. 230 : 7 Rang. 470 :
I. R. 1930 Rang. 22 :
A. I. R. 1929 Rang. 331.

—Ss. 342, 537—Non-compliance—Warrant case—Summary trial—Examination of accused, absence of—Prejudice, absence of—Irregularity.

Where a warrant case is summarily tried and the accused are not examined in accordance with the provisions of S. 342, but there is no prejudice occasioned by the absence of such examination, the omission to examine the accused is covered by the provisions of S. 537 of the Code. *Girdhari Lal v. Emperor*.

27 Cr. L. J. 852 :
95 I. C. 932 : 3 O. W. N. 534 :
A. I. R. 1926 Oudh 424.

—S. 342 (1)—Non-compliance—Examination of accused.

S. 342 (1), Cr. P. C., contemplates that the accused should be examined after all the witnesses for the prosecution are examined and cross-examined, and before he is called on for his defence. An omission to question the accused generally on the case as required by the latter part of S. 342 is an illegality which vitiates the whole trial. However, if the Magistrate discharges the accused without framing a charge, the non-examination of the accused would not vitiate the proceedings. *Udhao v. Emperor*.

25 Cr. L. J. 417 :
77 I. C. 593 : A. I. R. 1924 Nag. 311.

—S. 342—Non-curable illegality.

Statement of accused not recorded under S. 342—There is failure of justice and defect is not cured by S. 537. *Hikmat Ali v. Emperor*.

35 Cr. L. J. 784 :
148 I. C. 885 : 6 R. A. 791 :
A. I. R. 1934 All. 389.

—S. 342—Object and Scope of—Duty of Court.

The provisions of S. 342, Cr. P. C. are mandatory and non-compliance with them vitiates the trial. The object of S. 342 is (1) to communicate to the accused, to the full extent that may be found necessary in each particular case, what is alleged against him in the evidence for the prosecution; (2) to ascertain from him what explanation or defence, in law or in fact, he wishes to put forward in respect thereof. Where the accused is ignorant person who cannot be expected to know or understand what particular parts of the evidence are, or are likely to be considered by the Court to be against him, it is necessary that his attention should be directed to all vital parts of the evidence against him. It is not a sufficient compliance with the provisions of S. 342 to ask an accused the general question: "Have you anything more to say in this case?" or "you have heard the prosecution witnesses against you, what have you to say?" *Tani v. Emperor*.

20 Cr. L. J. 12 :
48 I. C. 487 : A. I. R. 1918 Nag. 143.

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site judgment—Legality—Examination of accused—Joint examination of several accused—Legality.

The practice of recording one composite judgment in several cases condemned. Where there are several accused persons, each of them should be examined separately. *Chander v. Emperor.* I. R. 1932 Lah. 664.

—S. 342—Joint statement—Legality of.

Where there are several accused persons, it is incumbent on the Magistrate to record statements of each of the accused separately under S. 342, Recording only a joint statement of all the accused is an illegality which vitiates the trial. *Balkrishna Anant Hirlekar v. Emperor.* 32 Cr. L. J. 572 : 130 I. C. 577 : 55 Bom. 356 : I. R. 1931 Bom. 257 : 33 Bom. L. R. 82 : A. I. R. 1931 Bom. 132.

—S. 342—Joint statement of several accused—Legality of.

Recording a joint statement of all the accused persons collectively without examining each accused and recording their statements separately is an illegality which vitiates the proceedings. *Amanat Khan v. Emperor.* I. R. 1932 Lah. 653.

—S. 342—Joint statement—Record of examination of accused after framing charge and re-cross-examination of prosecution witnesses.

Recording of the statements of accused collectively is an illegality vitiating the trial. Where a Magistrate recorded the statements of the accused separately before the charge but after the close of the prosecution evidence, questioned the accused jointly and recorded a joint statement: *Held*, that the trial was vitiated and the accused should be re-tried. *Girdhari Lal v. Emperor.* 29 Cr. L. J. 469 : 109 I. C. 117 : 29 P. L. R. 436 : 10 L. L. J. 306.

—Ss. 342, 488—Maintenance proceedings—Examination of accused, necessity of.

Where a person gives evidence on his own behalf in proceedings under S. 488, it is not necessary to examine him under S. 342 of the Code and the proceedings are not vitiated by the omission of the Magistrate to do so. *Bachai Kalwar v. Jamuna Kalwar.* 25 Cr. L. J. 1091 : 81 I. C. 915 : A. I. R. 1925 Cal. 339.

—S. 342—Miscellaneous—Accused relying on statement of co-accused—Procedure.

Accused stating that his statement is same as that of co-accused. Co-accused making two contradictory statements. Correct statement of co-accused not ascertained. Accused should be given benefit of statement beneficial to him. *Emperor v. Rehan Dodo.* 34 Cr. L. J. 161 : 141 I. C. 529 : I. R. 1933 Sind 57 : A. I. R. 1932 Sind 165.

—S. 342—Non-compliance—Absence of prejudice, effect of.

An omission to comply fully with the

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provisions of S. 342, does not vitiate the trial unless the accused has been prejudiced. *Rammu v. Emperor.* 27 Cr. L. J. 719 : 94 I. C. 911.

—S. 342—Non-compliance—Accused not examined—Written statements filed after examination of prosecution as well as defence witnesses—Prejudice—Miscarriage of justice.

Where an accused person files a written statement not only after the prosecution witnesses have been examined, cross-examined and re-examined, but also after the defence witnesses have also been cross-examined and discharged, the mere fact that the provisions of S. 342 have not been complied with would not vitiate the trial as in such a case the accused could not have been prejudiced, and miscarriage of justice caused. *Mir Tilawan v. Emperor.* 23 Cr. L. J. 703 : 69 I. C. 382 : 1 Pat. 31 : 4 P. L. T. 60 : A. I. R. 1929 Pat. 388.

—S. 342—Non-compliance—Approver stating that deceased caused injuries to accused—Failure of Magistrate to ask explanation from accused of injuries on his body—Trial, if vitiated—Re-trial, necessity of.

In a trial for murder the approver stated that the accused got injuries at the hands of the deceased during the fight. But the Magistrate failed to ask for an explanation from the accused under S. 342, Cr. P. C., about the injuries on his body: *Held*, that a re-trial was rendered necessary because of the failure of the Magistrate to ask the accused's explanation on such vital point. *Khairo v. Emperor.* 38 Cr. L. J. 995 : 170 I. C. 922 : 10 R. S. 77 : 31 S. L. R. 470 : A. I. R. 1937 Sind 221.

—S. 342—Non-compliance—Curable, defect.

Omission to examine the accused for a second time under S. 342 during a *de novo* trial is not an illegality which in itself vitiates the trial but only an irregularity to which S. 537 applies. *Marudamuthu Padayachi v. Raghava Sastri.* 36 Cr. L. J. 307 : 153 I. C. 297 : 1934 M. W. N. 1136 : 67 M. L. J. 800 : 40 L. W. 803 : 58 Mad. 427 : 7 R. M. 337 (1) : A. I. R. 1935 Mad. 22 (1).

—S. 342—Non-compliance—Effect.

A failure to comply with the provisions of S. 342 would vitiate a trial. *Fatu Santal v. Emperor.* 22 Cr. L. J. 417 : 61 I. C. 705 : 2 P. L. T. 288 : 6 P. L. J. 147 : A. I. R. 1921 Pat. 109.

—S. 342—Non-compliance—Effect.

A Magistrate is bound under S. 342 to question an accused after all the witnesses for the prosecution have been examined. Therefore, if a witness is examined after questioning the accused and the accused is not questioned again after the examination

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is not in conformity with the requirements of S. 370, Cr. P. C., and is liable to be set aside. *Ismail Sha v. Emperor*.

27 Cr. L. J. 110 :

91 I. C. 542 : A. I. R. 1926 Cal. 692.

—S. 342—Previous conviction—Proof of.

All previous convictions which are being relied on for the purposes of S. 75, Penal Code, must be proved in accordance with the law. A mere admission of the accused is not sufficient. *Sardar Ahmad v. Emperor*.

36 Cr. L. J. 778 :

155 I. C. 478 : 35 P. L. R. 697 :

7 R. L. 721 : A. I. R. 1934 Lah. 693.

—S. 342—Procedure.

Framing of questionnaire is duty of Court. Court should accept suggestions from prosecuting counsel as to questions to be put under S. 342 only in exceptional cases. *Hari Krishnaji Ghate v. Emperor*.

35 Cr. L. J. 1457 :

151 I. C. 778 : 31 N. L. R. 9 :

7 R. N. 68 : A. I. R. 1934 Nag. 213.

—S. 342—Procedure—Irregularity in recording statement of accused—Effect.

When a Magistrate has considered the statements of the accused they cannot possibly be prejudiced by the mere fact that he did not reduce those statements to writing in the proper column provided in the summary register. It would, therefore, be absurd to say that the mere failure to record the examination has resulted in a miscarriage of justice. *Khan Mohammad v. Emperor*.

41 Cr. L. J. 531 :

187 I. C. 769 : 12 R. Pesh. 38 :

A. I. R. 1940 Pesh. 11.

—S. 342—Procedure—Statement of accused not read over to accused—Accused given opportunity of making further statement—Trial, if vitiated.

Where it was brought to the notice of the Magistrate that the statement of the accused under S. 342, Cr. P. C., was not read over to the accused and then the latter was given an opportunity of making a further statement although it was not asserted that the original statement was not correct, the trial cannot be impeached as illegal on the ground that the statement of the accused under S. 342, was not read over to him and his signature taken immediately after the close of the prosecution. *Jogendra Nath v. Rabindra Nath*.

37 Cr. L. J. 1089 :

165 I. C. 150 : 40 C. W. N. 863 :

64 C. L. J. 7 : 9 R. C. 348.

—S. 342—Protection of accused, nature of.

The protection afforded to the accused by S. 342 is limited to statements made by the accused in answer to questions which are for the purpose of enabling the accused to explain any circumstances appearing in the evidence against him and which are put at some stage of the inquiry or trial. *Tribhovan v. Emperor*.

10 Cr. L. J. 509 :

4 I. C. 160 : 12 O. C. 308.

Cr. P. CODE (1898), S. 342**—S. 342 (2)—Protection of accused, nature of.**

S. 342 protects an accused person from punishment for giving false answers to Court, but does not protect him when he goes out of his way to a Court which is not trying him and makes a false charge against other persons. *Makhdum v. Emperor*.

25 Cr. L. J. 1194 :

82 I. C. 58 : 1 O. W. N. 657 :

A. I. R. 1925 Oudh 227.

—S. 342—Revision—Interference.

The High Court does not interfere in revision with an error or omission or irregularity unless the same has caused a failure of justice. *Pitam v. Emperor*.

33 Cr. L. J. 811 :

139 I. C. 636 : 9 O. W. N. 116 :

I. R. 1932 Oudh 369 :

A. I. R. 1932 Oudh 113.

—S. 342—Scope.

S. 342 is mandatory but not exhaustive. *Shyama Charan Bharthuar v. Emperor*.

35 Cr. L. J. 1322 :

151 I. C. 393 : 7 R. P. 85 (2) :

A. I. R. 1934 Pat. 330.

—S. 342—Scope.

S. 342 is not only for accused's interest but for ends of justice to determine whether accused committed offence. *Ishwar Das v. Bhagwan Das*.

35 Cr. L. J. 879 :

148 I. C. 1135 : 6 R. A. 831 :

3 A. W. R. 443 : 1934 A. L. J. 753 :

A. I. R. 1934 All. 693 (2).

—S. 342—Scope.

S. 342 of the Cr. P. C. does not make it legally incumbent on a Magistrate to further question the accused with reference to the evidence elicited from the prosecution witnesses after the framing of the charge when they are recalled by the Magistrate under S. 540, Cr. P. C., though it is highly desirable that he should so question the accused if the evidence contains any new matter of importance. *In re : Thackroth Hydross*.

25 Cr. L. J. 7 :

75 I. C. 695 : 18 L. W. 113 :

45 M. L. J. 279 : 1923 M. W. N. 860 :

A. I. R. 1923 Mad. 694.

—S. 342—Scope.

The provisions of S. 342 are clear and mandatory, so far as the latter portion of Sub-s. (1) of this section is concerned. *Onkar Singh v. Emperor*.

35 Cr. L. J. 1417 :

151 I. C. 840 : 1934 O. L. R. 777 :

11 O. W. N. 1206 : 7 R. O. 146 (2) :

A. I. R. 1934 Oudh 457.

—S. 342—Scope and object of—Compliance with section, what is.

What is necessary under S. 342 of the Cr. P. C. is that the accused should be brought face to face solemnly with an opportunity given to him to make a statement from his place in the dock in order that the Court may have the advantage of hearing his defence, if he is willing to make one with his own lips. A formal question in general terms which gives

Cr. P. CODE (1898), S. 342

had not been complied with and that the trial was thereby vitiated. *Durga Ram v. Emperor*.

26 Cr. L. J. 716 :
86 I. C. 156 : 6 P. L. T. 33 :
A. I. R. 1925 Pat. 342.

—S. 342—Non-compliance—Effect.

Omission to examine the accused as required by the imperative provisions of S. 342, vitiates a trial even though it has resulted in an acquittal. *Emperor v. Vga Po Byu*.

27 Cr. L. J. 1364 :
98 I. C. 484 : 4 Rang. 361 :
A. I. R. 1927 Rang. 19.

—S. 342—Non-compliance, effect of.

Omission to examine the accused under S. 342, at the stage indicated by the section is a mere irregularity curable by S. 537 of the Code. *Tamezkhan v. Rajjaballi Mir*.

28 Cr. L. J. 317 :
100 I. C. 827 : 31 C. W. N. 337 :
45 C. L. J. 591 :
A. I. R. 1927 Cal. 330.

—S. 342—Non-compliance, effect of.

S. 342, Cr. P. C. which requires that the accused shall be examined generally in the case after examination of prosecution witnesses and before the accused is called on for his defence, is mandatory and not discretionary and failure to comply with the terms of the section is an illegality vitiating the trial and not a mere irregularity which can be cured under S. 537 of the Code. *In re : Variso Rowther*.

24 Cr. L. J. 547 :
73 I. C. 163 : 44 M. L. J. 567 : 17 L. W. 722 :
32 M. L. T. 385 : 46 Mad. 449 :
1923 M. W. N. 477 :
A. I. R. 1923 Mad. 609.

—S. 342—Non-compliance—Effect of.

S. 540, Cr. P. C., cannot justify and cure the irregularity of a procedure whereby a Magistrate long after closing the case examines a witness under S. 540 but does not further examine the accused under S. 342. Failure to follow the provisions of S. 342 vitiates the trial. *Hooghly Chinsura Municipality v. Keshab Chandra Pal*.

34 Cr. L. J. 549 :
143 I. C. 285 : 56 C. L. J. 583 :
I. R. 1933 Cal. 395 :
A. I. R. 1933 Cal. 347.

—S. 342—Non-compliance, effect of—Summons case—Failure to examine accused, effect of—Illegality.

The omission in a summons case to comply with the provisions of S. 342 constitutes an illegality which vitiates the trial and not a mere irregularity. Such an illegality cannot be waived by the consent of the accused or his legal representative. *B. N. Gamadia v. Emperor*.

27 Cr. L. J. 165 :
91 I. C. 949 : 27 Bom. L. R. 1405 :
50 Bom. 34 : A. I. R. 1926 Bom. 57.

—S. 342—Non-compliance—Effect of.

The effect of non-compliance with the statutory rules of procedure, must vary

Cr. P. CODE (1898), S. 342

according to the gravity and the effect of the breach, and the test in each case is whether the proceedings have resulted in a miscarriage of justice. *Emperor v. Nga Po Min*.

34 Cr. L. J. 121 :
141 I. C. 89 : 10 R. Rang. 511 :
I. R. 1933 Rang. 14 :
A. I. R. 1932 Rang. 190.

—S. 342—Non-compliance—Effect of.

The failure to examine an accused person in accordance with the provisions of S. 342 is a mere irregularity and is not an illegality which vitiates the whole trial. *Ganga Sahai v. Emperor*.

26 Cr. L. J. 132 :
83 I. C. 692 : A. I. R. 1924 All. 763.

—S. 342—Non-compliance—Effect of.

The failure to examine an accused person under S. 342, Cr. P. C. vitiates the proceedings. *Bajinath Sahay v. Emperor*.

24 Cr. L. J. 311 :
72 I. C. 71 : 1923 Pat. 96 :
4 P. L. T. 231 : 1 P. L. R. 34 Cr :
A. I. R. 1923 Pat. 292.

—S. 342—Non-compliance—Effect of.

The omission to examine an accused person under S. 342 vitiates the trial and the same result follows if the accused has been examined before the stage in the trial prescribed by the section has been reached and there is no examination of the accused at that stage. *Emperor v. Nathu Kashurchand Marwadi*.

26 Cr. L. J. 690 :
86 I. C. 66 : 27 Bom. L. R. 105 :
A. I. R. 1925 Bom. 170.

—Ss. 342, 537—Non-compliance—Effect of.

The procedure prescribed by S. 342 is binding on the Courts, even in summons-cases, and the omission to comply with the provisions of that section is not a mere irregularity such as can be cured under S. 537 of the Code, but is an illegality vitiating the trial. *Muhammad Bakhsh v. Emperor*.

23 Cr. L. J. 154 :
65 I. C. 618 : 4 L. L. J. 230 :
A. I. R. 1922 Lah. 45.

—S. 342—Non-compliance—Effect of.

The provisions of S. 342 are mandatory. The accused must be examined under the provisions of that section after the prosecution has closed and before the accused has entered upon his defence and if the provisions of the section are not observed, the trial is vitiated. *Ramcharan Singh v. Emperor*.

26 Cr. L. J. 1289 :
89 I. C. 153 : 7 P. L. T. 259 :
A. I. R. 1926 Pat. 29.

—S. 342—Non-compliance—Effect of.

The second part of S. 342 is imperative. It casts a duty upon the Court to question the accused generally on the case after the witnesses for prosecution have been examined, that is, when the whole case against the accused has been disclosed. The omission to

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grant compensation. *Notified Area Committee, Kharar v. Karta Ram.* 27 Cr. L. J. 570 :
94 I. C. 138 : 7 Lah. 152 : 27 P. L. R. 339 :
A. I. R. 1926 Lah. 427.

—————Ss. 250, 423—*Appellate Court's power to award compensation.*

S. 423, Sub-s. 1, Cl. (d) entitles an Appellate Court to make any consequential order that may be just and proper, hence that Court has power to pass an order for compensation in favour of the accused under S. 250, if it finds that the case brought against him is frivolous or vexatious. *Kari Singh v. Tufani Dhanuk.*

11 Cr. L. J. 46 :
5 I. C. 72 : 14 C. W. N. 212.

—————S. 250—*Applicability.*

Before proceeding under S. 250, all evidence of complainant should be recorded—*Prima facie* case—Mere discrepancy of two of complainant's witnesses does not justify action under S. 250. *Gul Din v. Abdul Khalik.* 37 Cr. L. J. 298 :
160 I. C. 364 : 8 R. Pesh. 106 :
A. I. R. 1935 Pesh. 178.

—————S. 250—*Applicability—Bombay Public Conveyances Act (VI of 1887), S. 28—Complaint under S. 28, whether complaint of offence within S. 250.*

S. 28, Bombay Public Conveyances Act, provides a summary remedy for the recovery of the legal fare of a public conveyance, and a complaint under the section is not a complaint in respect of an offence within the meaning of S. 250 of the Cr. P. C. A Magistrate, therefore, has no power to make an order awarding compensation under S. 250, Cr. P. C. in respect of such complaint. *In re : Valli Mitha.*

21 Cr. L. J. 380 :
55 I. C. 860 : 22 Bom. L. R. 195 :
44 Bom. 463 : A. I. R. 1920 Bom. 350.

—————S. 250—*Applicability to cases triable by Sessions Judge.*

The provisions of S. 250 are inapplicable to a case in which the complaint discloses an offence triable by a Court of Sessions, even though it is actually tried by a Magistrate specially empowered under S. 30. *Muhammad Hayat v. Bhola.*

20 Cr. L. J. 141 :
49 I. C. 173 : 1 P. R. 1919 Cr. :
A. I. R. 1919 Lah. 192.

—————S. 250—*Applicability—Compensation to accused—Charges under different sections—Acquittal on some and conviction on others, effect of.*

S. 250 speaks of "the case" as a whole and contemplates a trial or inquiry ending in the unqualified acquittal or discharge of the accused. A complainant who, having a genuine grievance, wilfully exaggerates or distorts the same in order to aggravate the case against the accused, is liable, in the discretion of the trial Court, to be prosecuted for any offence against the Penal Code which he may have committed, but the policy of the Legislature seems to be to limit the summary jurisdiction of the Court under S. 250 to simple cases, in which the complainant is found to

Cr. P. CODE (1898), S. 250

have been wholly in the wrong. *Muhammad Ali Khan v. Raja Ram Singh.*

19 Cr. L. J. 670 :
45 I. C. 1006 : 16 A. L. J. 499 :
40 All. 610 : A. I. R. 1918 All. 109.

—————S. 250—*Applicability—Complaint dismissed without process.*

Held, that S. 250 is not applicable to a case in which a complaint is dismissed without any process being issued for the attendance of the person against whom such complaint is made. *Bhagwan Singh v. Harmakh.*

4 Cr. L. J. 451 :
26 A. W. N. 306 : 29 All. 137.

—————S. 250—*Applicability—Dismissal of complaint without issue of process.*

S. 250 does not apply to a case when the complaint is dismissed as false under S. 203 of the Code. It applies only in cases where the accused is discharged or acquitted. The fact that the accused is present and assisted by his pleader at the enquiry held under S. 202 does not make S. 250 of the Code applicable to the case on the dismissal of the complaint. *Harphul v. Maukn.*

4 Cr. L. J. 36 :
7 P. L. R. 254 : 3 P. R. Cr. 1906.

—————S. 250—*Applicability.*

S. 250 is not susceptible of a complete and logical application to all false and frivolous or vexatious cases. It will not apply, for instance, to punish the real complainant as against the formal complainant, but this remedy provided is a summary remedy and does not contemplate an inquiry which might be a long inquiry into a chain of informants to ascertain who is the real as against the formal complainant. *Muhammad Hashim v. Emperor.*

41 Cr. L. J. 788 :
189 I. C. 703 : 1940 Kar. 470 :
13 R. S. 47 : A. I. R. 1940 Sind 184.

—————S. 250—*Applicability—Offences triable by Magistrate and Sessions Court—Discharge of accused—Compensation, whether can be awarded.*

An order passed under S. 250 awarding compensation to an accused person must be confined to summons cases. Where a complaint is filed against an accused person in respect of offences, some of which are triable exclusively by a Magistrate and some by the Sessions Court and the accused after trial by a Magistrate, is discharged in respect of all the offences, an order for compensation against the complainant under S. 250 cannot be passed. *Harihar Dal v. Maksud Ali.*

27 Cr. L. J. 6 :
91 I. C. 38 : 23 A. L. J. 1056 :
48 All. 166 : A. I. R. 1926 All. 149.

—————S. 250—*Applicability.*

S. 250 does not apply to cases instituted at the instance of the Police. *Salch v. Emperor.*

33 Cr. L. J. 644 :
138 I. C. 635 : 26 S. L. R. 299 :
I. R. 1932 Sind 85 :
A. I. R. 1932 Sind 150.

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the accused must be set aside. *Amir v. Emperor*.

S. 342—Non-compliance.
151 I. C. 913 (1) : 7 R. L. 224 :
35 Cr. L. J. 1447 (1) :
A. I. R. 1934 Lah. 455.

Non-curable illegality—Where after charge is framed, fresh prosecution evidence is recorded, Court is bound to record statement of accused. Omission cannot be cured under S. 537. *Muhammad Din v. Emperor*.

36 Cr. L. J. 407 (1) :
153 I. C. 445 : 35 P. L. R. 613 :
7 R. L. 438 (2).

S. 342—Non-compliance.
Non-curable illegality—S. 342 is mandatory. Failure to examine accused after cross-examination is an illegality vitiating trial. *Kundan Lal v. Emperor*.

36 Cr. L. J. 468 :
153 I. C. 1034 : 35 P. L. R. 173 :
7 R. L. 499 (1) : A. I. R. 1934 Lah. 648 (1).

S. 342—Non-compliance.
Omission to question accused generally on the case is an illegality vitiating the trial and not a mere irregularity. *Nataraja Mudaliar v. Devasigamam Mudaliar*.

3 Mad. Cr. C. 362 : A. I. R. 1931 Mad. 241.
S. 342—Non-compliance—*Prejudice—Immaterial*.

When there has been a clear and deliberate non-compliance with Ss. 342 and 364, no question of prejudice arises. *Hari Krishnaji Ghale v. Emperor*.
151 I. C. 778 : 31 N. L. R. 49 : 7 R. N. 68 :
A. I. R. 1934 Nag. 213.

S. 342—Non-compliance.
Prejudice to the accused may be presumed in a case in which he has not been examined under S. 342, but a presumption is always liable to be rebutted. *Emperor v. Brij Lal*.

37 Cr. L. J. 408 :
160 I. C. 489 : 1936 O. L. R. 80 :
1936 O. W. N. 215 : 8 R. O. 263.

S. 342—Non-compliance—*Prejudice*.
The failure of the Magistrate to put explicit questions beyond asking a formal general question as to what he had to say, in a case where the accused is defended by Counsel, does not vitiate the trial especially when the accused is not prejudiced by such examination. *In re : Kallan Narayana*.
34 Cr. L. J. 481 :
143 I. C. 46 : 64 M. L. J. 88 : 37 L. W. 220 :
56 Mad. 231 : 1 R. 1933 Mad. 261 :
A. I. R. 1933 Mad. 233.

S. 342—Non-compliance.
Re-cross-examination after charge—Forms part of defence—Accused not re-examined after re-cross-examination is mere irregularity, which is curable if no injustice is caused.

37 Cr. L. J. 710 :
162 I. C. 758 : 1936 A. L. J. 274 :
1936 A. W. R. 375 : 8 R. A. 901 :
A. I. R. 1936 All. 319.

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S. 342—Non-compliance.

S. 342 is imperative and omission to comply with the provisions of the section is fatal to the trial. *Emperor v. Amirbi*.

34 Cr. L. J. 340 :
142 I. C. 393 : 1 R. 1933 Nag. 114 (1) :
A. I. R. 1933 Nag. 192.

S. 342—Non-compliance.

Summons case tried summarily—S. 342 applies—Failure to examine accused under procedure: *Held*, that accused were prejudiced by such failure which was sufficient to vitiate trial. *Emperor v. Karua Shankar*.

36 Cr. L. J. 1303 :
158 I. C. 16 : 1935 O. W. N. 1042 :
1935 O. L. R. 557 : 8 R. O. 71 :
A. I. R. 1936 Oudh 16.

S. 342—Non-compliance.

The defect of non-compliance with the provisions of S. 342 is a mere irregularity which is not fatal to the trial unless the accused has been prejudiced. *Sia Ram v. Emperor*.

36 Cr. L. J. 1290 :
158 I. C. 129 : 1935 A. L. J. 257 :
1935 A. W. R. 125 : 57 All. 666 :
A. I. R. 1935 All. 217.

S. 342—Non-compliance.

The mere fact that the statement of the accused has not been recorded by the Magistrate in a summary trial would not show either that the accused was never questioned at all or that the omission to record his statement is fatal. *Sia Ram v. Emperor*.

36 Cr. L. J. 1290 :
158 I. C. 129 : 1935 A. L. J. 257 :
1935 A. W. R. 125 : 57 All. 666 :
A. I. R. 1935 All. 217.

S. 342—Non-compliance.

The omission to examine the accused again after the last witness for the prosecution was examined vitiates the trial only if the accused has been prejudiced thereby. *Pitani v. Emperor*.
33 Cr. L. J. 811 :
139 I. C. 636 : 9 O. W. N. 116 :
I. R. 1932 Oudh 369 : A. I. R. 1932 Oudh 113.

S. 342—Non-compliance.

The omission to re-examine under S. 342, the accused who were charged under Child Marriage Restraint Act, after the prosecution evidence had been completely recorded is not such an irregularity as would vitiate the trial. *Bachchu Lal v. Emperor*.

37 Cr. L. J. 616 :
162 I. C. 389 (b) : 1936 O. L. R. 254 :
1936 O. W. N. 480 : 8 R. O. 376 :
A. I. R. 1936 Oudh 311.

S. 342—Non-compliance.

Where the provisions of S. 342 are not complied with, a re-trial will be necessitated from the stage of non-compliance. *Taj Ram v. Emperor*.
35 Cr. L. J. 104 (2) :
146 I. C. 434 : 34 P. L. R. 798 : 6 R. L. 225 :
A. I. R. 1933 Lab. 1002 (2).

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is legally inadmissible. *Parmeshwar Lall Mittar v. Emperor.*

23 Cr. L. J. 440 :
67 I. C. 646 : 3 P. L. T. 347 :
A. I. R. 1922 Pat. 296.

—S. 342—*Summons case—Examination of accused, necessity of—Omission to examine, whether vitiates trial.*

S. 342, Cr. P. C., is applicable to summons cases also. The initial statement of the accused in such cases under S. 242 does not dispense with the necessity of the examination by the Court and the statement of the accused under S. 342. The omission to comply with S. 342, Cr. P. C., is a violation of an express procedure ensuring an essential right of the accused person which vitiates a trial and is not a mere irregularity which can be cured by S. 537, Cr. P. C. *Emperor v. Pario.*

27 Cr. L. J. 1290 :
98 I. C. 186 : 19 S. L. R. 121 :
A. I. R. 1926 Sind 281.

—S. 342—*Summons case—Examination of accused, whether necessary.*

S. 342, Cr. P. C., is not applicable to a summons case. Where in such a case the accused files a written statement after the close of the case, for the prosecution and before entering on his defence it is not essential for the Magistrate to question him generally on the case. *Kale Khan v. Emperor.*

28 Cr. L. J. 480 :
101 I. C. 608 : 9 L. L. J. 109 :
28 P. L. R. 228 : A. I. R. 1927 Lah. 268.

—S. 342—*Summons case.*

If accused does not admit guilt, provisions of S. 342 must be observed. *Karam Din v. Emperor.*

35 Cr. L. J. 1394 :
151 I. C. 748 : 15 Lah. 60 : 35 P. L. R. 295 :
7 R. L. 188 : A. I. R. 1934 Lah. 96.

—S. 342—*Summons case—Trial on warrant case, effect of.*

When an enquiry has commenced as a warrant case, the proceedings must continue as such, although the case should have been tried as a summons case. Still less can an actual grave omission in warrant case procedure be construed as consonant with summons case procedure. *Emperor v. Amirbi.*

34 Cr. L. J. 340 :
142 I. C. 393 : I. R. 1933 Nag. 114 (1) :
A. I. R. 1933 Nag. 192.

—S. 342—*Transfer of Magistrate—De novo trial—Succeeding—Magistrate's duty to examine accused again—Omission to examine—Illegality.*

Where the Magistrate trying a case is transferred and the accused demands a *de novo* trial, the succeeding Magistrate is bound to examine the accused again under S. 342, Cr. P. C., and failure on the part of the Magistrate to do so will vitiate the trial. "It is not only a rule but a principle of law that the Magistrate who tries a case in the sense of 'decides' it, must give the accused an opportunity of explaining any points which may have been made

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against him and must hear what he has to say." *Akhtar Mohammad v. Emperor.*

29 Cr. L. J. 125 :
106 I. C. 717 : A. I. R. 1927 Lah. 720.

—S. 342—*Warrant cases—Examination of accused, stage for.*

A trial of a warrant case should be regarded as comprising not merely two stages, prosecution and defence, but three stages, prosecution, further cross-examination of prosecution witnesses and defence; it is clear, therefore, that S. 342 does not lay down any particular moment of time but a period of time within which the examination can be held. If the trial of a warrant case were regarded as having only two stages—prosecution and defence—then S. 342 would have to be interpreted as indicating a particular moment of time, namely that intervening between the close of the first stage and the beginning of the second. If, however, there are three stages, then the examination under S. 342 can be held either immediately after the close of the first stage or immediately before the beginning of the third stage or for the matter of that at any time between these two points. *Mohammad Nawaz v. Emperor.*

39 Cr. L. J. 781 :
176 I. C. 678 : 40 P. L. R. 850 :
I. L. R. 1938 Lah. 603 : 11 R. L. 226 :
A. I. R. 1938 Lah. 543.

—S. 342—*Witnesses for prosecution—Examination of after statement of accused—Irregularity.*

The examination of a witness for the prosecution after recording the statement of the accused is an error, but if the case has been decided correctly on the merits, the error in no way affects the result so as to vitiate the trial. *Bechu Chaube v. Emperor.*

24 Cr. L. J. 67 :
71 I. C. 115 : 20 A. L. J. 874 :
45 All. 124 : A. I. R. 1923 All. 81.

—S. 342—*Written statement of accused.*

After the prosecution case was closed, the accused were asked whether they would make a statement, having heard the case which had been brought against them by the prosecution. They replied in the negative and added that they would file a written statement and thereupon they filed a written statement meeting the points put forward by the prosecution: Held, that the provisions of S. 342 had been substantially complied with. *Bhaghat Singh v. Emperor.*

26 Cr. L. J. 932 :
86 I. C. 996 : 6 P. L. T. 73 :
4 Pat. 231 : A. I. R. 1925 Pat. 378.

—S. 342—*Written statement—Accused declining to answer questions and preferring to put in written statement—Violation of provisions.*

Where an accused person declines to make a statement, no examination under S. 342 is possible, and any attempt to induce answers by repeated questions would not only be futile but also harassing to the accused. An accused person can only be examined under the provisions of S. 342,

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———S. 342—Object of—Evidence against accused not direct but circumstantial—Non-compliance with S. 342—Re-trial.

The object of the questioning of the accused under S. 342, Cr. P. C., is that the circumstances which, if unexplained, would lead to conviction, should be pointed out to the accused by the Court, so that he may have an opportunity to give his explanation, if any, in regard to them. This procedure becomes all the more necessary in cases where the evidence against the accused is not direct but entirely circumstantial. On failure to comply with the provisions of S. 342, it is necessary to send the case back for re-trial. *Chinnu v. Emperor*.

37 Cr. L. J. 1107 :
165 I. C. 192 : 1936 M. W. N. 183 :
9 R. M. 217 : A. I. R. 1936 Mad. 628.

———S. 342—Object of—Examination of accused—Mode.

The object of S. 342, Cr. P. C. is to enable the accused to know what, in opinion of Court, are circumstances which from the evidence appear to be against him. The section makes it obligatory for the Court to tell the accused as to what are the circumstances which he has to explain. The time and the stage of the trial at which the Court is required to put the question to the accused is also of importance; it is after the close of the prosecution case and before the accused is called on for his defence. At this stage it is necessary that the Court should make up its mind as to whether there are circumstances appearing from the prosecution evidence against the accused, and if it is of opinion that there are such circumstances the accused must be apprised of the circumstances so that he may explain them to the satisfaction of the Court. The mere question as to whether the accused has anything to say after hearing the cross-examination of the prosecution witnesses is not a sufficient compliance with the provisions of the law. *Durga Ram v. Emperor*.

26 Cr. L. J. 716 :
86 I. C. 156 : 6 P. L. T. 33 :
A. I. R. 1925 Pat. 342.

———S. 342—Object of.

The provisions of S. 342 are mandatory and the object with which the accused is examined is to enable him to explain any circumstances appearing against him in the evidence. *Emperor v. Nani Mandal*.

26 Cr. L. J. 761 :
86 I. C. 345 : 41 C. L. J. 50 :
52 Cal. 403 : A. I. R. 1925 Cal. 575.

———S. 342 (1)—Object of—Examination of accused—Practice—Warning to accused.

The object of S. 342 (1), is to give an opportunity to the accused, if he so desires, to tender any explanation he likes of his part in the case that is presented against him. It is extremely desirable that Magistrates should follow the practice of English Courts of warning an accused person when they invite his explanation under S. 342 that he

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is not obliged to say anything unless he desires to do so. *In re : Kannammal*.

27 Cr. L. J. 311 :
92 I. C. 695 : 23 L. W. 384.
A. I. R. 1926 Mad. 570.

———S. 342—Power of Court—Accused declining to make statement—Procedure.

Where the accused declines to make a statement, the Court should not ask him questions of an inquisitorial or cross-examining character but the Court may put specific questions to the accused with a view to give him an opportunity of explaining, if he would, the circumstances appearing against him in the evidence. *Profulla Kumar Bose v. Emperor*.

31 Cr. L. J. 903 :
125 I. C. 656 : 50 C. L. J. 593 :
57 Cal. 1074 : A. I. R. 1930 Cal. 209.

———S. 342—Power of Court.

Although Court should not examine accused to entrap him into admissions which can fill up gaps in prosecution case, still if questions are straightforward and accused is asked what he has to say his statements can be considered under S. 342 (3). *Kalu Manjhi v. Emperor*.

32 Cr. L. J. 898 :
132 I. C. 360 : 9 Pat. 504 : 11 P. L. T. 706 :
I. R. 1931 Pat. 280 : A. I. R. 1930 Pat. 498.

———S. 342—Powers of High Court.

Evidence not fairly considered by Lower Court—High Court should test the accuracy of decision. *Raghubar Dayal v. Emperor*.

36 Cr. L. J. 33 :
152 I. C. 120 : 7 R. A. 261 :
A. I. R. 1934 All. 735.

———S. 342—Power of Magistrate—No evidence against accused—Magistrate, right of, to question accused.

S. 342, Cr. P. C., gives the Magistrate only the right to question the accused for the purpose of enabling him to explain any circumstance appearing in evidence against him. Where no evidence had been given implicating the accused, the Magistrate has no right under the Statute to put questions to him or invite him to make a statement. A statement, therefore, made by the accused under these circumstances is not admissible in evidence against him on his subsequent trial. *In re : Abibulla Rowthan*.

16 Cr. L. J. 623 :
30 I. C. 447 : 1915 M. W. N. 413 :
2 L. W. 939 : A. I. R. 1916 Mad. 407.

———Ss. 342, 370.—Presidency Magistrate—Judgment, contents of—Examination of accused, particulars of, record of,—Reasons for conviction, whether must be recorded.

Where in a trial before a Presidency Magistrate the accused is examined under S. 342, it is the duty of the Magistrate to record the substance of the examination of the accused and his plea in the judgment. In a case in which such Magistrate inflicts imprisonment or fine exceeding Rs. 200 or both, a brief statement of the reasons for conviction must also be recorded. Where these particulars are omitted, the judgment

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journed for judgment till the 15th October when it was delivered: *Held*, (1) that the written statement relieved the Magistrate from the necessity of examining the accused orally in reference to the matters elicited in cross-examination and re-examination of the prosecution witnesses; (2) that even assuming that S. 342, had not been strictly complied with, the facts showed at most a slight irregularity which did not in any way prejudice the accused and there was no ground for interference in revision. *Gurdial Singh v. Bhola Halwai*.

31 Cr. L. J. 171 :

120 I. C. 753 : 10 P. L. T. 196.

———S. 342—Written statement of accused.

S. 256, Cr. P. C., directs the Court to accept a written statement and it is intended that the Court should read it. If, therefore an accused person when examined under S. 342 of the Code states that he will file a written statement, that statement must be accepted in lieu of his oral statement. In every case the test is whether there has been prejudice to the accused by reason of the absence of judicial questioning and whether the defect is cured by S. 537 of the Code. If at the close of the prosecution case an accused person states that he is going to file a written statement and does so, he need not be asked anything further by the Magistrate. There may be cases in which, when fresh evidence is taken on remand, the accused ought to be given an opportunity of making a statement, that is, in effect of being examined by the Magistrate; but provided the accused has in fact had a reasonable and substantial opportunity of exercising the privilege accorded to him by the provisions of S. 342, Cr. P. C., that is, of either orally or in writing saying what he wishes to say in explanation of what has been alleged against him, a technical failure or omission in the procedure ought not to be regarded as rendering a trial wholly nugatory. *Mohiuddin v. Emperor*.

26 Cr. L. J. 811 :

86 I. C. 459 : 6 P. L. T. 154 :

1925 Pat. 112 : 3 Pat. L. R. 110 Cr. :

4 Pat. 488 : A. I. R. 1925 Pat. 414.

———S. 343—Accused, meaning of.

The accused referred to in S. 343 is the same accused as is specified in S. 342, and the former section has no application to the case of a person who has ceased to be an accused after his discharge. *Mahadeo v. Emperor*.

27 Cr. L. J. 807 :

95 I. C. 471 : A. I. R. 1926 Nag. 426.

———S. 343—Scope of.

A Court of Justice is not justified in exercising any pressure upon an accused person before it with the object of coercing him to produce persons who are fugitives from justice. *Fakir Mohammad v. Emperor*.

32 Cr. L. J. 344 :

I. R. 1931 Lah. 197 : A. I. R. 1930 Lah. 953.

———S. 344.

———Adjournment.

———Adjournment of Appeal.

———Applicability.

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———Bail.

———Conditional adjournment, legality of.

———Costs.

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———Costs of Previous Adjournment.

———Duty of Magistrate.

———Power of Magistrate to set aside stay.

———Remand.

———Revision.

———Scope.

———Scope of.

———Stay of Criminal Proceedings.

———Stay of Proceedings.

———S. 344.

See also (i) Calcutta Municipal Act, 1899, S. 631.

(ii) Cr. P. C., 1898, Ss. 107, 167, 170, 173, 200, 202, 203, 204, 256 (2).

(iii) Criminal Trial.

(iv) Magistrate.

(v) Practice.

———S. 344—Adjournment, period of.

Adjournment of criminal case pending civil suit should not be *sine die*, but for fixed and definite periods. *Tara Chand v. Emperor*.

34 Cr. L. J. 139 :

141 I. C. 179 (1) : 27 S. L. R. 17 :

I. R. 1933 Sind 33 (1) :

A. I. R. 1932 Sind 214.

———S. 344—Adjournment—Powers of Magistrate.

Once a Magistrate has taken cognizance of a case, his powers of postponement and adjournment are regulated by S. 344, Cr. P. C. *Bholanath Das v. Emperor*.

26 Cr. L. J. 68 :

83 I. C. 628 : 28 C. W. N. 490 :

A. I. R. 1924 Cal. 614.

———S. 344—Adjournment—Reasonable cause for postponement.

The fact that the accused's Advocate has to fulfil a long-standing engagement in a criminal case at another place is *prima facie* a reasonable cause for an adjournment under S. 344, Cr. P. C. A Magistrate is not justified in taking the extreme course of deciding without hearing the defence, when the accused's Advocate has an engagement at another place. *Esteves v. Emperor*.

12 Cr. L. J. 474 :

12 I. C. 82 : 4 Bur. L. T. 213.

———S. 344—Adjournment—Reasons for adjournment.

It is not a valid ground for adjourning a prosecution within the meaning of S. 344, Cr. P. C., that issues similar to those arising in the Criminal Court are concurrently the subject of determination by a Civil Court with the possible result of conflicting decisions upon practically the same evidence, especially when the adjournment of the criminal proceedings would necessarily be very prolonged. *Mathura Kunwar v. Durga Kunwar*.

2 Cr. L. J. 798 :

2 A. L. J. 747 : 25 A. W. N. 254.

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the accused an opportunity of making a statement of his defence with his own lips; for instance, the question "What is your defence?" is a sufficient compliance with the mandatory provisions of S. 342, since it enables the accused to explain any circumstances appearing in the evidence against him. It is neither necessary nor desirable that there should be any detailed questioning of the accused under this section. The point at which the Court is bound to question the accused is after the witnesses for the prosecution have been cross-examined. From that cross-examination it will usually appear to the accused what are the circumstances appearing in the evidence which require explanation. If this is apparent, it is not necessary for the Court to tell the accused what those circumstances are. *Emperor v. Alimuddin Naskar*.

26 Cr. L. J. 631 :
85 I. C. 919 : 29 C. W. N. 231 :
41 C. L. J. 101 : 52 Cal. 522 :
A. I. R. 1925 Cal. 361.

—S. 342—Scope.

Accused not questioned on certain matters—Adverse interference against accused cannot be drawn. *Emperor v. Baliram*.

34 Cr. L. J. 411 :
142 I. C. 785 : 15 N. L. J. 116 :
I. R. 1933 Nag. 145.

—S. 342—Scope of.

In every case, whether summons or warrant one, there must be an examination of the accused under S. 342, the provisions of which are mandatory. *Bhagwan v. Emperor*.

27 Cr. L. J. 632 :
94 I. C. 408 : 9 N. L. J. 43 :
22 N. L. R. 65 : A. I. R. 1926 Nag. 300.

—S. 342—Scope of—Omission to examine accused after close of prosecution case—Effect—Examination, sufficiency of.

Omission to give an opportunity to the accused at the close of the prosecution case to explain the circumstances against him is a sufficient ground for ordering re-trial. S. 342, Cr. P. C. only requires the court to question the accused generally on the case. Where the accused had already been questioned and at the close of the prosecution case the Court asked him whether he wanted to say anything more: *Held*, the accused had been given a sufficient opportunity and S. 342 had been complied with. *Emperor v. Rudra Dutt Misra*.

I. R. 1932 Lah. 666 (2).

—S. 342—Scope of.

S. 342, Cr. P. C., does not come into operation when additional evidence is taken under S. 428. *Nathu Singh v. Emperor*.

41 Cr. L. J. 356 :
186 I. C. 660 : 1940 N. L. J. 203 :
12 R. N. 256.

—S. 342—Scope of.

S. 342 relates only to oral questioning of the accused and does not prohibit a direction to him to make a finger impression, any more than it prohibits a direction to him

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to face a witness in order that he may be identified. *Emperor v. Nga Tun Hlaing*.

26 Cr. L. J. 108 :
83 I. C. 668 : 2 Bur. L. J. 270 :
1 Rang. 759 : A. I. R. 1924 Rang. 115.

—S. 342—Scope of.

The section is mandatory and it is the duty of the Magistrate to call the accused's attention to any important point against him and ask for an explanation. *Raghubar Dayal v. Emperor*.

36 Cr. L. J. 33 :
152 I. C. 120 : 7 R. A. 261 :
3 A. W. R. 655 :
A. I. R. 1934 All. 735.

—S. 342—Scope of.

Unless a person is an accused person in the trial, S. 342, Cr. P. C. would not render him incompetent to make any statement on oath. 166 Ind. Cas. 587 (15), relied on. *Sheo-shankar Dhondbaji Mahar v. Emperor*.

41 Cr. L. J. 697 :
188 I. C. 885 : 1940 N. L. J. 165 : 13 R. N. 14.

—S. 342—Security for peace—Reference to Superior Magistrate by 2nd class or 3rd class Magistrate—Power to pass sentence.

A Magistrate of the second or third class, if of opinion that the accused should be bound down under S. 106, Cr. P. C. must refer the whole case to a superior Magistrate without passing any part of the sentence himself. *Rohimuddi Howladar v. Emperor*.

9 Cr. L. J. 72 :
35 Cal. 1093.

—S. 342—Sessions Case—Examination of accused.

In case triable by Sessions Court, omission to examine accused in Committing Court does not vitiate trial. *Emperor v. Ajabar Mandal*.

36 Cr. L. J. 1340 :
157 I. C. 1103 : 39 C. W. N. 289 : 62 Cal. 475 :
8 R. C. 151 : A. I. R. 1935 Cal. 605.

—Ss. 342, 289—Sessions case—Examination of accused.

In the course of the preliminary enquiry in a Sessions case, when examined before the framing of the charge, the accused stated: "I am not guilty. I will make a statement later." In the Trial Court there was no further examination of the accused, under the provisions of S. 289 and S. 342 of the Cr. P. C.: *Held*, that the case was eminently one in which an opportunity of making a statement should have been given to the accused. *Gangadhar Goala v. Reed*.

23 Cr. L. J. 41 :
64 I. C. 665 : 25 C. W. N. 609 :
33 C. L. J. 503.

—S. 342—Sessions case—Failure of Committing Magistrate to examine accused, effect of.

It is highly desirable that Committing Magistrates should adhere to the provisions of S. 342 and examine the accused after the prosecution case has been concluded. In a case exclusively triable by the Sessions Court, however, it is the latter Court that tries the accused and calls upon him for his defence, and it is that Court that must strictly conform to the provisions of S. 342, and if this done,

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method of conducting criminal cases must be departed from. *In re : Abdul Rahiman.*

19 Cr. L. J. 326 :
44 I. C. 342 : 20 Bom. L. R. 124 :
42 Bom. 254 : A. I. R. 1918 Bom. 253 :

———S. 344—Costs—Adjournment of criminal case—Power of Court to order costs.

Magistrate in granting an adjournment under the provisions of S. 344 is competent under the same section to order the costs of the day to be paid by the party in whose favour the order for adjournment is made. *Mathura Prasad v. Basant Lal.*

2 Cr. L. J. 803 :
25 A. W. N. 256 : 2 A. L. J. 831 :
28 All. 207.

———S. 344—Costs—Adjournment of transfer application.

An order for costs of adjournment should not be passed in the case of an application for transfer. *Sorabji v. Erachshaw.*

33 Cr. L. J. 802 (2) :
139 I. C. 577 : 34 Bom. L. R. 1106 :
56 Bom. 536 : I. R. 1932 Bom. 509 :
A. I. R. 1932 Bom. 470.

———S. 344—Costs—Complainant's witnesses not present—Adjournment—One accused, absence of.

A complainant should not be burdened with costs for an adjournment occasioned by his failure to produce evidence when one of the accused also happens to be absent on that day. *Bishamhar v. Ram Chand.*

27 Cr. L. J. 572 :
94 I. C. 140 : A. I. R. 1926 Lah. 407 :

———S. 344—Costs—Costs to accused and witnesses—Adjournment.

Where a Magistrate finds it necessary to postpone a case because the complainant has failed to take necessary steps to summon his witnesses, the Magistrate has the power to direct the complainant to pay costs to the accused or to the witnesses. *Gulzari Lal v. Gunga Ram.*

13 Cr. L. J. 268 :
14 I. C. 652 : 9 A. L. J. 170.

———S. 344—Costs—Order awarding costs of adjournment against the accused.

It would be entirely opposed to the spirit of S. 344 that a Magistrate would pass orders awarding costs of adjournment against the accused who was absent on the date of hearing. *Browne v. Chanda Singh.*

4 Cr. L. J. 78 :
6 P. R. Cr. 1906.

———S. 344—Costs—Prosecution on Police report—Adjournment at request of prosecution—Complainant, whether liable for costs.

Where a Magistrate takes cognizance of an offence on a Police report, the complainant is merely a witness, and if an adjournment takes place because of the absence of the prosecution witnesses on the date fixed, an order under S. 344, Cr. P. C., directing the complainant to pay the expenses incurred by the accused is not justified, as the adjournment was not caused through any fault of his. *Emperor v. Lawman Natha.*

23 Cr. L. J. 338 :
66 I. C. 994 : 24 Bom. L. R. 360 :
A. I. R. 1922 Bom. 239.

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———S. 344—Costs of adjournment.

It is in the discretion of a Magistrate to make an order as to costs of adjournment under S. 344, Cr. P. C. *Sew Prosad Poddar v. The Corporation of Calcutta.*

2 Cr. L. J. 1 :
9 C. W. N. 18.

———S. 344—Costs of adjournment.

The words "on such terms as it thinks fit" in S. 344, Cr. P. C., empower Criminal Courts to allow costs of adjournment. *Emperor v. Shuldham.*

1 Cr. L. J. 1095 :
20 P. R. Cr. of 1904.

———Ss. 344, 526—Costs of adjournment—Apprehension of prejudice—Transfer of case—Power of Magistrate—Local inspection, Magistrate, power of, to make.

The Cr. P. C. does authorise Magistrates to give compensation whenever they think proper by way of costs for adjournments, and the passing of such an order against a party does not disclose any prejudice on the part of the Magistrate and is not a valid ground for the transfer of the case to another Magistrate. *Raghunandan Prosad v. Ramadhin Singh.*

19 Cr. L. J. 6 :
42 I. C. 918 : 2 P. L. W. 218 :
A. I. R. 1918 Pat. 656.

———S. 344—Costs of adjournment, against accused.

A Court cannot take any proceedings against an accused person in his absence. In a criminal case an accused person cannot be ordered to pay compensation to the complainant on an adjournment of the complaint against him occasioned by his failure to appear on the date fixed for the hearing. *Beedha v. Emperor.*

23 Cr. L. J. 243 :
66 I. C. 179 : 20 A. L. J. 280 :
A. I. R. 1922 All. 84.

———S. 344—Costs of adjournment against accused.

An order requiring an accused to pay the costs of an adjournment is one which a Magistrate in his discretion may make under S. 344, and the High Court will not interfere with such an order if not found to be unreasonable under the circumstances of the case. *Sorabji v. Erachshaw.*

33 Cr. L. J. 802 (2) :
139 I. C. 577 : 34 Bom. L. R. 1106 :
56 Bom. 536 : I. R. 1932 Bom. 509 :
A. I. R. 1932 Bom. 470.

———S. 344—Costs of previous adjournment.

A Magistrate cannot, at a later date, award costs of previous adjournments which have already been granted unconditionally. *Sorabji v. Erachshaw.*

33 Cr. L. J. 802 (2) :
139 I. C. 577 : 34 Bom. L. R. 1106 :
56 Bom. 536 : I. R. 1932 Bom. 509 :
A. I. R. 1932 Bom. 470.

———S. 344—Duty of Magistrate.

The provisions of S. 344, Cr. P. C., must be strictly observed and a Magistrate is not entitled, on the ground of convenience, to infringe those provisions. *Wadhawa Singh v. Emperor.*

22 Cr. L. J. 669 :
63 I. C. 461 : 3 U. P. L. R. Lah. 78.

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the failure of the Committing Magistrate to examine accused does not vitiate the trial. *Dinu v. Emperor.* 26 Cr. L. J. 191 :

83 I. C. 895 : 16 S. L. R. 201.

———**Ss. 342, 537—Sessions case—Omission to examine accused—Effect.**

The provisions of S. 342 are of general application, and are applicable to all trials including Sessions cases, and an omission to examine an accused person in a Sessions case is not a mere irregularity curable by S. 537 of the Code, but is fatal to the trial, irrespective of whether the provisions of S. 342 are merely directory or mandatory. *Raghu Bhumij v. Emperor.* 21 Cr. L. J. 705 :

58 I. C. 49 : 1 P. L. T. 241 : 5 P. L. J. 430.

———**S. 342—Statement by accused.**

When accused person is examined under S. 342, Cr. P. C., the answers given by him may be taken into consideration at trial, and proper inferences drawn therefrom, and even in a subsequent trial for any other offence, they may still be used for or against him. *Baldeo Kocri v. Emperor.* 22 Cr. L. J. 433 :

61 I. C. 785 : 6 P. L. J. 241 : 2 P. L. T. 565 :

A. I. R. 1921 Pat. 122.

———**S. 342—Statement of accomplice—Accomplice pardoned by Local Government in a case not triable exclusively by Court of Session—Admissibility in evidence of statement made by such accomplice.**

An accomplice who has been pardoned by Local Government in a case not triable exclusively by Court of Session is a competent witness, and his sworn testimony is admissible in evidence, as against persons accused of the crime when he is sent up not as accused but merely as a witness in the case. *Sardar Khan v. Emperor.* 1 Cr. L. J. 1066 :

5 P. L. R. 476 : 21 P. R. Cr. of 1904.

———**S. 342—Statement of accused—Whether can be used against accomplice.**

The statement by accused under S. 342, Cr. P. C., cannot be used against his accomplices in the dock. *Sumitra v. Crown.*

41 Cr. L. J. 886 :

190 I. C. 273 : 1940 N. L. J. 343 :

13 R. N. 94 : A. I. R. 1940 Nag. 287.

———**S. 342—Statement of accused, use of by Court, cannot be used against co-accused.**

The statements made by the accused under S. 342 are to be considered by the Court and the Court should draw such an inference from the answer of the accused or refusal to answer as it thinks just. The Court in some cases may draw even an inference against the accused from his answer or refusal to answer. But the Court is not entitled to draw any inference against a co-accused from the answer of one accused given in response to questions put to him under the provisions of this section. *Tahsimuddin Ahmad v. Emperor.*

41 Cr. L. J. 563 :

188 I. C. 288 : 44 C. W. N. 396 (2) :

12 R. C. 678 : A. I. R. 1940 Cal. 250.

———**S. 342—Statement of accused, use of, by prosecution.**

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The Crown has to rely on the prosecution case and the evidence called in support of it, it cannot fill up a gap in the evidence of the prosecution by a statement made by the accused in his examination under S. 342, Cr. P. C., or an admission contained therein. *Sallch v. Emperor.* 30 Cr. L. J. 1135 :

120 I. C. 95 : I. R. 1929 Sind 239 :

A. I. R. 1929 Sind 255.

———**S. 342—Statement under—Object and value of.**

A statement made by the accused under S. 342, Cr. P. C., is not made on oath and cannot be tested by cross-examination. The accused is offered an opportunity to explain any circumstances appearing in the evidence against him on the principle that though the proof of the case against the prisoner must depend for its support, not upon the explanation on the part of the prisoner but upon the positive, affirmative evidence of his guilt given by the Crown, yet if he is involved by such evidence in a state of considerable suspicion, he is called upon, for his own sake and for his own safety, to state and elucidate the circumstances, whatever they may be, which might reconcile such suspicious appearances with perfect innocence. The statement of the accused cannot be placed on a higher level than this and the Court and the Jury are expressly left free to draw such inference from the refusal of the accused to answer or from the answers he gives as they think just. *Emperor v. Barendra Kumar Ghose.*

25 Cr. L. J. 817 :

81 I. C. 353 : 38 C. L. J. 411 : 28 C. W. N. 170 :

A. I. R. 1924 Cal. 257.

———**Ss. 342, 364—Summary trial—Examination of accused.**

In a summary trial of a warrant case, although a Magistrate is bound to examine the accused under S. 342, Cr. P. C., he is not bound to record such examination as provided for in S. 364 of the Code. *Parshotam Das v. Emperor.* 28 Cr. L. J. 1037 :

106 I. C. 221 : 6 Pat. 504 : 8 P. L. T. 787 :

I. L. T. 40 Pat. 14 : A. I. R. 1927 Pat. 369.

———**S. 342—Summons case, application to.**

Held, by the Full Bench (*Carr*, J. dissenting) S. 342, does not apply to the trial of summons cases. *Emperor v. Nga La Gyi.* (F. B.).

32 Cr. L. J. 1190 :

134 I. C. 500 : 9 Rang. 506 :

I. R. 1931 Rang. 292 : A. I. R. 1931 Rang. 244.

———**S. 342—Summons case, duty of Magistrate.**

Under the procedure laid down for the trial of summons cases, the accused has no right to postpone the cross-examination of any prosecution witness as in the case of the trial of a warrant-case. But if the cross-examination is postponed in accordance with the direction of the Magistrate, the Magistrate is bound to give further opportunity to the accused to cross-examine the witness without such a cross-examination, the evidence of the witness

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is not a rule of law but a rule dictated by prudence and its application must depend on the merits of each case. Where documents are tampered with after they were produced in Court in a civil case, it is not necessary to stay institution of criminal proceedings till the decision of the civil case. *Lorind Singh v. Emperor*.

31 Cr. L. J. 1053 :

126 I. C. 523 : A. I. R. 1930 Lah. 802.

—S. 344—*Stay of criminal proceedings pending civil suit.*

Where the facts on which a criminal prosecution is based are in issue in a civil suit filed previously by the complainant himself, and the decision in the civil suit is likely to throw considerable light upon the dispute in the criminal case, the criminal proceedings should be stayed till the decision of the civil suit. *Linton v. Emperor*.

28 Cr. L. J. 326 :

100 I. C. 710 : 28 P. L. R. 103.

—S. 344—*Stay of criminal proceedings—Riot and theft—Civil suit in respect of same property already pending, effect of.*

Where accused are charged with theft and riot and the charges have reference to property which forms the subject-matter of a Civil suit already pending, it is desirable in the interests of the fair administration of justice that the Criminal proceeding should be stayed until the disposal of the Civil suit. *Khobhari Rai v. Bhagwat Rai*.

18 Cr. L. J. 771 :

41 I. C. 147 : 1 P. L. W. 793 :

A. I. R. 1917 Pat. 621.

—S. 344—*Stay of criminal proceedings—Same issue in civil and criminal proceedings—Stay of criminal proceedings—Principles—Refusal by Court to act under S. 344.*

Where the same issue is agitated both in a civil action and a criminal proceedings, there is invariable rule that the Civil shall take precedence of the Criminal Court. Each case must be considered on its own merits and the only general rule that may be adumbrated is that every Court should be left as far as possible to dispose of the cases on its file with the utmost expedition. In those cases arising out of a disputed title on which it is difficult to draw the line between *bona fide* claim and criminal trespass, if the title is already the subject-matter of a civil suit before the institution of criminal proceedings, it may be advisable for the criminal to abide the civil trial. *Chitrata Ramiah v. Natukula Ramiah*.

28 Cr. L. J. 812 :

104 I. C. 522 : 26 L. W. 113 :

39 M. L. T. 14 : 53 M. L. J. 265 :

1927 M. W. N. 672 :

50 Mad. 839 : A. I. R. 1927 Mad. 778.

—Ss. 344, 561-A—*Stay of criminal proceedings pending civil—Principle—High Court's powers.*

On general grounds as well as under the powers conferred by S. 561 A, Cr. P. C., a High Court has jurisdiction to stay criminal

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proceedings pending proceedings in a Civil Court in a proper case. The mere pendency of a civil suit or appeal is not in itself a sufficient ground for staying criminal proceedings. But if the object of the criminal proceedings in a private prosecution is to prejudice the trial of the suit or to use them as a lever to coerce the accused into a compromise of the civil suit, the criminal proceedings can be stayed till the decision of the civil suit. Criminal proceedings need not be stayed where the accused is not likely to be prejudiced by the criminal proceedings being allowed to proceed. *Jhangir Pestonji Wadia v. Framji Rustomji Wadia*.

29 Cr. L. J. 1053 :

112 I. C. 477 : 30 Bom. L. R. 962.

—S. 344—*Stay of proceedings.*

If the civil case is likely to be delayed, the Criminal Court may record all the prosecution evidence before considering the question of staying the criminal case. *Basheshar Nath v. Ratan Chand*.

33 Cr. L. J. 96 (2) :

141 I. C. 66 : 33 O. L. R. 1045 :

I. R. 1933 Lah. 61 :

A. I. R. 1933 Lah. 37.

—S. 344—*Stay of proceedings.*

Magistrate has discretionary power to stay criminal proceedings—Discretion how to be exercised, stated. *Ravatul Vadhomal v. Sajanmal Mehrmal*.

36 Cr. L. J. 94 :

152 I. C. 382 : 7 R. S. 89 :

A. I. R. 1934 Sind 143.

—S. 344—*Stay of proceedings, period of.*

Proceedings should not be stayed indefinitely. Postponement should be for fixed and definite period. *Emperor v. Dinalshah Rajan-shah*.

35 Cr. L. J. 517 (2) :

147 I. C. 856 : 27 S. L. R. 219 :

6 R. S. 170 : A. I. R. 1933 Sind 358.

—S. 344—*Stay of proceedings, power of Magistrate.*

A Sub-Divisional Magistrate has no power to stay proceedings in his own Court, although he may, under S. 344, Cr. P. C., adjourn a case from time to time. *Murugan v. Guttha Ramia Naidu*.

28 Cr. L. J. 849 :

104 I. C. 625 : 1927 M. W. N. 694 :

39 M. L. T. 103 : 26 L. W. 405 :

53 M. L. J. 455 :

A. I. R. 1927 Mad. 851.

—S. 345.

—Applicability.

—Composition.

—Compoundable case.

—Compounding of offence.

—Compromise.

—Discretion.

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—Scope of.

—Withdrawal from prosecution, application for.

—Withdrawal of case, petition for.

—Written compromise, effect of.

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if he is willing to answer question put by the Court. If he declines to answer questions and prefers to put in a written statement, there is no violation of the provisions of that section by the Magistrate. *Budhulal v. Emperor.*

38 Cr. L. J. 354 :
167 I. C. 155 (1) : 9 R. N. 168 :
I. L. R. 1937 Nag. 228 :
A. I. R. 1937 Nag. 67.

———S. 342—Written statement—Accused refusing to answer beyond what was stated in written statement—Duty of Court.

It no doubt is the duty of the Court to put to the accused the various points against him and the filing of the written statement does not abrogate that duty; if however when the Court wanted to put questions, the accused practically refuses to answer them, saying that he would give his statement later on and that he had nothing to say beyond what he stated in his written statement filed, it would be useless for the Court to persist with detailed questions and there is no prejudice to the accused. *G. S. Rameshar v. Emperor.*

A. I. R. 1936 Nag. 147.

———S. 342—Written statement—Accused's right to put in.

It is nowhere provided in the Cr. P. C. that the accused is entitled as a matter of right to put in a written statement in lieu of any answers he may give to questions put to him under S. 342. *C. E. Ring v. Emperor.*

31 Cr. L. J. 65 :
120 I. C. 340 : 31 Bom. L. R. 545 :
53 Bom. 479 : A. I. R. 1929 Bom. 296.

———S. 342—Written statement—Duty of Magistrate.

In examining the accused under S. 342 it is incumbent upon the Magistrate not to put him the general question: "You have heard the prosecution witnesses against you, say what you have to say," but to communicate to him by appropriate questions everything that is alleged against him in the evidence for the prosecution to its full extent, with a view to ascertain from him what explanation or defence in law or in fact he wishes to put forward in respect thereof. Written statements filed by the accused do not take the place of evidence, nor of such examination of the accused as is contemplated by S. 342. *Udhao v. Emperor.*

25 Cr. L. J. 417 :
77 I. C. 593 : A. I. R. 1924 Nag. 311.

———S. 342—Written statement, effect of—Duty of Magistrate.

The filing of a written statement cannot take the place of the examination of an accused as required by S. 342, Cr. P. C. Under S. 342 it is the duty of the Magistrate to question the accused generally on the case after the close of the prosecution, but when the accused refuses to answer a question the Magistrate is not bound to go on asking questions especially where a written statement is put in meeting

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the points put forward by the prosecution. *Bhagal Singh v. Emperor.*

26 Cr. L. J. 932 :
86 I. C. 996 : 6 P. L. T. 73 :
4 Pat. 231 : A. I. R. 1925 Pat. 378.

———S. 342—Written statement—Non-compliance—Effect.

The provisions of S. 342, Cr. P. C., are mandatory in character and the omission by a Session Judge to comply with these provisions would vitiate the trial. A written statement filed by the accused cannot take the place of an examination under the section. *In re : Nainamalai Konan.*

23 Cr. L. J. 697 :
69 I. C. 377 : 14 L. W. 418 :
A. I. R. 1921 Mad. 679.

———S. 342—Written statement.

Personal statement by the accused is necessary and not by Advocate. *Iskwar Das v. Bhagwan Das.*

35 Cr. L. J. 879 :
148 I. C. 1135 : 1934 A. L. J. 753 :
3 A. W. R. 443 : 6 R. A. 831 :
A. I. R. 1934 All. 693 (2).

———S. 342—Written statement.

The filing of a written statement by the accused is not tantamount to the examination of the accused as required by S. 342 of the Code. *Nataraja Mudaliar v. Devasigamani Mudaliar.*

32 Cr. L. J. 757 :
131 I. C. 493 : 1931 M. W. N. 914 :
A. I. R. 1931 Mad. 241.

———S. 342—Written statement.

Where an accused puts in a written statement in the trial of a warrant case, he should be allowed to file it in Court instead of allowing the accused to read it *in extenso* in Court and to have it recorded as he reads it. *Jhabwala v. Emperor.*

34 Cr. L. J. 967 :
145 I. C. 481 : 1933 A. L. J. 799 :
6 R. A. 65 : A. I. R. 1933 All. 690.

———S. 342—Written statement—Whether sufficient.

A written statement filed by an accused person cannot take the place of his examination under S. 342. *Balkeshwar Singh v. Emperor.*

23 Cr. L. J. 114 :
65 I. C. 546 : 3 P. L. T. 332 :
A. I. R. 1922 Pat. 5.

———S. 342, 537—Written statement—Absence of oral examination—Irregularity.

Mere omission to comply with the provisions of S. 342, Cr. P. C., will not vitiate a trial unless there has been a failure of justice as a result of the irregularity. The accused was examined by the Magistrate before a charge was framed and stated that he would file a written statement. After cross-examination of the prosecution witnesses was completed, the case was adjourned to the 3rd October for defence. On that day the written statement of the accused was ready, but it was not filed as the accused declined to produce any defence witnesses and the case was adjourned to the 10th October for argument. On that date the written statement was signed and dated by the *mukhtar* for the defence and filed, and argument having been heard, the case was ad-

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the scope of S. 345, Cr. P. C., for any consideration or gratification. It is not necessary that the consideration should be of a monetary character. All that the law requires is that there should be some arrangement between the parties settling their differences. A petition asking for leave to withdraw the case as against one of the accused on the ground that the latter had apologised to the complainant is in effect a petition of compromise under S. 345, Cr. P. C. *Anantia v. Emperor*.

25 Cr. L. J. 629 :

81 I. C. 117 : 5 Lah. 239 :

A. I. R. 1924 Lah. 595.

—S. 345—Composition—Person competent to compound.

An offence punishable under S. 325, Penal Code, is compoundable with the permission of the Court, but it is compoundable by the person to whom the hurt was caused. In a case where the person to whom the hurt was caused is dead, the case cannot be compounded by his heir. *Emperor v. Rahmat*.

16 Cr. L. J. 586.

30 I. C. 138 : 13 A. L. J. 630 :

37 All. 419 : A. I. R. 1915 All. 443.

—S. 345 (2)—Composition before prosecution—Legality—Enquiry by Magistrate.

Under S. 345 (2), Cr. P. C., there must be a prosecution pending and the permission of the Court must be given. Any act of the parties done before the prosecution has begun and without reference to any Court cannot be a composition under this sub-section and whatever may be the civil rights to which it may give rise, can have no effect on the trial. Where upon a prosecution by complainant under S. 337, Penal Code, the accused produces during trial, a receipt given by the father of the complainant and alleges that the complainant had agreed not to prosecute him, but the complainant denies the payment, the Court cannot inquire into the factum of compromise alleged by one and denied by the other party under S. 345 (2). *In re : M. S. Ponnuswami Ayyar*.

39 Cr. L. J. 133 :

172 I. C. 369 : 1937 2 M. L. J. 383 :

46 L. W. 289 : 1937 M. W. N. 864 :

10 R. M. 453 :

A. I. R. 1937 Mad. 825.

—S. 345—Composition by some of accused.

Where two out of three accused in a case compromise it but the third chooses to stand the trial, there is nothing illegal in the Magistrate issuing process against the third. *Makhan Lal Pal v. Sakhi*.

34 Cr. L. J. 1063 :

145 I. C. 700 : 37 C. W. N. 319 :

6 R. C. 135 : A. I. R. 1933 Cal. 552.

—S. 345—Composition in revision.

A High Court in revision may allow an offence under S. 498, Penal Code, to be compounded. *Chhotai Singh v. Emperor*.

24 Cr. L. J. 590 :

73 I. C. 334.

—S. 345—Composition in revision.

S. 345, Cr. P. C. allows a case in which appeal

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is pending to be opened to composition with the leave of the Court before which the appeal is to be heard, but the section does not apply to cases coming up in revision. *Ram Chandra v. Emperor*.

16 Cr. L. J. 247 :

28 I. C. 103 : 13 A. L. J. 104 :

37 All. 127 : A. I. R. 1915 All. 8.

—S. 345—Composition in revision.

When complainant applies to High Court in revision that he has compromised with accused voluntarily, it should be accepted. On composition accused is entitled to acquittal. *Hakam Ali v. Emperor*.

35 Cr. L. J. 579 :

147 I. C. 1081 : 35 P. L. R. 257 :

6 R. L. 482 (1) : A. I. R. 1934 Lah. 317 (1).

—Ss. 345 (2), 439—Composition in revision—Penal Code (Act XLV of 1860), of S. 417—Cheating—Compromise put in before evidence recorded—Permission to compound, whether should be given—Refusal to give permission—Revision.

A complaint under S. 417, Penal Code, alleged that the accused had borrowed a sum of money from the complainant on the security of a hand-note by falsely representing that the money was required for necessity of a *khankah* and for its *sajjadanashin* and that it was being borrowed on behalf of the latter. Process was issued against the accused but before any evidence was recorded, a petition of compromise was filed before the Magistrate. The Magistrate refused permission to compound the case on the ground that the offence related to a public trust. On revision : *Held*, that although the pretence of the accused was that the money was required for *khankah* or for *sajjadanashin* inasmuch as the hand-note which he executed made himself personally liable, the funds of the *khankah* were not in any way put in jeopardy and that having regard to the fact that the compromise was arrived at an early stage of the case before any evidence was recorded, the Magistrate should have given permission to compound the offence. *Nehal Ahmad Khan v. Emperor*.

26 Cr. L. J. 1345 :

89 I. C. 385 : A. I. R. 1925 Pat. 583 :

—Ss. 345 (2), 439—Composition in revision—Power of High Court to grant permission.

The High Court has power under S. 439, Cr. P. C., to grant the permission necessary for compounding an offence under S. 345 (2) of the Code. Permission to compound should be granted if the parties are closely related and if it is to their mutual interest that the difference between them be removed and compromise effected so as to establish cordial relations between them. *Emperor v. Bhaiyalal*.

30 Cr. L. J. 960 :

118 I. C. 681 : I. R. 1929 Nag. 281 :

A. I. R. 1929 Nag. 287.

—S. 345 (5-A)—Composition in revision.

A Court of Revision can accept a compromise under Cl. (5-A) of S. 345. But that does not mean that the Court of Revision should accept a compromise in every case where there has been not only a conviction by the first Court

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———Ss. 344, 526—*Adjournment—Sessions trial, adjournment of, legality of—Procedure—Transfer of case, grounds for.*

Ordinarily a Sessions trial once begun should be continued *de die in diem* until it is finished. No such case should be adjourned for hearing except for very good reasons. When a single day was fixed for a Sessions trial and it was obvious that owing to the large number of witnesses to be examined the trial could not be completed on that day: *Held*, (1) that under these circumstances the Sessions Judge should have postponed the trial to some subsequent date when it could be continued *de die in diem*; (2) that the refusal of the Sessions Judge to postpone the trial was a ground for transferring the case to some other Court. *Ram Sarup v. Emperor.*

20 Cr. L. J. 127 :
49 I. C. 111 : 17 A. L. J. 48 :
1 U. P. L. R. All. 36 :
A. I. R. 1919 All. 200.

———Ss. 344, 526 (8) (a)—*Adjournment—Adjournment for filing application to High Court for transfer—Adjournment granted on condition of payment of costs—Order for costs, held illegal and set aside.*

Accused asked for an adjournment in order to enable him to apply to the High Court for transfer. The Magistrate adjourned the case on condition that a sum of Rs. 20 was paid by way of costs: *Held*, that under S. 344, Cr. P. C., a Magistrate may adjourn a case on such terms as he thinks fit but this particular adjournment was one which was covered by the provisions of S. 526, Sub-s. (8), and the Court had to grant it. It is true that the explanation to Sub-s. (9) says that nothing contained in Sub-s. (8) or Sub-s. (9) restricts the powers of a Court under S. 344, but at the same time it is difficult to see how a Court can impose terms for granting an adjournment when it is bound to grant that adjournment whether the terms are accepted or not. *Salek Chand v. Emperor.*

38 Cr. L. J. 142 :
166 I. C. 198 (1) : 1936 A. L. J. 1123 :
I. L. R. 1937 All. 161 : 9 R. A. 369 :
1936 A. W. R. 985 :
A. I. R. 1936 All. 851.

———S. 344—*Adjournment of Appeal—Costs, whether can be awarded.*

S. 344, Cr. P. C., is not applicable to appeals. Costs cannot, therefore, be awarded on the adjournment of an appeal. *Suraj Bhan v. Emperor.*

21 Cr. L. J. 201 :
54 I. C. 985 : 29 P. R. 1919 Cr. :
2 U. P. L. R. Lah. 44 :
85 P. L. R. 1920 :
A. I. R. 1920 Lah. 289.

———S. 344—*Applicability.*

S. 344, Cr. P. C., is applicable to a case even before the issue of process under S. 204 of the Code and a Magistrate is entitled under the former section, if there be a reasonable cause for doing so, to postpone an inquiry or trial

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and to postpone the issue of process under S. 204. *Ram Saran Singh v. Nikha Narain Singh.*

26 Cr. L. J. 1179 :
88 I. C. 603 : 6 P. L. T. 477 :
3 Pat. L. R. 134 Cr. :
A. I. R. 1925 Pat. 619.

———S. 344—*Bail, grant of.*

The mere fact that the investigation may continue for a long time is no ground for releasing accused on bail. *Emperor v. Sooba.*

32 Cr. L. J. 1045 (2) :
133 I. C. 617 : 53 All. 729 :
1931 A. L. J. 617 : I. R. 1931 All. 729 :
A. I. R. 1931 All. 617.

———S. 344—*Conditional adjournment, legality of—Adjournment on payment of costs, power to grant—Police charge-sheet—Costs, award of, against informant, legality of—‘On such terms’; meaning of.*

It is competent to a Magistrate in a pending trial or proceeding, to grant an adjournment conditionally under S. 344, Cr. P. C., on the payment of costs. The power can be exercised in a case tried on a report by the Police against the informant to the Police who, though a witness, virtually prosecutes the case. The words ‘on such terms as it thinks fit’ in the section are wide enough to cover an order making the payment of costs by one party to another a condition of granting an adjournment. *Sunnasi Kudumban v. Sivasubramania Kone.*

18 Cr. L. J. 612 :
39 I. C. 980 : 5 L. W. 763 :
22 M. L. T. 42 : 1917 M. W. N. 566 :
33 M. L. J. 366 : 40 Mad. 1131 :
A. I. R. 1918 Mad. 538.

———Ss. 344, 526 (8), (9)—*Conditional adjournment, legality of—Costs, order for.*

A Court can pass an order for costs under S. 344, Cr. P. C., and Sub-Ss. 8 and 9 of S. 526 do not restrict this power. A Court cannot pass a conditional order of adjournment because it has to pass such an order, but it may, when passing its order for adjournment, direct that the party whose application has necessitated adjournment shall pay costs of the opposite party. *Ram Rakshpal v. Ram Nath.*

39 Cr. L. J. 352 :
173 I. C. 385 : 1937 A. L. J. 1356 (1) :
10 R. A. 481 : I. L. R. 1938 All. 233 :
1937 A. W. R. 1226 : A. I. R. 1938 All. 112.

———S. 344—*Cost.*

Adjournment necessary as one accused is absent and unrepresented—Order for adjournment cost is not justified. *Gulab Singh v. Inder Singh.*

36 Cr. L. J. 101 :
152 I. C. 145 : 36 P. L. R. 74 :
7 R. L. 258 : A. I. R. 1934 Lah. 441.

———S. 344—*Costs—Adjournment of case—Costs, order for, validity of.*

The Cr. P. C. does not make special provision for costs in the course of a criminal trial and if S. 344 is to be regarded as justifying an order as to costs, it can only be where the circumstances are exceptional and where for some reason or another the ordinary everyday

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but that conviction has been upheld by the Court of Appeal. *Jumo Sherkhan v. Emperor*.

36 Cr. L. J. 210 :

152 I. C. 412 : 28 S. L. R. 109 :

7 R. S. 596 : A. I. R. 1934 Sind 122.

—S. 345—Composition of offence—Acquittal—Adjournment for verification, whether necessary—Withdrawal of composition, legality of.

A composition of an offence once effected cannot be withdrawn. It is entirely immaterial for this purpose whether the terms of the composition were carried out or not. As soon as valid composition is filed in Court, it is the duty of the Magistrate, without any unnecessary delay to pronounce an acquittal. Where a composition signed by the parties is filed in Court and all the parties are before the Court, it is not necessary to adjourn the case for any verification of the compromise. *Jhangtoo Barai v. Emperor*.

31 Cr. L. J. 1215 :

127 I. C. 420 : 1930 A. L. J. 281 :

52 All. 254 : A. I. R. 1930 All. 409.

—S. 345—Composition of offence—Accused charged with offences of house trespass, grievous hurt and unlawful assembly—Summoned under charge of grievous hurt—Compromise of whole matter—Subsequent prosecution of accused, if maintainable.

The petitioners were accused of committing house trespass, causing grievous hurt and being members of an unlawful assembly. The Magistrate summoned the petitioner for the charge of the grievous hurt only. In the course of the hearing, a petition of compromise was put in and the Magistrate sanctioned the compromise. Subsequently, the complainant sought to revive the case on the ground that the terms of the compromise had not been carried out : *Held*, that, as the parties were entitled to compound the offence of house trespass without the sanction of the Court and the Magistrate sanctioned the compromise of the offence of causing grievous hurt, and as the object of the unlawful assembly could only have been to commit those two offences, the accused could not be prosecuted any further. *Basireddi v. Khayrat Ali*.

14 Cr. L. J. 458 :

20 I. C. 618 : 17 C. W. N. 948.

—S. 345—Composition of offence after conviction.

Accused who has been either committed or convicted cannot claim as of right that case against him be withdrawn on ground of compromise the offence being compoundable. *Jumo Sherkhan v. Emperor*.

36 Cr. L. J. 210 :

152 I. C. 412 : 28 S. L. R. 199 :

7 R. S. 596 : A. I. R. 1934 Sind 422.

—S. 345—Composition of offence after conviction—Appellate Court, whether bound to give effect to composition.

The composition of an offence is permissible only up to the time of the judgment, and not after. After conviction, there can be no composition without the leave of the Court, and

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an Appellate Court is not bound to recognise and give effect to an agreement which the parties might enter into after the conviction of the accused. *In re : Pedakanti Chinna Nagadu*.

20 Cr. L. J. 832 :

53 I. C. 832 : 11 L. W. 33 :

A. I. R. 1920 Mad. 245.

—S. 345—Composition of offence—Arbitration agreement filed in Court—Adjournment requested—Case, whether compounded.

The complainant and the accused in a compoundable case filed a petition of compromise agreeing to be bound by the decision of certain arbitrators and asking the Court to grant an adjournment for settlement of dispute. The award was subsequently not accepted by the complainant, and he wanted the Court to proceed with the trial : *Held*, that the petition of compromise had not the effect of compounding the case within the meaning of S. 345, Cr. P. C., as the fact that the parties asked for an adjournment of the case showed that what the parties contemplated was that the arbitrators should go into the matter, and that, after effect was given to their decision by mutual agreement, the case would be compromised. *Prish Chandra Ghose v. Abani Nath Hazra*.

26 Cr. L. J. 1584 :

90 I. C. 544 : 42 C. L. J. 139 :

A. I. R. 1926 Cal. 266.

—S. 345—Composition of offences at late stage—Some offences compoundable, others not—Refusal to give leave to compound.

Where a compromise was arrived at a late stage, some of the offences were not compoundable, and the complainant pleaded that the compromise was arrived at by threat and coercion and the Magistrate ordered the case to proceed : *Held*, that there was no lawful composition and the order of the Magistrate was not erroneous. *Hanmant Shrinivas v. Emperor*.

31 Cr. L. J. 353 :

122 I. C. 118 : 31 Bom. L. R. 789 :

A. I. R. 1929 Bom. 375.

—S. 345—Composition of offence before complaint, effect of—Penal Code (Act XLV of 1860), S. 341—Wrongful restraint.

An offence is complete when the acts constituting it have been committed, apart from whether any complaint or charge has been laid before the Court or not. An offence under S. 341, Penal Code, may be compounded without the permission of the Court under S. 345 (1). It is not, therefore, necessary that a composition in such a case should be arrived at after the complaint has been filed in Court. A composition arrived at between the parties with regard to such an offence before a complaint is filed in Court is binding upon the parties and operates as an acquittal. *F. M. Torpey v. Emperor*.

28 Cr. L. J. 495 :

101 I. C. 671 : 25 A. L. J. 396 :

49 All. 484 : A. I. R. 1927 All. 375.

—S. 345—Composition of offence.

Compounding of compoundable offence—Suit for damages on facts constituting the original

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—S. 344—Power of Magistrate to set aside stay.

Civil litigation being deliberately delayed—Magistrate may set aside stay and proceed with criminal case. *Rewatmal Udhomal v. Sajamal Mehrmal*.

36 Cr. L. J. 94 :
152 I. C. 382 : 7 R. S. 89 :
A. I. R. 1934 Sind 143.

—S. 344—Remand—Grant of.

A Magistrate can order remand under S. 344 even without report under S. 173. *Nitya Gopal Roy v. Nani Gopal Karmakar*.

32 Cr. L. J. 1045 :
133 I. C. 617 : 53 All. 729 :
1931 A. L. J. 617 : I. R. 1931 All. 729 :
A. I. R. 1931 All. 617.

—S. 344—Remand.

Matters to be considered in deciding whether remand should be granted under S. 344 stated. *Emperor v. Sooba*.

32 Cr. L. J. 1045 :
133 I. C. 617 : 1931 A. L. J. 617 :
53 All. 729 : I. R. 1931 All. 729.
A. I. R. 1931 All. 617.

—S. 344—Remand, when ordered—Practice.

A remand to custody should not ordinarily be ordered under S. 344, Cr. P. C., without first recording some evidence, where such evidence is available, to show that good ground exists for believing the accused person to have committed a non-bailable offence. Where after one remand the accused is again brought up, some direct evidence of the guilt of the accused should be required to justify the refusal of bail and with each remand the necessity for producing such evidence increases. *Ahmadali v. Emperor*.

16 Cr. L. J. 705 :
30 I. C. 996 : 1 N. L. R. 162 :
A. I. R. 1915 Nag. 28.

—S. 344—Revision, application to.

Provisions of S. 344, Cr. P. C., do not apply to proceedings in revision. *Jethanand Thawar-das v. Tahliram*.

38 Cr. L. J. 119 :
165 I. C. 993 : 9 R. S. 115 :
30 S. L. R. 357 : A. I. R. 1936 Sind 235.

—S. 344 (1)—Scope.

Explanation—Order postponing commencement of enquiry or trial—Existence of reasonable cause, is condition precedent—Explanation is not exhaustive. *Sundar Ram v. Emperor*.

34 Cr. L. J. 1194 :
146 I. C. 167 : 37 C. W. N. 683 :
6 R. C. 182 : A. I. R. 1933 Cal. 752 (2).

—S. 344—Scope of—Stay of proceedings.

S. 344 refers specially to the stay of any enquiry or trial and this definitely includes a preliminary enquiry under S. 202. *Rewatmal Udhomal v. Sajamal Mehrmal*.

36 Cr. L. J. 94 :
152 I. C. 382 : 7 R. S. 89 :
A. I. R. 1934 Sind 143.

—S. 344—Scope of.

The powers vested in the Magistrate by S. 344 are very wide. There is no hard and

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fast rule that a criminal case should be postponed pending the disposal of a suit which relates to the same subject-matter. *Fatiz Muhammad v. Abbas Jafferli*.

36 Cr. L. J. 1350 :
158 I. C. 256 : 8 R. S. 45 :
A. I. R. 1935 Sind 187.

—S. 344—Stay of criminal proceedings pending civil—Principles—Civil suit instituted after complaint to stifle criminal proceedings—Stay, granting of.

An order staying criminal proceedings pending civil suit relating to the same matter should be granted only if special grounds exist, the general rule being that the High Court should avoid staying proceedings in the lower Courts. Where a civil suit is instituted and thereafter a complaint is filed with the object of prejudicing the trial of the civil suit, the trial of the criminal case may well be postponed. But where a civil suit is instituted after a complaint, as a counter-blast and particularly with a view to postpone the criminal proceedings till they are stale, stay should not be granted. *In the matter of : Bhagwat Prasad v. Ramkisun Ram Sonar*.

31 Cr. L. J. 766 :
125 I. C. 124 : 11 P. L. T. 310 :
A. I. R. 1930 Pat. 351.

—S. 344—Stay of criminal proceedings.

Discretion of Magistrate, how to be exercised, stated. *Rewatmal Udhomal v. Sajamal Mehrmal*.

36 Cr. L. J. 94 :
152 I. C. 382 : 7 R. S. 89 :
A. I. R. 1934 Sind 143.

—S. 344—Stay of criminal proceedings, pending civil—Principles.

No hard and fast rule can be laid down as to stay of proceedings in a Criminal Court pending the decision of a civil suit in regard to the same subject-matter. Each case must be determined upon its own facts. Even if some or all of the matters materially in issue are the same that, in itself cannot be a reason for staying the criminal proceedings. Where prosecution is public, the Court, as a rule, in the exercise of its inherent jurisdiction, would not stay criminal proceedings; where it is private, there would not be the same reluctance of the Court to interfere. If the object of the criminal proceedings be in reality to prejudice the trial of the civil suit or coerce the accused to a compromise, the Magistrate should, as a general rule, postpone the enquiry. In many cases the proper course would be to expedite civil proceedings where a question of fact involved therein is also raised in criminal proceedings. *Gopal Chandra Chakraborti v. Emperor*.

31 Cr. L. J. 211 :
121 I. C. 308 : 33 C. W. N. 969 :
57 Cal. 558 : A. I. R. 1929 Cal. 563.

—S. 344—Stay of criminal proceedings pending civil litigation—Rule of prudence.

The rule that criminal proceedings should not be started when the same question is also involved in a pending civil litigation

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to a composition of the offence under S. 345, and does not oust the jurisdiction of the Magistrate to try the case. A Magistrate is not bound to recognize a reference to arbitration and wait for the arbitrators to make the award though it will be reasonable to do so. If he does not choose to wait, he will not be doing anything illegal. But if he chooses to wait and then there is an award, that award may amount to a compounding of the offence and if it is an offence compoundable under S. 345, effect will be given to such compounding. *Ramalinga Iyer v. Budda Varadarajulu Iyer.* 26 Cr. L. J. 1594 :

90 I. C. 666 : 22 L. W. 390 : 49 M. L. J. 544 : 1925 M. W. N. 753 : A. I. R. 1925 Mad. 1211.

———Ss. 345, 435—Composition of offence—Record called by District Magistrate for transfer of case to another Magistrate—Magistrate, former, whether has jurisdiction to record composition.

When a District Magistrate calls for the papers of a case under S. 435, Cr. P. C. with a view to withdraw the case from the file of the Magistrate before whom it is pending and to refer it for trial to another Magistrate, the case is no longer on the file of the former Magistrate and his jurisdiction over the case is suspended. An order made by that Magistrate recording a composition of the offence and acquitting the accused under S. 345, Cr. P. C. after the order of the District Magistrate calling for the record is void and of no effect. *In re : Maruti Vithu.*

26 Cr. L. J. 996 : 87 I. C. 596 : 27 Bom. L. R. 380 : 49 Bom. 533 : A. I. R. 1925 Bom. 247.

———Ss. 345, 439—Composition of offence in revision.

Neither the High Court nor the Judge of a Court of Session, when sitting as a Court of Revision, has the power, in view of S. 345, Cr. P. C., to allow an offence to be compounded. *Ram Baran Singh v. Emperor.*

21 Cr. L. J. 447 : 56 I. C. 239 : 2 U. P. L. R. All. 140 : 18 A. L. J. 574 : 42 All. 474 : A. I. R. 1920 All. 169.

———S. 345—Composition of offence, effect of—Bond executed for keeping peace—Forfeiture of in absence of other evidence—Legality.

The composition of an offence under S. 345 (6), Cr. P. C., shall have the effect of an acquittal of the accused with whom the offence has been compounded and if there is no other evidence on the record to show that the accused committed a breach of the peace, the orders forfeiting part of the bond not being supported by any evidence is illegal. *Chanda Singh v. Emperor.* 41 Cr. L. J. 359 :

186 I. C. 642 : 12 R. L. 426 : A. I. R. 1940 Lah. 32.

———S. 345 (6)—Composition of offence out of Court—Effect—Enquiry by Magistrate—Proof ousts jurisdiction.

The provisions of S. 345 (6) indicates that the composition of an offence has the same effect in a criminal trial as it would have in a Civil

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suit. It operates as a complete bar to the prosecution. The composition need not be effected in Court, and the plea by the accused that the offence charged has been compounded out of Court, must be inquired into by the Magistrate trying the accused, and, if proved, would bar the jurisdiction of the Magistrate to go on with the trial. *Imperator v. Mulo.*

14 Cr. L. J. 292 : 19 I. C. 948 : 6 S. L. R. 284.

———Ss. 345, 439—Composition of offence in revision.

The High Court sitting as a Court of Revision under S. 439, Cr. P. C. have no power to allow the composition of an offence under S. 345 of the Code. *Emperor v. Harnam Singh.*

20 Cr. L. J. 87 : 48 I. C. 887 : 35 P. R. 1918 Cr. : A. I. R. 1919 Lah. 471.

———Ss. 345 (5), (1) (d)—439—Composition of offence in revision.

A Court exercising revisional jurisdiction has no power to sanction the composition of an offence when entered into after the conviction of the accused. *Audhi Rai v. Emperor.*

23 Cr. L. J. 80 : 65 I. C. 432 : 3 P. L. T. 458 : A. I. R. 1922 Pat. 89.

———Ss. 345 (5-a), 439—Composition of offence in revision.

Under S. 345 (5-A), Cr. P. C., a High Court acting in the exercise of its powers of revision under S. 439 of the Code may allow any party to compound any offence which he is competent to compound under that section. *Brij Behari Lal v. Emperor.* 25 Cr. L. J. 1005 :

81 I. C. 717 : 21 A. L. J. 838 : 46 All. 91 : A. I. R. 1924 All. 209.

———Ss. 345 (d), 439—Composition of offences in revision.

In two cross-cases the accused persons were convicted under Ss. 325 and 147, I. P. C. On appeal the charges of grievous hurt and rioting were eliminated and their conviction under S. 323, I. P. C., was ordered. On revision, application was made to give effect to the compounding of offences which the accused persons had agreed to in the meanwhile. The Chief Court granted the application. *Nidhan Singh v. Emperor.* 1 Cr. L. J. 509 : 5 P. L. R. 252.

———S. 345—Composition outside Court—Dispute between parties at time of hearing—Power of Court to take evidence—Monetary consideration, necessity of.

A composition of a criminal case arrived at by the parties outside the Court comes within the terms of S. 345, Cr. P. C., and has the effect of an acquittal. Where an offence has been compounded outside the Court, but subsequently at the time of hearing, one of the parties resiles from the agreement, it is competent to the Court to take evidence as to the factum of the agreement and give effect to it. No monetary consideration is necessary to make the composition valid ; it is enough if there is a *quid pro quo* between the parties to

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—S. 345.

(i) Cr. P. C. 1898, Ss. 197, 198, 248.

—S. 345—Penal Code (Act XLV of 1860), Ss. 147, 325—Rioting and grievous hurt—Compromise sanctioned by Court with regard to charge of grievous hurt—Charge of rioting, whether fails—Procedure—Acquittal—Revision.

Where, in a case under Ss. 147, 325, Penal Code, the Court gives sanction to the compromise of the charge under S. 325, this has not the effect of *ipso facto* operating as an acquittal of the accused with respect to the charge under S. 147. The proper procedure in such a case, if the circumstances justify it, is for the Magistrate to acquit the accused with regard to the charge under S. 325 and to discharge them in respect of the accusation under S. 147. *Emperor v. Jarnali*.

26 Cr. L. J. 686 :

86 I. C. 62 : 26 P. L. R. 35 :

A. I. R. 1925 Lah. 464.

—S. 345 — Applicability — Income-tax Act (II of 1886), S. 36—Collector deciding objections to assessment of Income-tax as Revenue Court—Prosecution ordered for false statement in declaration.

S. 345, Cr. P. C. applies to proceedings before inferior Criminal Courts, and an order of a Collector under S. 36, Income Tax Act, arising out of a proceeding pending before another officer, does not fall within the purview of that section. A Collector deciding an objection to the assessment of income-tax may possibly be regarded as a Revenue Court. *Ganga Sahai v. Emperor*.

15 Cr. L. J. 2 :

22 I. C. 146 : A. I. R. 1914 Oudh 114.

—S. 345—Composition—Case under S. 498, Penal Code—Party competent to compromise.

An order of acquittal, in respect of an offence under S. 498, Penal Code, which is the result of the offence having been compounded by a complainant other than the husband, is illegal. *Mahbub Ali Khan v. Emperor*.

24 Cr. L. J. 780 :

74 I. C. 444 : 4 L. L. J. 448.

—S. 345—Composition—Case under S. 498, Penal Code—Parties competent to compromise.

Where, during the absence of a husband in jail, his wife was enticed away, and his aunt instituted a complaint under S. 498, Penal Code, but subsequently, before the framing of a charge, withdrew it, whereupon the Magistrate, acting under S. 345, Cr. P. C., acquitted the accused : *Held*, that the aunt of the husband was not competent to compound the offence, that the order of acquittal was not justified, and that the husband on release from jail was entitled to institute a complaint against the same accused and to have that complaint adjudicated upon. *Harnam Singh v. Sain Dass*.

24 Cr. L. J. 120 :

71 I. C. 248.

—S. 345—Composition, denial of—Enquiry by Magistrate.

Denial of compromise by complainant—Magistrate must enquire whether compromise was effected. *Madari v. Emperor*.

32 Cr. L. J. 1034 :

32 P. L. R. 293 (2) : I. R. 1931 Lah. 784 :

A. I. R. 1931 Lah. 402 (1).

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—S. 345—Composition—Denial—Enquiry by Magistrate.

Where a composition alleged by the complainant is denied by the accused, it is the duty of the Magistrate to satisfy himself whether the case was compounded or not. He cannot acquit the accused without enquiring into the matter. *Abdul Jabbar v. Emperor*.

33 Cr. L. J. 109 :

135 I. C. 271 : 25 S. L. R. 341 :

I. R. 1932 Sind 31 : A. I. R. 1932 Sind 7.

—S. 345—Composition—Duty of Magistrate.

Before a composition of an offence can be allowed under S. 345, the Court must be satisfied that the composition is legal and valid in law. *Hanumant Shrinivas v. Emperor*.

31 Cr. L. J. 353 :

122 I. C. 118 : 31 Bom. L. R. 789 :

A. I. R. 1929 Bom. 31.

—S. 345—Composition—Duty of Magistrate—Reference to outside authority.

In the case of an offence under S. 325, Penal Code, which is compoundable under S. 345 (2), it is illegal for the Magistrate who is seized of the case to make a reference to another Court for instructions whether to accept a compromise or not. He must accept or disallow it himself. *Sultan v. Emperor*.

35 Cr. L. J. 1372 :

151 I. C. 532 (b) : 35 P. L. R. 329 :

7 R. L. 155.

—S. 345—Composition, mode of—Document of compromise—Withdrawal.

S., a Railway passenger, complained to the Police that he had been assaulted and abused by J., the Guard of the train in which he had travelled. Upon this J. was charged with the commission of offences under S. 323 and 504, Penal Code. At the trial, he produced a document alleged to have been written by S. which said : "Mr. J. has come to me and offered an unconditional apology. I beg to withdraw the case against him." S. admitted the agreement but said that it was 'given for office and not for Court' and that he wished the accused to be tried. The Magistrate held that the agreement was not a compromise but a withdrawal which could only be made by 'intimation to the Magistrate' and finding the accused guilty sentenced him to a fine. On a reference of the case to the High Court : *Held*, that the case had been compounded by S. and the conviction of J. was illegal. *Emperor v. John*.

24 Cr. L. J. 758 :

74 I. C. 262 : 45 All. 145 :

A. I. R. 1923 All. 474.

—S. 345—Scope of—Composition—Monetary consideration, necessity of.

The compounding of an offence signifies that the person against whom the offence had been committed had received some gratification to act as an inducement for his desiring to abstain from prosecution. A lawful composition may be effected within

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or even to permit the same to be filed. *Guru Prasad Sahu v. Ajodhya Nath Parhi*.

20 Cr. L. J. 552 :
51 I. C. 840 : A. I. R. 1919 Pat. 545.

———S. 345—*Compromise—Party entitled to compound—Hurt caused to three persons, one of them died—Compromise as regards the deceased.*

Under S. 345, Cr. P. C., the person to whom the hurt is caused is the only person who can compound. Therefore, where an offence, under S. 323, Penal Code, was committed on three persons, and one of whom died subsequently, the remaining two cannot lawfully compromise the offence as regards the deceased. *Emperor v. Sultan Singh*.

10 Cr. L. J. 473 :
4 I. C. 24 : 6 A. L. J. 882.

———S. 345—*Compromise—Person entitled to.*

The only person who can compound a case under S. 498, Penal Code, is the husband of the woman. *Mir Alam v. Emperor*.

23 Cr. L. J. 690 :
69 I. C. 370 : A. I. R. 1922 Lah. 177.

———S. 345—*Compromise by leave of Court—Revision.*

It is the duty of a Magistrate, in each case which is compoundable with his leave, to decide whether he will or not allow a compromise and the responsibility rests entirely with him. Where the offence is not of a serious nature and a compromise is arrived at a very early stage, the Magistrate ought to allow the compromise. In this case, a compromise that had been disallowed by the Trying Court was allowed by the High Court in revision. *Sewa Singh v. Emperor*.

23 Cr. L. J. 85 :
65 I. C. 437 : 7 P. W. R. 1922 Cr. :
A. I. R. 1922 Lah. 138.

———S. 345—*Compromise by leave of Court—Trying Magistrate referring to Superintendent of Police or District Magistrate, legality of.*

The parties to a case under S. 325, Penal Code, compromised the case and applied to the trying Magistrate for permission to compound. The latter recorded the statement of the parties and referred the application for permission to compromise to the District Magistrate with a recommendation that the permission sought for might be allowed, and the District Magistrate ordered that the case must go on unless the Superintendent of Police chose to withdraw it: *Held*, that the trying Magistrate was entirely wrong in referring the matter to the District Magistrate as the duty of granting permission is cast by law upon him and that duty cannot be assigned either to the District Magistrate or the Police. *Paritab Singh v. Emperor*.

32 Cr. L. J. 20 (b) :
127 I. C. 712 : 31 P. L. R. 121 :
I. R. 1930 Lah. 872 :
A. I. R. 1930 Lah. 272.

———S. 345 (2)—*Compromise by leave of Court—Duty of Court—Reference to Police.*

Under S. 345 (2), Cr. P. C., an offence punishable under S. 325, Penal Code, may only be compounded with the permission of the Court before which any prosecution for such offence is pending and the Magistrate should not refer

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the question to an outside agency. In asking for an opinion of the Police, the action of the Magistrate is particularly reprehensible in that it is bound to give rise to the impression that Magistrates are influenced in their decisions by the opinion of the Police. *Pratap Singh v. Emperor*.

38 Cr. L. J. 689 :
169 I. C. 33 : I. L. R. 1937 Nag. 183 :
9 R. N. 291 : A. I. R. 1937 Nag. 114.

———S. 345 (5-A)—*Compromise in revision—No impropriety in order of lower Courts—Case heard and determined by competent Court—High Court, if can record compromise—Use of discretion—Aggrieved person must be before High Court.*

It is clear from the language of S. 439, Cr. P. C., read with S. 345 (5-A) of the Code that the High Court can, in certain circumstances, allow a compromise to be recorded in the exercise of its revisional jurisdiction in the case of any proceeding, the record of which has been called for by itself or which has been reported for orders or which otherwise comes to its knowledge. The High Court is competent to record the compromise having regard to the provisions of S. 345 (5-A) even although there is no impropriety in the order of either of the lower Courts in suitable circumstances; the parties can be allowed in such cases to compromise their disputes even after the cases in which they were concerned had been heard and determined by the Courts competent to try them. But the exceptional powers conferred by S. 345 (5-A) should not be used where the proceedings before the lower Court disclose no irregularity or impropriety, except where the record indicates that the parties made some attempt to compromise their differences while the matter was still before the trial Court and before the Court passed final orders. Ordinarily the party who seeks to invoke the jurisdiction of the High Court under Sub-s. (5-A) of S. 345, must be the person aggrieved by the offence which has been committed and not an accused person or a person who has been convicted in respect of that offence. In any event, it would not be competent for the High Court to allow a compromise to be recorded under Sub-s. (5-A) of S. 345, unless the aggrieved persons were actually before the High Court and had expressly recorded their consent to such a compromise being recorded. *Baburahi Sardar v. Kala Chand Bepari*.

41 Cr. L. J. 125 :
185 I. C. 177 : I. L. R. 1939 Cal. 567 :
12 R. C. 347 (2) : A. I. R. 1939 Cal. 728.

———S. 345—*Compromise out of Court—High Court, whether can give effect to, on revisional side.*

The parties to a criminal case have no *locus standi* to ask the High Court sitting on the revisional side to treat the compromise which they have made of their own free-will out of Court as one coming under S. 345, Cr. P. C. *Athar Chandra Dey v. Subodh Chandra Ghosh*.

15 Cr. L. J. 728 :
26 I. C. 176 : 18 C. W. N. 1212 :
A. I. R. 1914 Cal. 901.

Cr. P. CODE (1898), S. 250———S. 250—*Applicability.*

S. 250 does not apply to proceedings under S. 107. *Baij Nath v. Kalicharan.*

28 Cr. L. J. 604 :
102 I. C. 780 : 25 A. L. J. 493 :
49 All. 750 : A. I. R. 1927 All. 531.

———S. 250—*Applicability.*

The words in S. 250 cannot be read at large and divorced from the words of S. 190, with which they are closely associated. S. 250 will apply to information given by a Police Officer if that information can come as a complaint under Cl. (a) of S. 190 (1), but S. 250 will not apply to a Police report falling under Cl. (b) of S. 190 (1) *Muhammad Hashim v. Emperor.* (F. B.)

41 Cr. L. J. 788 :
189 I. C. 703 : 1940 Kar. 470 :
13 R. S. 47 :
A. I. R. 1940 Sind 134.

———S. 250—*Applicability to enquiry under S. 107, Criminal Procedure Code.*

A person whose application for security for keeping the peace, under S. 107 is rejected, cannot be ordered to pay compensation under S. 250. *Ram Badan Singh v. Janki.*

24 Cr. L. J. 228 :
71 I. C. 692 : 21 A. L. J. 207 :
45 All. 363 : A. I. R. 1923 All. 332.

———S. 250—*Applicability to maintenance petitions.*

Where a Magistrate ordered payment of compensation to the counter-petitioner in an application for maintenance under S. 488 : *Held*, that an application for maintenance is not a complaint of an offence or an accusation of an offence and the Magistrate cannot order payment of compensation. *Amboo v. Baboo.*

11 Cr. L. J. 156 :
4 I. C. 1045 (2) : 6 M. L. T. 261.

———S. 250—*Applicability to proceedings under S. 107.*

Compensation under S. 250 cannot be awarded in a case in which an application has been made to a Magistrate with a view to his taking proceedings under S. 107, Cr. P. C. *In re : Ram Sukh Rai v. Mahadeo Rai.*

11 Cr. L. J. 446 :
7 I. C. 290 : 7 A. L. J. 743.

———S. 250—*Applicability to Sessions cases.*

S. 250 applies only to cases of offences triable by a Magistrate, and not to a case where the accused is charged with an offence triable exclusively by a Court of Sessions. *Emperor v. Chhaba Dolsang.*

18 Cr. L. J. 438 :
39 I. C. 303 : 19 Bom. L. R. 60 :
A. I. R. 1916 Bom. 96.

———S. 250—*Applicability, whether applicable to enquiry under S. 107.*

S. 250 is only applicable in a case instituted by complaint, or on information given to a Police Officer, or to a Magistrate whereupon a person is accused before a Magistrate of an "offence," and does not apply to an enquiry

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under S. 107 of that Code. *Mannu Khon v. Chandi Prasad.*

23 Cr. L. J. 474 :
67 I. C. 826 : 20 A. L. J. 624 :
4 U. P. L. R. All. 161 :
A. I. R. 1922 All. 321.

———S. 250 — *Applicability — Workman's Breach of Contract Act, Ss. 1, 2—Complaint against workman, dismissal of—Compensation.*

A Magistrate has no jurisdiction, when dismissing a complaint under S. 1 of the Workman's Breach of Contract Act, to direct the complainant to pay compensation to the accused. *Jamil Ahmad v. Muhammad Ishaq.*

20 Cr. L. J. 570 :
52 I. C. 58 : 17 A. L. J. 165 :
41 All. 322 : A. I. R. 1919 All. 395.

———S. 250 — *Compensation — Penal Code, S. 211—False charge—Sanction of Police Officer—Laying of charge-sheet by Constable—Discharge—Award of compensation against Constable.*

Where, on an order made by an Assistant Superintendent of Police for the prosecution of an accused under S. 211, Penal Code, the accused was put upon her trial on a charge-sheet laid by a Police Constable and the Magistrate directed her discharge at the same time directing the Constable to pay accused a compensation of Rs. 10 : *Held*, that the order for payment of compensation was illegal, as the Constable was not the person upon whose complaint or information the order was made. *Subramanya Pillai v. Pakia Nadatchi.*

12 Cr. L. J. 482 :
12 I. C. 90 : 21 M. L. J. 144 :
10 M. L. T. 191.

———S. 250—*Compensation not allowed—Prosecution.*

The failure to make an order under S. 250 awarding compensation against a complainant, does not preclude the Magistrate from directing the prosecution of the complainant for perjury. *Ma Ma v. Emperor.*

12 Cr. L. J. 521 :
12 I. C. 289 : 4 Bur. L. T. 246.

———S. 250 — *Compensation —Award—Accused neither discharged nor acquitted—Awarding compensation, legality of—Transfer of case—Prosecution witness stating admission by complainant regarding falsity of case—Discharge, propriety of—Procedure.*

An order under S. 250, awarding compensation to the accused cannot be passed without discharging or acquitting him. Where a Magistrate does so, it will be a good ground for transfer of the case from his Court. It is not a proper exercise of the discretion vested in the Magistrate under S. 253, to discharge the accused on the statement of a prosecution witness that the complainant had, on a previous occasion, admitted that the complaint was a false one. In such cases the proper course to follow for a Magistrate is to hear the whole evidence and then to come to the conclusion and to take action, if proper, under S. 250. *Ram Lubhaya v. Jagan Nath.*

30 Cr. L. J. 854 :
117 I. C. 883 : 30 P. L. R. 361 :
I. R. 1929 Lah. 707 : A. I. R. 1929 Lah. 623.

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———S. 345 (2)—*Scope of—Offence compoundable with permission of Court—Compromise effected out of Court—Court's power to enquire into factum of compromise—Composition, when valid.*

In the case of an offence compoundable with the permission of the Court, there is no rule of law enabling a Court to hold an enquiry into the factum of a compromise alleged by one party to have been effected out of Court but denied by the other and to give effect to such compromise. S. 345, Cr. P. C., is exhaustive on the subject of the composition of offences mentioned therein. In cases falling under S. 345 (2), the permission of the Court before which a prosecution is pending is essential before the case can be validly compounded. *Naurang Pai v. Kidar Nath.* 29 Cr. L. J. 585 : 109 I. C. 601 : 9 Lah. 406 : 29 P. L. R. 510 : A. I. R. 1928 Lah. 232.

———S. 345, (2) (1) (7)—*Scope of—Offence under S. 420, Penal Code, if can be compounded before challan by Police is put up.*

An offence under S. 420, Penal Code, can only be compounded with the permission of the Court and an argument that it can be compounded without permission before the *challan* is put by the Police, would amount to take the offence out of the category of the offences mentioned in Sub-s. (2) and put it within the category of those mentioned in Sub-s. (1) of S. 345, Cr. P. C. Sub-s. (7) of that section lays down that no offence shall be compounded except as provided by that section and any arrangement entered into between the parties before the case comes into Court at all is ineffective. When the case had been *challaned*, it is open to the parties to renew their application for compounding but then composition can only be effected with the consent of the Court. *Har-swarup v. Emperor.* 39 Cr. L. J. 59 (b) : 172 I. C. 89 : 20 N. L. J. 244 : 10 R. N. 159 : A. I. R. 1938 Nag. 37.

———S. 345—*Withdrawal from prosecution, application for—Penal Code (Act XLV of 1860). Ss. 342, 343—Complaint under S. 342—Accused by mistake summoned under S. 343.*

A complaint, as well as the statement on oath of the complainant, disclosed the commission of an offence punishable under S. 342, Penal Code, but by mistake the accused was summoned under S. 343 of that Code. The complainant subsequently filed an application withdrawing from the prosecution but the application was refused on the ground that as the accused had been summoned under S. 343, Penal Code, the complainant had no right to withdraw: *Held*, that the fact that the accused had by mistake been summoned under S. 343, Penal Code, did not deprive the complainant of his right to withdraw from the prosecution, and that all proceedings had subsequent to the filing of the application of withdrawal were illegal. *Kadir v. Emperor.*

22 Cr. L. J. 493 :
62 I. C. 189 : 1921 Pat. 16 :
2 P. L. T. 602 : A. I. R. 1921 Pat. 75.

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———S. 345, 346—*Withdrawal of case, petition for—Reference to Police, whether proper.*

A petition for withdrawal of a case should be judicially determined by the Magistrate himself and it is wholly improper to refer the matter to the Police for report and then to act on the report in refusing or allowing withdrawal. *Azisur Rahman v. Emperor.*

27 Cr. L. J. 545 :
93 I. C. 1041 : 43 C. L. J. 214 :
A. I. R. 1926 Cal. 590.

———S. 345—*Written compromise, effect of—Compromise filed in Court, effect of—Further proceedings, whether can be taken.*

Where the parties to a criminal proceeding file a written compromise in Court under S. 345, Cr. P. C., such compromise amounts to an acquittal of the accused, and no further proceeding can be taken against him at the instance of the complainant in respect of the subject-matter of the compromise. *Hem Chandra Dutta v. Girendra Chandra Chaudhury.*

22 Cr. L. J. 301 :
60 I. C. 797 : 33 C. L. J. 226 :
A. I. R. 1921 Cal. 403.

———S. 346.

See also Cr. P. C., 1898, Ss. 201, 202,
346, 349, 350.

———Ss. 346 and 332—*Commitment to the Sessions—Commitment made under S. 346, Criminal Procedure Code—De novo trial, if necessary.*

Commitment made to the Sessions by a Magistrate acting under the powers conferred by S. 346, Cr. P. C., is not illegal simply because he has not examined *de novo* the witnesses who were examined by the Magistrate who submitted the case under the provisions of that section. To the case of an accused thus committed to the Court of Sessions, S. 532, Cr. P. C., has no application. *Kamini Baurini v. Fakir Chand.*

6 Cr. L. J. 429 :
12 C. W. N. 136.

———Ss. 346, 350 (2)—*De novo trial—Transfer of case under S. 346—Magistrate is bound to hold de novo trial.*

When a case has been transferred under the provisions of S. 346, Cr. P. C., the Magistrate is bound to hold a *de novo* trial. Apart from that the ordinary rule is that the Magistrate who tries the case, is to record the evidence and, unless an exception is definitely provided for by some statute, that ordinary provision should prevail. *Sashati Gopal Samui v. Haridas Bagdi.*

39 Cr. L. J. 606 (b) :
175 I. C. 537 : 42 C. W. N. 508 :
10 R. C. 799 : A. I. R. 1938 Cal. 415.

———Ss. 346, 537—*De novo trial—Transfer of case from file of Magistrate not competent to try it—Accused, whether can waive right—Evidence recorded by Magistrate not competent to try case, whether can be considered—Procedure—Illegality.*

Where a case is transferred from the file of a Magistrate who is not competent to try it under S. 346, Cr. P. C., there must be a trial

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offence will not lie. *Narsing Rao v. Raichand Marwadi*.

147 I. C. 1096 :
35 Bom. L. R. 850 : 57 Bom. 678 :
6 R. B. 243 : A. I. R. 1933 Bom. 413.

—S. 345—Composition of offence—Duty of Court.

Where parties wish to have a compromise recorded under S. 345, Cr. P. C., it is neither necessary for the accused to plead guilty, nor is it the duty of the Court to inquire into the nature or value of the consideration given to the complainant for compounding the offence. *Emperor v. Lilaram*.

10 Cr. L. J. 228 :
2 S. L. R. 16.

—S. 345—Composition of offence, effect of—Acquittal—Withdrawal of compromise, whether can be permitted.

The effect of a composition of a compoundable offence is the immediate acquittal of the accused, and once a composition has been arrived at, the complainant cannot be permitted to withdraw from it. *Ram Richpal v. Mata Din*.

25 Cr. L. J. 810 :
81 I. C. 346 : A. I. R. 1925 Lah. 159.

—S. 345—Composition of offence, effect of—Complainant, whether can retract—Composition before complaint, enforceability of—Accused in S. 345 (6), meaning of—Incomplete agreement, effect of.

S. 345, Cr. P. C., deals only with the lawful compounding of offences. The principles which apply to the offence also apply to the exception. The section is not limited to acts done in Court or to cases in which the parties continue to be of the same mind until the case comes on for further hearing before the Court. Once a composition has been effected, the matter is at an end and the person injured cannot effectively rescind from the agreement. If he chooses to do so, it is for the Court to enquire into the accused's allegation that the offence was compounded out of Court and to direct an acquittal under the section if it so finds. A composition made before the filing of a complaint in Court is covered by the provisions of S. 345, the offence being complete when the acts constituting it have been committed, apart from whether any complaint or charge has been laid before the Court or not. The word 'accused' in Para. 6 of the section only describes the character of the person accused of the offence at the time of the trial when the question of the effect of the composition is under consideration. To operate as an acquittal, the compounding must have been completed and any incomplete agreement would not amount to an acquittal within the meaning of the law. *Kumarasami Chetty v. Kuppusami Chetty*.

19 Cr. L. J. 356 ;
44 I. C. 583 : 34 M. L. J. 217 :
7 L. W. 274 : 23 M. L. T. 240 :
1918 M. W. N. 493 : 41 Mad. 685 :
A. I. R. 1919 Mad. 879.

—S. 345—Composition of offence—Party entitled to compound.**Cr. P. CODE (1898), S. 345**

Where a person is charged under S. 342, Penal Code, with wrongfully confining the complainant and another person, the complainant has authority to compound the offence as against himself but he has no authority to compound it as against that other person. *Shib Chandra v. Rabbani Mondal*.

24 Cr. L. J. 578 :
73 I. C. 322 : 27 C. W. N. 168 : 37 C. L. J. 254 :
A. I. R. 1923 Cal. 168.

—S. 345—Composition of offence—Party competent to compromise.

Where a person sends another man to Court to represent him in filing a complaint, the Court is perfectly justified in accepting the latter's statement that he desires to compound the offence with the assumption that he is authorised by the former to compound it, and, under the circumstances, it is not incumbent on the Court, before allowing the case to be compounded and acquitting the accused, to make any inquiry into his authority. *Harbans v. Emperor*.

26 Cr. L. J. 98 :
83 I. C. 658 : 22 A. L. J. 820 :
A. I. R. 1924 All. 778.

—S. 345—Composition of offence—Procedure—Written compromise signed by both parties put in—Magistrate, whether entitled to call for further evidence.

Where the parties are entitled of themselves to compound a case and put in a written paper signed by themselves stating that the offence is compounded, they have proved that the offence is compounded and a Magistrate is not entitled to call for further evidence to prove it. *Emperor v. Ganga Krishna Walunj*.

16 Cr. L. J. 88 :
26 I. C. 1000 : 16 Bom. L. R. 939 :
A. I. R. 1914 Bom. 258.

—S. 345—Composition of offence, stage for—Powers of Court.

In a case compoundable without the permission of the Court, the Magistrate has no jurisdiction to go on with the case after composition, as he is bound to give effect to the composition. The fact that the prosecution evidence has been closed and that a charge has been framed against the accused is no bar to the composition of an offence. *Muhammad Ali v. Emperor*.

29 Cr. L. J. 1058 :
112 I. C. 562.

—S. 345—Composition of offence, what is—Agreement to refer to arbitration, whether amounts to composition.

The compounding of an offence supposes an agreement by which the parties have settled their differences and implies that the prosecutor has received some consideration or gratification for dropping the prosecution. At any rate the arrangement must be one by which the parties have settled their differences and not a mere arrangement to settle the disputes in future as the result of some action either by themselves or by the arbitrators and some decision arrived at by themselves or by third parties. The mere signing of an agreement to refer the subject-matter of certain criminal proceedings to arbitration does not amount

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illegal and the consent given by the accused did not validate it. *Muhammad v. Emperor*.

2 Cr. L. J. 369 :
6 P. L. R. 362 : 25 P. R. Cr. 1905.

—S. 346—Re-trial.

Charges under Ss. 420 and 465, Penal Code—Conviction under S. 420 and acquittal under S. 465, by Magistrate not having powers under S. 30, Cr. P. C.—Appeal against conviction under S. 420—Sessions Judge not going into merits setting aside conviction and ordering re-trial: *Held*, that order was of doubtful legality and re-trial should have been ordered only on charge under S. 420. *Ali Muhammad v. Emperor*.

37 Cr. L. J. 303 :
160 I. C. 363 : 37 P. L. R. 564 :
8 R. L. 534 : A. I. R. 1935 Lah. 945.

—S. 346—Scope of—Submission of case under S. 346 (1)—Power of superior Magistrate to refer case back to Magistrate who submitted it.

S. 346 (2), Cr. P. C., is sufficiently wide to embrace a reference back of the case to the Magistrate who originally submitted it. *Polur Reddi v. Munusami Reddi*.

31 Cr. L. J. 1010 :
126 I. C. 495 : 1930 M. W. N. 493 :
59 M. L. J. 308 : 32 L. W. 381 :
A. I. R. 1930 Mad. 765.

—S. 346—Superior Magistrate, whether can return case to Magistrate submitting it.

Under S. 346, Cr. P. C., a superior Magistrate cannot simply return a case to the Subordinate Magistrate from whom it comes, he must refer it to some other Magistrate or dispose of it himself. *Sessions Judge, Bellary v. Kottur Hampana*.

23 Cr. L. J. 710 :
69 I. C. 438 : 1922 M. W. N. 64 :
16 L. W. 532 : 31 M. L. T. 365 :
45 Mad. 846 : A. I. R. 1923 Mad. 51.

—S. 347.

See also (i) Cr. P. C., 1898, Ss. 207, 208, 215, 254.

—S. 347—Commitment—Power of Magistrate to.

S. 347 is controlled by Chap. XVIII—Case triable by Sessions or High Court—Magistrate inquiring under Chap. XVIII—Finding before closing of prosecution evidence that case should be tried by Sessions or High Court—He cannot commit, without completing prosecution evidence under S. 208. *Emperor v. Asghar*. (F. B.)

37 Cr. L. J. 337 :
160 I. C. 856 : 1935 A. L. J. 1321 :
1935 A. W. R. 1490 : 8 R. A. 652 :
A. I. R. 1936 All. 134.

—S. 347—Commitment—Power of Magistrate.

Under S. 347, Cr. P. C., if it appears to a Magistrate at any stage of a trial that the case is one which ought to be tried by the Court of Session, he has power to direct that the evidence shall be taken under S. 208 of the Code and if the Magistrate gives such a direction before he is transferred, the accused has no right to

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demand a *de novo* trial before his successor. *Panchanan Sarkar v. Emperor*.

32 Cr. L. J. 243 :
129 I. C. 182 : I. R. 1931 Cal 134 :
A. I. R. 1930 Cal. 666.

—S. 347—Commitment—Procedure.

Magistrate committing accused to Sessions has to follow Cl. 18—Remedy in cases of direction suggested. *Bhat v. Emperor*.

33 Cr. L. J. 68 :
134 I. C. 1230 : 33 Bom. L. R. 1192 :
I. R. 1932 Bom. 14 :
A. I. R. 1931 Bom. 517.

—S. 347—Commitment—Warrant case, trial of—Charge framed—Commitment to Sessions for portion of Charge—Procedure.

S. 347, Cr. P. C., authorises a Magistrate at any stage of the trial of a warrant case to commit the accused for trial to the Court of Session instead of completing the trial himself. The new charge which is then drawn up by the Magistrate has the effect of cancelling any previous charge framed by him but this is so only with respect to the subject-matter of the new charge. So far as this subject-matter is concerned, the previous proceedings before the Magistrate must be regarded as proceedings in an inquiry preliminary to commitment but this alternative of the character of the inquiry does not extend to any matter which is not the subject of the new charge. Where a Magistrate after having taken cognizance of a warrant case finds that the accused ought to be committed to the Court of Session in respect of a portion of the subject-matter of the charge, but that he has not committed a part of the offence with which he has been charged, his duty is to commit the accused for trial in respect of the subject-matter of the former portion of the charge and acquit him so far as the latter portion of the charge is concerned. S. 347 does not empower a Magistrate to discharge an accused. It is only in respect of the offence for which the accused is to be committed to the Court of Session that the proceedings are taken out of Ch. XXI of the Code and the other proceedings of the Magistrate continue to be governed by the provisions of that Chapter. *Bishambhar Nath v. Emperor*.

26 Cr. L. J. 520 :
85 I. C. 360 : 1 O. W. N. 705 :
A. I. R. 1925 Oudh 547.

—S. 347—Commitment to Sessions—Magistrate, discretion of—Summons case taken on to warrant case—Procedure.

A Magistrate committed a case for trial by the Court of Session upon charges against some of the accused under Ss. 302 and 160, Penal Code, and against others under S. 160 of the Code only. On behalf of these latter, it was objected that as the case against them was a summons case which was triable by the Magistrate and the accused could be adequately punished by him, their commitment for trial by the Court of Session was illegal: *Held*, that under S. 347 it being in the discretion of a Magistrate, duly empowered, to commit cases to the Court of Session where a certain case calls for such committal and that as the pro-

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support it. *Mahomed Kanni v. Pattani Inayathulla.* 16 Cr. L. J. 803 :

31 I. C. 819 : 2 L. W. 1200 :

18 M. L. T. 602 : A. I. R. 1916 Mad. 854.

—S. 345—Composition, stage for—Compromise petition filed when judgment was being written, whether can be refused.

A case may be compounded under S. 345, Cr. P. C., at any time before the sentence is pronounced. Therefore, a Magistrate cannot refuse to accept a compromise petition on the ground that it was presented when the judgment was actually being written. *Aslam Mea v. Emperor.* 19 Cr. L. J. 752 :

46 I. C. 528 : 22 C. W. N. 744 :

28 C. L. J. 261 ; 45 Cal. 816 :

A. I. R. 1918 Cal. 238.

—Ss. 345, 423 (1) (d)—Composition, stage for—Order allowing composition, nature of.

S. 345, Cr. P. C. is exhaustive of the circumstances and conditions under which composition can be effected. An order allowing composition of an offence is not an incidental order within the meaning of clause (d) of S. 423, Cr. P. C. *Sankar Sangayya v. Sankar Ramayya.* 16 Cr. L. J. 750 :

31 I. C. 350 : 29 M. L. J. 521 :

18 M. L. T. 381 :

A. I. R. 1916 Mad. 483.

—S. 345—Composition with one accused, —Effect of.

The composition of an offence with one of several accused persons under S. 345, Cr. P. C. does not have the effect of an acquittal of all the accused persons. *Muthia Naik v. Emperor.* 19 Cr. L. J. 176 :

43 I. C. 592 : 41 Mad. 323 :

A. I. R. 1918 Mad. 413.

—S. 345—Composition with one accused —Effect of.

When several persons are accused of having jointly committed an offence under S. 323, Penal Code, and the complainant compounds the offence against one of them personally, such compounding does not affect the case against any of the other accused. *Chandan v. Emperor.* 22 Cr. L. J. 353 :

61 I. C. 209 : 19 A. L. J. 374 :

43 All. 483 : A. I. R. 1921 All. 35.

—S. 345—Composition with one of several accused—Effect of.

The composition of an offence under S. 345, Cr. P. C. with one of several accused persons has not the effect of an acquittal of all the accused persons. *Ram Krishen v. Emperor.* 21 Cr. L. J. 437 :

56 I. C. 229 : 1 Lah. 169 :

121 P. L. R. 1920 :

A. I. R. 1920 Lah. 108.

—S. 345—Composition with one of several accused.

Where several persons join in committing an offence and the complainant compounds the case with one of them, the case should be treated as compounded in respect of all. *Saroj Kumar Mukerji v. Emperor.* 23 Cr. L. J. 432 :

67 I. C. 592 : 4 P. L. T. 107.

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—S. 345—Composition with one of several accused—Effect of.

Where an offence is compounded with one of several accused persons, the composition does not necessarily have the effect of an acquittal in the case of all the accused. *Emperor v. Alibhai Abdul Vora.* 22 Cr. L. J. 55 :

59 I. C. 199 : 22 Bom. L. R. 1221 :

45 Bom. 346 : A. I. R. 1921 Bom. 166.

—S. 345—Compoundable case—Test—Penal Code (Act XLV of 1860), Ss. 323, 325, 352.

The question whether a case is not compoundable must be decided with reference to the state of facts existing at the date of the application to compound, and not with reference to the ultimate result of the case. While a case was being tried as one under S. 323, Penal Code, the complainant presented an application for compromise. No orders were passed on this application. After the medical evidence was recorded, the complainant withdrew the application for compromise. A charge was framed under S. 323 of the Penal Code and the accused was ultimately convicted under S. 352 of the Code : *Held*, that as the application for compromise was presented at a stage when the case was being tried as one under S. 323, and the permission of the Court was not granted on it, and the application was withdrawn by the time the case was found to be a compoundable one, the accused was not entitled to an acquittal on the basis of the compromise. *Rani v. Jaiwanti.* 26 Cr. L. J. 1428 :

89 I. C. 900 : A. I. R. 1925 Nag. 395.

—S. 345 (1)—Compounding of offence —Compromise, who can.

The person by whom an offence under S. 323, Cr. P. C. may be compounded is the person to whom the hurt is caused, and not the person who causes the hurt. *Lala v. Emperor.* 18 Cr. L. J. 729 :

40 I. C. 729 : 15 A. L. J. 467 :

A. I. R. 1917 All. 377.

—S. 345—Compromise—Non-compoundable offence—Compromise, whether can be sanctioned.

A complaint was made to a Magistrate against several persons of the offence of theft. The Magistrate, without examining the complainant upon oath, held a local investigation and found that an offence in the nature of theft had been committed. During the course of the investigation, the parties agreed to a compromise which was sanctioned by the Magistrate. The accused failing to abide by the terms of the compromise, the complainant applied to have the order sanctioning the compromise set aside and for permission to proceed with his original petition of complaint : *Held*, that the proceedings of the Magistrate were altogether irregular and improper, inasmuch as the offence complained of was not compoundable, and he, therefore, had no jurisdiction to entertain or sanction the compromise entered into between the parties,

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—S. 250—*Compensation—Award of—Case instituted upon information to Police—Order directing compensation, whether exempts complainant from criminal liability.*

Under S. 250, compensation can be awarded in a case instituted upon information given to a Police Officer. A complainant does not escape liability for prosecution under S. 211, Penal Code, by reason of an order directing payment of compensation having been passed against him under S. 250. *Hafiz Khan v. Emperor.*

26 Cr. L. J. 527 :

85 I. C. 367 :

1 O. W. N. 878 : A. I. R. 1925 Oudh 558.

—S. 250—*Compensation, when awarded—“Frivolous,” meaning of.*

An order for the payment of compensation under S. 250 can be made in a case which is false as well as frivolous or vexatious. “Frivolous” means “trifling,” “silly,” or “without due foundation.” *Jain v. Santaklas.*

21 Cr. L. J. 41 :

54 I. C. 249 : A. I. R. 1920 Nag. 78.

—S. 250—*Compensation—Award, when competent.*

An order for compensation under S. 250, cannot be justified merely because the complaint filed was vexatious in one particular. An award of compensation can only be made where there has been a complete discharge or acquittal of the accused on all the heads of the charges against him. *Emperor v. Nadar.*

20 Cr. L. J. 106 :

48 I. C. 986 : 12 S. L. R. 87 :

A. I. R. 1918 Sind 24.

—S. 250—*Compensation—Award, when competent—All witnesses produced by prosecution examined except one on ground that his evidence would not be material—Accused discharged and compensation awarded—Award of compensation, legal.]*

Where in a trial under S. 380, Penal Code, a Magistrate examines all the witnesses produced by the prosecution, but refuses to issue commission to examine a witness living at the time in India, on the ground that his evidence is not material and discharges the accused on the evidence already before him and gives him compensation under S. 250 (1), Cr. P. C., the order of discharge is legal and there is no legitimate ground of invalidity of the order under S. 250. *K. Nath v. P. K. Nath.*

39 Cr. L. J. 29 :

171 I. C. 921 : 1937 Rang. 159 :

10 R. Rang. 202 : A. I. R. 1937 Rang. 398.

—S. 250—*Compensation—Award, when competent.*

Criminal proceeding brought to bring pressure on opponent in civil litigation—Compensation can be awarded by trying Magistrate. *Dahyabhai Nathabhai v. Tangarao Machhi.*

34 Cr. L. J. 878 :

144 I. C. 922 : 35 Bom. L. R. 484 :

6 R. B. 30 : A. I. R. 1933 Bom. 233.

—S. 250—*Compensation—Award, when competent.*

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In discharging a person accused of offences under Ss. 406 and 467, Penal Code, the Magistrate, with powers under S. 30, Cr. P. C., directed the complainant to pay to the accused Rs. 100 as compensation: *Held*, that in respect of the offence under S. 467, which was triable by a Court of Sessions, the Magistrate had no jurisdiction to award compensation, and that in regard to the offence under S. 406, the amount of compensation could not exceed Rs. 50 under S. 250, Cr. P. C. *Shankar Sahai v. Emperor.*

20 Cr. L. J. 495 :

51 I. C. 479 : 15 P. R. 1919 Cr. :

A. I. R. 1919 Lah. 227.

—S. 250—*Compensation—Award—Offences partly triable by Court of Sessions and partly by Magistrates.*

The words “an offence triable by a Magistrate” in S. 250, relate to an offence which is shown as triable by a Magistrate in Col. 8, Sch. II. The section is not applicable to offences triable by a Court of Sessions. Consequently, where a complainant brings joint accusation of both classes of offence and the Magistrate with S. 30 powers finds both to be false, he is competent to award compensation only in respect of offences triable by a Magistrate, and if compensation is awarded for both kinds of offences and it is not possible to apportion the amount so awarded between the two, the order is bad for uncertainty and must be set aside as a whole. *Amin Lal v. Emperor.*

31 Cr. L. J. 1133 :

126 I. C. 792 : A. I. R. 1930 Lah. 482.

—S. 250—*Compensation—Award, when competent—Discharge of accused by Magistrate not competent to try—Compensation.*

A Magistrate, by whom a charge under S. 497, Penal Code, is not triable, but who enquires into a charge of adultery and discharges the accused on the ground that no case is made out against him, cannot award compensation to the accused under S. 250. *In re: Kesava Panda.*

9 Cr. L. J. 502 :

2 I. C. 159.

—S. 250—*Compensation—Award when competent—Special Power Magistrate trying complaint under S. 376, Penal Code—Accused discharged—It can pass order under S. 250.*

A special power Magistrate trying a complaint under S. 376, Penal Code, and passing an order discharging the accused, can pass an order under S. 250 notwithstanding the fact that the offence is exclusively triable by a Court of Sessions. *Ma Sin v. Munng Maung Lay.*

37 Cr. L. J. 773 :

163 I. C. 163 : 8 R. Rang. 613 : 14 Rang. 378 :

A. I. R. 1936 Rang. 230.

—S. 250—*Compensation—Award, when competent.*

A Civil Court *chaprasi* reported that he had been obstructed in making an attachment. The District Judge, before whom the report was laid, directed that the papers should be sent to the District Magistrate with a view to the institution of a case under S. 225 (B) of Penal Code. A case having been instituted accordingly, resulted in the acquittal of the

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—S. 345 (6)—*Compromise outside Court—Duty of Magistrate—Complaint under S. 500, Penal Code (Act XLV of 1860)—Party resiling from it before it is filed—Effect—Acquittal of accused, if must be ordered.*

A composition arrived at between the parties of offence under S. 500, I. P. C., which is compoundable without the permission of the Court is complete as soon as it is made and has the effect of an acquittal in spite of the fact that one of the parties subsequently resiles from the compromise. If it is proved that the parties signed the document and understood its contents, it is incompetent for any party to it to withdraw from it. Since the compromise has immediate effect of acquittal so as to deprive the Magistrate of his jurisdiction to try the case, the subsequent withdrawal from it even before the filing of the compromise in the Court by any party can neither affect the acquittal nor revive the jurisdiction of the Magistrate to proceed with the case. The simple question for the Magistrate in such a case is to find whether or not the parties signed the document and understood its contents. *Mst. Rambai v. Mst. Chandra Kumari Devi.*

41 Cr. L. J. 287 :

186 I. C. 370 : 12 R. N. 202 :

1940 N. L. J. 25 : A. I. R. 1940 Nag. 181.

—S. 345—*Compromise with some of several accused, effect of.*

Where more persons than one are charged with an offence and a compromise is entered into with some of them, the Court will accept the compromise in respect of the persons with whom it is effected, and will proceed to hear the case against rest of the accused. *Baldeo Misser v. Deputy Inspector-General of Police, Bengal.*

26 Cr. L. J. 238 :

84 I. C. 62 : 16 S. L. R. 149.

—S. 345—*Compromise with some of several accused—Effect on others.*

The compounding of an offence with some of the accused does not effect the acquittal of the rest. *Emperor v. Mohna.*

27 Cr. L. J. 576 :

94 I. C. 144 : 7 Lah. 344 :

2 L. Cas. 329 : 27 P. L. R. 493 ;

A. I. R. 1926 Lah. 424.

—S. 345 (2)—*Discretion—Proper exercise by Magistrates.*

The Secretary of a Co-operative Society was put upon his trial on a charge of criminal misappropriation. The matter was subsequently settled out of Court and the parties applied for leave to compromise. The Magistrate refused leave on the ground that the matter should not be hushed up as the petitioner was a clerk in the *touzi* department: *Held*, that there was no question of hushing up as the accused had already been charged, that the accused was a clerk in the *touzi* department had no bearing on the case and the Magistrate did not exercise a proper discretion in refusing leave. *Singheshwar Prasad v. Ali Hasan.*

31 Cr. L. J. 507 :

124 I. C. 95 : 11 P. L. T. 492 :

A. I. R. 1929 Pat. 512.

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—Ss. 345, 439—*Revision—Compromise—Sanction.*

A Court of revision has power to sanction a compromise under S. 345, Cr. P. C. S. 439; Cr. P. C. sets forth the powers of a Court in revision. It only grants certain fixed powers and does not mention S. 345 (5).

14 Cr. L. J. 46 :

18 I. C. 270 : 11 A. L. J. 13.

—S. 345 (6)—*Revision against acquittal—Acquittal of person under S. 345 (6) in respect of whom charge for wrongful confinement has been framed and who has not compounded case—High Court will interfere though Local Government has not appealed.*

Ordinarily the High Court will interfere but rarely in revision with acquittals, whether put forward on behalf of Government or on behalf of private individuals, particularly so in cases where the correctness of the acquittal cannot be considered without a consideration of the evidence, but when a case comes to the notice of the High Court where the acquittal has depended not on an appreciation of the evidence, but has occurred in complete disregard of Cr. P. C., the High Court should interfere despite the fact that no appeal has been preferred by Government. The High Court will interfere with an acquittal not on merits but under S. 345 (6), Cr. P. C. of a person in respect of whom a charge for wrongful confinement has been framed and who has not compounded the case. *Khilwan Singh v. Emperor.*

38 Cr. L. J. 334 :

166 I. C. 926 : 9 R. N. 154 :

I. L. R. 1937 Nag. 286 :

A. I. R. 1937 Nag. 72.

—S. 345—*Scope of.*

A compromise arrived at after the hearing of the appeal does not come within S. 345. *Emperor v. J. M. Chatterjee.*

34 Cr. L. J. 926 :

145 I. C. 126 : 1933 A. L. J. 1493 :

6 R. A. 47 : A. I. R. 1933 All. 434.

—S. 345—*Scope of—Magistrate permitting compromise of, not compoundable offence—Magistrate's permission ultra vires.*

A Magistrate has no power to allow the non-compoundable offence of rioting to be compounded. *Emperor v. Hira Singh.*

6 Cr. L. J. 336 :

11 P. R. Cr. 1907 : 2 P. W. R. Cr. 93 :

9 P. L. R. 115.

—S. 345—*Scope of—Penal Code (Act XLV of 1860), S. 417—Cheating—Complaint by wife of party cheated—Composition—Subsequent complaint by husband, whether barred—Composition with person not authorised to compound, effect of.*

In order to apply S. 345, Cr. P. C., there should be real composition by a person who is authorised to compound under Sub-s. (2) of S. 345. Composition with a complainant who is not authorised to compound is no bar to a fresh complaint by the person competent to compound. *Dajiba Ramji Patil v. Emperor.*

28 Cr. L. J. 531 :

102 I. C. 549 : 29 Bom. L. R. 718 :

51 Bom. 512 : A. I. R. 1927 Bom. 410.

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tion to this rule must be strictly construed, S. 349, Cr. P. C. creates one of such exceptions. *Baba v Emperor*.

24 Cr. L. J. 738 :
74 I. C. 66 : A. I. R. 1924 Nag. 37.

—Ss. 349 (2), 364—*Examination of accused*.

When a Magistrate examines an accused person, such examination should, under the provisions of Ss. 349 and 364, Cr. P. C., be reduced to writing. *In re : Venkataraya*.

7 Cr. L. J. 177 :
12 M. C. C. R. 48.

—S. 349—*Forwarding accused to another Magistrate for higher sentence—Conviction by forwarding Magistrate, effect of—Reference to High Court for quashing conviction, whether necessary*.

Where a Magistrate who forwards an accused person to another Magistrate under S. 349, Cr. P. C., for passing a higher sentence not only records his opinion that the accused is guilty as he is required to do but also convicts the accused, there is no legal objection to the conviction being treated as a mere surplusage and as a legal nullity, so that the Magistrate to whom the case is sent can proceed with it without a reference to the High Court for the purpose of having the conviction formally quashed. *Emperor v. Narayan Dhaku Bhil*.

29 Cr. L. J. 904 :
111 I. C. 664 : 30 Bom. L. R. 60 :
52 Bom. 456 : A. I. R. 1928 Bom. 240.

—S. 349—*Jurisdiction—Reference to Joint Magistrate, legality of*.

A Second Class Magistrate trying an accused person under Ss. 352 and 506, Penal Code, being of the opinion that the accused should be bound over under S. 106, Cr. P. C. referred the case to the Joint Magistrate. The latter passed an order under S. 106. On the record going back, the Second Class Magistrate convicted the accused on the substantive charge. On a reference by the Sessions Judge : *Held*, that the Joint Magistrate acted without jurisdiction and the order passed by him was liable to be set aside. *Dukhi v. Emperor*.

24 Cr. L. J. 784 :
74 I. C. 448 : A. I. R. 1924 All. 141.

—S. 349—*Jurisdiction—Reference, to whom can be made*.

Jurisdiction to deal with the proceedings under S. 349, Cr. P. C., is conferred upon District Magistrate and Sub-Divisional Magistrates and upon no other Magistrates. *Emperor v. Vinayak Narayan Arle*.

16 Cr. L. J. 273 :
28 I. C. 321 : 16 Bom. L. R. 598 :
38 Bom. 719 : A. I. R. 1914 Bom. 217.

—S. 349—*Punishment, meaning of*.

An order under S. 562, Cr. P. C., directing release upon probation of good conduct cannot be said to be a "punishment" in the sense in which that word is used in S. 349, for it is not one of the various kinds of punishment described in S. 53, Penal Code. *Baba v. Emperor*.

24 Cr. L. J. 738 :
74 I. C. 66 : A. I. R. 1924 Nag. 37.

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—S. 349—*Reference—De novo trial*.

Where a case is forwarded to a Superior Magistrate under S. 349 (2), Cr. P. C., the Magistrate is not bound to hold a trial *de novo*. *Emperor v. Dodo*.

26 Cr. L. J. 1363 :
89 I. C. 451 : 18 S. L. R. 216 :
A. I. R. 1925 Sind 48.

—S. 349—*Reference—Duty of superior Magistrate*.

It is not sufficient for a superior Magistrate, to whom a case has been referred under S. 349, Cr. P. C., to accept the findings of the inferior Magistrate making the reference and he should form his own independent judgment and write a judgment according to the provisions of S. 367, Cr. P. C. When the Magistrate to whom the case is referred merely passes an order without coming to any independent judgment against his order, the proper course for the Appellate Court is to send back the case to him for writing a proper judgment. *Lallu Ram v. Emperor*.

39 Cr. L. J. 1005 :
178 I. C. 173 : 11 R. O. 91 :
1938 O. L. R. 468 : 1938 O. W. N. 1051 :
A. I. R. 1939 Oudh 35.

—S. 349—*Reference—Return of case*.

A District Magistrate or a Sub-Divisional Magistrate to whom a case has been submitted by a Magistrate of the second or third class under S. 349, Cr. P. C. is not at liberty to return the case to the submitting Magistrate or to some other Magistrate. He must dispose of it himself. *Emperor v. Thakur Dayal*.

1 Cr. L. J. 137 :
24 A. W. N. 42 : I. L. R. 26 All. 344.

—S. 349—*Reference—Several accused jointly tried—Reference in respect of all—Procedure—Case forwarded to superior Magistrate—De novo trial, whether necessary*.

When two persons are jointly tried before a Magistrate who being of opinion that he cannot pass a sentence sufficiently severe against one of them, forwards the case to a Superior Magistrate under S. 349, Cr. P. C., it is desirable that both the accused should be forwarded, though the Superior Magistrate would be competent to try only one of the accused who is actually sent up before him. *Emperor v. Dodo*.

26 Cr. L. J. 1363 :
89 I. C. 451 : 18 S. L. R. 216 :
A. I. R. 1925 Sind 48.

—Ss. 349, 254, 346, 530 (1)—*Reference—Second or third class Magistrate referring after charge, legality of—Return of case to another Magistrate*.

It is not irregular for a Magistrate of the second or third class to frame a charge although he thinks that he cannot inflict adequate punishment and intends to submit the proceedings to the District or Sub-Divisional Magistrate to pass sentence. When a case is submitted to a Magistrate under S. 349, Cr. P. C., he may not transfer it to another Magistrate for disposal. *Emperor v. Nga Po Si*.

2 Cr. L. J. 464 :
4 B. R. 1905 Cr. (P. C.) 33.

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de novo of the whole case, and the whole of the prosecution evidence must be recorded afresh. In such a case, the accused have no power to waive their right to a trial *de novo*. The evidence recorded by the Magistrate from whose file a case is transferred under this section, having been recorded by a Magistrate who was not qualified to record it, cannot be taken into consideration by the Magistrate who actually tries the case. The failure to hold the trial *de novo* in such a case is an illegality which vitiates the trial and not merely an irregularity covered by S. 537, Cr. P. C. *Ambica Singh v. Emperor*. 19 Cr. L. J. 625 :

45 I. C. 673 : 5 P. L. W. 40 :
A. I. R. 1918 Pat. 676.

—Ss. 346, 438—Discharge, legality of—Case submitted by inferior Magistrate to superior Magistrate—Procedure—Discharge, order of, set aside.

It is a general principle of the Cr. P. C. that evidence taken by one Magistrate is not evidence in a trial before another Magistrate unless some provisions of law expressly makes it so. The mere consent of the parties is not sufficient for the purpose. Where a Second Class Magistrate, who was not competent to try a case submitted it to a superior Magistrate under S. 346 and the latter Magistrate made an order of discharge merely after hearing argument on the evidence already taken by the inferior Magistrate : *Held*, that it could not be said that the superior Magistrate had tried the case himself within the meaning of S. 346 (2) and the order passed by him was, therefore, illegal. *Paravada China v. Vendu Naidu*. 24 Cr. L. J. 413 :

72 I. C. 525 : 17 L. W. 247 :
A. I. R. 1923 Mad. 327.

—S. 346—Duty of Magistrate—Reference to superior Magistrate.

A District Magistrate to whom a case is referred by a Subordinate Magistrate under S. 346, Cr. P. C., cannot pass any order on the evidence recorded by the Subordinate Magistrate. He must proceed as directed by Cl. 2 of the section. *Inayat Husain v. Emperor*. 2 Cr. L. J. 689 :

6 P. L. R. 418.

—Ss. 346, 347—European British subject—Waiver of right—Duty of Court to explain rights—Revision.

A claim to be tried as an European British subject can be waived. When an accused is found to be a European British subject, his rights as such subject should be carefully explained to him so as to enable him to exercise his choice and judgment as to whether he would claim those rights or waive them. Unless and until the accused has definitely claimed to be tried as an European British subject and his claim has been allowed, the local High Court, not being a High Court within the meaning of S. 4 (j) with reference to proceedings against European British subjects, can exercise its revisional powers. *Emperor v. F. M. C. Nulty*. 12 Cr. L. J. 436 :

11 I. C. 620 : 7 N. L. R. 93.

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—S. 346—“Evidence,” meaning of.

The word ‘evidence’ in S. 346 includes all facts and statements disclosed by the inquiry held by the Magistrate and is not confined to depositions recorded by him. *In re : T. R. Balakrishna Reddiar*. 28 Cr. L. J. 384 :

100 I. C. 992 : A. I. R. 1927 Mad. 591.

—S. 346—Jurisdiction of trying Magistrate.

When the trying Magistrate who is invested with second class powers comes to the conclusion that the offence disclosed is one triable exclusively by a First Class Magistrate, the trial of the case by him is without jurisdiction and the order of the District Magistrate requiring him to proceed with the case cannot vest him with jurisdiction. *Azizur Rahman v. Emperor*. 27 Cr. L. J. 545 :

93 I. C. 1041 : 43 C. L. J. 214 :
A. I. R. 1926 Cal. 590.

—S. 346—Notice—Order against accused without notice, legality of.

Though as a general rule notice should go to an accused person before an order is made to his prejudice, where the question arising is one of law and the accused has not been prejudiced by want of notice, an order without notice which is otherwise correct will not be set aside. *Paravada China v. Vendu Naidu*. 24 Cr. L. J. 413 :

72 I. C. 525 : 17 L. W. 247 :
A. I. R. 1923 Mad. 327.

—S. 346—Power of District Magistrate—Commitment.

The accused were *chalaned* for murder and abetment thereof, respectively, and after examining them upon evidence for the prosecution, the Subordinate Magistrate being of opinion that the principal offence did not amount to murder, sent the case under S. 346, Cr. P. C., to the District Magistrate with a view to its disposal. The latter, however, charged the accused with murder and abetment of murder, respectively, and ordered their commitment : *Held*, that the District Magistrate was competent to base his order on the evidence already recorded by the Subordinate Magistrate. *Emperor v. Ram Prasad*. 18 Cr. L. J. 35 :

36 I. C. 867 : 12 N. L. R. 146 :
A. I. R. 1916 Nag. 115.

—S. 346—Procedure—Sentence—Case sent to superior Magistrate when severe sentence required—Procedure—Illegality.

A Subordinate Magistrate recorded the evidence produced before him and being of opinion that the accused deserved severer punishment than he could inflict sent the case to the District Magistrate. The District Magistrate treating the case as sent up under S. 346, Cr. P. C., asked the accused whether they wanted the witnesses to be re-called and re-heard, and on their replying in the negative, proceeded to judgment and convicted and sentenced them : *Held*, that the procedure adopted by the District Magistrate was

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an even number of Honorary Magistrates the case is referred back to the District Magistrate or Sub-Divisional Officer, under r. 6 of the rules framed by Bengal Government under S. 16, the provisions of S. 350, apply to the case, so that the Magistrate does not act without jurisdiction if in the absence of any demand for a *de novo* trial on the part of the accused he hears arguments and passes judgment without holding a *de novo* trial. *Chand Tarasdar v. Shamsher Fakir*. 19 Cr. L. J. 312 :

44 I. C. 328 : A. I. R. 1918 Cal. 304.

———S. 350—*Applicability—Evidence heard by one Bench and order pronounced by another Bench, legality of.*

Both the letter and the spirit of the law require all criminal cases to be decided by Magistrates who have heard the evidence, the only exception being that provided for by S. 350, Cr. P. C. In a case tried by a Bench of Honorary Magistrates, the evidence for the prosecution was heard by two Magistrates, one of whom did not attend again. The accused called no witnesses but the Advocates were heard and judgment was delivered by a Bench consisting of one of the Magistrates who had heard the evidence and another Magistrate : *Held*, that the procedure adopted was illegal. *Nga Paik v. Nga Saw Hlaing*. 20 Cr. L. J. 336 :

50 I. C. 672 : 3 U. B. R. 1918 118 :

A. I. R. 1919 U. Bur. 29.

———Ss. 350, 537—*Applicability—Judgment written but not pronounced—Pronouncement by successor—De novo trial not claimed—Irregularity curable.*

Where a judgment written by a Magistrate who was under orders of transfer and expected to be relieved before the date fixed for pronouncing the judgment, is delivered on the date so fixed, by his successors there being no demand for trial *de novo* by the accused, the irregularity, if any, is cured by S. 537, Cr. P. C. *Harnam Singh v. Emperor*. 41 Cr. L. J. 808 :

189 I. C. 826 : 42 P. L. R. 240 :

13 R. L. 130 : A. I. R. 1940 Lah. 289.

———S. 350—*Applicability—Judgment written but not signed—Transfer of Magistrate—De novo trial.*

An accused remained absent on the date fixed for arguments and the Magistrate then wrote out the judgment in the case convicting the accused and added a sentence at the end of it, "As the accused is not present to-day, and I am under orders of transfer, I keep this judgment on the file and leave this for my successor to pronounce it when the accused appears in Court." He then signed it and dated it : *Held*, that the trial of the accused had been completed and all that remained was the execution of the judgment against him. S. 350, Cr. P. C., did not apply and the accused could not claim *de novo* trial. *Gain Singh Munshi Singh v. Amar Singh-Jaimal Singh*. 40 Cr. L. J. 288 :

179 I. C. 990 : 40 P. L. R. 996 :

I. L. R. 1938 Lah. 567 : 11 R. L. 656 :

A. I. R. 1939 Lah. 21.

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———Ss. 350, 476—*Applicability—Judgment written by officer while on leave, legality of—District Magistrate, withdrawal to file of—Withdrawal of prosecution—Subsequent proceedings under S. 476, legality of.*

A judgment written and signed by a Magistrate who has proceeded on leave and has ceased to exercise jurisdiction in the case is, in fact, no judgment at all. A District Magistrate, ignoring the judgment of a Joint Magistrate which was written and signed while that officer was on leave, withdrew the case to his own file and permitted the Public Prosecutor to withdraw from the prosecution under S. 404, Cr. P. C. Thereafter he satisfied himself by enquiry that an offence was committed in respect of a document used as evidence in the case by the accused and directed his prosecution under S. 476 : *Held*, that as the proceedings did not terminate when the case was withdrawn to the file of the District Magistrate, the offence for which prosecution was directed was brought to his notice in the course of a judicial proceeding and he had jurisdiction to pass the order under S. 476. *Chandra Kishore Ray v. Emperor*. 18 Cr. L. J. 10 :

36 I. C. 842 : 21 C. W. N. 755 :

A. I. R. 1917 Cal. 310.

———S. 350—*Applicability—Judgment written by Trying Magistrate pronounced by his successor—Jurisdiction.*

When a Trying Magistrate after concluding the trial of a case writes and signs the judgment, but before delivering it is transferred, and the judgment is pronounced by his successor, the latter cannot be said to have acted without jurisdiction. *Chandrika Prasad v. Emperor*. 25 Cr. L. J. 1075 :

81 I. C. 899 : 11 O. L. J. 725 :

1 O. W. N. 491 : A. I. R. 1925 Oudh 62.

———S. 350—*Applicability—Successive changes of Magistrates.*

One Magistrate heard the prosecution evidence in a case and was then transferred. His successor heard the defence evidence and was transferred, judgment was delivered by the third Magistrate : *Held*, that S. 350, Cr. P. C., was not confined to two Magistrates, and the judgment delivered by the third was not without jurisdiction, S. 350 (a) applies at the time when the succeeding Magistrate begins to exercise jurisdiction, that is, every time another Magistrate takes cognizance of a matter which has been begun or continued by his predecessor. *Govindan Nair v. Kuttasseri Kunhi Krishnan Nair*. 25 Cr. L. J. 566 :

81 I. C. 54 : 1923 M. W. N. 815 :

45 M. L. J. 808 : 13 L. W. 949 :

33 M. L. T. 189 : 47 Mad. 245 :

A. I. R. 1924 Mad. 227.

———S. 350—*Applicability.*

The provisions of S. 350 apply to summons cases as well as to warrant case. *Baij Nath Sah v. Emperor*. 25 Cr. L. J. 1380 :

83 I. C. 340 : 27 O. C. 323 :

A. I. R. 1925 Oudh 288.

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cedure to be followed where, the complaint forms the subject of two distinct charges arising out of the same transaction, one of which is a summons case and the other a warrant case was that prescribed for a warrant case, the commitment was not illegal. *Ghani Yaqub v. Emperor*. 21 Cr. L. J. 791 :

58 I. C. 519 : A. I. R. 1920 Sind 55.

—S. 347—Commitment to Sessions—Trial under S. 354, Penal Code—Prosecution and defence witnesses examined and cross-examined—Commitment to Sessions, whether illegal.

The special power to commit to a Sessions Court, conferred on a Magistrate by S. 347, Cr. P. C., cannot be interpreted as depriving the accused of the benefit of the procedure prescribed in Chap. XVIII of that Code, but where the accused, when tried on a charge under S. 354, Penal Code, denies the charge *in toto* and enjoys the benefit of cross-examining the prosecution witnesses for the defence, it cannot be said that he has been prejudiced, merely because the Magistrate altered the charge into one under Ss. 376 and 511, Penal Code, and committed him to the Sessions, because he was not himself competent to try the accused on the altered charge. A committal order passed under such circumstances is not illegal. *In re : Chinnavan*.

15 Cr. L. J. 366 :

23 I. C. 734 : A. I. R. 1914 Mad. 643.

—Ss. 347, 208—Commitment to the Court of Sessions under S. 347 not controlled by S. 208.

S. 347 is not to be read as subject to the provisions of S. 208, and it is not imperative on the Magistrate after the prosecution has closed its case and the Magistrate has decided to commit the accused for trial to the Court of Session in exercise of his powers under S. 347 to allow the accused to cross-examine the witnesses for the prosecution or to call witnesses in his defence. *Phanindra Nath Mitra v. Emperor*. 8 Cr. L. J. 221 :

12 C. W. N. 1014.

—S. 347—Cross-examination of prosecution Witnesses, application for—Application made before charge framed—Duty of Magistrate.

Where before a charge is framed and before the Magistrate decides to commit the case to the Court of Session under S. 347, an application is made on behalf of the accused to cross-examine the prosecution witnesses, the Magistrate has no discretion in the matter and is bound to allow the cross-examination. *Jyotsna Nath Sikdar v. Emperor*.

26 Cr. L. J. 63.

88 I. C. 591 : 51 Cal. 442 :

A. I. R. 1924 Cal. 780.

—S. 347—Death reference—Power of High Court to go into evidence—Duty to give proper weight to opinion of Judge and Jury.

In a Death Reference under S. 347, Cr. P. C., the powers of the High Court are not limited as they are ordinarily limited in the case of an appeal from a trial held by a Jury. It is open to the High Court to come to the

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conclusion that the finding of the Jury was not justified by the evidence. But the Court has not to deal with the case merely on the paper book. It should attach proper weight to the conclusions of the Judge and Jury who had the advantage of seeing the witnesses in the box and noticing the development of the prosecution and defence cases. *Emperor v. Panchu Shaikh*.

32 Cr. L. J. 190 :

128 I. C. 811 : 34 C. W. N. 1154 :

I. R. 1931 Cal. 107 :

A. I. R. 1931 Cal. 178.

—S. 347—Duty of Magistrate.

Magistrate must commit cases of complicated and serious nature. *Emperor v. Maung Chil Sein*.

34 Cr. L. J. 187 :

141 I. C. 256 : 10 Rang. 495 :

I. R. 1933 Rang. 18 :

A. I. R. 1932 Rang. 193.

—S. 347—Scope—Commitment by Magistrate trying case, whether can be quashed—Procedure.

S. 347, Cr. P. C., merely extends the period when a commitment may be made by a Magistrate trying a case to any time before the pronouncing of judgment. It enables the Magistrate to commit even if he has recorded the whole or part of the evidence for the defence. The concluding words of the section that the Magistrate should "commit the accused under the provisions hereinbefore contained" point to S. 213 and, when applicable to S. 214, and in the absence of any other provision except S. 215, for quashing a commitment, a commitment made under S. 347 falls none the less within the purview of Ss. 213 and 214, and where there is any question of quashing, it can only be done under S. 215. *Ulibai v. Emperor*.

26 Cr. L. J. 148 :

83 I. C. 708 : 17 S. L. R. 188 :

A. I. R. 1924 Sind 61.

—S. 347—Scope—Magistrate, power of, to commit to Sessions after defence.

The discretion given to a Magistrate to commit a case to the Sessions, under S. 347, Cr. P. C., is neither restricted nor taken away merely because he issues summons to the defence witnesses under S. 212, Cr. P. C., and examines them. *In re : Sessions Judge, Madura*.

15 Cr. L. J. 704 :

26 I. C. 152 : 17 M. L. T. 83 :

A. I. R. 1915 Cal. 219.

—S. 347—Scope.

S. 347 is couched in general terms and confers very wide powers upon Magistrates. There is no suggestion in the section that the only possible reason for a competent Magistrate to commit a case to the Sessions is that he will not be able to pass a sufficiently severe sentence. *Emperor v. Ishahat*.

26 Cr. L. J. 1389 :

89 I. C. 525 : 3 Rang. 42 :

A. I. R. 1925 Rang. 207.

—S. 347—Scope.

The words "stop further proceedings" in S. 347 refer obviously to proceedings of a trial

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When a case is transferred from the Court of one Magistrate to that of another, the accused has a right to demand that the witnesses or any of them shall be re-summoned and re-heard, and he has such a right not only in warrant cases but also in the case of summary trials, and trials of summons cases and when an accused person makes such a demand, his demand must be complied with, as it is not competent to the second Magistrate to treat the evidence recorded by the first Magistrate as evidence in the case. The time when an accused person must exercise the right is, when the second Magistrate commences his proceedings. When a witness is re-summoned under the proviso to S. 350 and he retracts his former statement, it is not admissible to treat the former statement as evidence in the case. *Sahib Din v. Emperor*.

23 Cr. L. J. 330 :
66 I. C. 826 : 3 Lah. 115 :
4 U. P. L. R. (L) 50 : A. I. R. 1922 Lah. 49.

—Ss. 350, 195—*Applicability*—“*Re-summoned and re-heard*” in proviso (a) to S. 350, significance of—*Object of S. 350*—*Witnesses examined by interrogatories*—*De novo trial*—*Issue of further commission, if necessary*.

The words “re-summoned and re-heard” used in proviso (a), S. 350, Cr. P. C., presuppose that the witnesses have already been summoned and heard. S. 350 is inserted in order that an accused should not be prejudiced by a Magistrate relying on evidence which he did not himself record. Where, therefore, in a prosecution under Ss. 193, 467 and 471, Penal Code, after the Government Examiner of Questioned Documents was examined on Commission on the transfer of the Magistrate a *de novo* trial is commenced and the second Magistrate records against the evidence of all witnesses but no commission is issued a second time to examine the Expert, S. 350 does not apply inasmuch as in case of witnesses examined by interrogatories, there would be no point whatever in the second Magistrate issuing a further commission for interrogatory in the trial. *Kaura Ram v. Emperor*.

38 Cr. L. J. 748 :
169 I. C. 44 : 9 R. Pesh. 138 :
A. I. R. 1937 Pesh. 67.

—Ss. 350, 537—*Applicability*—*Transfer of case*—*Transfer of Magistrate*—*Waiver of right*—*Irregularity*—*Revision*.

S. 353, Cr. P. C., applies as much to cases in which a Magistrate ceases to exercise jurisdiction by reason of the transfer of the case to another Court, as to cases in which the Magistrate ceases to exercise jurisdiction by reason of his own death or transfer to another post. In other words, the section covers cases of transfer as well as those cases in which the Court remains the same but the person of the presiding officer is changed. It is open to an accused to waive his right under the section. But even if there is non-compliance with the provisions of the section, the irregularity is curable unless prejudice is shown. *Ram Das v. Emperor*.

19 Cr. L. J. 378 :
44 I. C. 682 : 16 A. L. J. 217 :
40 All. 307 : A. I. R. 1918 All. 279.

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—S. 350 (a)—*Applicability to enquiries*.

The intention of the Legislature was to limit the application of S. 350 (a), Cr. P. C. to criminal trials and not to extend that proviso to inquiries which are also covered by the first portion of the section. *Syed Sadek Raza v. Sachindra Nath Roy*.

24 Cr. L. J. 569 :
73 I. C. 265 : 37 C. L. J. 128 :
A. I. R. 1923 Cal. 483.

—S. 350 (1)—*Applicability*—*Inquiry preparatory to commitment*—*De novo trial*.

Under S. 350 (1), Cr. P. C., where a Magistrate is transferred during the course of a trial, the accused may, when the second Magistrate commences his proceedings, demand that there should be a *de novo* trial. But where the proceedings are not in the nature of a trial but merely of an enquiry preparatory to commitment, the necessity of any provision for a *de novo* trial does not exist. *Panchnan Sarkar v. Emperor*.

32 Cr. L. J. 243 :
129 I. C. 182 : I. R. 1931 Cal. 134 :
A. I. R. 1930 Cal. 666.

—S. 350 (1)—*Applicability*—*Proceeding in warrant-case before charge*—*Inquiry or trial*.

A proceeding in a warrant-case before a charge is framed is merely an enquiry and not a trial and S. 350 (1), Cr. P. C., is applicable to such a case. *In re : Ramanathan Chettiar*.

24 Cr. L. J. 192 :
71 I. C. 608 : 17 L. W. 412 :
32 M. L. T. 81 & 217 : 46 Mad. 719 :
A. I. R. 1923 Mad. 660.

—S. 350 (1), Chap. XXXVI—*Applicability*—*Proceedings against person under Chap. XXXVI*—*Whether can claim fresh enquiry under S. 350*.

A person against whom proceeding under Chap. XXXVI, Cr. P. C., are taken, cannot claim under S. 350 that the enquiry should be commenced afresh as he is not an accused person. The proviso to S. 350 (1) applies only in the case of trials of persons accused of offences alleged to have been committed by them. *U Kun Zaw v. Ma Aye Khin*.

39 Cr. L. J. 205 :
172 I. C. 876 : 10 R. Rang. 285 (2) :
A. I. R. 1937 Rang. 536.

—S. 350-A—*Bench of Magistrates*—*Bench of three Magistrates*—*One only present throughout trial*—*Legality of trial*.

Where out of three Magistrates constituting a Bench only one is present on all hearings throughout the trial, sitting sometimes with one, sometimes with the others, and sometimes with both, the trial is bad as contravening the provisions of S. 350-A, Cr. P. C., even though the quorum consisted of two. *Banwari v. Emperor*.

27 Cr. L. J. 463 :
93 I. C. 255 : 7 Lah. 122 :
27 P. L. R. 131 :
A. I. R. 1926 Lah. 304.

—Ss. 350 (1) (a), 227 (1)—*Charge*—*Transfer of case*—*Framing of new charge*—*Power of Magistrate*.

In a case governed by S. 350 (1) (a),

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or of an inquiry with a view to a trial by himself when it appears to the Magistrate that the case is one which ought to be tried by the Court of Session or the High Court. *Emperor v. Channing Arnold*. 13 Cr. L. J. 877 (b) : 17 I. C. 813 : 5 Bur. L. T. 239.

—S. 347—Scope of—Procedure to be followed.

The special power to commit to a Sessions Court conferred on a Magistrate by S. 347, Cr. P. C., cannot be interpreted so as to enable the Magistrate to deprive the accused of any of the rights conferred on him by Chap. XVIII of the Code. The phrase "under the provisions hereinbefore contained" in S. 347 must relate to those provisions in Chap. XVIII of the Code which define the procedure to be adopted in inquiries into cases triable by the Court of Sessions. When a case has not reached the stage of committal and nothing in the main proceedings has to be undone before the procedure which is prescribed by law can be followed, no question of the prejudice to the accused arises. Irrespective of the question of prejudice, the proper procedure should be observed. *In re : Damodaram*. 31 Cr. L. J. 273 :

121 I. C. 618 : 57 M. L. J. 555 :

30 L. W. 646 : 1929 M. W. N. 894 :

52 Mad. 995 : A. I. R. 1929 Mad. 862.

—S. 347—"Stop further proceedings", meaning of.

Obiter.—The expression "stop further proceedings," in S. 347 means to stop proceedings with the case as a trial and instead to commit the case to the Sessions for trial by that Court. *Sessions Judge of Coimbatore v. Immudi Kumara Kangaya*. 13 Cr. L. J. 778 :

17 I. C. 410 : 23 M. L. J. 368 :

13 M. L. T. 166 : 1912 M. W. N. 1243.

—S. 347, Chap. XVIII—Transfer of Magistrate—Trial before Presidency Magistrate for offence under Ss. 406 and 420, Penal Code—Transfer of Magistrate—Successor holding case triable by Sessions Court—Procedure.

Where in proceedings for offences under Ss. 406 and 420 before a Presidency Magistrate, the Magistrate heard the prosecution evidence and was then transferred and his successor took up the case and formed the conclusion that it was one which should be tried by a Court of Session inasmuch as it involved the offences also of forgery and using as genuine a forged document, rendered punishable by S. 467 and S. 471, Penal Code, respectively, and applications were then made by the petitioner for a *de novo* trial: *Held*, that apart from any difference in procedure in the method of recording evidence prescribed by S. 362 (1) and Sub-s. (4), since the provisions of S. 360 were not complied with, namely, the deposition was not read over to each witness in the presence of the accused, read with Ss. 207 and 208 of Chap. XVIII, the inquiry must be re-opened *de novo*. *In re : Damodaram*. 31 Cr. L. J. 273 :

121 I. C. 618 : 57 M. L. J. 555 :

30 L. W. 646 : 1929 M. W. N. 894 :

52 Mad. 995 : A. I. R. 1929 Mad. 862.

Cr. P. CODE (1898), S. 349**—Ss. 348, 403—Conviction—Subsequent commitment to Sessions.**

Where a Magistrate has to act under S. 348, Cr. P. C., he ought not to find the accused guilty before commitment but should merely frame a charge and then commit, as otherwise a conviction would bar a fresh trial before the Sessions Court under S. 403, Cr. P. C. *In re : Kora Sellandi*. 15 Cr. L. J. 188 (a) :

22 I. C. 764 : A. I. R. 1914 Mad. 149 (a).

—Ss. 348, 350—De novo trial—Previously recorded evidence, use of.

It is not competent to a Magistrate to embark upon a trial *de novo* and yet rely upon the evidence recorded previously. *Kartar Singh v. Emperor*. 28 Cr. L. J. 302 :

100 I. C. 382 : A. I. R. 1927 Lah. 328.

—Ss. 348, 349—Procedure when previous conviction of accused brought to Magistrate's notice.

It is not illegal or irregular for a Magistrate of the 2nd or 3rd class acting under S. 349, Cr. P. C. to frame a charge against an accused person. A Magistrate acting under S. 348, Cr. P. C., should, on the accused's previous conviction being brought to his notice, either commit the accused to the Sessions or transfer the case to the District Magistrate, unless he thinks he can pass adequate sentence. In either case, he is not entitled to submit the records to the higher Court with a finding as to the accused's guilt. Such a procedure is wrong and *ultra vires*. *Emperor v. Po Yin*. 17 Cr. L. J. 201 :

34 I. C. 313 : 9 Bur. L. T. 213 :

A. I. R. 1916 L. Bur. 65.

—Ss. 348, 349—Scope of—Trial of previously convicted offender by second class Magistrate—Power of reference for higher punishment.

A. was tried by a second class Magistrate for an offence for which he was liable, by reason of a previous conviction, to enhanced punishment under S. 75, Penal Code. The Magistrate, being of opinion that he was guilty, but that he could not pass an adequate sentence himself, referred the case under S. 349, Cr. P. C., to the Sub-Divisional Magistrate, who sentenced him to two years' rigorous imprisonment and a whipping: *Held*, that the case was one to which S. 348 applied, the Magistrate was debarred from referring the case for higher punishment under S. 349. *Emperor v. Po Thwe*. 8 Cr. L. J. 478 :

4 L. B. R. 282.

—S. 349.

See also (i) Appeal

(ii) Cr. P. C., 1898, Ss. 4 (b) 8, 13, 262 (2), 346, 348, 349, 369.

—S. 349—Construction—Court competent to decide guilt of accused—General principle—Penal Code (Act XLV of 1860), S. 53.

It is a general rule of criminal jurisprudence that only an authority who has heard the evidence is competent to decide whether the accused is innocent or guilty, and any excep-

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to second class Magistrate having no summary powers—He discharging accused owing to complainant's default—Second Class Magistrate's trial must be *de novo*—Hence another complaint by same complainant on same facts would not be barred under S. 350. *Nammier v. Dasalier*.

33 Cr. L. J. 653 :
138 I. C. 581 : 55 Mad. 795 :
1932 M. W. N. 244 :
35 L. W. 760 : 62 M. L. J. 738 :
I. R. 1932 Mad. 594 (2) :
A. I. R. 1932 Mad. 505.

—S. 350—*De novo trial*—High Court Sessions—Change of Judge after swearing in of Jury and reading of charges—Proceedings whether should be commenced *de novo*.

Where during a trial in the High Court, the presiding Judge becomes ill after the Jury are sworn in and the charges are read, and another Judge is appointed by the Chief Justice to preside over the case, the trial can proceed further before the successor. It is not necessary to discharge the Jury sworn by the predecessor, and to commence the whole proceedings *de novo*. *Emperor v. Dorabji Pestonji Gora*.

28 Cr. L. J. 402 :
101 I. C. 178 : 29 Bom. L. R. 204 :
A. I. R. 1927 Bom. 161.

—S. 350—*De novo trial*, implication of—Magistrate framing charges—Case taken up by another Magistrate who allows claims of accused for trial *de novo*—Magistrate transferred—Another Magistrate summoning prosecution witnesses on trial *de novo* being claimed—Discharge order—Effect—Order, if one of acquittal.

Where in a complaint under S. 420, Penal Code, the Magistrate framed charges against the accused and the case was then taken up by another Magistrate who recorded that the accused claimed trial *de novo* before him and the claim was allowed, and on the transfer of this Magistrate, the case continued before another Magistrate who also noted that the accused claimed a *de novo* trial, and he re-summoned the prosecution witnesses accordingly and after hearing them passed an order of discharge : Held, that by ordering a *de novo* trial the Magistrate must be deemed in this case to have acted under S. 350 (1), Cr. P. C., and that by *de novo* trial he meant what is technically *de novo* inquiry plus trial. The procedure followed in re-hearing the case from the beginning and ignoring all previous proceedings including the charge showed that this was the option he adopted. The legal result was that the previous charge was no longer in force and, therefore, the order was one of discharge and not of acquittal. *Tukaram v. Emperor*.

37 Cr. L. J. 983 :
164 I. C. 744 : I. L. R. 1936 Nag. 92 :
9 R. N. 28 : A. I. R. 1936 Nag. 153.

—S. 350—*De novo trial*, implications of.

The grant of a *de novo* trial by the successor of the Magistrate has the effect of wiping out the prior proceedings and hence even the old Magistrate cannot proceed with the trial from

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the point where he had left it. *Pillai v. Emperor*.

35 Cr. L. J. 1363 :
151 I. C. 309 : 1934 M. W. N. 369 :
67 M. L. J. 293 : 40 L. W. 832 :
57 Mad. 1019 : 7 R. M. 122 :
A. I. R. 1934 Mad. 475.

—S. 350—*De novo trial*, implications of—Charge whether cancelled—Order setting free accused whether acquittal or discharge.

A *de novo* trial held under S. 350, Cr. P. C., does not imply the cancellation of a charge previously framed against the accused and consequently an order subsequently passed letting off the accused is one of acquittal and not of discharge. *Bughta Simhadri Naidu v. Behava Sitharama Patrudu*.

17 Cr. L. J. 1 :
32 I. C. 129 : 2 L. W. 1244 :
A. I. R. 1916 Mad. 1048.

—S. 350—*De novo trial*—Interrogatories issued and answered—Subsequent *de novo* trial—Fresh interrogatories, necessity of.

Where interrogatories have been served and answered and subsequently a trial *de novo* under S. 350 is demanded and granted, it is not necessary that a fresh set of interrogatories should be issued; nor the interrogatories which have already been answered can be excluded from evidence in the case. The object of re-summoning witnesses who have already been examined is that the Magistrate may see their demeanour in the witness-box. This does not apply in the case of interrogatories. Therefore, the answers given to the interrogatories before trial *de novo* can be considered as evidence in the case during trial *de novo*. *Roshan Lal Harjimal v. Emperor*.

41 Cr. L. J. 681 :
188 I. C. 770 : 17 R. Pesh. 7 :
A. I. R. 1940 Pesh. 17.

—S. 350—“*De novo trial*”, meaning and object of.

A *de novo* trial means a new trial from the very beginning of the case. The object of granting a *de novo* trial is to enable the Magistrate who hears the case to see the way in which the witnesses give evidence before him, to mark their demeanour, and thereby to be in a position to judge of their credibility. The object is lost if the witnesses are only allowed to be cross-examined by the accused. Such a course is not in accordance with the provisions of S. 350, Cr. P. C. Even if no objection is taken to the course of merely allowing the witnesses to be cross-examined further, still the trial is vitiated. *Narayan Reddy v. Enumula Bojamma*.

26 Cr. L. J. 1596 :
90 I. C. 668 : 1925 M. W. N. 652 :
49 M. L. J. 423 : A. I. R. 1925 Mad. 1280.

—S. 350—*De novo trial*—Omission to examine afresh the prosecution witnesses—Prejudiced to the accused.

Where after the prosecution witnesses were examined and cross-examined before a Magistrate, the case against the accused was made over to another Magistrate and a *de novo* trial was commenced before the latter in

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—S. 349 (1)—*Reference—Joint trial of three persons including one juvenile offender by Sub-Magistrate—Conviction of adults and sending up of juvenile accused to Sub-Divisional Magistrate, legality of.*

Where in a joint trial before a Sub-Magistrate of three persons, one of whom was a juvenile offender of the age of 15 years, the Magistrate convicted the adults and sent up the juvenile offender alone to the Sub-Divisional Magistrate under S. 349, Cr. P. C.: *Held*, that the procedure was illegal and that all the three persons must have been sent up under S. 349. *Murugesu Koundan v. Emperor.*

29 Cr. L. J. 624 :
109 I. C. 816 : 1928 M. W. N. 72.

—S. 349 (2)—*Reference—Return of case.*

Where a case is sent by a Sub-Magistrate under S. 349, Cr. P. C., to a Sub-Divisional Magistrate for disposal, the latter has no power to return the case to the former for disposal, but should dispose of it himself. *Pounnuswamy Naidu v. Emperor.*

13 Cr. L. J. 16 :
13 I. C. 110 : 1912 M. W. N. 16 :
36 Mad. 410.

—S. 349—*Reference for higher punishment.*

It is not illegal or irregular for a Magistrate of the second or third class to frame a charge against an accused person, in a case which he has jurisdiction to try, even though at the time of framing the charge he intends, if he is of opinion that the accused is guilty, to submit the proceedings to the District or Sub-Divisional Magistrate to pass sentence. S. 254, Cr. P. C., must be read as subject to the general provision in S. 349. *Emperor v. Hla Gyi.*

1 Cr. L. J. 1010 :
10 Bur. L. R. 306 : 2 L. B. R. 285.

—S. 349 (1) (a)—*Scope—Joint trial of several accused, some held guilty—Reference with regard to all accused, legality of.*

Under Sub-s. (1) (a) of S. 349, Cr. P. C., only the case of those accused who are in the opinion of the Magistrate guilty should be forwarded to the District or Sub-Divisional Magistrate. The accused in the case who, in the opinion of the Magistrate, are not guilty should be acquitted and an order referring their case to the Sub-Divisional Magistrate along with the case of those accused who are guilty is illegal and in contravention of the sub-section. *Sultan Muhammad Khan v. Emperor.*

26 Cr. L. J. 1630 :
90 I. C. 926 : 24 A. L. J. 80 :
A. I. R. 1926 All. 176.

—S. 349—*Scope of—Reference by Bench of Magistrate, competency of.*

S. 349, Cr. P. C., does not authorize a bench of Magistrate to refer a case for higher punishment to a District Magistrate or Sub-Divisional Magistrate. *Emperor v. Jalal Khan.*

8 Cr. L. J. 475 :
4 L. B. R. 277.

—S. 349 (2)—*Scope of.*

The provision in S. 349 (2), Cr. P. C., that

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the Magistrate to whom the proceedings are submitted may pass such order as he thinks fit, means that he may pass such other final order disposing of the case as he thinks fit. *Pounnuswami Naidu v. Emperor.*

13 Cr. L. J. 19 :
13 I. C. 110 : 1912 M. W. N. 16 : 36 Mad. 470.

—S. 349—*Security proceedings—Summary order under S. 349 (2)—Procedure.*

A Magistrate seized of a case under S. 107 (3) and (4), Cr. P. C., i. e., on information which he sees reason to believe, cannot pass the summary order allowable by S. 349 (2) but must go through all the procedure prescribed in Ss. 112—116 of the Code and must hold the regular enquiry laid down by S. 117. *Emperor v. Hardil Singh.*

10 Cr. L. J. 309 :
3 I. C. 577 : 7 P. R. 1909 Cr.

—S. 350.

—Applicability.
—Bench of Magistrates.
—Charge.
—Commitments.
—Construction.
—*Denovo* trial.
—Effect of.
—Interpretation of.
—Non-compliance.
—Power of Magistrate.
—Power of transferee Court.
—Procedure.
—Right of accused.
—Scope.
—Transfer of case.
—Transfer of Magistrate.
—Trial.
—Trial by Bench of Magistrates.

—S. 350.

See also Cr. P. C., 1898, Ss. 118, 192,
204, 287, 346, 348, 366 (5),
403, 436.

—S. 350—*Applicability—Case transferred from one Magistrate to another.*

S. 350, Cr. P. C., is applicable to a case which has been transferred from the Court of one Magistrate to that of another. It is not restricted to cases in which Magistrates succeeded each other in their offices. *Akbar Ali v. Emperor.*

20 Cr. L. J. 41 :
48 I. C. 681 : A. I. R. 1918 Nag. 142.

—S. 350—*Applicability—Commencement of trial—Jurisdiction—Charge of Magistrate—Irregularity.*

The provisions of S. 350, Cr. P. C., are only applicable where a trial has been commenced before one incumbent of a particular magisterial post who ceases to exercise jurisdiction in that post and is succeeded by another officer. *Emperor v. Gokal.*

1 Cr. L. J. 1056 :
17 C. P. L. R. 159.

—S. 350—*Applicability—Difference of opinion between even number of Magistrates—Procedure—Rules framed by Bengal Government, r. 6—Trial, de novo—Jurisdiction.*

Where on a difference of opinion between

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—S. 350—*De novo trial—Transfer of Magistrate—Re-transfer of Magistrate—Trial proceeded with from where he had left it.*

The accused were charged with certain offences under various sections of the Penal Code and the Cattle Trespass Act. The case was assigned to Mr. T., the Joint Magistrate, who, however, was transferred from the district before he was able to complete the case. The Sub-Divisional Officer transferred the case to his own file and heard the case *de novo*, disregarding all the evidence recorded by Mr. T. Before the Sub-Divisional Officer had concluded the case, Mr. T. was re-transferred to the district, whereupon the Sub-Divisional Officer transferred the case to Mr. T.'s file with a direction that Mr. T. should take it up from where he had left it before being transferred. This was done, and resulted in the accused being convicted: *Held*, that the trial was illegal and must be set aside, and the accused tried *de novo*, that the order of the Sub-Divisional Officer was *ultra vires* and without jurisdiction, because all that had taken place before Mr. T. had been superseded. *Daroga Chowdhury v. Emperor*. 20 Cr. L. J. 638: 52 I. C. 398: A. I. R. 1919 Pat. 578.

—S. 350—*De novo trial—Transfer of Magistrate—Return of Magistrate—Trial, whether can be started from stage at which it had arrived before transfer.*

When on the transfer of a Magistrate a criminal case pending before him is taken up by another Magistrate and the trial is started *de novo*, the proceedings which had already taken place before the Magistrate who has been transferred are wiped out, and S. 350, Cr. P. C., gives no jurisdiction to such Magistrate on his re-transfer to the district to proceed with the trial from the point where he had left it. *Jago Singh v. Emperor*. 20 Cr. L. J. 820: 53 I. C. 820: A. I. R. 1919 Pat. 311.

—S. 350—*De novo trial—Transfer of Magistrate.*

The right of claiming of a trial *de novo* on the transfer of a Magistrate is given to an accused person in order that he may have the very great benefit of the Trying Magistrate having the witnesses examined and cross-examined in his presence, so that he may see and note their demeanour and manner of giving evidence. When the right is claimed, the Magistrate must re-commence the trial. In a criminal trial, the Magistrate was transferred after the prosecution evidence was heard and a charge framed. The accused claimed a trial *de novo* before the succeeding Magistrate. Thereupon the witnesses were re-summoned, their statements were read over to them and they were further cross-examined. No fresh charge was framed nor was the accused examined by the Magistrate: *Held*, that the provisions of S. 350, Cr. P. C. were not complied with and that a new trial must be ordered. *Hnin Yin v. Than Pe*. 19 Cr. L. J. 321-A: 44 I. C. 337: 9 L. B. R. 92: [11 Bur. L. T. 58: A. I. R. 1918 L. Bur. 63.

—S. 350—*De novo trial—Transfer of*

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Magistrate—Trial de novo—Transfer of case to transferred Magistrate, effect of—Procedure.

When on the transfer of a Magistrate to another station a criminal case pending before him is taken up by another Magistrate and the trial is started *de novo*, the proceedings which had already taken place before the Magistrate who has been transferred are wiped out, and such Magistrate has no jurisdiction, on the case being transferred to him again by the District Magistrate, to proceed with the trial from the point where he had left it. *Sardar Khan v. Attoulla*. 26 Cr. L. J. 510. 85 I. C. 254: 20 L. W. 847: 47 M. L. J. 926: A. I. R. 1926 Mad. 174.

—S. 350—*De novo trial—Transfer of Magistrate after cross-examination of prosecution witnesses after charge—His successor noting accused's claim for de novo trial and resummoning witnesses—Subsequent failure to examine witnesses is illegality vitiating trial—Acquiescence by accused in procedure, if stops him from raising plea of illegality.*

Where in a case after the framing of the charge and the cross-examination of the prosecution witnesses after the charge, the Magistrate is succeeded by another Magistrate who notes in the order sheet the accused's claim for *de novo* trial and orders the witnesses to be re-summoned, the order must be deemed to have directed a *de novo* trial and the failure to examine the witnesses-in-chief is a manifest illegality which vitiates the trial. When the accused does not expressly wish that the examination-in-chief of the witnesses recorded by the previous Magistrate should be treated as part of the record of a subsequent *de novo* trial by the second Magistrate, the accused is not estopped from raising the plea of the illegality of the trial by reason of his acquiescence in the procedure adopted by the Magistrate. *Purushottamrao Bhauji Berde v. Emperor*. 40 Cr. L. J. 73: 178 I. C. 465: 11 R. N. 229: 1938 N. L. J. 309: A. I. R. 1938 Nag. 493.

—S. 350—*De novo trial—Trial re-commenced under S. 350—Charge, whether cancelled—Discharge—Acquittal.*

A Magistrate who re-commences an "inquiry" or "trial" under S. 350, Cr. P. C., does not thereby modify its nature or the stage at which it has arrived. Therefore, once a charge is framed and trial begun, the charge cannot be cancelled by reason of re-commencement of the trial under S. 350 and the only order which the second Magistrate can pass is that of acquittal under S. 258, and not that of discharge under S. 253 (2), Cr. P. C. *Tanguturi Sritramulu v. Nalam Krishna Rao*. 15 Cr. L. J. 673: 25 I. C. 1001: 1914 M. W. N. 646: 16 M. L. T. 303: 27 M. L. J. 589: A. I. R. 1915 Mad. 23.

—S. 350—*De novo trial—Waiver of right by the accused—Throwing oneself on Court's mercy, if amounts to pleading guilty—Illegal gratification, payment of, under compulsion—Accomplice's evidence.*

Cr. P. CODE (1898), S. 350**—S. 350—Applicability.**

The provisions of S. 350, Cr. P. C., apply to all cases in which cases are transferred for whatever reasons from the file of one Magistrate to that of another. *Mohesh Chandra Saha v. Emperor*.

7 Cr. L. J. 220 :
12 C. W. N. 416 : 35 Cal. 457 :
7 C. L. J. 488.

—S. 350—Applicability.

The provisions of S. 350, Cr. P. C., have no application to a case transferred from a Subordinate Magistrate to a District Magistrate under the proviso to S. 348 of the said Code. *Ladya v. Emperor*.

2 Cr. L. J. 820 :
1 N. L. R. 187.

—S. 350—Applicability, to Benches of Magistrates—Decision after hearing part of evidence, legality of.

S. 350, Cr. P. C. does not apply to cases tried by Benches of Magistrates. There is no provision of law which provides for a change in the constitution of Benches of Magistrates, and, therefore only those Magistrates who have heard the whole of the evidence in a case can decide the case. *Itala v. Emperor*.

18 Cr. L. J. 96 :
37 I. C. 160 : 9 Bur. L. T. 203 :
8 L. B. R. 463 : A. I. R. 1917 L. Bur. 79.

—S. 350—Applicability to Bench of Magistrate, procedure—Evidence heard by one member—Conviction—Legality.

S. 350 does not apply to cases tried by Benches of Magistrates. All criminal cases which are tried by Benches of Magistrates must be decided by Magistrates who have heard the whole of the evidence in each particular case. A conviction by a Bench of Magistrates in a case in which the entire evidence is heard by only one member, is illegal. *Girdhari v. Emperor*.

22 Cr. L. J. 740 :
64 I. C. 132 : 2 Lah. 237.

—S. 350—Applicability to enquiries.

Clause I of S. 350, Cr. P. C., gives a discretion to the trial Magistrate while proviso (a) gives a right to the accused. One of the objects of this section is to give the trial Magistrate an opportunity to watch and observe the demeanour of a witness which is a very important factor in assessing the value of his evidence. There is no reason why in an enquiry in a case under S. 110, Cr. P. C. which vitally affects an accused, he should be deprived of the right given to him in proviso (a) to ask the Magistrate who succeeds the Magistrate who has made a part of the enquiry to see for himself the demeanour of the witness and to have a first-hand impression of the witness and his evidence by re-calling the prosecution witnesses and re-hearing him. *Mahtab Singh v. Emperor*.

38 Cr. L. J. 804 :
169 I. C. 833 : 1937 A. L. J. 373 :
10 R. A. 71 : 1937 A. W. R. 382 :
A. I. R. 1937 All. 438

—S. 350—Applicability to enquiries.

The provisions of S. 350, Cr. P. C., apply to an inquiry under S. 247 of the U. P. Municipalities

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Act. Where proceedings under S. 247, U. P. Municipalities Act, began in the Court of one Magistrate who after recording prosecution evidence was transferred and his successor proceeded to record the defence although the accused had demanded that the witnesses already examined should be re-heard: *Held*, that the procedure adopted was illegal and the case should be re-heard. *Basanti v. Emperor*.

25 Cr. L. J. 651 :
81 I. C. 139 : A. I. R. 1925 All 245.

—S. 350—Applicability to summary trials—Magistrate recording prosecution evidence in extenso in narrative form—Successor can act on this evidence.

S. 350, Cr. P. C., does not in terms exclude summary trials from its operation. It applies to all enquiries or trials conducted by a Magistrate in which the whole or any part of the evidence has been heard and recorded. It depends on the way in which the evidence has been recorded in each case whether S. 350 would apply or not. In trying a case summarily it is enough if scanty notes of the evidence are made, and these need not be kept on the record at all. Where such notes are allowed to remain it would obviously be improper for the Magistrate to rely on such inadequate material. But where the prosecution evidence was recorded by the first Magistrate in extenso in narrative form, at least quite as fully as it would have been in a summons case where by S. 355, Cr. P. C., a memorandum of the substance is enough, it cannot be urged that S. 350 would not apply to such evidence if recorded in a summons case. *Emperor v. Durga Prasad*.

41 Cr. L. J. 782 :
189 I. C. 689 : 1940 N. L. J. 321 :
13 R. N. 73 : A. I. R. 1940 Nag. 239.

—S. 350—Applicability, to trials by Benches of Magistrates.

S. 350 has no application to cases tried by Benches of Magistrates. *Abdul Ghani v. Emperor*.

22 Cr. L. J. 511 (a) :
62 I. C. 335 : A. I. R. 1922 Lah. 137.

—S. 350—Applicability—Transfer of case.

S. 350, Cr. P. C., is not limited to cases in which Magistrate succeed one another in Court but applies also to cases transferred from the file of one Magistrate's Court to that of another under S. 528 of the Code. *Ganga Chetty v. Emperor*.

20 Cr. L. J. 496 :
51 I. C. 480 : 12 Bur. L. T. 55 :
A. I. R. 1919 L. Bur. 50.

—S. 350—Applicability.

Trial by Bench of two Magistrates—Evidence recorded by one—Dissolution of the Bench—Case proceeded with by Magistrate taking evidence—S. 350 (1), does not apply. *Shahu v. Emperor*. (F.B.)

36 Cr. L. J. 831 :
155 I. C. 736 : 7 R. S. 206 :
A. I. R. 1935 Sind 84.

—S. 350—Applicability—Trial transferred from one Magistrate to another—Accused, right of, to re-summon witnesses—Time for making demand—Evidence recorded by first Magistrate, whether can be relied on.

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Except where the law expressly permits waiver the right of an accused should not be held to be lost by his consent to a procedure or to admission of evidence which the law does not authorise. The prisoner on his trial can consent to nothing. It is the duty of Magistrates and all Criminal Courts to follow the procedure prescribed by law, and the consent of the accused cannot be invoked against irregularity in procedure. Where after several witnesses were examined the case was transferred to another Magistrate, the latter acted irregularly in convicting the accused on evidence partly recorded by the former Magistrate. S. 350, Cr. P. C. not being applicable to such a case, the irregularity could not be waived by the accused. *Deputy Legal Remembrancer v. Upendra Kumar*.

6 Cr. L. J. 434 :
12 C. W. N. 140.

—S. 350—De novo trial—Waiver of right by accused.

The Magistrate ceases to exercise jurisdiction within the meaning of S. 350, Cr. P. C., when a case is withdrawn from his file, and where, in such a case, the accused, on the case being sent to another Magistrate, fails to ask for a new trial, the latter Magistrate is competent to record the remaining evidence and pronounce judgment. *Rupa Singh v. Emperor*.

22 Cr. L. J. 82 :
29 I. C. 370 : 1 P. L. T. 679.

—S. 350—De novo trial, what is.

Where the trying Magistrate acting not *suo motu* but at the request of one of the accused, re-calls certain witnesses, the trial cannot be regarded as a *de novo* trial. *Kunwar Sen v. Emperor*.

34 Cr. L. J. 124 :
141 I. C. 192 : 9 O. W. N. 1136 :
I. R. 1933 Oudh 33 :
A. I. R. 1933 Oudh 86.

—S. 350—De novo trial.

When a case has been submitted to a First Class Magistrate on the stay of its proceedings before the Second Class Magistrate, under S. 376, the First Class Magistrate is bound to try it *de novo*. His failure vitiates the trial. *Sher Khan v. Emperor*.

34 Cr. L. J. 749 :
144 I. C. 231 : 27 S. L. R. 266 :
I. R. 1933 Sind 173 :
A. I. R. 1933 Sind 191.

—S. 350—De novo trial.

Where the Magistrate who has recorded the evidence of witnesses in a warrant case is transferred before he has framed the charge, the accused has a right to have the witnesses re-called and examined *de novo*. *Labhsing v. Emperor*.

35 Cr. L. J. 1261 :
151 I. C. 213 : 28 S. L. R. 239 :
7 R. S. 46 : A. I. R. 1934 Sind 106.

—Ss. 350, 223, 224, 230, 233, 234, 346—De novo trial—Right of accused—Case transferred from one Magistrate to another—Trial *de novo* whether can be claimed by accused—Estoppel—Intention of Counsel, expression of, in High Court not to claim trial *de novo*, whether estops

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accused from demanding trial de novo,—Cheating, charge of—Omission to specify manner in which cheating was effected, whether vitiates charge—Money delivered by some persons but contributed by several persons—Inducements offered to persons contributing—Separate offences—Misjoinder of charges.

The applicant was challaned and convicted on three charges under S. 420, I. P. C., which were tried together under S. 234, Cr. P. C., on the allegation that in his capacity as a Revenue Inspector he cheated three persons by dishonestly inducing them to deliver to him sums of money collected by them from several others, they themselves contributing to the sum their own quota of subscriptions. The applicant under orders from the Tahsildar caused a list of the tenants of a certain village to be prepared, showing the amount each of the tenants would have to pay towards the War Loan. Sometime after he offered to some of them within the hearing of others to cut down the subscriptions to half if he was paid Rs. 2 a piece and to omit altogether the names of persons who were to pay Rs. 7-12-0 if they paid him Re. 1 each. The villagers were then told to bring the money and they met in two groups. Seven out of one group paid Rs. 2 each to K., who thus collected Rs. 16 including Rs. 2 of his own and paid the amount to the applicant, who made the necessary corrections in the list already prepared. Similarly C. collected Rs. 9 from 6 persons including himself out of the other group and paid it to the applicant, who made corrections in the list as promised. The case was originally tried by the District Magistrate but on an application for transfer to Judicial Commissioner it was sent to the file of a First Class Magistrate in the same District. In the course of his arguments in the proceeding under the transfer application, the applicant's Counsel expressed his intention not to apply for a re-hearing of the case. The Magistrate, to whose file the case was transferred, held that this constituted a waiver on the part of the accused and consequently refused to grant the prayer of the applicant for a trial *de novo*. On appeal the Sessions Judge set aside the conviction and sentence on one only and upheld those on the other two. The applicant urged amongst others the following grounds : (1) that there were an illegal contravention of S. 350 in refusing to grant a trial *de novo*; (2) that there was a non-compliance with Ss. 223 and 224, Cr. P. C., causing in fact a failure of justice and illegal misuse of S. 336 inasmuch as the charges did not give necessary notice of the matter charged, (3) that the charges framed were in contravention of the provisions of Ss. 233 and 234, Cr. P. C., as there were 15 persons cheated and 15 separate offences committed and the offences were wrongly combined in one trial : Held, that the statement of the applicant's Counsel not to apply for a fresh trial did not operate as an estoppel and the trial Court was wrong in refusing th

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Cr. P. C., where the accused demands that the prosecution witnesses or any of them be re-summoned and re-heard, it is not necessary for the Magistrate to frame a new charge at the request of the accused. If, however, he does frame a new charge, the accused cannot have any cause for grievance. Under S. 227 (1), Cr. P. C., a Court can alter or add to any charge at any time before judgment is pronounced. Where, therefore, in a case a charge is framed against an accused under S. 454, Penal Code, but the case is subsequently transferred to another Magistrate who frames a fresh charge under Ss. 411 and 454 and the case is again transferred to a third Magistrate who re-commences the trial and again frames charges under Ss. 411 and 454, Penal Code, there is absolutely no irregularity in framing charges afresh as the first Magistrate could have added a charge under S. 411 at any time, nor is the accused in any manner prejudiced, the more so when the accused himself applies for a *de novo* trial before the subsequent Magistrate. *Gajju v. Emperor*.

39 Cr. L. J. 842 :
177 I. C. 193 : 1938 O. W. N. 898 :
11 R. O. 34 : 1938 O. L. R. 394 :
A. I. R. 1938 Oudh 247.

—————**S. 350—Commitment—Statement recorded by one Magistrate but committal by another—Admissibility of statement in trial before Sessions Judge.**

Where a statement of the accused during inquiry is recorded by one Magistrate, but the case is committed by his successor, the statement so recorded is admissible in evidence at the trial before the Sessions. *Ghulam Jannat v. Emperor*.

27 Cr. L. J. 627 :
94 I. C. 403 : 7 Lah. 70 :
27 P. L. R. 534 :
A. I. R. 1926 Lah. 271.

—————**S. 350 (1)—Proviso — Commitment—Transfer of part-heard case—Commitment, whether can be based on evidence recorded by transferring Magistrate.**

It is a general rule that only an authority who has heard all the evidence is competent to decide whether the accused is innocent or guilty, but commitment of the accused involves no such question. The correct inference to be drawn from the proviso to Sub-s. (1) of S. 350 is that in determining whether or not to commit for trial the Magistrate to whom the case is submitted is competent to base his determination on the evidence already recorded and the report sent with it. *Emperor v. Ramprasad*.

18 Cr. L. J. 35 :
36 I. C. 867 : 12 N. L. R. 146 :
A. I. R. 1916 Nag. 115.

—————**S. 350—Construction — “Succeeded,” meaning of—Case taken by second Magistrate, the first being otherwise busy—Legality of trial.**

The word “succeeded” in S. 350, Cr. P. C., should not be construed in a narrow sense. The words “ceases to exercise jurisdiction therein” mean “in the inquiry or trial” and not “in a particular post.” A Deputy Magistrate heard a case in part. On the next day

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of hearing, he was occupied in some other work, and the District Magistrate, upon the application of the Counsel for the accused, appointed another Magistrate to try the case. The entire case for the defence, including the cross-examination of the witnesses for the prosecution, was held before the second Magistrate : *Held*, that the trial by the second Magistrate was not illegal. *Kudrutullah v. Emperor*.

13 Cr. L. J. 218 :
14 I. C. 314 : 39 Cal. 781.

—————**S. 350—De novo trial—Accused, if can insist on fresh trial—Trial de novo, when can be commenced—Duty of Magistrate.**

S. 350, Cr. P. C., in effect lays down that the enquiry or trial has to be commenced *de novo* if the succeeding Magistrate in his discretion desires that it should be so, with the necessary implication that the charge already framed has to be ignored. In such cases Magistrates should make it clear whether they are starting fresh proceedings altogether or are merely re-hearing the witnesses to the extent demanded by the accused. *Tukaram v. Emperor*.

37 Cr. L. J. 983 :
164 I. C. 744 : 9 R. N. 28 :
I. L. R. 1936 Nag. 92 :
A. I. R. 1936 Nag. 153.

—————**S. 350—De novo trial.**

Charge framed—Another Magistrate succeeding and proceeding with case under S. 350—*De novo* trial order—Charge cannot be ignored. *Raza Hussain v. Emperor*.

36 Cr. L. J. 912 :
156 I. C. 186 : 7 R. A. 1057 :
1935 A. L. J. 1022 :
1935 A. W. R. 789 :
A. I. R. 1935 All. 834.

—————**S. 350—De novo trial—Evidence previously recorded, exhibition of—Irregularity—Trial, whether, vitiated—Consent of accused, effect of—Evidence Act, S. 187, applicability of.**

As a general rule witnesses in all criminal trials should be examined *viva voce*. Departures from this rule can be permitted only under some express provisions of the law, for instance, where S. 145, or S. 157, Evidence Act, is applicable or in the class of cases covered by S. 288, Cr. P. C. Where in the course of a trial, the Trying Magistrate is succeeded by another and at a *de novo* trial held by the latter the depositions of witnesses in the previous trial are exhibited, “in order to save cross-examination” without the witnesses being examined afresh, it amounts to an irregularity that vitiates the trial. An irregularity such as the above cannot be cured by the consent of the accused. Nor has S. 167, Evidence Act, any application to such a case. *In re : Kottammal Kolathingal Ummar Hajee*.

23 Cr. L. J. 748 :
69 I. C. 636 : 1922 M. W. N. 644 :
16 L. W. 697 : 43 M. L. J. 659 :
A. I. R. 1923 Mad. 32.

—————**S. 350—De novo trial.**

First Class Bench partly trying case under summary powers—After charge case transferred.

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a *de novo* trial or inquiry. The Magistrate beginning the proceedings anew against the wishes of the accused is not acting without jurisdiction. S. 350 (1) (a), has no application in a case in which the second Magistrate decides to re-summon the witnesses and re-commence the enquiry or trial. The Proviso gives the accused a right at the time of the commencement of the proceedings before the second Magistrate to demand that the witnesses or any of them be re-summoned and re-heard, and it does not give him any other right. The complainant can, of course, put before the Magistrate reasons why it is desirable under S. 350, that the witnesses should be re-summoned and the inquiry or trial recommenced, but he has no right to demand that the witnesses be re-summoned or to claim a *de novo* trial from the beginning. *Gur Dayal v. Sheo Dularey*.

39 Cr. L. J. 858 :

177 I. C. 270 : 1938 O. W. N. 841 :

11 R. O. 37 : 1938 O. L. R. 40 :

A. I. R. 1938 Oudh 218.

————S. 350 (1) (2)—*De novo trial—Magistrate, transfer of—Subsequent waiver—Mere cross-examination of prosecution witnesses, effect of—Re-trial, privilege of, is not claimable by complainant.*

Where an accused, on a transfer of a Magistrate, claimed the privilege of re-trial under S. 350, Cr. P. C., but when the prosecution witnesses appeared, changed his mind and was content to cross-examine the witnesses : *Held*, that the procedure adopted was not irregular and the Court was free to exercise its statutory option and act upon the evidence recorded by its predecessor. The privilege under S. 350, Cr. P. C., is that of the accused and not of the complainant and if the accused declines to act under Sub-cl. (1) (a), the complainant of necessity must suffer any disadvantage which follows upon the Magistrate electing to proceed upon the evidence already recorded. *In re : Arulay*.

27 Cr. L. J. 659 :

94 I. C. 707 : A. I. R. 1926 Mad. 815.

————S. 350—Effect of.

The general provisions of S. 33, Evidence Act, are in no way affected by S. 350, Cr. P. C. *Lekal v. Emperor*.

28 Cr. L. J. 451 :

101 I. C. 483 : 28 P. L. R. 199 :

8 Lah. 570 : A. I. R. 1927 Lah. 332.

————S. 350 (2)—Interpretation of.

The first part of Sub-s. (2) of S. 350, Cr. P. C., was intended to provide that where proceedings have been stayed under S. 346, the Magistrate by whom the case is subsequently taken up is to hold a *de novo* trial. The only reasonable construction to put upon the second part of the sub-section would be to say that where proceedings have been submitted to a superior Magistrate under S. 349, the accused may not insist upon a *de novo* trial. To hold otherwise would be to render S. 349, Sub-s. (2) of no effect. *Sashte Gopal Samui v. Haridas Bagdi*.

39 Cr. L. J. 606 (b) :

175 I. C. 537 : 42 C. W. N. 508 :

10 R. C. 799 : A. I. R. 1938 Cal. 415.

————S. 350 (1) (a)—Non-compliance, effect of—Scope.

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A contravention of the provisions of S. 350 (1) (a) will vitiate the trial only when there is a refusal on the Magistrate's part to re-summon and re-hear the witnesses or when the evidence of witnesses examined against the provisions of Cl. (a) is relied upon by the Court. Where a witness is only cross-examined in the second Court but not examined-in-chief by the prosecution, there is a clear breach of the section. But where the Court discards the evidence of such a witness, there can be no prejudice to the accused, and the defects in procedure which do not cause any prejudice to the accused do not vitiate the trial. *Sheo Ram v. Emperor*.

39 Cr. L. J. 854 :

177 I. C. 200 : 1938 O. W. N. 881 :

11 R. O. 35 : 1938 O. L. R. 399 :

A. I. R. 1938 Oudh 212.

————S. 350—Non-compliance with right of accused—Effect.

The case of the accused was taken up by a Magistrate who, after recording the prosecution evidence and framing a charge, was transferred. On the case coming before his successor, the accused applied for a trial *de novo*, and the Magistrate fixed a date for the trial but took it up on an earlier date without notifying the change of date to Counsel for the accused, and on this date he merely read over to each witness the statement recorded by his predecessor, asking such further questions as he thought necessary. On a subsequent date Counsel applied on behalf of accused to re-call certain of the prosecution witnesses for cross-examination, but this was refused : *Held*, that the whole of the proceedings were irregular and unfair to accused, who had a right under S. 350, Cr. P. C., to demand all the prosecution witnesses to be re-summoned and re-heard and that the proceeding, must, therefore, be set aside. *Mangal Singh v. Emperor*.

22 Cr. L. J. 119 (b) :

59 I. C. 551 : 16 P. W. R. 1919 Cr. :

A. I. R. 1921 Pat. 306.

————S. 350—Power of Magistrate.

Magistrate may decide to re-summon witnesses and re-commence enquiry or trial. If he exercises the option, accused cannot object to examination afresh of any witness. *Mudda Verrappa v. Emperor*.

36 Cr. L. J. 1265 :

157 I. C. 1020 : 1935 M. W. N. 179 :

8 R. M. 203 : A. I. R. 1935 Mad. 318 (2).

————S. 350—Power of transferee Court to re-summon witnesses and re-commence inquiry.

Sessions Judge ordering enquiry by same Magistrate—Case transferred to another Magistrate—Second Magistrate has power to re-summon witnesses and re-commence inquiry. *Ramaswami Tevar v. M. Subban*.

32 Cr. L. J. 226 :

129 I. C. 79 : 1930 M. W. N. 911 :

32 L. W. 782 : I. R. 1931 Mad. 223 :

A. I. R. 1930 Mad. 983.

————S. 350 — Procedure — Irregularity — Effect of.

When it is not known whether Magistrate is re-commencing trial or not and accused does

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which the prosecution witnesses were not again examined but they were only cross-examined by the defence without any objection : Held, that the trial was not in due compliance with the provisions of S. 350, Cr. P. C., and ought to be set aside. *Sobh Nath Singh v. Emperor*. 6 Cr. L. J. 431 ; 12 C. W. N. 138.

———S. 350—De novo trial.

Prior to the framing of the charge, an accused is not entitled under S. 350, to have a *de novo* enquiry. S. 350 gives the accused a right to have a *de novo* trial. The trial begins only after the framing of a charge. The Code leaves the re-summoning of witnesses entirely to the discretion of the Magistrate. He may feel that he would like to see a witness or question him further and S. 350 (1) gives him authority to do so. If he does not feel it necessary to examine any witness afresh, it is not incumbent on him to do so. The Code does not recognize any principle of natural justice in such matters. *In re : Komma Hari Chandra Reddi*.

39 Cr. L. J. 828 ;
176 I. C. 879 (2) : 1938 M. W. N. 587 ;
48 L. W. 136 : (1938) 2 M. L. J. 222 ;
11 R. M. 189 : A. I. R. 1938 Mad. 742.

———S. 350—De novo trial—Procedure—Transfer of case—Court's duty to re-summon witnesses, extent of—Death of witness—Lying declaration.

Under S. 350, Cr. P. C., on the transfer of a case the duty of the Court to re-summon the witnesses of for trial *de novo* on the desire of the accused only extends to re-summoning witnesses that are available. Therefore, where on a trial *de novo* in consequence of a transfer, the Court, finding that a witness is dead and gets his evidence in the first judicial proceeding proved and re-summons the other witnesses, the procedure adopted is strictly in accordance with law. *Lekal v. Emperor*. 28 Cr. L. J. 451 ; 101 I. C. 483 : 28 P. L. R. 199 ; 8 Lah. 570 : A. I. R. 1927 Lah. 332.

———S. 350—De novo trial—Remand for taking further evidence—Transfer of judicial officer—Accused, whether entitled to demand *de novo* trial by successor—Appellate Court, power to order *de novo* trial.

The provisions of S. 350, Cr. P. C., are applicable where a case is remanded to the trial Court for taking further evidence, and it is found when the case returns to the trial Court that the Magistrate or officer who was trying the case has been succeeded by a new judicial officer ; and the accused, therefore, is entitled in such a case to demand a *de novo* trial by the succeeding officer. Even if S. 350 does not apply, while it is possible that the accused might have been prejudiced by the fact they did not have a new trial, the Appellate Court can quash the conviction and order a *de novo* trial. *Daroga Singh v. Emperor*. 27 Cr. L. J. 1125 ; 97 I. C. 645 : 8 P. L. T. 181 ; A. I. R. 1927 Pat. 5.

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———S. 350 (1)—*De novo trial, requirements of—Second Magistrate must be different from first who has heard and recorded evidence and has ceased to have jurisdiction on.*

There are two Magistrates contrasted by Sub-s. (1) of S. 350, Cr. P. C. The first Magistrate has two qualifications ; (1) he must have heard and recorded the whole or any part of the evidence, and (2) he must have ceased to exercise jurisdiction. The second Magistrate is contrasted with the first as "another Magistrate." The word "another" means that the second Magistrate should differ from the first both on point (1) and point (2). Where a Magistrate is transferred from a District after he has examined prosecution witnesses in a case and has recorded the statement of the accused and the case is transferred to other Magistrate but subsequently the first Magistrate is again re-posted to that District and the case is again transferred to his file, he differs only on point (2) and cannot be considered "another Magistrate" within the meaning of S. 350 (1) because he does not fulfil the two points of difference from the first Magistrate. Therefore, he does not come under S. 350 at all. Moreover, as he has heard all the evidence for the prosecution, there is no power in S. 350 for him to re-hear it even if he desired to do so. Such Magistrate is not, therefore, bound to hear the case *de novo*. *Shyama Pado Deb v. Sunder Das*. 39 Cr. L. J. 978 ; 177 I. C. 978 : 1938 A. L. J. 767 ; I. L. R. 1938 All. 794 ; 11 R. A. 241 ; 1938 A. W. R. 492 ; A. I. R. 1938 All. 536.

———S. 350—De novo trial.

Right of accused to claim *de novo* trial—Right cannot be limited by imposing condition that accused should pay process fees. *Maung Chit Tay v. Maung Tun Nyun*. 36 Cr. L. J. 953 ; 156 I. C. 441 : 13 Rang. 297 ; 8 R. Rang. 1 : A. I. R. 1935 Rang. 108.

———S. 350—De novo trial—Transfer of case—Procedure.

Where a case in which a charge has been framed is transferred to the Court of another Magistrate and under the proviso to S. 350 (1), Cr. P. C., the accused claims a *de novo* trial, the Magistrate must re-commence the trial and not merely allow further cross-examination of the complainant and other prosecution witnesses and generally proceed with the case from the stage where the charge was framed. *Sidik v. Emperor*. 27 Cr. L. J. 332 ; 92 I. C. 748 : 20 S. L. R. 50 ; A. I. R. 1926 Sind 158.

———S. 350—De novo trial—Transfer of Magistrate—Failure of transferred Magistrate to hear arguments—De novo trial.

Where a Magistrate trying a case is transferred and is succeeded by another, the accused cannot under S. 350, Cr. P. C., demand a *de novo* trial on the ground that the transferred Magistrate did not hear his Counsel. *Chandika Prasad v. Emperor*. 25 Cr. L. J. 1075 ; 81 I. C. 899 : 11 O. L. J. 725 ; 1 O. W. N. 491 : A. I. R. 1925 Oudh 62.

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—S. 350—*Scope of—Case withdrawn from one Magistrate and transferred to another—Whether accused entitled to claim re-hearing of evidence—‘Register case,’ transfer of—Warrant case—Whether failure to re-hear evidence prejudicial to accused.*

The provisions of S. 350, Cr. P. C., are applicable to cases in which the case under enquiry or trial is withdrawn from one Magistrate, who therefore ceases to exercise jurisdiction therein, and is transferred to another Magistrate. In such a case the accused is not entitled to a re-hearing of the evidence. The transfer from one Magistrate to another of a ‘register’ case or preliminary enquiry into the accusation of an offence triable exclusively by the Court of Session is not provided for by proviso (a) to S. 350, Cr. P. C., Even if such a ‘register’ case is treated as a ‘warrant’ case, the accused is not prejudiced by the failure to re-hear evidence as he is at liberty, after the framing of the charge, to re-call the prosecution witnesses for cross-examination. *Palaniandy Gounden v. Emperor.*

9 Cr. L. J. 146 :

1 I. C. 54 : 32 Mad. 218 : 5 M. L. T. 218.

—S. 350—*Scope of.*

S. 350 relates to jurisdiction and an error in jurisdiction is not mere irregularity. *Emperor v. Hemandas Devan Singh.*

37 Cr. L. J. 455 :

161 I. C. 267 : 8 R. S. 134 :

A. I. R. 1936 Sind 40.

—S. 350—*Scope of.*

When a case is transferred under S. 528, Cr. P. C., from the file of one Magistrate to that of another, the former ceases to exercise jurisdiction in the case and is succeeded by the latter in the exercise of the jurisdiction within the meaning of S. 350, Cr. P. C. *Mohesh Chandra Saha v. Emperor.*

7 Cr. L. J. 220 :

12 C. W. N. 416 : 35 Cal. 457 :

7 C. L. J. 488.

—S. 350—*Scope of.*

The general rule is that the decision as to the innocence or guilt of an accused person must be by the Judge who has heard all the evidence. S. 350, Cr. P. C., introduces an exception to this general rule and the exception should not receive a more extended interpretation than its actual words clearly justify. *Jangilal v. Emperor.*

19 Cr. L. J. 657 :

45 I. C. 993 : A. I. R. 1918 Nag. 22.

—S. 350 (1)—*Scope of—Magistrate, death of—District Magistrate, case taken up by—District Magistrate, whether succeeds deceased Magistrate.*

On the death of a Magistrate empowered under S. 30, Cr. P. C., the District Magistrate, being the only remaining Magistrate in the District having powers under that section, took upon his file a case which was being tried by the deceased : *Held*, that the District Magistrate must be regarded as having succeeded the deceased Magistrate within the meaning of S. 350 (1), Cr. P. C. *Gore Lal v. Emperor.*

19 Cr. L. J. 705 :

46 I. C. 289 : A. I. R. 1917 Nag. 63.

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—S. 350—*Transfer of case—De novo trial—Right of accused.*

It is clearly desirable for the proper administration of justice that normally the Magistrate who passes the final order should be the Magistrate who has heard all the evidence, and in order that there should be no prejudice to the accused it is expressly provided that, in cases where the Magistrate does not propose to follow this procedure, the accused is entitled to demand that this procedure shall be followed. Where a case is transferred to another Magistrate on the ground of the apprehension of accused that he would not get a fair trial, the accused cannot insist that there shall not be a *de novo* trial or inquiry, that the Magistrate was acting without jurisdiction in beginning the proceedings anew when the accused did not so desire. S. 350 lays down that one Magistrate succeeding another may either act on the evidence heard partly by his predecessor or he may re-summon the witnesses and re-commence the inquiry or trial. The discretion is in the Magistrate and his action is only limited in the trial by proviso (a). There is no proviso that the accused may demand that witnesses examined by the Magistrate who has ceased to exercise jurisdiction shall not be re-summoned and re-heard. *Sardarilal v. Emperor.*

38 Cr. L. J. 697 :

169 I. C. 47 : 9 R. N. 295 :

I. L. R. 1937 Nag. 538 :

A. I. R. 1937 Nag. 147.

—S. 350—*Transfer of case—Right of accused—Successive transfers—Waiver of right.*

Each transfer of a case gives an accused a fresh opportunity of exercising his right under the proviso to S. 350, Cr. P. C. The word ‘predecessor’ should be taken to mean ‘predecessors’ where there is more than one. It could not mean that a third Magistrate could act only on the evidence recorded by his predecessor, the second Magistrate and not also on the evidence recorded by the first Magistrate who handled the case. The accused can also change his mind in this matter. *Moti v. Keshrichand.*

39 Cr. L. J. 815 :

176 I. C. 808 : 1938 N. L. J. 96 :

11 R. N. 80 : I. L. R. 1939 Nag. 79 :

A. I. R. 1938 Nag. 288.

—S. 350 (1)—*Transfer of case—Right of accused to have prosecution witnesses re-summoned.*

The provisions of S. 350 are applicable to a case which, after being part-heard, comes upon the file of another Magistrate who exercises jurisdiction by transfer under S. 528, and it is necessary that the proviso to S. 350 should be given effect to and the accused made acquainted with the fact that he is entitled to have the prosecution witnesses re-called. *Barachi v. Emperor.*

17 Cr. L. J. 401 :

35 I. C. 961 : U. B. R. 1916 II, 108 :

A. I. R. 1917 U. Bur. 11.

—S. 350—*Transfer of Magistrate—Judgment written after transfer—Delivery of judgment by successor—Jurisdiction.*

S. 350, Cr. P. C. does not give a Magistrate jurisdiction to deliver a judgment written by

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accused. The trying Magistrate directed the *chaprasi* to pay compensation to the accused under S. 250: *Held*, that as the prosecution was not initiated upon a complaint, or upon information given to a Police Officer or to a Magistrate within the meaning of S. 250, the order awarding compensation was illegal. *In the matter of the Petition of Ram Padarath.*

1 Cr. L. J. 358 :

I. L. R. 26 All. 183 : 1903 A. W. N. 216.

———S. 250—Compensation — Award when competent—Complaint of offence triable by Court of Session—Process in respect of offence triable by Magistrate — Compensation, whether can be awarded.

In filing a complaint, the complainant must, for the purpose of S. 250, be deemed to make an accusation which includes not only the offence specifically referred to, but also any offence which the facts disclosed in the complaint, considered in the light of such inquiry as the Magistrate considers necessary. The mere fact that the complaint charges the accused with an offence which is not triable by a Magistrate, does not oust the jurisdiction of the Magistrate to pass an order under S. 250, if after a preliminary inquiry, the Magistrate finds that the accusation is really one in respect of an offence triable by a Magistrate. *Hemandas v. Ahmed Khan.*

26 Cr. L. J. 265 :

81 I. C. 329 : 16 S. L. R. 205.

———S. 250—Compensation — Award, when competent—F frivolous and vexatious accusation.

Where a charge in respect of which a complaint is made is a specific and serious one, it cannot be described as frivolous or vexatious unless it is in fact false ; and unless it is held to be false, an order for compensation under S. 250 is not justified. *Mangra Kharia v. Ram Dhari Singh.*

18 Cr. L. J. 837 :

41 I. C. 661 : 2 P. L. W. 116 :

A. I. R. 1917 Pat. 594.

———S. 250—Compensation — Award, when competent.

S. 250 requires that the complaint or information given by the complainant should be false and either frivolous or vexatious. An order under this section on the ground that because a complaint is frivolous and vexatious, therefore, it is false is not legal. *Assanmal Chatumal v. Dilbar.*

26 Cr. L. J. 1295 :

89 I. C. 159 : A. I. R. 1926 Sind 19.

———S. 250—Compensation — Award, when competent.

Where a case is neither wilfully false nor is there any perversion or exaggeration of evidence, compensation under S. 250 cannot be awarded. *Ganguli v. Emperor.*

30 Cr. L. J. 539 :

115 I. C. 900 : I. R. 1929 Rang. 132 :

A. I. R. 1929 Rang. 14.

———S. 250—Compensation — Award, when competent.

Where a person is accused of several offences and is discharged in respect of some of the accusations and is acquitted in respect of the others, it is open to the Magistrate to make an

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order under S. 250 against the complainant in respect of all the accusations when he passes his final order of acquittal. *Ravishankar Jagjivan v. Savailal Krishnallal.*

27 Cr. L. J. 448 :

93 I. C. 240 : 28 Bom. L. R. 89 :

A. I. R. 1926 Bom. 163.

———S. 250—Compensation — Award, when competent.

Where a report is made to the Police which is false, frivolous or vexatious with the intention that action should be taken against the persons mentioned in the report, there is nothing to prevent the Magistrate who tried the case to award compensation to the accused under S. 250 against the person who made the report. *Jairaj Singh v. Bausi.*

27 Cr. L. J. 35 :

91 I. C. 67 : 23 A. L. J. 1054 :

A. I. R. 1926 All. 165.

———S. 250—Compensation — Condition—False case, test of.

When directing compensation against the complainant under S. 250, it is necessary for the Magistrate to come to a finding that the case was frivolous or vexatious. The fact that the parties are on bad terms is not a sufficient ground for holding that the charge is a false one. *Maung Pan v. Maung Mya Din.*

39 Cr. L. J. 704 :

176 I. C. 199 : 11 R. Rang. 38 :

A. I. R. 1938 Rang. 209.

———S. 250—Compensation in cases triable by Sessions Court.

A Magistrate who discharges a person accused of an offence triable by a Court of Sessions, and refuses to commit him for trial, cannot order the complainant to pay compensation to the accused under S. 250. The jurisdiction of a Magistrate to order payment of compensation under S. 250 is confined to cases triable by a Magistrate. *Bansidhar Pande v. Chunni Lal.*

28 Cr. L. J. 983 :

105 I. C. 807 : 25 A. L. J. 818.

———S. 250—Compensation in cases triable by Sessions Court.

Where a case ordinarily triable only by a Court of Sessions is tried by a Magistrate empowered under S. 30, the Magistrate is not competent to award compensation. The special provisions of S. 30 which enable a Magistrate to try offences only triable by a Court of Sessions "as a Magistrate" do not make such offences triable by a Magistrate for the purposes of S. 250. *Ma E Dok v. Maung Po Than.*

23 Cr. L. J. 289 (a)

66 I. C. 513 : 11 L. B. R. 151 :

A. I. R. 1923 L. Bur. 15.

———S. 250—Compensation or prosecution—Discretion of Court.

If the false charge is of such a nature that a prosecution is necessary on grounds of public policy, it may well be that a Magistrate would exercise his discretion wrongly if instead of sanctioning a prosecution, he awarded compensation. If the false charge is one which does not render it necessary on grounds of public policy that a prosecution should be

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cannot be regarded as a good ground for interfering. *Naraynasawmy v. A. Blake.*

3 Cr. L. J. 433 :
12 Bur. L. R. 59.

—S. 352—Police Officer, exclusion of from Court room.

S. 352 gives power to the Court of ordering that any particular person shall not remain in the room used by the Court. It makes no exception in the case of a Police Officer. When accused person objects to the presence of a Police Officer or other person the Magistrate has to decide whether the accused's fear of prejudice to his case is reasonable, considering the intelligence and susceptibilities of the class to which he belongs and not merely whether his presence is convenient or helpful to the Court or the prosecution. In the case of a person interested in the prosecution such as a Police Officer, other than the Prosecuting Officer, even where the Court itself does not see sufficient reason to order that he shall not remain in the Court room, it may put it to that or to the Prosecuting Officer whether in view of the accused's objection he will withdraw or be advised to withdraw from the Court-room. *Nathusingh v. Emperor.*

26 Cr. L. J. 1130 :
88 I. C. 362 : 8 N. L. J. 95 :
A. I. R. 1925 Nag. 296.

—S. 352—Police Officer, special treatment of.

It is not advisable that a Police Officer interested in a case proceeding before a Magistrate should receive exceptional treatment as a seat on the dais, as such treatment is calculated to breed suspicion in the mind of the accused as to the independence of the Magistrate. *Nathusingh v. Emperor.*

26 Cr. L. J. 1130 :
88 I. C. 362 : 8 N. L. J. 95 :
A. I. R. 1925 Nag. 296.

—S. 352—Place of trial—Power of Magistrate.

Whether the Magistrate should hold the trial at a place other than his Court-house is a matter purely within the discretion of the Magistrate himself. Where he decides to hold the trial in the jail premises, he must pass a formal order directing that the trial should be held in the jail premises. Such a formal order must invariably be passed, as otherwise, if accused persons consider that they have a grievance in any matter, it would be difficult for them, in the absence of any formal order, to have recourse to higher authority for redress. It is ordinarily for the trying Magistrate to take the initiative in these matters if he considers that the trial should not be held in his Court-house. If however, this District Magistrate, who is responsible for law and order in his district, wishes to take the initiative in such matters himself, his proper course is not to move the Local Govt. himself straightway in the matter, but to instruct the Public Prosecutor to make an application to the Magistrate asking that the trial shall be held elsewhere. It is then for the Magistrate to pass formal orders as to whether he considers it desirable

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to hold a trial in the Court or outside of it. If the Magistrate then wishes to try the case in a place other than his Court, he will do so after obtaining the permission of the necessary authorities who are in control of the premises in which the Magistrate desires to hold the trial. *The King v. U Khemein.*

41 Cr. L. J. 497 :
187 I. C. 640 : 1940 Rang. 122 :
12 R. Rang. 353 : A. I. R. 1940 Rang. 72.

—S. 352—Place of trial—Trial in jail, legality of.

S. 352 does not vitiate the whole trial in a jail when there is nothing to show that admittance was refused to any one who desired it, or that the prisoners were unable to communicate with their friends or Counsel. No doubt it is difficult to get Counsel to appear in jail and for that reason, if for no other, such trials are usually undesirable. *Sahai Singh v. Emperor.*

18 Cr. L. J. 852 :
41 I. C. 820 : 21 P. W. R. 1917 Cr. :
A. I. R. 1917 Lah. 311.

—S. 353—Sec also Cr. P. C., 1898, Ss. 75, 537.

—S. 353—Absence of accused—Witnesses examined in absence of accused—Conviction, legality of.

Where in a summary trial some of the witnesses were examined before one of the accused had been properly served with notice and they were not re-called for cross-examination on his appearance in Court: *Held*, that the trial was irregular and bad in law. *Chholey Lal v. Emperor.*

28 Cr. L. J. 756 :
103 I. C. 836 : 1 Luck. Cas. 265 :
A. I. R. 1927 Oudh 353.

—Ss. 353, 537—Absence of accused—Failure to examine witnesses in accused's presence—Illegality—Waiver.

Failure to examine the witnesses in the presence of the accused vitiates a trial except in cases mentioned in S. 353. It is not a mere irregularity which can be cured under S. 537, or by waiver on the part of the accused's Pleader. *Bigan Singh v. Emperor.*

29 Cr. L. J. 260 :
107 I. C. 530 : 6 Pat. 691 :
9 P. L. T. 327 : A. I. R. 1928 Pat. 143.

—Ss. 353, 537—Absence of accused—Recording defence evidence in the absence of absconding accused—Irregularity, whether curable.

Where an accused person, who was being tried under S. 323, of the I. P. C. together with three others, absconded after the evidence for the prosecution had been recorded, but before the witness for the defence named by him had been examined: *Held*, that recording the defence evidence in the absence of the accused was an irregularity which could not be cured under S. 537, Cr. P. C. and, therefore, the conviction of the accused must be set aside. *Nga Po Shein v. Emperor.*

14 Cr. L. J. 287 :
19 I. C. 719 : U. B. R. 1912 152.

—S. 353—Absent witnesses, evidence of, when may be recorded—Transferring evidence of

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applicant's demand for a trial *de novo*; (2) that the omission to specify in the charge the manner in which the applicant cheated, whether by illegal act or omission, could not be regarded as material as it had not misled the accused; (3) that all or most of the persons who parted with money having been present when the terms were proposed by the accused, the representations made and inducements offered were made and offered to each of the villagers collected there and when the applicant took the money, paid by each villager, he committed a distinct offence, and the trial of the case was, therefore, bad for misjoinder of charges as under S. 234, the applicant could not be tried for more than three charges. If circumstances are deposed to against the accused by a prosecution witness, it is necessary that the Magistrate should let the accused know by questions put to him in examination which of them all against him in his mind; it is more particularly necessary where the witness has deposed to other circumstances favourable to the accused which nullify the value of the circumstances against him. *Jangilal v. Emperor*. 19 Cr. L. J. 657 : 45 I. C. 993 : A. I. R. 1918 Nag. 22.

—Ss. 350, 436—*De novo trial, legality of—Further enquiry—Order that enquiry shall be conducted by same Magistrate and on same evidence—Case transferred to another Magistrate—Trial de novo, legality of.*

S. 436, Cr. P. C., does not authorize a Sessions Judge to direct further inquiry by a particular Magistrate subordinate to the District Magistrate. What the Sessions Judge can do is to direct the District Magistrate by himself, or by any of the Magistrate subordinate to him, to make the further inquiry, thus leaving the District Magistrates to exercise a discretion as to the selection of any Magistrate subordinate to him. A Sessions Judge in revision ordered further inquiry and directed that such inquiry should be made by the same Magistrate who originally heard the case on the evidence already adduced. The case had to be transferred by the District Magistrate to another Magistrate and the latter decided to proceed with the examination of the witnesses afresh. The Sessions Judge set aside that order: *Held*, (i) that the first order of the Sessions Judge was not in consonance with S. 436, Cr. P. C.; (ii) that by virtue of S. 350 (1), Cr. P. C., the Second Magistrate has power in re-summoning the witnesses and re-commence the inquiry and the Sessions Judge had no power to interfere with his discretion. *Ramaswami Tevar v. M. Subhan*.

32 Cr. L. J. 226 : 129 I. C. 79 : 1930 M. W. N. 911 : 32 L. W. 782 : I. R. 1931 Mad. 223 : A. I. R. 1930 Mad. 983.

—Ss. 350, 528—*De novo trial before succeeding Magistrate—Power of District Magistrate to re-transfer.*

Where, after the transfer of a Magistrate during the pendency of a criminal case, his successor has taken cognizance of the case *de novo*, it is not competent to a District

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Magistrate to re-transfer the case to the Magistrate who originally heard the evidence with a view merely to avoid the *de novo* trial. *Sriranga Chettiar v. Subramania Asari*.

28 Cr. L. J. 23 : 99 I. C. 55 : 24 L. W. 640 : 38 M. L. T. 137 : A. I. R. 1927 Mad. 81.

—S. 350 (1)—*De novo trial—Accused, if can compel prosecution to produce witness examined in first Court but whom they do not wish to produce in second Court—Effect of such non-production.*

S. 350 (1) does not require that even a witness on whom the prosecution does not rely and whom it does not wish to produce though produced before the first Court should also be produced in the second Court. Of course the Court will consider the effect of the prosecution not producing a witness previously examined by them and if he should happen to be one named in the first information report, the circumstance will go against the prosecution, but S. 350 (1) (a) does not authorise an accused person to compel the prosecution to produce a witness whom they do not wish to produce. *Sheo Ram v. Emperor*. 39 Cr. L. J. 854 :

177 I. C. 200 : 1938 O. W. N. 881 : 11 R. O. 35 : 1938 O. L. R. 399 : A. I. R. 1938 Oudh 212.

—S. 350 (a)—*De novo trial—Person entitled to claim—Waiver of right.*

Under proviso (a) to S. 350, the right given to an accused person is the right of demanding that the prosecution witnesses or any of them be re-summoned and re-heard, and it rests on the accused to say who shall be re-summoned and re-heard. The complainant, however, has no such right, and when the accused is exercising his right under the proviso in regard to some witnesses only, the complainant cannot claim a *de novo* trial from the beginning. It is open to the accused at any time to say that he does not wish certain witnesses to be re-summoned and re-heard, even though previously he had asked for them to be re-summoned and re-heard. *In re Vodigalapudigadu*.

26 Cr. L. J. 526 : 85 I. C. 366 : 20 L. W. 916 : A. I. R. 1925 Mad. 317.

—S. 350 (1)—*De novo trial—Right of accused when arises—Powers of Magistrate.*

Whereas the accused's right under S. 350 (1), proviso (a), Cr. P. C., arises only when the case is at the stage of trial, the Magistrate is not so bound and may re-commence the case under S. 350 (1) even when it has not reached the stage of trial. When this is done, this has the effect of wiping out the former proceedings. *Emperor v. Ganpat*.

38 Cr. L. J. 15 : 165 I. C. 830 : 9 R. N. 97 : I. L. R. 1937 Nag. 135 : A. I. R. 1936 Nag. 220.

—S. 350 (1) (a)—*De novo trial—Option of Magistrate against wishes of accused—Complainant's right.*

The accused has no right under S. 350 (1) (a), Cr. P. C., to insist that there shall not be

Cr. P. CODE (1898), S. 356**—S. 355—Non-compliance.**

Non-compliance with the requirements of S. 342, or 355, vitiates the trial. *Balkshewar Singh v. Emperor.*

23 Cr. L. J. 114 :
65 I. C. 546 : 3 P. L. T. 332 :

A. I. R. 1922 Pat. 5.

—S. 355 and 356—Scope — Theft below Rs. 50—Procedure is as in S. 355

In a case of theft under S. 379 in which the value of property stolen does not exceed Rs. 50, the procedure at the trial is regulated by S. 355 and not S. 356. *Emperor v. Bulaki.*

21 A. L. J. 276 :

A. I. R. 1923 All. 432.

—S. 355—Summary trial—Deposition of witnesses, reading of.

In a case triable summarily, the deposition of the witnesses need not be read over to them. *Mohammad Ishaq v. Emperor.*

23 Cr. L. J. 120 :

65 I. C. 552.

—S. 355—Summary trial—Evidence, recording of.

In summary cases, notes of evidence need not be recorded. In re : *Tippanna Kautya Manavaddar.*

35 Cr. L. J. 841 :

148 I. C. 1006 : 36 Bom. L. R. 212 :

58 Bom. 298 : 6 R. B. 325 :

A. I. R. 1934 Bom. 157.

—Ss. 355 (2), 342—Summary trial—Warrant case—Memorandum of evidence.

When a warrant-case is tried summarily, the procedure to be followed is that prescribed for the trial of warrant cases and, therefore, the memorandum of the substance of the evidence of each witness must, as provided by S. 355 (2), be signed by the Magistrate. *Balkeshwar Singh v. Emperor.*

23 Cr. L. J. 114 :

65 I. C. 546 : 3 P. L. T. 332 :

A. I. R. 1922 Pat. 5.

—S. 356.

See also (i) Cr. P. C., 1898, Ss. 145, 203, 204, 356.

(ii) Criminal trial.

—S. 356—Applicability.

The provisions of S. 356 apply only to cases to which the provisions of S. 355 do not apply. *Muhammad Rafiq Ahmad v. Emperor.*

37 Cr. L. J. 710 :

162 I. C. 758 : 8 R. A. 901 :

1936 A. L. J. 274 :

A. I. R. 1936 All. 319.

—S. 356—Non-compliance — Material error.

The provisions of S. 356 are mandatory and the omission of the Magistrate to record evidence as prescribed in the section constitutes a material error sufficient to set aside the proceeding. *Natho Khan v. Emperor.*

34 Cr. L. J. 216 :

141 I. C. 628 : 26 S. L. R. 353 :

I. R. 1933 Sind 67 :

A. I. R. 1932 Sind 145.

Cr. P. CODE (1898), S. 360**—S. 356 — Recording evidence, mode of.**

Where the Sessions Judge does not take down the depositions in writing by himself but are taken down in his presence and hearing and personal direction and the depositions interpreted in the presence of the accused and their Pleader, the irregularity does not vitiate the trial but is cured by S. 537. *Nayeb Shahana v. Emperor.*

35 C. L. J. 1179 :

152 I. C. 44 : 38 C. W. N. 659 :

61 Cal. 390 : 7 R. C. 215 :

A. I. R. 1936 Cal. 636.

—S. 356—Recording of evidence—Vernacular record, absence of—Effect.

Where a Magistrate omits to prepare a Vernacular record of the evidence as required by S. 356, he commits an irregularity which vitiates the trial. *Udit Narain v. Emperor.*

21 Cr. L. J. 28 (a) :

54 I. C. 172 : 17 A. L. J. 1146 :

A. I. R. 1920 All. 64.

—Ss. 356, 537—Recording of evidence—Language of Court.

The direction contained in S. 356 is mandatory, and the recording of evidence, therefore, in a language which is not the language of the Court, is not merely an irregularity but an illegality which vitiates the trial. Even if it is an irregularity, it is so grave and material that it cannot be cured by S. 537. *Janki Prasad v. Emperor.*

19 Cr. L. J. 235-A :

43 I. C. 827 : A. I. R. 1917 Pat. 41.

—S. 357—Sessions Court—Record of evidence.

By a notification issued by the Local Government under S. 357, Cr. P. C., a Judge is bound to take down the evidence of each witness. The intention is that the evidence shall be recorded in full, and a memorandum of the substance of the evidence is not sufficient in any case before a Court of Session. *Nga Saw v. Emperor.*

2 Cr. L. J. 133 :

11 Bur. L. R. 8.

—S. 359—Evidence, mode of recording.

S. 359 directs that the evidence shall ordinarily be taken down in the form of a narrative. And though it cannot always be taken down in the exact words of the witness, Judges should, as far as possible, adhere to the words actually used either in the question or in the answer. It is not a compliance with the law to record a more or less accurate paraphrase of the evidence, but the words used, or a sound translation of them, should be recorded as far as possible. *Nga Saw v. Emperor.*

2 Cr. L. J. 133 :

11 Bur. L. R. 8.

—S. 360.

—“Accused,” meaning of.

—Applicability.

—Commitment proceedings.

—Complainant.

—Construction.

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not protest against action of prosecution in dispensing with a witness, the action, though irregular, does not call for interference unless prejudice is caused. *Mudda Verrappa v. Emperor*.

36 Cr. L. J. 1265 :

157 I. C. 1020 : 1935 M. W. N. 179 :

8 R. M. 203 : A. I. R. 1935 Mad. 318 (2).

—S. 350—Right of accused.

Accused not wishing to have a fresh trial—Accused has right to insist upon his case being decided on evidence already recorded by first Magistrate. *Manzoor Ali v. Abdus Salam*.

35 Cr. L. J. 1147 :

150 I. C. 857 : 1934 O. L. R. 651 :

11 O. W. N. 825 : 7 R. O. 66 :

A. I. R. 1934 Oudh 324.

—S. 350—Right of accused.

An accused has, under S. 350, Cr. P. C., a right to demand that the witnesses or any of them be summoned and re-examined when the case is tried by the Magistrate to whom it is transferred for trial. He can, however, waive his right. *Chhann Prasad Singh v. Emperor*.

29 Cr. L. J. 229 :

107 I. C. 160.

—S. 350—Right of accused—Waiver.

Witnesses called under S. 350—Accused can waive examination. *Ibrahim v. Emperor*.

36 Cr. L. J. 41 :

152 I. C. 236 : 31 N. L. R. 117 :

7 R. N. 80 : A. I. R. 1934 Nag. 209.

—S. 350—Right of accused under—Nature of—Option of Magistrate.

Under S. 350 (1), Cr. P. C., the right of the accused is not to demand a re-trial as such, but simply that any or all of the witnesses should be re-summoned and re-heard. Subject to giving effect to that right, the option lies with the Magistrate to start the inquiry or trial all over again, or not. In some cases to which S. 350, Cr. P. C. applies, the previous charge is blotted out and in some cases not. It depends on which option the Magistrate adopts. The accused can in no case insist on a clean slate; and the Magistrate cannot ignore although he may amend the previous charge, if he decides to make use of any of the evidence previously recorded; but if he decides to wipe out all that previous evidence, the former charge is also wiped out. *Tukaram v. Emperor*.

37 Cr. L. J. 983 :

164 I. C. 744 : I. L. R. 1936 Nag. 92 :

9 R. N. 28 : A. I. R. 1936 Nag. 153.

—S. 350—Right of accused—Nature of—Discretion to act upon evidence already recorded, whether absolute—Exercise of option under S. 350 (1), whether can be made more than once.

The discretion given to a Magistrate, by S. 350 (1), Cr. P. C., to act or not to act upon the evidence recorded by his predecessor is not absolute but controlled by the first proviso to the section and it is solely left to the accused whether to claim a right to have the witnesses already examined by the previous Magistrate re-called and re-examined by the Second Magistrate. This right can be exercised by the accused only at the time

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when the Second Magistrate commenced his proceedings. *Emperor v. J. B. San*.

31 Cr. L. J. 282

121 I. C. 646 : A. I. R. 1930 Nag. 59

—S. 350—Scope.

Order for further inquiry—Change of Magistrate in trial Court—Successor framing charge without re-examining witnesses already examined—Procedure, is legal. *Nanureddigari Lakshmireddy v. Urganapalle Munireddy*.

32 Cr. L. J. 635 :

131 I. C. 5 : 1931 M. W. N. 179 :

60 M. L. J. 524 : 54 Mad. 512 :

33 L. W. 336 : I. R. 1931 Mad. 469 :

A. I. R. 1931 Mad. 488 (2).

—Ss. 350, 537—Scope—Magistrate recording evidence succeeded by another Magistrate—Succeeding Magistrate delivering judgment written by his predecessor without adopting it as his own—Defect, if curable under S. 537.

It is quite possible under S. 350, Cr. P. C., that the succeeding Magistrate may take the judgment left by his predecessor and compare it with the evidence recorded in the case and discover that it expresses what he himself would have decided on the case. In that case if there is no demand for a new trial on the part of the accused, he may deliver that judgment as his own. In fact by so doing, it becomes his own judgment. But if the succeeding Magistrate has delivered judgment not as his own but as that of his predecessor without signing it himself or dating it, the defect in the delivery of such judgment goes beyond a mere irregularity curable under S. 537. It is not contemplated in the Code that a Magistrate shall deliver any judgment other than his own, and if he does so, it is not an irregularity in the form of delivery; it is not delivering judgment at all. *Chinnayar v. Maung Mya Thi*.

40 Cr. L. J. 829 :

183 I. C. 216 : 12 R. Rang. 69 :

1939 Ra ng. 570 : A. I. R. 1939 Rang. 249.

—Ss. 350, 537—Scope—Right of accused—No demand or refusal—Omission of Magistrate to ask accused whether he would exercise right—No material irregularity or failure of justice.

S. 350, Cr. P. C., confers on an accused person the right to demand a re-hearing of evidence, and does not actually prescribe that the Magistrate shall ask the accused. Where there is no demand or refusal but merely an omission to exercise the right reserved by proviso (a) to S. 350, the accused is not necessarily materially prejudiced, nor is a failure of justice occasioned by the omission, the error being one which, is curable under S. 537, Cr. P. C. The mere fact that an accused stated before a Magistrate at the time of the framing of the charge that he did not wish the witness to be re-called, should not deter the Magistrate's successor from acting under S. 350. *Nga Po Tein v. Emperor*.

14 Cr. L. J. 175 :

19 I. C. 175 : 1912 U. B. R. 151.

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sanctioned, a Magistrate who makes an order for compensation cannot be said to exercise his discretion wrongly. *In the matter of : Tammi Reddi.* 1 Cr. L. J. 280 :

I. L. R. 27 Mad. 59 : 2 Weir 313.

—————S. 250—Compensation or prosecution—*Legality of.*

It is not illegal but only improper to order a complainant to pay compensation under S. 250, and at the same time to sanction his prosecution under S. 211, I. P. C. The compensation awarded can be considered in passing sentence in the event of a conviction as the result of the prosecution ordered. *Mulk v. Fattch Muhammad.* 1 Cr. L. J. 597 :

6 P. R. Cr. of 1904.

—————S. 250—Compensation—Proper order.

When a Magistrate, on finding a complaint to be frivolous, thinks it right to award compensation to the accused, he must do so by his order of discharge or acquittal. An order for compensation made in a separate proceeding, after the accused has been discharged, is without jurisdiction. *Haru Tanti v. Salish Roy.* 12 Cr. L. J. 6 :

9 I. C. 54 : 13 C. L. J. 425 : 38 Cal. 302.

—————S. 250—Compensation to Government.

There is no provision that Government is to be compensated in any way under S. 250. *Emperor v. Maroti.*

34 Cr. L. J. 1163 (2) :

146 I. C. 14 : 30 N. L. R. 15 : 6 R. N. 69 :

A. I. R. 1933 Nag. 296.

—————S. 250—Compensation—When competent.

If the accusation is proved to be false but cannot be regarded to be frivolous or vexatious, S. 250 does not justify the award of compensation. If the accusation is not proved to be false, no compensation can be awarded. *Bechan Prasad v. Jhuri.*

37 Cr. L. J. 424 (2) :

161 I. C. 49 : 1936 A. L. J. 189 :

1936 A. W. R. 188 : 8 R. A. 714 :

A. I. R. 1936 All. 363.

—————S. 250—Compensation—Who can order.

A Magistrate exercising powers under S. 30, in a case triable by the Court of Session, is incompetent to award compensation under S. 250. *Ramzan v. Rajan.*

11 Cr. L. J. 396 (a) :

6 I. C. 735 : 21 P. W. R. 1910 Cr.

—————S. 250 (1)—Compensation in—Offence triable by Court of Session.

Where after an inquiry in respect of an offence triable by a Court of Sessions the accused is discharged, the Magistrate is not empowered to award compensation to the accused. *Sarup Sonar v. Ram Sundar Thakrain.*

23 Cr. L. J. 319 :

66 I. C. 671 : 20 A. L. J. 433 :

A. I. R. 1922 All. 188.

—————Ss. 250 (1), (2), (b)—Compensation, award of—"Case instituted on complaint", meaning of—Charge by Police on complaint transmitted by a Village Magistrate, whether

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"Case instituted on complaint"—"Magistrate", whether includes Village Magistrate.

Under S. 250, a Magistrate, can, when discharging an accused, order compensation to be paid to him by the person who gave information to a Village Magistrate, as the result of which the prosecution was launched by the Police. The fact that the information was transmitted by the Village Magistrate to the Police will not prevent the case from falling within the first part of the section. And the person whose information was the whole foundation of the prosecution is the person against whom information may be awarded under the latter part of the section. The term "Magistrate", in S. 250 of the Code of Criminal Procedure, does not include a Village Magistrate. *Margasahaya Chetty v. Gandala Nadiabba.* 18 Cr. L. J. 11 :

36 I. C. 843 : 1917 M. W. N. 86 :

32 M. L. J. 79 : 5 L. W. 290 :

A. I. R. 1917 Mad. 660.

—————S. 250—Complainant—Duty of—Compensation—False accusation.

There is no reason why a case in which the accusation is found to be false should be considered as being outside the scope of S. 250. Where during the course of a trial facts come to the notice of the complainant which, if true, would prove the innocence of the accused, it is his duty to investigate those facts, and if he finds them to be true, to inform the Magistrate accordingly. *Shaik Dawood v. Mohamed Ibrahim.*

19 Cr. L. J. 172 :

43 I. C. 588 : 11 Bur. L. T. 201 :

A. I. R. 1918 L. Bur. 48.

—————S. 250—Complainant—Meaning of.

S. 250 does not warrant an order to pay compensation against a person who only instigates the giving of false information but who does not himself make the complaint or give the information to the Police. *Emperor v. Sumar.*

20 Cr. L. J. 100 :

48 I. C. 980 : 12 S. L. R. 76 :

A. I. R. 1918 Sind 25.

—————S. 250—Complainant or informant—Meaning of.

A process-server, on whose report, that the accused had obstructed him while executing a warrant in execution of a decree for custody, the District Judge instituted criminal proceedings against the accused, is not a person upon whose complaint or information the accusation was made, and is not liable to pay compensation under S. 250. *Emperor v. Abdul Ghani.*

11 Cr. L. J. 634 :

8 I. C. 382 : 25 P. R. 1910 Cr.

—————S. 250—Complainant's right to show correctness of accusation.

Where a person is acquitted and notice is issued to the complainant calling upon him to show cause why an order for compensation should not be made, it is open to the complainant to show that the complaint was not false and either vexatious or frivolous. *Dr. Faruqi v. Municipal Board, Allahabad.*

35 Cr. L. J. 175 :

146 I. C. 691 : 1933 A. L. J. 1369 :

6 R. A. 320 : A. I. R. 1933 All. 814.

Cr. P. CODE (1898), S. 350

his predecessor. Where a Magistrate after hearing evidence in a case is transferred and sends a written judgment to his successor, the latter acts without jurisdiction in delivering it. Even if the Magistrate himself delivers it after his transfer, he would be acting without jurisdiction. *Baishnab Charan Das v. Amin Ali*.

24 Cr. L. J. 489 :
72 I. C. 953 : 50 Cal. 664 :
38 C. L. J. 202 : A. I. R. 1924 Cal. 55.

—S. 350—Transfer of Magistrate after framing charge.

Successor re-hearing evidence—Accused is not entitled to further opportunity of cross-examination after charge is read over to him by Second Magistrate. *In re : Edward Philbert*.

37 Cr. L. J. 150 (1) :
159 I. C. 663 : 8 R. M. 534 :
A. I. R. 1935 Mad. 258.

—Ss. 350, 544—Transfer of Magistrate pending trial—Expenses of prosecution witnesses re-called, whether to be paid by accused.

Where on the transfer of the trying Magistrate the accused claims under S. 350, Cr. P. C., to have the witnesses re-examined by the succeeding Magistrate, the witnesses should be re-summoned without payment of any fees. *Elias v. Ezakiel*.

15 Cr. L. J. 687 :
26 I. C. 135 : A. I. R. 1915 L. Bur. 107.

—S. 350 (1) (a)—Transfer of Magistrate—Procedure—De novo trial.

Where a Magistrate is transferred after he has heard the prosecution case and framed a charge, it is not open to his successor to ignore the charge. The accused are only entitled to demand that the witnesses or any of them be re-summoned and re-heard. They cannot have them re-called and re-heard a second time. *In re : A. Ramanna*.

35 Cr. L. J. 79 (1) :
146 I. C. 523 (2) : 1933 M. W. N. 94 :
65 M. L. J. 791 : 38 L. W. 995 :
6 R. M. 268 : A. I. R. 1933 Mad. 841.

—S. 350—Trial, commencement of.

The trial of an accused person for the purposes of S. 350, does not commence at the charge, but commences as stated in Chap. XXI, when the accused appears before the Court. *Labbh Singh v. Emperor*.

35 Cr. L. J. 1261 :
151 I. C. 213 : 28 S. L. R. 239 :
7 R. S. 46 : A. I. R. 1934 Sind 106.

—S. 350-A—Trial by Bench of Magistrates.

Bench of three Magistrates trying a case—Absence of one at time of examination of witness—All joining in deliberations and signing judgment—Conviction held illegal. *Dasrath Rai v. Emperor*.

36 Cr. L. J. 38 :
152 I. C. 158 : 1934 A. L. J. 376 :
56 All. 599 : 7 R. A. 277 :
A. I. R. 1934 All. 144.

—S. 350-A—Trial by Bench of Magistrates—One Magistrate absent—Effect of.

One Magistrate not present throughout—

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Order of Bench is invalid. *Ram Khelawan v. Sheo Nandan*.

33 Cr. L. J. 885 :
140 I. C. 122 : 1932 A. L. J. 166 :
54 All. 413 : I. R. 1932 All. 613 :
A. I. R. 1932 All. 191.

—S. 350-A—Trial by Bench of Magistrate.

Where in a trial by a Bench of Magistrates, a Magistrate who was not present throughout the trial assisted in delivering the judgment and signed it : *Held*, that the trial was illegal and that the accused must have been seriously prejudiced. *Nago v. Shankar*.

33 Cr. L. J. 559 :
138 I. C. 175 : 28 N. L. R. 190 :
15 N. L. J. 11 : I. R. 1932 Nag. 76 :
A. I. R. 1932 Nag. 95.

—S. 351—Powers of Magistrate.

A Magistrate acting under S. 351, if he has taken cognizance of an offence on a complaint or a Police report, is not proceeding under S. 190 (c). A Magistrate may join as a co-accused any person attending his Court who seems to him to be implicated in the case under trial. *Imperator v. Lalu*.

12 Cr. L. J. 399 :
11 I. C. 583 : 4 S. L. R. 258.

—S. 351—Scope—Proceeding under S. 351.

S. 351 is self-contained, complete in itself and independent of section and consequently of S. 191. *Emperor v. Sakhia*.

10 Cr. L. J. 303 :
3 I. C. 568 : 3 N. L. R. 113.

—S. 352—Camera trial—Trial conducted in camera—No objection raised—Interference.

Where a Magistrate conducts a trial in camera in the exercise of his own discretion, as he was entitled to do by the proviso to S. 352, Cr. P. C., and no objection to this course was made at the time by the applicant, the proceedings of the Magistrate cannot be upset on this ground unless the applicant can show that he was in fact prejudiced by the case not being tried in open Court. *W. E. Gardner v. U Kha*.

38 Cr. L. J. 42 :
165 I. C. 596 : 9 R. Rang. 217 :
A. I. R. 1936 Rang. 471.

—S. 352—Camera trial—Trial of case in Magistrate's private room—Whether objection to it is allowable on revisional application if no objection taken in Court below.

This was an application to revise an order of acquittal. The first ground taken was that the Magistrate failed to exercise a proper discretion in trying the case in camera. The Magistrate, as a matter of personal convenience, sometimes tried cases in his private room, and no one had ever objected to his doing so. This case, too, was tried in his private room, instead of in the Court room, and, although the complainant was represented by an Advocate, no objection seemed to have been taken to the course at the time : *Held*, that as no objection was taken at the time to the trial being held in the Magistrate's private room, the objection taken in this Court as to its having been held there

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inadmissible and each case of non-compliance must be considered by the Court on its own merits, and the document which purports to be the record can be admitted, but without the presumption laid down in S. 80, Evidence Act, and, therefore, open to question by the defence and appraisal by the Court. The law itself does not expressly lay down that the least failure to comply with the provisions of S. 360 renders the whole document inadmissible; where, therefore, there has been an attempt by the presiding officer to comply with its provisions and to secure the accuracy of the record of evidence, the provisions of S. 80, Evidence Act, do not lead to complete exclusion of the document, and the Court is bound to admit it under S. 5 of the Act but, it is open to each side to adduce evidence as to its faithfulness or otherwise and as to the degree of presumption under S. 80 and weight to be attached to it. *Pitoomal v. Emperor*.

26 Cr. L. J. 657 :
86 I. C. 33 : 16 S. L. R. 255.

—S. 360—Non-compliance—Effect.

The question whether the violation of the provisions of S. 360 vitiates a trial, depends upon whether the accused has been prejudiced. If the accused has not been prejudiced, nothing short of an illegal or irregular exercise of jurisdiction should vitiate the trial. *Muhiuddin v. Emperor*.

26 Cr. L. J. 811 :
86 I. C. 459 : 6 P. L. T. 154 :
1925 Pat. 112 : 3 Pat. L. R. 110 Cr. :
4 Pat. 488 : A. I. R. 1925 Pat. 414.

—S. 360—Non-compliance—Effect.

Where a trial is set aside and a re-trial ordered on the ground that the depositions of the witnesses had not been read over to them in the presence of the accused in accordance with the provisions of S. 360 statements made by the witnesses in the previous trial can be referred to for the purpose of contradicting the statement made by them in the subsequent trial. *Fazlur Rahman v. Emperor*.

28 Cr. L. J. 772 :
104 I. C. 100 : 6 Pat. 478 :
8 P. L. T. 773 : A. I. R. 1927 Pat. 315.

—S. 360—Non-compliance—Effect.

Where the deposition of witnesses who are examined one after another until the midday adjournment are read over to them during the interval and the depositions of the witnesses examined in the afternoon are similarly read over to them in the afternoon after the close of the day, there is no compliance with the provisions of S. 360 and the trial is vitiated. *Samserali Hazi v. Emperor*.

27 Cr. L. J. 688 :
94 I. C. 736 : 53 Cal. 129 :
A. I. R. 1926 Cal. 563.

—S. 360—Non-compliance—Effect.

Where the Magistrate has tried to consult the convenience of the defence Counsel and also at the same time tried to comply with the requirements of S. 360, Cr. P. C., as far as possible and it is not alleged that failure to comply with this provision of law has resulted in any inaccuracy in the deposition of any of the witnesses, the defect is a mere irregularity curable

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under S. 537 and not an illegality vitiating trial. *Abdul Rahman v. Emperor*.

27 Cr. L. J. 669 :
94 I. C. 717 : 4 Bur. L. J. 213 :
A. I. R. 1926 Rang. 53.

—S. 360—Non-compliance—Effect.

Where the provisions of the section are not complied with by a Committing Magistrate and also with respect to some of the witnesses in the Sessions Trial, the commitment to the Sessions Court will not be quashed on the application of the Crown where it is opposed by the accused who do not complain of any inaccuracy in the commitment record or in the record of the Sessions Court. *Emperor v. Abdur Rahim*.

26 Cr. L. J. 1276 :
88 I. C. 1052 : 29 C. W. N. 698 :
A. I. R. 1925 Cal. 928.

—S. 360, 361—Non-compliance—Effect.

The bare fact of an omission to comply strictly with the provisions of S. 360 or S. 361, Cr. P. C. unaccompanied by any probable suggestion of any failure of justice having been thereby occasioned, is not enough to warrant the quashing of a conviction which may be supported by the curative provisions of Ss. 535 and 537 of the Code. *Abdul Rahman v. Emperor*.

28 Cr. L. J. 259 :
100 I. C. 227 : 31 C. W. N. 271 :
24 A. L. J. 117 : 1927 M. W. N. 103 :
38 M. L. T. 64 : 8 P. L. T. 155 :
4 O. W. N. 283 : 6 Bur. L. J. 65 :
5 Rang. 53 : 52 M. L. J. 585 :
29 Bom. L. R. 813 : 45 C. L. J. 441 :
54 I. A. 96 :
A. I. R. 1927 P. C. 44.

—S. 360 — Non-compliance — Objection when should be taken.

Where an objection is taken on the ground that the provisions of S. 360 have not been observed, it should be taken immediately after there has been a neglect to comply with the provisions of the law. *Arjun Kurmi v. Emperor*.

28 Cr. L. J. 77 :
99 I. C. 109 : 8 P. L. T. 166 :
A. I. R. 1927 Pat. 100.

—Ss. 360, 476—Non-compliance—Effect—Sanction to prosecute for perjury—Deposition not read over to defendant under S. 360, effect of.

For the purpose of granting sanction for a prosecution on the ground of perjury, deposition to which the procedure laid down in S. 360, Cr. P. C., has not been applied cannot be properly used, inasmuch as under S. 90, Evidence Act, the document embodying the deposition is the only evidence of the statement charged having been made, and under S. 80 of the same Act it is admissible only if it was taken in accordance with law. *Kadir Pakiri v. Emperor*.

18 Cr. L. J. 966 :
42 I. C. 326 : A. I. R. 1918 L. Bur. 129.

—Ss. 360, 476—Non-compliance—Effect.

The provision contained in S. 360 is mandatory so that the evidence given by a witness must be read over to him in the presence of the accused or his Pleader. Where this is not done, the witness cannot be prosecuted for

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absent witnesses from record of case to which accused was not party, legality of.

Under S. 353, evidence of witnesses against an accused must be recorded in his presence; therefore, the evidence of absent witnesses on the record of another judicial proceeding to which the accused was not a party cannot be brought on the record against him. *Abdul Gaffor v. Govind Prasad*. 30 Cr. L. J. 736 : 117 I. C. 241 : I. R. 1929 Rang. 177 ; A. I. R. 1928 Rang. 284.

———**Ss. 353, 537—Non-compliance—Cross-cases—Evidence not recorded in accordance with S. 353—Procedure followed at request of accused—No prejudice—Irregularity, if curable.**

There were two cross-cases. When the accused in the one case came to give their evidence in defence they only asked their witnesses or some of them a few questions and then got their statements as prosecution witnesses in the cross-case brought on the record as their substantive statement in the case. In the case of one witness what happened was that he made some statement in examination-in-chief and when he was cross-examined, the prosecution Counsel after putting a question or two, asked him whether he had made in the cross-case the whole statement in cross-examination recorded in that case. That statement was then apparently brought on the record or at any rate utilised. The copies of statements in the cross-cases were not brought on the record and thus there was a contravention of S. 353 : *Held*, that the procedure having been adopted at the request of the accused, there could not have been any prejudice to the accused. Though the procedure adopted by the trial Court was clearly irregular yet the accused could not be heard to say that they were prejudiced by his procedure. *Taqi Mohammad v. Mohammad Jan*.

40 Cr. L. J. 1 : 178 I. C. 169 : 11 Rang. 893 : 1938 O. L. R. 465 : 1938 O. W. N. 1064 : A. I. R. 1938 Oudh 255.

———**S. 353—Personal attendance—Exemption—Powers of High Court.**

Under the provisions of S. 353, a High Court has the power to dispense with the attendance of an accused, during his trial before the High Court, on the ground of his ill-health. *Emperor v. King*.

13 Cr. L. J. 464 : 15 I. C. 96 : 14 Bom. L. R. 236.

———**S. 353, Chap. XII — Personal attendance—Exemption—Sessions trial—Pardanashin accused.**

A Sessions Judge has powers under the provisions of S. 353, to dispense with the personal attendance of a *pardanashin* accused and permit her to appear by Pleader during the Sessions trial inasmuch as in the interest of justice, *pardanashin* ladies should not be compelled to appear in public at least until they are convicted. *Kandamani Devi v. Empeaoq*.

23 Cr. L. J. 266 : 66 I. C. 330 : 1922 M. W. L. 165 : 42 M. L. J. 337 : 15 L. W. 550 : 30 M. L. T. 346 : 45 Mad. 359 : A. I. R. 1922 Mad. 79.

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———**S. 353—Scope.**

The wording of S. 353, laying down that all evidence shall be taken in the presence of the accused, includes the evidence for the defence as well as for the prosecution. *Nga Po Shein v. Emperor*.

14 Cr. L. J. 287 : 19 I. C. 719 : U. B. R. 1912 152.

———**Ss. 353, 537—Scope—Connected trials—Admission of evidence in one case as evidence in another—Illegality—Consent of accused, effect of.**

The accused, when they were asked whether they had any defence witnesses to call stated that they would not call any witnesses but wished that the evidence adduced by them in another trial may be used as their evidence. The Sessions Judge adopted this procedure and convicted the accused : *Held*, that the procedure adopted was illegal inasmuch as the defence evidence had not been recorded in the presence of the accused as required by S. 353, and that the fact that accused consented to the procedure did not render the procedure legal. *Thakar Singh v. Emperor*.

28 Cr. L. J. 771 : 104 I. C. 99.

———**S. 354.**

See Cr. P. C., S. 145.

———**S. 355.**

See also (i) Cr. P. C., 1898, Ss. 260, 261, 264.

(ii) Summary trial.

———**S. 355—Applicability.**

S. 355, Cr. P. C. applies to offences coming within Cls. (b) of to (m) of S. 260 but not to offences falling under S. 261, Cl. (b). *Chimanlal Maneklal v. Emperor*.

28 Cr. L. J. 537 : 102 I. C. 345 : 29 Bom. L. R. 710 : A. I. R. 1927 Bom. 426.

———**S. 355—Applicability—Summary trial under Chap. XXII.**

S. 355 has no application to summary trial of a case under Chap. XXII of the Code, *Emperor v. Maung Po Saw*.

36 Cr. L. J. 892 : 156 I. C. 183 : 13 Rang. 225 : 7 R. Rang. 386 : A. I. R. 1935 Rang. 106.

———**Ss. 355, 356—Inability, meaning of—Pressure of work whether inability.**

It cannot possibly be conceded that a Magistrate is entitled to attend to other work during the hearing of a case, and to plead that other work as the reason of his inability to comply with the requirements of law with regard to the recording of evidence. This is an irregularity of much more than a technical nature when a Magistrate is engaged in the trial of a case, it is his duty to give his undivided attention to it. *Emperor v. Jagmohan Singh*.

38 Cr. L. J. 150 : 166 I. C. 224 : 1936 O. L. R. 728 : 9 R. O. 294 : 1937 O. W. N. 56 : A. I. R. 1937 Oudh 126.

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—S. 360—Object.

S. 360 has been enacted not only for the protection of the witness but also to safeguard the interest of the accused. The object of the provisions being to ensure the accuracy of the record, and also that the accused should know and understand the evidence that is given at the trial, the provisions must be held to be obligatory and not merely directory. *Hira Lal Ghose v. Emperor*.

26 Cr. L. J. 201 :

83 I. C. 905 :

29 C. W. N. 968 : 41 C. L. J. 224 :

52 Cal. 159 : A. I. R. 1924 Cal. 889.

—S. 360—Object.

The provisions of S. 360 were enacted for the benefit of the witnesses as also for that of the accused persons. *Emperor v. Abdur Rahim*.

26 Cr. L. J. 1276 :

88 I. C. 1052 : 29 C. W. N. 698 :

A. I. R. 1925 Cal. 928.

—Ss. 360, 537, 535—Object—Depositions of witness read over and not objected to by accused—Whether can be used in evidence against witness.

The object of reading over the depositions to the accused is to obtain an accurate record from the witness what he really means to say and to give him an opportunity of correcting the words which the Magistrate or his clerk has taken down. It is not to enable the accused or his Advocate to suggest corrections. All that the accused is entitled to be sure about is that the deposition had been read over and the witness has had an opportunity of correcting the original words, but the accused himself is not entitled to the opportunity of suggesting corrections. The primary object is to fix the witness and to enable him to protect himself against any inaccuracy in the words, taken down from his lips. S. 360 is intended to protect the accused as well as the witnesses. Where the accused in the case in which the witness is examined takes no objection of his deposition as recorded by the Court, it must be inferred that he is in no way prejudiced by the irregularity, if any, and the non-compliance in this respect cannot vitiate a trial in view of the provisions of Ss. 535 and 537. Where the witness himself admits to the Court that his deposition had been read out to him and that it had been clearly recorded, no prejudice in any case is caused to him. *Sheoshankar Dhondbaji Mahar v. Emperor*.

41 Cr. L. J. 697 :

188 I. C. 885 : 1940 N. L. J. 165 :

13 R. M. 14.

—S. 360—Procedure.

S. 350 lays down that the deposition is to be read over to the witness. This provision is not complied with in terms by giving the witness an opportunity of reading the deposition over to himself and except in cases where reading over to the witness would be absurd; as for example, with a stone-deaf person, the

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provision should be complied with. *Abdul Rahman v. Emperor*.

28 Cr. L. J. 259 :

100 I. C. 227 : 31 C. W. N. 271 :

25 A. L. J. 117 : 1927 M. W. N. 103 :

38 M. L. T. 64 : 8 P. L. T. 155 :

4 O. W. N. 283 : 6 Bur. L. J. 65 :

5 Rang. 53 : 52 M. L. J. 585 :

29 Bom. L. R. 813 : 45 C. L. J. 441 :

54 I. A. 96 : A. I. R. 1927 (P. C.) 44.

—S. 360—Scope of—Reading over deposition—Certificate, appending of.

There is nothing in S. 360 to indicate that a Magistrate must record that a deposition was read over in the presence of the accused, though it will be much better that he should do so in order that there might be no complaint as to his not having complied with the provisions of the section. S. 360 requires that the deposition of a witness should be read over in the presence of the accused so that an opportunity be given to him to challenge the correctness of the record. The mere reading of the deposition by the witness himself is not a sufficient compliance with the provisions of the section. *Rameshar Singh v. Emperor*.

26 Cr. L. J. 927 :

86 I. C. 991 : 6 P. L. T. 493 :

A. I. R. 1925 Pat. 723.

—S. 360—Reading over evidence—Presence of accused.

Where in the original case there were twenty-seven accused persons, and the deposition of one of the witnesses was read over to him in the presence of the pleader of one of the accused: *Held*, that in a case of perjury against that witness, his deposition was admissible in evidence. *Rakhal Chandra v. Emperor*.

10 Cr. L. J. 150 :

2 I. C. 697 : 9 C. L. J. 690.

—S. 360—Record of evidence—Objection by accused.

S. 360 does not lay down that the deposition of a witness should be read over to him within the hearing of the accused. If the accused or his Pleader is doubtful as to the manner in which the statement of a witness has been recorded or as to any point in the deposition, he would have a right to ask that the deposition should be read over to him so that he can satisfy himself as to what has been actually recorded, but that demand should be made at once. *Arjun Kurmi v. Emperor*.

28 Cr. L. J. 77 :

99 I. C. 109 : 8 P. L. T. 166 :

A. I. R. 1927 Pat. 100.

—S. 360—Recording of evidence—Depositions of witnesses, proper time for reading.

S. 360 is mandatory and its provisions must be strictly complied with. Reading over the depositions of all the witnesses examined on one day at the end of the day is not in strict conformity with the requirement of the law. The evidence of each witness should be read over to him after it is completed

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- Criminal trial.
- Distinction between.
- Duty of Court.
- Nature of.
- Non-compliance.
- Object.
- Procedure.
- Reading over deposition.
- Reading over evidence.
- Record of evidence.
- Recording of evidence.
- Scope.
- S. 360.

See also (i) Cr. P. C., 1898, Ss. 117, 145, 193, 342, 359, 337.

(ii) Evidence Act, 1872, Ss. 5, 80.

-----S. 360, Chap. XII—"Accused," meaning of.

The "accused" in Sub-s. (1) of S. 360, Cr. P. C., means a person over whom a Criminal Court is exercising jurisdiction. *Aswini Kumar Dutt v. Puti*. 26 Cr. L. J. 914 :

86 I. C. 978 : 29 C. W. N. 474 : 52 Cal. 437 : A. I. R. 1925 Cal. 678.

-----S. 360—Applicability — Proceedings under Chap. XLV—Deposition of witnesses, whether must be read over.

S. 360, Cr. P. C., is by virtue of the provisions of S. 356 of the Code, applicable to inquiries held under Chap. XII of the Code and where the provisions of S. 360 are not complied with, the inquiry is vitiated. *Aswini Kumar Dutt v. Puti*.

26 Cr. L. J. 914 : 86 I. C. 978 : 29 C. W. N. 474 : 52 Cal. 437 : A. I. R. 1925 Cal. 678.

-----S. 360—Applicability to security proceedings.

S. 360 is not applicable to an inquiry under S. 107. *Emperor v. Jafar Raki*.

26 Cr. L. J. 1456 : 89 I. C. 976 : 52 Cal. 668 : A. I. R. 1925 Cal. 940.

-----S. 360—Commitment proceedings—Deposition read over to witness during examination of other witnesses, effect of.

Reading over to a witness his deposition while other witnesses are being examined is not sufficient compliance with the provisions of S. 360 since the object of that section is that the accused may have the opportunity of ascertaining that the evidence has been correctly recorded. This is of great importance in an inquiry with a view to commitment since under certain circumstances the evidence then taken may be used as evidence against the accused at the trial. *Manik v. Emperor*.

26 Cr. L. J. 1267 : 88 I. C. 1043 : 41 C. L. J. 393 : A. I. R. 1925 Cal 933.

-----S. 360—Complainant, examination of, record of, whether must be read over—Perjury—Alternate charge—Proof.

It is desirable that the substance of the

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oral examination of a complainant recorded under S. 200, Cr. P. C. should be read over to the deponent before it is required to be signed by him if it is to be ultimately used for contradicting him. The principle underlying S. 360, Cl. (i) should be made applicable on grounds of public policy to the substance of the examination of a complainant on oath, if the accuracy of records of such examination is to be vouchsafed. Where, however, this has not been done, the substance of the oral examination does not become inadmissible under S. 91, Evidence Act, in proof of the statement therein contained. *Bhagirathi Bai v. Emperor*. 26 Cr. L. J. 1401 :

89 I. C. 713 : A. I. R. 1926 Nag. 141.

-----S. 360—Construction—"Appear by Pleader," meaning of.

The words "Appear by Pleader", as used in S. 360 are nowhere defined. In ordinary acceptance these words mean "represented by Pleader" that is to say, having a Pleader to act and plead. *Hari Narayan Chandra v. Emperor*. 29 Cr. L. J. 49 :

106 I. C. 545 : 46 C. L. J. 368 : A. I. R. 1928 Cal. 27.

-----S. 360 (1)—Construction—Deposition of witness, reading of—Accused not present—Presence of Pleader, whether sufficient.

There is nothing in provisions of S. 360 (1), to indicate that the Legislature intended that the reading over in the presence of the Pleader should be a compliance with the provisions of that section only in cases where the personal appearance of the accused is dispensed with by the Court. The natural meaning of the words is that if an accused person has engaged a Pleader, who is in attendance, the reading over the deposition in the presence of the Pleader will be a full compliance with the provisions of the section, if the accused himself does not happen to be present at the time the deposition is read over. *Hari Narayan Chandra v. Emperor*.

29 Cr. L. J. 49 : 106 I. C. 545 : 46 C. L. J. 368 : A. I. R. 1928 Cal. 27.

-----S. 360—Criminal trial—Recording of evidence—Statement, how to be read out—Procedure.

S. 360 does not require that an endorsement or certificate should be made or given that the statement of a witness has been read over to him, so that where such endorsement is made but is defective, it is impossible to hold merely on the basis of the endorsement that the depositions were not read over to the witness in the presence of the accused. *Arjun Kurmi v. Emperor*. 28 Or. L. J. 77 :

99 I. C. 109 : 8 P. L. T. 166 : A. I. R. 1927 Pat. 100.

-----Ss. 360, 361—Distinction between.

The distinction between S. 360 and S. 361 of the Cr. P. C. is very marked. Under the latter section, if evidence is given in a language not understood by the accused or his Pleader, it is to be interpreted into their language, while under the former section when

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———S. 360—*Recording of evidence—Deposition of witness, reading of by witness himself, whether legal—Evidence—Perjury—Admissibility of deposition.*

To hand over a witness's deposition to him so that he may read it over himself is not sufficient compliance with the provisions of S. 350 (1) inasmuch as Sub-s. (1) requires that the evidence should be read over in the presence and hearing of the accused in order that the accused should have an opportunity of correcting any mistake in it. Such deposition is not admissible on a charge of giving false evidence. *Emperor v. Jogendranath Ghose.*

15 Cr. L. J. 483.
24 I. C. 571 : 18 C. W. N. 1242 :
42 Cal. 240 : A. I. R. 1914 Cal. 789.

———S. 360 (1)—*Recording of evidence—Reading over of deposition.*

In a criminal case it is most important in the interests of the accused that a witness's deposition should be read over in the manner laid down in S. 360 (1), Cr. P. C. *Kesar Singh v. Sultan-ul-Mulk.*

28 Cr. L. J. 651 (a) :
103 I. C. 107.

———S. 360—*Scope.*

Obiter.—S. 360 (3) is not an additional provision requiring that the deposition recorded in English should be translated into the vernacular to a witness who has deposed in the vernacular, after having first been read over to him in English. *Hari Narayan Chandra v. Emperor.*

29 Cr. L. J. 49 :
106 I. C. 545 : 46 C. L. J. 368 :
A. I. R. 1928 Cal. 27.

———S. 361.

See also Cr. P. C., 1898, Ss. 360, 537.

———S. 361-A—*Examination of witness on commission.*

Application under S. 39, Prisoners Act—Order in Chambers for producing prisoner as defence witness in Court—Application for order for his examination on commission on ground of inconvenience expenditure and likely breach of the peace—Application opposed on ground that there was no change of circumstances warranting alteration of previous order: *Held*, order allowing witness to be examined on commission should be substituted for previous order. *Assistant Government Advocate v. Upendra Nath Mukerji.*

32 Cr. L. J. 551 :
130 I. C. 538 : 11 P. L. T. 892 :
I. R. 1931 Pat. 186 : A. I. R. 1931 Pat. 81.

———Ss. 361, 537—*Translation of evidence to accused.*

Under S. 361 depositions of witnesses given in English in the conduct of a trial ought to be translated to an accused person ignorant of English. Omission to do so is, however, a mere irregularity which can be cured by S. 537. *In re: Annai Errappa.*

31 Cr. L. J. 827 :
125 I. C. 253 : 1929 M. W. N. 898 :
31 L. W. 386 : A. I. R. 1930 Mad. 186.

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———S. 362.

See also (i) Cr. P. C. 1898, Ss. 254, 342, 355.

(ii) Evidence Act, 1872, S. 25.

———S. 362—*Appealable case, mode of.*

What the Appellate Court requires is not merely the opinion of the Magistrate regarding the evidence by the witnesses but a correct record of the evidence given by the witnesses. It is for the High Court to decide whether the evidence corroborates or contradicts the other evidence and it can only decide this properly if it has the evidence before it. Where in recording the evidence-in-chief of two witnesses the Magistrate while passing an appealable sentence merely records the words "corroborates P. W. 1", it does not amount to recording evidence in accordance with the provisions of S. 362, and the conviction cannot therefore be upheld. *Ghulam Dastgir Khan v. Emperor.*

41 Cr. L. J. 40 :
184 I. C. 581 : 12 R. C. 244 :
A. I. R. 1939 Cal. 623.

———S. 362 — *Applicability — Security proceedings.*

S. 362 does not apply to proceedings under S. 110 of the Code. *Emperor v. Nepal Shikary.*

10 Cr. L. J. 122 :
2 I. C. 651 : 9 C. L. J. 439 :
13 C. W. N. 318.

———S. 362—*Recording of cases—Appealable cases—Presidency Magistrate, duty of—Presidency Magistrate's judgment and record of evidence.*

It is only in appealable cases that a Presidency Magistrate is required by S. 362 to prepare a record of the evidence of witnesses. In other cases it rests with his discretion to do so. *Emamdu v. Emperor.*

1 Cr. L. J. 839 :
8 C. W. N. 839.

———S. 362—*Recording evidence in petty cases—Magistrate, discretion of.*

S. 362 does not mean that a Presidency Magistrate can act arbitrarily and record nothing by way of evidence in cases in which he is not bound to take down evidence in the manner prescribed in the section. In such cases the section merely gives him a discretion to take down the evidence or not, and the discretion should be exercised judicially in a reasonable spirit and not arbitrarily. There may be no necessity to record any evidence in 'morning cases'. But where a respectable person is charged with an offence reflecting on his character, and serious allegations are levelled against him, there ought to be some record of evidence to enable him in case of conviction to go to the High Court. Even in a summary case a Magistrate is bound to record a summary of the accused's examination and any statement in the course of that examination. *Emperor v. Harischandra.*

7 Cr. L. J. 194 :
10 Bom. L. R. 201.

———S. 362 — *Recording evidence — Trial before Presidency Magistrate.*

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it is read over, it is to be interpreted to the witness in his own language, but there is no provision for its being interpreted to the accused. *Abdul Rahman v. Emperor*.

28 Cr. L. J. 259 :
100 I. C. 227 : 31 C. W. N. 271 :
25 A. L. J. 117 :
1927 M. W. N. 103 : 38 M. L. T. 64 :
8 P. L. T. 155 : 4 O. W. N. 283 :
6 Bur. L. J. 65 : 5 Rang. 53 :
52 M. L. J. 585 : 29 Bom. L. R. 813 :
45 C. L. J. 441 : 54 All. 96 :
A. I. R. 1927 P. C. 44.

S. 360—Duty of Court.

Lower Courts should be very careful in complying strictly with the provisions of S. 360. *Jiwan Singh v. Sheodan Singh*.

28 Cr. L. J. 514 :
102 I. C. 210.

S. 360—Nature of—Deposition of witness, reading over to him.

The provisions of S. 360 are obligatory and not directory. The evidence given by a witness should be read over to him in the presence of the accused or his pleader, in all cases, as provided by the section. *Jyotish Chandra v. Emperor*.

10 Cr. L. J. 581 :
4 I. C. 416 : 36 Cal. 955 :
14 C. W. N. 82.

S. 360—Non-compliance—Effect.

A deposition recorded without compliance with the terms of S. 360 is not a nullity for all purposes. A conviction for perjury may be upheld if the deposition had been read over to the witness and acknowledged by him to be correct, even though the reading over was not in the presence of the Judge and of the accused and of the pleaders for prosecution and defence as required by law. *In re : Bogra*.

11 Cr. L. J. 482 :
7 I. C. 414 : 8 M. L. T. 117.

S. 360—Non-compliance—Effect.

An omission to comply with the provisions of S. 360 in recording depositions in a former case is a bar to the use of such deposition as evidence in any subsequent proceedings (e. g. trial under S. 211, Penal Code.) *Chayunddin Pramanik v. Emperor*.

A. I. R. 1928 Cal. 271.

S. 360 — Non-compliance—Effect—Duty of Magistrate or Judge.

It is the duty of a Judge or Magistrate to read or to have read over to witnesses their recorded depositions with a view to correct any errors which may require correction not only in his own presence and hearing but also in the presence of the accused and of his Pleader, so that the latter may have an opportunity of checking their correctness. A statement not read over and corrected as aforesaid is not taken in accordance with law and, therefore, is not admissible in evidence against the person making it. *Nga San Myin v. Emperor*.

13 Cr. L. J. 569 :
15 I. C. 985 : U. B. R. 1912 I. 123.

S. 360—Non-compliance—Effect.**Cr. P. CODE (1898), S. 360**

Failure to read over the evidence of a witness does not necessarily vitiate the trial. But where the accuracy of the record has been challenged by the Counsel of the accused and the evidence of the interpreter shows that one of the witnesses had made a statement, which though relevant to the case was omitted from the record, the proceedings must be quashed and a re-trial ordered. *E. E. Mayeth v. Emperor*.

27 Cr. L. J. 857 :
95 I. C. 937 : 3 Rang. 612 :
4 Bur. L. J. 257 : A. I. R. 1926 Rang. 78.

S. 360—Non-compliance—Effect.

No amount of pressure of work and inconvenience and other considerations of that kind in the slightest degree can justify any Court for deliberate breach of the provisions of the law. S. 360 is direct and positive and instructions laid down by the law to the administrators of the law should be rigorously complied with both in the interests of the accused, Court and witnesses. *Pitumal v. Emperor*.

26 Cr. L. J. 1137 :
88 I. C. 449 : 18 S. R. 342.

S. 360—Non-compliance—Effect.

Non-compliance with the provisions of S. 360 does not vitiate a trial where it has not resulted in any failure of justice. *Fatiar Bap v. Emperor*.

28 Cr. L. J. 751 :
103 I. C. 799 : 31 C. W. N. 691 :
A. I. R. 1927 Cal. 575.

S. 360—Non-compliance—Effect.

The depositions of the witnesses in a criminal trial as soon as they were completed, were read over to the witnesses by the clerk and their signatures were taken, while the Court was recording the statements of other witnesses in the case : *Held*, that the procedure was not warranted by law and did not amount to a compliance with the provisions of S. 360. The omission to comply with the provisions of S. 360 vitiates a trial. *Adiladdi v. Emperor*.

26 Cr. L. J. 1016 :
87 I. C. 840 : A. I. R. 1926 Cal. 423.

S. 360—Non-compliance—Effect.

The omission to comply with the provisions of S. 360 of the Cr. P. C. vitiates the trial. *Hiralal Ghose v. Emperor*.

26 Cr. L. J. 201 :
83 I. C. 905 : 29 C. W. N. 968 :
41 C. L. J. 224 : 52 Cal. 159 :
A. I. R. 1924 Cal. 889.

S. 360—Non-compliance—Effect.

The omission to read out a deposition to a witness as required by S. 360 does not necessarily render it inadmissible in evidence, at any rate against a person charged with abetment of perjury and it can also be proved by extraneous evidence notwithstanding S. 91, Indian Evidence Act. *Pitumal v. Emperor*.

26 Cr. L. J. 1137 :
88 I. C. 449 : 18 S. L. R. 342.

S. 360—Non-compliance—Effect.

The provisions of S. 360 are no doubt mandatory, but non-compliance with them does not legally result in rendering the whole record

Cr. P. CODE (1898), S. 364

S. 364 (1) does not apply to summary trials. When the records of the statements made and recorded in English by the Magistrate which are on the record were admittedly there before the trial concluded and before the Session Judge was moved and there are no materials to show that the said record by the Magistrate in English was made at any other time than when the prosecution closed its case, there is sufficient compliance with the law. The fact that the vernacular statements are not put in till after conclusion of the trial, does not vitiate it. *Bauka Nath v. Abdul Kadir*.

37 Cr. L. J. 1098 :
165 I. C. 154 (2) : 39 C. W. N. 1306 :
9 R. C. 349.

—S. 364—Confession—Proof, mode of.

No evidence can be given of the terms of such a confession except the record, if any, made under S. 364. *Emperor v. Gulabu*.

14 Cr. L. J. 211 :
19 I. C. 307 : 11 A. L. J. 286 :
35 All. 260.

—S. 364—Confession, recording of—Irregularity.

A statement made by an accused person before a Magistrate who subsequently commits him to the Court of Session must be recorded in the form prescribed by S. 364, but any defect therein can be cured by proving it by the evidence of the Magistrate who had recorded it. *Emperor v. Shuldham*. (F. B.)

16 Cr. L. J. 257 :
28 I. C. 145 : 14 P. W. R. 1914 Cr :
222 P. L. R. 1915 :
A. I. R. 1915 Lah. 487.

—S. 364—Confession—Recording of statement as—Procedure.

If the statement made by a person is recorded as a "confession," the procedure prescribed by S. 364 must be followed. Whether a statement is to be called a confession or not, depends not merely on the nature of the statement itself, but on the use that is sought to be made of it. *In re : Madala Ramaniyamma*.

17 Cr. L. J. 195 :
34 I. C. 307 : 20 M. L. T. 21 :
A. I. R. 1917 Mad. 316.

—S. 364—Examination of accused—Collective examination, legality of.

Recording of the statements of two accused collectively is an irregularity which vitiates trial. *Ghasiti v. Emperor*.

27 Cr. L. J. 408 :
93 I. C. 72 : 6 Lah. 554 :
27 P. L. R. 85 : A. I. R. 1926 Lah. 155.

—S. 364—Examination of accused—Composite questions, legality of.

The examination of the accused conducted by putting a long composite question is irregular and not in accordance with law. *Hasni v. Emperor*.

28 Cr. L. J. 767 :
103 I. C. 847 : A. I. R. 1927 Lah. 650.

—S. 364—Examination of accused—Cross-examination.

It is opposed to the principles of English justice to commence proceedings by subjecting

Cr. P. CODE (1898), S. 364

an accused person who has not offered to make a confession, to a searching cross-examination; and in examining an accused under S. 364, it would not be fair to put him such a question as "If you did not commit the murder who did?" *Chedau v. Emperor*. 1 Cr. L. J. 699 : 7 O. C. 191.

—S. 364—Examination of accused—Explaining circumstances appearing against him—Question eliciting confessional statement—Corroboration—Motive, whether a material particular.

A Magistrate, in examining an accused under S. 364, can only ask him to explain the circumstances which appeared against him. The Magistrate cannot put him any question which may elicit a confessional statement. The evidence of motive can never by itself be sufficient to corroborate any statement which requires corroboration in material particulars, as motive is not a material particular, for it is not the duty of the prosecution to prove any motive, because it is impossible in most cases to assign motives to the conduct of other people. *Tufani Sheikh v. Emperor*.

13 Cr. L. J. 283 :
14 I. C. 667 : 15 C. L. J. 323.

—S. 364—Examination of accused, mode of.

In examining an accused under S. 364, it would not be fair to put him such a question as "If you did not commit the murder who did?" *Chedau v. Emperor*. 1 Cr. L. J. 699 : 7 O. C. 191.

—S. 364—Examination of accused, mode of.

Questions and answers must be recorded word for word—It is not enough to put down their purport in Magistrate's memorandum. *Bhagwan Din v. Emperor*. 35 Cr. L. J. 915 : 149 I. C. 195 : 11 O. W. N. 444 : 6 R. O. 529 : A. I. R. 1934 Oudh 151.

—S. 364—Examination of accused—Procedure.

S. 364 has made it obligatory upon a Magistrate to show or read the record to accused and the reason is that he is at liberty to explain or add to his answers until he signs the record. Otherwise statement made by him to the Committing Magistrate cannot be used as evidence against him at his trial. *Emperor v. Drwan Kahar*. 24 Cr. L. J. 497 : 72 I. C. 961 : 4 P. L. T. 186 : A. I. R. 1923 Pat. 13.

—S. 364—Examination of accused—Procedure.

Under S. 364 when an accused person is examined by the Court, the whole of such examination including every question put to him and every answer given by him must be recorded in full in the language in which he is examined, or if that is not practicable, in the language of the Court, or in English, and such record must be shown or read to the accused, or if he does not understand the language in which it is written, must be interpreted to him in a language which he

Cr. P. CODE (1898), S. 360

perjury in respect of any false statement made by him. *Brahmdeo Singh v. Emperor*.

22 Cr. L. J. 562 :
62 I. C. 584 : 2 P. L. T. 380 :
1921 Pat. 139 : A. I. R. 1921 Pat. 149.

—Ss. 360, 537—Non-compliance—Effect.

Non-compliance with the provisions of S. 360 amounts only to an irregularity and is cured by S. 537 of the Code. *Sher Mohammad Khan v. Bihari*.

28 Cr. L. J. 606 :
102 I. C. 782.

—Ss. 360, 537—Non-compliance—Effect.

Non-compliance with the provisions of S. 360, does not vitiate a trial where it has not in fact occasioned any failure of justice. *Bajai v. Ram Sarup*.

28 Cr. L. J. 596 :
102 I. C. 772.

—Ss. 360, 537—Non-compliance—Effect.

Non-compliance with the provisions of S. 360 is curable under S. 537, that is, it will not vitiate the trial unless it is proved that it has caused failure of justice. *Kamini Kumar Chuckerburty v. Emperor*.

31 Cr. L. J. 373 :
122 I. C. 209 : 33 C. W. N. 664 :
A. I. R. 1929 Cal. 390.

—Ss. 360, 537—Non-compliance—Effect.

Omission to comply with provisions of S. 360, Cr. P. C. is an illegality which is not curable by the provisions of S. 537, Cr. P. C. *Haro Nath Malo v. Ala Buz*.

25 Cr. L. J. 289 :
76 I. C. 961 :
38 C. L. J. 281 : 28 C. W. N. 119 :
A. I. R. 1924 Cal. 182.

—Ss. 360, 537—Non-compliance—Effect.

The failure of a Court to comply with the provisions of S. 360 in the matter of reading out depositions to the witnesses amounts only to an irregularity within the meaning of S. 537 and does not affect the legality of the trial unless it is proved that it has led to a failure of justice. *Jivan Singh v. Sheodan Singh*.

28 Cr. L. J. 514 :
102 I. C. 210.

—S. 360 (1)—Non-compliance—Effect.

The terms of S. 360 (1) being mandatory, any violation or departure from the practice or procedure enjoined upon the Court is not merely an irregularity which can be cured but an illegality. It is not a compliance with the section for the Magistrate to examine a number of witnesses and ask them to be in a room and then have the depositions read over to them later in the day. Such a procedure is altogether illegal. *In re: Kuppa Mudali*.

26 Cr. L. J. 1587 :
90 I. C. 659 : 49 M. L. J. 421 :
22 L. W. 389 : 1925 M. W. N. 795 :
49 Mad. 71 : A. I. R. 1925 Mad. 1206.

—S. 360—Object—Deposition, interpretation and reading.

The object of reading over a deposition to a witness is to obtain an accurate record from the witness of what he really means to say, and to give him an opportunity of correcting

Cr. P. CODE (1898), S. 360

the words which the Magistrate or his clerk has taken down. It is not to enable the accused or his Advocate to suggest corrections. No doubt, the evidence has to be read over in the presence of the accused or of his pleader. He is entitled to be sure that it has been read over, and that the witness has had an opportunity of correcting the written word. But he is not necessarily entitled to the opportunity of suggesting correction. At the same time, it would be a better course if depositions other than mere formal ones were read over so that the accused or his pleader could hear them and give their undivided attention to them. Care would, of course, have to be taken that no suggestion should be conveyed to a witness in the form of a correction which would make him alter his evidence, but there might be obvious slips to which, under proper safeguard, attention might be called by the accused or his pleader. Still it should be remembered that the primary object is to fix the witness and to enable him to protect himself against inaccuracy in the word taken down from his lips. *Abdul Rahman v. Emperor*.

28 Cr. L. J. 259 :
100 I. C. 227 : 31 C. W. N. 271 :
25 A. L. J. 117 : 1927 M. W. N. 103 :
38 M. L. T. 64 : 8 P. L. T. 155 :
4 O. W. N. 283 : 6 Bur. L. J. 65 :
5 Rang. 53 : 52 M. L. J. 585 :
29 Bom. L. R. 813 : 45 C. L. J. 441 :
54 I. A. 96 : A. I. R. 1927 P. C. 44.

—S. 360—Object—Intention—Deposition of witness not read over, effect of—Memorandum, absence of, effect of.

The provisions of S. 360 are mandatory and their intention is to protect the witnesses as also to help the accused. Failure to comply with the provisions of the section vitiates the trial. The absence of a memorandum at the foot of a deposition that it has been read out to the witnesses does not by itself prove that the provisions of S. 360 have not been observed. *Bhagwat Singh v. Emperor*.

26 Cr. L. J. 932 :
86 I. C. 996 : 6 P. L. T. 73 :
4 Pat. 231 : A. I. R. 1925 Pat. 378.

—S. 360—Object—Provisions, whether imperative—Omission to read over deposition to witness—Trial, whether vitiated—Provisions, object of.

Per *Newbould, J.*—The general object to be secured by Ch. XXV of the Code, which includes S. 360, is to ensure the accuracy of the record, and also that the accused should know and understand what evidence is given at the trial. The direction in S. 360 that the evidence shall be read over to the witness is imperative and not only directory. Per *Mukerji, J.*—Before a deposition is closed, a witness should be given an opportunity of explaining and correcting any contradictions it may contain, and only the statement which the witness finally declares to be the true one must be taken to be the statement he intended to make. *Hira Lal Ghose v. Emperor*.

26 Cr. L. J. 201 :
83 I. C. 905 : 29 C. W. N. 968 : 41 C. L. J. 224 :
52 Cal. 159 : A. I. R. 1924 Cal. 889.

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written out by his predecessor without considering the evidence on the record and without hearing the arguments, if any, on behalf of the accused. *Mahomed Rafique v. Emperor*.

27 Cr. L. J. 406 :
93 I. C. 70 : 43 C. L. J. 100 :
A. I. R. 1926 Cal. 537.

———Ss. 366, 367—*Delivering of judgment, Mode of—Irregularity.*

Where a Sessions Judge agreeing with the assessors simply makes an endorsement that the accused is acquitted and directs that he be set at liberty and writes the full text of his judgment assigning reasons for his order a few days later, he commits an irregularity under S. 537, but such irregularity does not vitiate the proceedings. *Saukaralinga Mudaliar v. Narayana Mudaliar*.

23 Cr. L. J. 583 :
68 I. C. 615 : 16 L. W. 413 :
43 M. L. J. 369 : 1922 M. W. N. 579 :
31 M. L. T. 342 : A. I. R. 1922 Mad. 502.

———Ss. 366, 367—*Delivering of judgment, what is—Judgment written and signed by one Magistrate, whether can be pronounced by his successor-in-office—De novo trial—Discretion.*

A judgment is not delivered under Ss. 366 and 367 until (1) it is written, (2) signed, (3) dated, and (4) pronounced in open Court. The last three must take place on the same occasion. It is in the discretion of a Magistrate to date and deliver a judgment written and signed by his predecessor-in-office or to grant a *de novo* trial. A Magistrate pronouncing a judgment of his predecessor is not the mouthpiece of the latter and must be taken to adopt the judgment as his own. *In re : Savari Muthu Pillai*.

17 Cr. L. J. 166 :
33 I. C. 646 : 3 L. W. 496 :
1916 1 M. W. N. 372 : 32 M. L. J. 81 :
40 Mad. 108.

———S. 366 (5)—*Delivering of judgment, what is.*

Once a Magistrate signs the judgment written by him, he has delivered it within the meaning of S. 366 (3), and the trial is then over. *Gian Singh-Munsha Singh v. Amar Singh-Jaimal Singh*.

40 Cr. L. J. 288 :
179 I. C. 990 : 40 E. L. R. 996 :
I. L. R. 1938 Lah. 567 : 11 R. L. 656 :
A. I. R. 1939 Lah. 21.

———S. 366—*Judgment.*

Sessions Judge delivering judgment after making over charge to successor—Judgment is not valid. *Ram Rattan v. Emperor*.

34 Cr. L. J. 112 (1) :
141 I. C. 31 : 1932 A. L. J. 753 :
I. R. 1933 All. 32 (1) : A. I. R. 1932 All. 582.

———Ss. 366, 424—*Judgment—Duty of Appellate Court.*

Appellate Court should take care to write judgments which are in consonance with the provisions of the Cr. P. C., because by failing to do so, they encourage persons convicted to waste their money and the time of the

Cr. P. CODE (1898), S. 366

High Court by making applications in revision. *Ram Singh v. Emperor*.

41 Cr. L. J. 249 :
186 I. C. 97 : 1939 A. L. J. 1146 :
12 R. A. 383 : A. I. R. 1940 All. 80.

———Ss. 366, 367—*Judgment—Omission to sign and date, effect of.*

An omission on the part of a Magistrate to sign and date a judgment is only an irregularity curable under S. 537. *Mohamed Hayat Mulla v. Emperor*.

30 Cr. L. J. 1166 :
120 I. C. 225 : 7 Rang. 370 :
I. R. 1930 Rang. 17 : A. I. R. 1930 Rang. 77.

———Ss. 366, 367 — *Judgment, mode of delivering.*

Where in a criminal case the judgment was written and delivered some days after the prisoners were convicted and sentenced: *Held*, this was a violation of the provisions of Ss. 366 and 367. It was more than an irregularity. It was a defect which vitiated the convictions and sentences. Accordingly a re-trial was ordered. *Bandaru Aichayya v. Emperor*.

1 Cr. L. J. 566 :
I. L. R. 27 Mad. 237 : 2 Weir 440.

———Ss. 366, 537—*Loss of record—Loss of material records before pronouncing judgment, effect of—Inherent power of Courts to restore lost records—Conviction and sentence passed without reading judgment, if void.*

A conviction cannot be set aside and a new trial ordered on the ground that some of the material records of the trial have been lost. S. 366, Cr. P. C., does not require as a condition of valid judgment that all the records of the case must be in the Court-house at the time of pronouncing the judgment. Where a judgment is lost, the proper course for the Court is to re-write it from memory and place it on record. A Court has inherent power in the case of the loss of a judicial document to restore such record. A conviction and sentence passed by a Court without pronouncing the whole of the written judgment are not void. The irregularity in such a procedure is cured by S. 537. *Kamakshamma v. Emperor*.

14 Cr. L. J. 595 :
21 I. C. 467 : 14 M. L. T. 317 :
25 M. L. J. 445 : 1913 M. W. N. 862.

———S. 366—*Predecessor's judgment — Pronouncement.*

Quare.—Whether it is legal for a Magistrate to pronounce his predecessor's judgment when the accused demands *de novo* trial. *In re : Savari Muthu Pillai*.

17 Cr. L. J. 166 :
33 I. C. 646 : 3 L. W. 496 :
1916 1 M. W. N. 372 : 32 M. L. J. 81 :
40 Mad. 108 : A. I. R. 1917 Mad. 340.

———Ss. 366, 439, 367, 537—*Scope—Passing of sentence before writing reasons—Irregularity—Revision—Ground for interference.*

To pass a sentence before recording reasons for the decision is a procedure neither contemplated nor permitted by Ss. 366 and 367. Such a procedure constitutes material irregularity but it can only be treated as

Cr. P. CODE (1898), S. 360

before that of another witness commences.
Abdul Bari Mullick v. Emperor.

27 Cr. L. J. 375 :
92 I. C. 887 : 42 C. L. J. 585 :
30 C. W. N. 644 :
A. I. R. 1926 Cal. 157.

———S. 360—*Recording of evidence—Deposition of witness read over in presence of Pleader of accused, validity of.*

Under S. 360 if the accused is in attendance, the evidence must be read over in his presence; it is only when the accused appears by a Pleader that the reading over of the evidence in the presence of the accused's Pleader amounts to a sufficient compliance with the provisions of the section. *Kasim Ali v. Sarada Kripa Laba.*

27 Cr. L. J. 509 :
93 I. C. 973 : 30 C. W. N. 336 :
A. I. R. 1926 Cal. 528.

———S. 360—*Recording of evidence—Deposition read over by witness himself and admitted correct—Section whether complied with.*

The fact that the deposition of a witness is read over by the witness himself and is admitted by him to be correct, does not amount to sufficient compliance with the provisions of S. 360. *In re : Sahorali Molla.*

26 Cr. L. J. 951 :
87 I. C. 103 : A. I. R. 1925 Cal. 1120.

———S. 360—*Recording of evidence—Deposition read by witness—Statement, whether duly recorded.*

Where the deposition of a witness instead of being read over in him in the presence of the accused is handed over to the witness and is read by the witness himself, there is no compliance with the provisions of S. 360 and the deposition cannot be used as the foundation of a conviction. *Mohammad Yasin v. Emperor.*

26 Cr. L. J. 1178 :
88 I. C. 602 : 29 C. W. N. 650 :
52 Cal. 431 : A. I. R. 1925 Cal. 782.

———S. 360—*Recording of evidence—Application of Counsel raising objection to recording or omitting to record statements by witnesses—How to be dealt with—Language of examination.*

A Judge should not take exception to an application by Counsel to have a certain statement taken down; nor should he regard the making of such applications as an attempt to dictate to the Judge the form of the record. A Counsel is within his rights in making reasonable applications of this kind, and in asking the Court to note his objection to the recording or omission of a statement, if his objection is over-ruled. The Court is also bound to give the accused or his Pleader the opportunity of knowing what is on the record. The law prescribes that this is to be done by having the deposition of each witness read over, when complete, in the presence of the accused, or if he appears by Pleader, of his Pleader. It is not a sufficient compliance with the law to have this done while the evidence of another witness is being recorded, unless the accused, or his Pleader, if he so desires, has had a full

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opportunity of knowing substantially what is recorded as the examination proceeds. If a Judge thinks that the witnesses understand a certain, e.g., Karen, language and do not thoroughly understand Burmese, he should require the prosecution to arrange for their examination in that (their own) language. *Nga Saw v. Emperor.*

2 Cr. L. J. 133 :
11 Bur. L. R. 8.

———S. 360—*Recording of evidence—Reading over evidence to witness—Examination-in-chief conducted on one day—Cross-examination on subsequent day—Reading over deposition after cross-examination, legality of—Irregularity, curing of.*

Where a witness is examined-in-chief on one day and is cross-examined on a subsequent day and the whole of his deposition is read over to him after cross-examination, there is sufficient compliance with the provisions of S. 360. The evidence of a witness is ordinarily completed when he has been examined-in-chief, cross-examined, and if necessary, re-examined. Completion of evidence in the section does not mean end of the deposition of each day. *Kamni Kumar Chuckerburty v. Emperor.*

31 Cr. L. J. 373 :
122 I. C. 209 : 33 C. W. N. 664 :
A. I. R. 1929 Cal. 390.

———S. 360—*Recording of evidence—Reading over deposition to witness while another witness is being examined, legality of.*

To read over the deposition of a witness while another witness is being examined by the Court is not sufficient compliance with the terms of S. 360 since the intention of that section is that the evidence should be read in such a manner that the accused can hear what is being read and take objection to it. An accused person cannot be expected at one and the same time to listen to the evidence of a fresh witness that is being recorded. Under S. 360 the evidence of a witness must be read over before the examination of another witness is commenced. *Dargabi v. Emperor.*

26 Cr. L. J. 1213 :
88 I. C. 733 : 52 Cal. 489 :
A. I. R. 1925 Cal. 831.

———S. 360—*Recording of evidence—Reading over deposition to witness.*

The evidence of a witness must be read over to him after it is completed and before the examination of another witness is started. *Samsrali Hazi v. Emperor.*

27 Cr. L. J. 688 :
94 I. C. 736 : 53 Cal. 129 :
A. I. R. 1926 Cal. 563.

———S. 360—*Recording of evidence—Statement of witness, when to be read out.*

S. 360 requires that the evidence of each witness shall be read over to him as it is completed and this procedure should be strictly followed. It is not a sufficient compliance with the provisions of the section to read out each sentence of the statement of a witness as it is being recorded. *Wadhawa Singh v. Emperor.*

22 Cr. L. J. 669 :
63 I. C. 461 : 3 U. P. L. R. Lah. 78.

Cr. P. CODE (1898), S. 367

a ground for interference in revision when it has occasioned failure of justice. *Emperor v. Morio Khan*.
12 Cr. L. J. 610 :
12 I. C. 986 : 5 S. L. R. 131.

S. 367.

- Appellate Judgment.
- Applicability.
- Construction.
- Delivery of Judgment.
- De novo trial.
- Expunging of remarks.
- Judgment.
- Language of judgment.
- Murder.
- Murder case.
- Nature of.
- Non-compliance.
- Reference.
- Remand.
- Revision.
- Scope.
- Trial by Jury.
- Withdrawal of complaint.

S. 367.

See also (i) Cr. P. C., 1898, Ss. 16, 253, 258, 265 (2), 290, 297, 366, 424, 561-A.
(ii) Penal Code, 1860, Ss. 302, 426.

S. 367—Appellate judgment, contents of.

Appeal—Dismissal of appeal under S. 476-B with remark that prosecution was not necessary : *Held*, judgment was not according to law as provisions of S. 367 were not complied with. *Nitya Gopal Roy v. Nani Gopal*.

32 Cr. L. J. 1045 :
133 I. C. 672 : 35 C. W. N. 660 :
I. R. 1931 Cal. 736 : A. I. R. 1931 Cal. 454.

S. 367—Appellate judgment, contents of—Court, duty of.

An appellate judgment must be self-contained document and cannot be read in connection with, and as supplementary to, the judgment of the Trial Court. It must indicate that the Court has applied its mind to the case advanced by the prosecution against each of the accused and to the defence set up by him. *Solhu v. Kishna Ram*.

25 Cr. L. J. 113 :
76 I. C. 177 : A. I. R. 1924 Lah. 660.

S. 367—Appellate judgment, contents of—Cursory judgment—Illegality.

Judgment of an Appellate Court ought to contain particulars so as to satisfy the revisional Court that the case has been examined from every aspect. Where an Appellate Court dismisses an appeal saying merely that it was satisfied after examining the evidence that the appellant was guilty, its judgment, though not illegal under S. 367, is most improper. *Shanker v. Emperor*.

27 Cr. L. J. 449 :
93 I. C. 241 : 24 A. L. J. 318 :
A. I. R. 1926 All. 318.

Cr. P. CODE (1898), S. 367

S. 367—Appellate judgment, contents of—Evidence, discussion of, necessity of.

Where a District Magistrate on appeal made no attempt to discuss the evidence given for the prosecution and the defence and merely said that a detailed judgment had been recorded by the Trial Court and that nothing that had been urged in appeal affected the reasons given for the conviction : *Held*, that the judgment was not in accordance with law, as it did not comply with the requirements of S. 367, Cr. P. C. *Sheo Narayan Raut v. Emperor*.

18 Cr. L. J. 994 :
42 I. C. 722 : 1 P. L. W. 673 :
A. I. R. 1917 Pat. 592.

S. 367—Appellate judgment—Contents of.

No judgment of a Court, other than a High Court, which purports to dispose of an appeal under S. 424, Cr. P. C., is a legal judgment unless it contains at least (1) the point or points for determination raised by the memorandum of appeal, (2) the decision thereon and (3) the reasons for the decision. Therefore, the following judgment of an Appellate Court was held to be no judgment in law. "There appears no sufficient reason to doubt the evidence for the prosecution. The sentence is not heavy. The appeal is dismissed." *Jairam v. Emperor*.

13 Cr. L. J. 559 :
15 I. C. 975 : 8 N. L. R. 84.

S. 367—Appellate judgment, contents of.

Reasons for the decision should be given by an Appellate Court in its judgment in order that the Superior Court may at once know the facts found and the reasons therefor without reference to the record and satisfy itself that the lower Court has done its duty by an honest and careful consideration of the case. There must be sufficient material in the appellate judgment itself to show that the appeal has been properly tried and the judgment or order must bear marks of such intelligent appreciation on the part of the Appellate Court of the necessary facts and material as would warrant the Superior Court to infer that the conclusions were properly arrived at by the lower Appellate Court. *Maroti v. Kasabai*.

27 Cr. L. J. 1404 :
98 I. C. 716 : A. I. R. 1927 Nag. 88.

S. 367—Appellate judgment—Contents of.

The judgment of the Court of Appeal in a criminal case must comply with the provisions of S. 367, otherwise the aggrieved person can justly take exception to the judgment and ask for its reversal. *Aghari Dutta v. Emperor*.

32 Cr. L. J. 1197 :
134 I. C. 619 : 12 P. L. T. 601 :
11 Pat. 143 : I. R. 1931 Pat. 475 :
A. I. R. 1931 Pat. 379.

S. 367—Appellate judgment, contents of.

Where a Magistrate does not dismiss a criminal appeal summarily but gives a hearing to the Pleaders of the parties and writes a judgment in which all he says is that he is satisfied that the judgment of the Trial Court is sub-

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Under S. 362 it is the duty of the Presidency Magistrate to keep a record of the evidence in a case in which the sentence inflicted upon the accused exceeds six months. Even in cases falling under Sub-s. (4) of S. 362, the discretion which is allowed to a Presidency Magistrate not to record any evidence, should be exercised reasonably. *Mohammed Roshan v. Emperor*.

26 Cr. L. J. 454 :
85 I. C. 134 : 26 Bom. L. R. 1232 :
A. I. R. 1925 Bom. 147.

—Ss. 362, 537—Recording evidence—Form.

Where in a case falling under S. 362 the Magistrate recorded the evidence in the form of an indirect narration: *Held*, that it was a irregularity covered by S. 537 and did not vitiate the trial, where no failure of justice was occasioned thereby. *In re : Ghulab Chand*.

18 Cr. L. J. 336 :
38 I. C. 448 : A. I. R. 1918 Mad. 1197.

—S. 362—Recording of evidence—Non-appealable cases—Presidency Magistrate, duty of.

Under S. 362 it is not necessary for a Presidency Magistrate to record evidence in cases which are not appealable, and as long as the case falls within the cases excepted under S. 362 (4), the Magistrate is not bound to record the evidence, and the High Court has no jurisdiction to require him to do what the Statute says it is not necessary for him to do. *P. X. D'Souza v. Emperor*.

33 Cr. L. J. 404 :
137 I. C. 188 : 34 Bom. L. R. 286 :
56 Bom. 200 : I. R. 1922 Bom. 236 :
A. I. R. 1932 Bom. 180.

—S. 362—Recording of evidence.

Previous convictions of accused—Duty of prosecution to intimate to Magistrate to record evidence in such cases pointed out. *Emperor v. Ahmad Ebrahim*.

36 Cr. L. J. 527 :
154 I. C. 577 : 36 Bom. L. R. 1126 :
7 R. B. 346 : A. I. R. 1935 Bom. 37.

—S. 362 (4) — Recording of evidence—Summons cases.

The effect of S. 488, Sub-s. (6) and S. 362, Sub-s. (4) read together is that in a summons case tried by a Presidency Magistrate, it is not necessary to record the evidence. *In re : Chhagan Hargovan*.

33 Cr. L. J. 461 :
137 I. C. 27 : 34 Bom. L. R. 276 :
I. R. 1932 Bom. 242 : A. I. R. 1932 Bom. 179.

—S. 362 — Recording of evidence by a Presidency Magistrate.

A Presidency Magistrate is bound to record evidence only in cases coming under S. 362. He is not bound to record evidence in any summons cases or warrant cases or cases in which inquiries have to be made as in summons cases or warrant cases, except where he may impose a fine exceeding two hundred rupees or imprisonment for a term exceeding six months. It is, however, desirable that he should keep some record of the statements made by witnesses or that his judgment should indicate what those statements are, so that the High Court as a Court of Revision may

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judge of the propriety or legality of the order passed by him. *Shaik Babu v. Emperor*.

4 Cr. L. J. 368 :
4 C. L. J. 408 : I. L. R. 33 Cal. 1036.

—S. 363 — Appellate Court — Estimate — Evidence.

Where the evidence is all oral and its credibility is a mere matter of opinion, the opinion of the Court which heard the witnesses, must be treated as almost conclusive. In such a case, the Court of Appeal should not adopt the view adverse to the accused, and believe the evidence as to his guilt, which the lower Court has disbelieved, and take upon itself to set aside the verdict of acquittal. The indications of mistake must be obvious or the evidence too strong to be rejected, before the Court should interfere. *Emperor v. Bishen Singh*.

15 Cr. L. J. 203 :
22 I. C. 987 : 125 P. L. R. 1914 :
27 P. W. R. 1914 Cr :
A. I. R. 1914 Lah. 427.

—S. 363—Scope—Court's duty to record remarks regarding demeanour of witnesses explained —Recording remarks regarding substance of depositions.

Although S. 363 makes it incumbent on the Magistrate to record remarks, if any, as he may think material respecting the demeanour of a witness whilst under examination, it is quite a different thing to record a remark about the demeanour of the witness and to make or record a remark or opinion about the substance of the deposition of that witness. The parties are entitled to claim that unless expressly provided to the contrary by law, the Magistrate shall not prejudice their cases or form an opinion about the respective merits of their cases or about the deposition of the witnesses till they have been fully and finally presented to the Magistrate by Counsel, if any, in their concluding arguments and after the entire evidence has been recorded. Any opinion formed and expressed by the Magistrate at an earlier stage of the case is bound to be prejudicial to the party concerned. Proceedings under S. 476, Cr. P. C. when they relate to the merits of the statements made in Court by a witness if started before the close of the case, are calculated to seriously affect the case of the party who called him, as they are bound to frighten the remaining witnesses who must assume them as an indication of the treatment that they themselves are likely to receive if they make a similar statement in Court. *Sikandar Lal Pari v. Emperor*.

30 Cr. L. J. 129 :
113 I. C. 321 : I. R. 1929 Lah. 163 :
10 Lah. 778 : 31 P. L. R. 87 :
A. I. R. 1928 Lah. 975.

—S. 364.

See also (i) Confession.

(ii) Cr. P. C., 1898, Ss. 133,
164, 260, 342, 349, 533.

(iii) Criminal trial.

—S. 364 (1)—Applicability to summary trials—Record of statements in English at close of prosecution case—Sufficiency.

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———Ss. 367, 421—*Appellate judgment of—Summary dismissal.*

A Magistrate dismissing an appeal summarily under S. 421 is not bound to write a judgment as defined in S. 367 of the Code. *Kundan v. Emperor.*

15 Cr. L. J. 512 :

24 I. C. 600 : 12 A. L. J. 851 :

36 All. 496 : A. I. R. 1914 All. 311.

———Ss. 367, 421—*Appellate judgment—Summary dismissal of appeal—Duty of Magistrate to record reasons.*

Though under the Cr. P. C. it is not necessary to deliver a formal judgment when an appeal is summarily dismissed under S. 421 of the Code, a Magistrate who summarily dismisses an appeal ought, save in very exceptional cases, to give some reasons for his decision which will show that he had really considered the points raised by the appellant; if no reasons are given and the High Court is not satisfied in revision that the Magistrate has properly applied his mind to the case and the case will be remanded for further hearing. *Thakur Sahu v. Emperor.*

31 Cr. L. J. 760 :

125 I. C. 121 : 11 P. L. T. 242 :

A. I. R. 1930 Pat. 331.

———Ss. 367, 422—*Appellate judgment, contents of.*

A judgment of an Appellate Court other than a High Court, must comply with the provisions of S. 367, that is to say, it must contain the point or points for determination and the decision thereon and the reasons for the decision. *Dwarka v. Emperor.*

27 Cr. L. J. 343 :

92 I. C. 855 : 20 S. L. R. 82 :

A. I. R. 1926 Sind 275.

———Ss. 367, 424—*Appellate judgment contents of—Case of unlawful assembly and theft.*

S. 424 read with S. 367 of the Cr. P. C., prescribes that a judgment of an Appellate Court shall, among other things, contain the point or points for determination, the decision thereon, and the reasons for the decision. In a case under S. 379 of the I. P. C., the lower Appellate Court should find whether there was any dishonest intention on the part of the accused, especially when the accused puts forward a *bona fide* claim of right. In a case under S. 143 of the I. P. C. the judgment of the lower Appellate Court should contain, as one of the points for determination, a statement as to the presence of the conditions which constitute the unlawful assembly in the particular case, and the decision thereon bearing in mind the provisions of S. 141, I. P. C. *Ram Lal Singh v. Hari Charan Ahir.*

11 Cr. L. J. 348 :

5 I. C. 999 : 37 Cal. 194 :

11 C. L. J. 410.

———Ss. 367, 424—*Appellate judgment, contents of—Finding, definite, necessity of.*

A Court of appeal dismissed a criminal appeal with the observation that the evidence for the prosecution was, on the whole, stronger and that the story of the prosecution as regards probability was far more likely than the story set up by the defence : *Held*, that the opinion expressed by the Court was not sufficient for a

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conviction in a criminal case and that unless the Court could come to some more definite opinion regarding the guilt of the accused, the latter ought to be acquitted. *Kobbat Ali v. Emperor.*

18 Cr. L. J. 698 :

40 I. C. 698 : 21 C. W. N. 550.

A. I. R. 1917 Cal. 792.

———Ss. 367, 424—*Appellate judgment, contents of—Improper judgment—Interference.*

A judgment of an Appellate Court which does not set out or disliss the evidence on which the conclusions are based, is not a proper judgment and is liable to be set aside by the High Court in revision. *Dalip Singh v. Emperor.*

29 Cr. L. J. 1031 :

112 I. C. 359 : 10 L. L. J. 317.

———Ss. 367, 424—*Appellate judgment, contents of.*

It is the duty of the Appellate Court not merely to consider whether there are reasons for differing from the judgment of the trial Court, but to apply its mind afresh to the evidence and to form its own conclusion and to embody its conclusion and the reasons on which they are based, in a considered judgment which will, if necessary, bear the scrutiny of the High Court. Where the judgment does not set forth the points for determination, the decision thereon and the reasons for these decisions it does not comply with the provisions of S. 367, read with S. 424, Cr. P. C. *Kali Charan Som v. Priya Nath Das.*

39 Cr. L. J. 791 (b) :

176 I. C. 677 : 11 R. C. 150 :

A. I. R. 1938 Cal. 522.

———Ss. 367, 424—*Appellate judgment, contents of—Joint trial—Appellate Court, duty of.*

Where the law allows an appeal, the appellant is entitled to have from the Court of Appeal that has to deal with it, an explicit opinion on the question of fact involved in the case, and the Court of Appeal should take its own view of the evidence after perusing the record. Its judgment should be such that the High Court, as a Court of Revision, might, on looking into the judgment be in a position to judge for itself what the case is and how far the Court of Appeal has considered the evidence as bearing on the guilt or innocence of the individual accused, before it affirmed the judgment of the Trial Court. In the case of a joint trial, the judgment of an Appellate Court, dealing with the case of several accused, should show on the face of it that the case of each accused has been taken into consideration, and should state reasons, as far as may be necessary, to show that the Court has devoted judicial attention to the case of each accused. *Inatullah Sarkar v. Emperor.*

25 Cr. L. J. 1044 :

81 I. C. 820 : 39 C. L. J. 117 :

A. I. R. 1924 Cal. 618.

———Ss. 367, 424—*Appellate judgment, contents of—Judgment not dealing with facts or evidence, legality of.*

By virtue of S. 424, Cr. P. C., the judgment of an Appellate Court must conform to the provisions of S. 367 of the Code. A judgment of

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understands, and he is at liberty to explain or add to his answers. *Emperor v. Nani Mandal*. 26 Cr. L. J. 761 :

86 I. C. 345 : 41 C. L. J. 50 : 52 Cal. 403 :
A. I. R. 1925 Cal. 575.

-----S. 364—*Examination of accused—Record not made, effect of—Breach—Irregularity.*

At the close of the prosecution case in a Sessions trial, the Judge made the following note :—"The statements of the accused were read out to each of them and they were asked if they would add anything here. They stated that they would not, except C. What he stated here is recorded by the Court." The Court then examined a Court witness and further examined the accused and made the following note :—"After the conclusion of the examination of the witness the Court examined the accused again. They stated that they had nothing further to say and declined to examine any witness in defence." No record was made of the examination of the accused except in the case of the examination of C : *Held*, that a record of the examination of the accused under the provisions of S. 364 was obligatory and that the absence of it had caused serious prejudice to the accused and that, therefore, the trial was vitiated and must be set aside. *Sarat Chandru Kar v. Emperor*.

26 Cr. L. J. 1244 :
88 I. C. 860 : 52 Cal. 446 :
A. I. R. 1925 Cal. 821.

-----S. 364—*Examination of accused—Right of accused.*

Where a person accused of murder makes a confession, everything that he wishes to say must be recorded even though he may make a long and rambling statement. *Mata Din v. Emperor*.

32 Cr. L. J. 854 :
132 I. C. 228 : 8 O. W. N. 228 :
I. R. 1930 Oudh 244 :
A. I. R. 1931 Oudh 166.

-----S. 364—*Compliance, proof of.*

When there is no signature of Magistrate nor of accused, S. 364 is not complied with, but the fact that it had been duly made can be proved by further evidence under S. 533. *Mohammad Ali v. Emperor*.

35 Cr. L. J. 385 :
147 I. C. 390 : 1933 A. L. J. 1551 :
6 R. A. 467 : 56 All. 302 :
A. I. R. 1934 All. 81.

-----S. 364—*Non-compliance—Effect.*

Defect of not strictly complying with provisions of S. 364 is curable by examination of the Magistrate recording the confession. *Bala v. Emperor*.

35 Cr. L. J. 1382 :
151 I. C. 745 : 7 R. L. 189 :
A. I. R. 1934 Lah. 18.

-----S. 364—*Non-compliance—Effect.*

The provisions of S. 364 are mandatory and an omission to comply with those provisions vitiates a trial. *Meser Bepari v. Emperor*.

26 Cr. L. J. 1032 :
87 I. C. 920 : 29 C. W. N. 939 :
A. I. R. 1926 Cal. 430.

-----S. 364—*Object of.*

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S. 364 authorises a Magistrate to put questions to accused to enable him to explain any evidence that may have been produced against him during the enquiry or the trial. *Pahlwan v. Emperor*.

31 Cr. L. J. 533 :
123 I. C. 540 : A. I. R. 1930 Lah. 454.

-----S. 364—*Procedure—Confession, mode of recording—Release of accused from Police custody.*

Before recording confession accused should be sent to jail custody and removed from police influence. He should also not be sent back to Police custody after confession. *Bhagwan Din v. Emperor*.

35 Cr. L. J. 915 :
149 I. C. 195 : 11 O. W. N. 444 :
6 R. O. 529 : A. I. R. 1934 Oudh 151.

-----S. 364 (2)—*Refusal to sign—Accused person refusing to sign record—Effect.*

An accused person who refuses to sign the record of his examination by the Court does not commit an offence punishable under S. 180, Penal Code. *Emperor v. Ba Tin*.

4 Cr. L. J. 205 :
3 L. B. R. 199 : 12 Bur. L. R. 315.

-----S. 364—*Scope.*

Where an incomplete *chalan* is sent up and evidence available is recorded by the Magistrate, the statement made by the accused is statement under S. 364 and not under S. 164. *Bhai Khan v. Emperor*.

23 Cr. L. J. 617 :
68 I. C. 841 : 4 L. L. J. 225 :
A. I. R. 1922 Lah. 189.

-----S. 364—*Scope—Statement of accused.*

Statement of accused under S. 202 is not one under S. 364 or S. 164. *Sat Narain Tewari v. Emperor*.

3 Cr. L. J. 138 :
10 C. W. N. 51 : I. L. R. 32 Cal. 1085.

-----S. 364—*Statement of accused before Magistrate.*

Statement beginning by saying that he was guilty—Body of statement showing accused meant not guilty : *Held*, statement was no confession but assertion of innocence. *Hem Chandra Chongdar v. Emperor*.

37 Cr. L. J. 69 :
159 I. C. 31 : 1935 C. L. J. 1073 :
40 C. W. N. 64 : 8 R. C. 296 :
A. I. R. 1935 Cal. 681.

-----S. 364—*Statement of accused, value of.*

Statement of one accused capable of being heard by others—Retraction—Accused produced from and returned to Police custody—*Held*, no reliance can be placed on confession. *Bhagwan Din v. Emperor*.

35 Cr. L. J. 915 :
149 I. C. 195 : 11 O. W. N. 444 :
6 R. O. 529 : A. I. R. 1934 Oudh 151.

-----S. 366.

See also Cr. P. C., 1898, Ss. 258, 537.

-----Ss. 366, 350—*Delivering Judgment, written by predecessor, legality of.*

Though a Magistrate is authorised to try a case on evidence recorded by his predecessor, there is no authority for the proposition that a Magistrate who succeeds his predecessor can deliver a judgment which has been

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points arising in the case. Where a Sessions Judge dismissed an appeal preferred by thirteen accused save and except in respect of one of the appellant, all of whom were convicted by the Magistrate under S. 147 and S. 342 and some also under S. 352 and six also under S. 438, Penal Code, the High Court set aside the appellate judgment and directed the re-hearing of the appeal by the same Sessions Judge, on the ground that though the High Court were convinced that the Sessions Judge had given the hearing of the appeal his full consideration and must have taken very considerable care with regard to the case against each of the accused, yet he did not give sufficient materials in his judgment to enable the High Court to come to a decision upon the points that arose in the case. *Arindra Bajbanshi v. Emperor*. 18 Cr. L. J. 294 : 38 I. C. 326 : 20 C. W. N. 1296 : A. I. R. 1917 Cal. 285.

—Ss. 367, 424, 537—Appellate judgment, contents of.

Judgments of the Judges of the Court of the Judicial Commissioner of Sind sitting as Sessions Judges for the District of Karachi, should follow as closely as possible the provisions of Ss. 367 and 424, Cr. P. C., but an omission to do so does not vitiate and nullify the whole proceeding before the Sessions Court. Such an error falls within the scope of S. 537 of the said Code. *Fakir Bux v. Emperor*.

27 Cr. L. J. 833 :
95 I. C. 753 : A. I. R. 1926 Sind 244.

—Ss. 367, 427—Appellate judgment, contents of.

The law requires an appellate Court to write a reasoned and considered judgment, setting out the facts and points arising for determination and stating the reasons and grounds for its decision. A judgment which omits to do this, the Judge in appeal contenting himself with saying that he adopts the reasons given by the trial Court to support the grounds of his decision for maintaining the conviction of an accused person, is erroneous in form, as such a judgment cannot be read as supplementary or additional to, or to be explained and deciphered by the aid of the judgement of the trial Court. *Darogi Chamar v. Emperor*.

20 Cr. L. J. 645 :
52 I. C. 421 : A. I. R. 1919 Pat. 529.

—Ss. 367, 439—Appellate judgment not in accordance with law—Remand—Interference in revision—Right of accused to audience.

If an Appellate Court does not write a judgment in accordance with S. 367, the High Court is not bound to send the case back to the Appellate Court for a re-hearing; it can itself hear the appeal and dispose of it upon an application for revision under S. 439. In such a case, the accused would be deprived of what he calls his right of revision but he cannot complain for, as a matter of fact, there is no such right. Interference in revision is purely discretionary; it is not even necessary to hear the accused. The fact that he is invariably heard, and the

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fact that the discretion conferred by S. 439 is exercised in a judicial manner, does not make any difference to the fact that the accused has no right to demand any of these things. All that he is entitled to is that a second Court of competent jurisdiction should hear his entire case as an appeal. If he gets that, he has obtained all that the law allows him, and when the High Court hears his appeals in place of a lower Court, he has obtained a good deal more than he has any right to claim. *Bapurao v. Emperor*.

39 Cr. L. J. 349 :
173 I. C. 639 : 10 R. N. 316 :
I. L. R. 1937 Nag. 38 :
A. I. R. 1936 Nag. 160.

—S. 367—Applicability—Appeals against orders directing payment of compensation—Judgment, contents of.

The provisions of S. 367 apply to appeals against an order directing a complainant to pay compensation, and where an appellate judgment in such a case omits to set forth the points for determination, the objections of the appellant, the decision thereon, and the reasons for the decision, the judgment is not in accordance with law, and is liable to be set aside. *Deonarain Mahlo v. Chhaloo Raut*.

23 Cr. L. J. 261 :
66 I. C. 325 : 3 P. L. T. 203 :
A. I. R. 1922 Pat. 157.

—S. 367—Applicability.

S. 367 is not applicable to an order passed under S. 195, as S. 376 relates to such judgments as are referred to in S. 366 that is to say, to judgment in trials. *In re : Nagappa Satyappa*.

1 Cr. L. J. 969 :
6 Bom. L. R. 897.

—S. 367—Applicability, to appeals disposed of summarily.

S. 367 has no application to appeals and specifically to an appeal disposed of summarily whether by a District Magistrate or a Sessions Judge or a High Court. *Jodha v. King-Emperor*.

41 Cr. L. J. 711 :
189 I. C. 83 : 1940 O. L. R. 408 :
1940 O. W. N. 594 : 13 R. O. 50 :
A. I. R. 1940 Oudh 369.

—S. 367—Construction.

The expression "heads of charge" in S. 367 of the Cr. P. C., must be construed reasonably, and must be held to include such statement on the part of the Sessions Judge as will enable the Appellate Court to decide whether the evidence has been properly laid before the Jury or whether there has been any misdirection in the charge. *In re : Shambhulal*.

8 Cr. L. J. 35 :
10 Bom. L. R. 565.

—Ss. 367, 369 537—Delivery of judgment—Pronouncing judgment before writing it out—Illegality—Contents of judgment.

The provisions of S. 367 are mandatory and a judgment must contain the decision and the reasons for the decision and it must be dated and signed by the presiding officer in open Court at the time of pronouncing it. Where

Cr. P. CODE (1898), S. 250**—S. 250—Complaint—Meaning of.**

A statement made by a person at a Police enquiry, which results in the institution of criminal proceedings against another, is not a 'complaint' made by him within the meaning of S. 250, when the case is not instituted either on his complaint or on information given by him but as result of enquiry by the Police. *Sarjug Prasad Singh v. Emperor.*

17 Cr. L. J. 336 :
35 I. C. 512 : 1 P. L. J. 106 :
A. I. R. 1916 Pat. 211.

—S. 250—Complaint to Village Magistrate—Discharge of accused—Compensation, whether can be awarded.

Compensation can be awarded to an accused under S. 250, even where the case against him originated in a complaint to a Village Magistrate. *Thonokadavali Awalla v. Aumian Mannil Kutiali.*

17 Cr. L. J. 503 :
36 I. C. 471 : 4 L. W. 73 :
A. I. R. 1917 Mad. 967.

—S. 250—Complaint to Village Magistrate—Liability for—Report to Police Officer—Charge—Compensation, right to.

Where a complaint of theft was made to the Village Magistrate who communicated the information to the nearest Police station, and the Police in due course, charged the case: *Held*, that the case must be regarded as instituted upon information given to a Police Officer within the meaning of S. 250 and the Magistrate was competent to pass an order for compensation. *Murudai Veeran v. Pichan Ambalagaran.*

16 Cr. L. J. 248 :
28 I. C. 104 : A. I. R. 1915 Mad. 1076.

—S. 250—Complaint, vexatious, to Village Magistrate—Compensation.

A person who makes a complaint to a Village Magistrate of a bailable offence, knowing that the latter must, in the ordinary course of his duty, report the substance of the complaint to the Police, gives information to a Police Officer within the meaning of S. 250 just as effectively as if he went in person to the Police Station, and where the complaint is ultimately found to be frivolous or vexatious, an order directing the complainant to pay compensation is perfectly legal. *Kaliaperumal Naidu v. Bavaji Sahib.*

24 Cr. L. J. 717 :
73 I. C. 941 : 1923 M. W. N. 421 :
18 L. W. 32 : 45 M. L. J. 255 :
A. I. R. 1924 Mad. 91.

—S. 250—Composition of case—Compensation—Whether competent.

When a criminal case is compounded, a Magistrate cannot legally award compensation to the accused under S. 250. To justify the award of compensation, the Magistrate himself must acquit the accused under S. 245 or S. 247. *Emperor v. Sundar Singh.*

11 Cr. L. J. 638 :
8 I. C. 387 : 30 P. R. 1910 Cr.

—S. 250—Court competent to award compensation.

A Magistrate before whom a false charge is brought, is competent to order compensation

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to be paid to the accused and also to direct the prosecution of the complainant under S. 476. *Allah Bux v. Emperor.*

18 Cr. L. J. 414 :
38 I. C. 974 : 10 S. L. R. 162 :
A. I. R. 1917 Sind 19.

—S. 250—Court, competent to award compensation.

Magistrate can pass an order under S. 250, if he considers that the case is frivolous and vexatious. The Magistrate by whom the case is heard, need not be the same Magistrate before whom the case is instituted. *Painda v. Gulab Khatun.*

40 Cr. L. J. 515 :
181 I. C. 49 : I. L. R. 1938 Lah. 619 :
41 P. L. R. 221 : 11 R. L. 734 :
A. I. R. 1939 Lah. 122.

—S. 250—Court competent to pass order.

In enacting S. 250, the Legislature never intended that one Magistrate should deal with the case and make the order calling upon the complainant to show cause and that another Magistrate may make the order for compensation. Therefore, where it appears, at the time when a Rule granted against an order for compensation is made absolute by the High Court, that the Magistrate who made the order has been transferred, the case cannot be sent back for re-hearing to his successor. *Rajaram Manjhi v. Panchanan Ghosh.*

31 Cr. L. J. 828 :
125 I. C. 294 : 33 C. W. N. 861 :
A. I. R. 1929 Cal. 762.

—S. 250—Court competent to pass order.

In Sub-s. (1) of S. 250 at least, the only Magistrate who may call upon the complainant to show cause is the Magistrate who hears the case and who discharges or acquits all or any of the accused. The Magistrate, in Sub-s. (2) to S. 250, refers to the Magistrate in Sub-s. (1) and the definite article "the" does not mean the Magistrate who succeeds the Magistrate who heard the case or any other Magistrate. Consequently, where a Magistrate who has called upon the complainant to show cause why he should not pay compensation for having made a false and frivolous or vexatious complaint, has retired in the course of proceedings before the passing of the final orders, the notice upon the complainant should be discharged. *Emperor v. Muhammad Alan.*

41 Cr. L. J. 53 :
184 I. C. 595 : 1940 Kar. 119 :
12 R. S. 127 : A. I. R. 1939 Sind 321.

—S. 250—Discretion.

Power under S. 250 is to be exercised in fit and proper cases. *Saleh v. Emperor.*

33 Cr. L. J. 644 :
138 I. C. 635 : 26 S. L. R. 29 :
I. R. 1932 Sind 85 :
A. I. R. 1932 Sind 150.

—S. 250—Duty of Court.

Before an order under S. 250 is passed, it is incumbent on the court to record a definite finding that the accusation against

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may have to consider facts in relation to a particular individual who is not an accused or witness in order to weigh fairly the evidence against the accused or the evidence given by witnesses, but a Magistrate is not justified in condemning any person without his being given an opportunity of being heard. *Kartarchand Shankerdas v. Emperor*.

39 Cr. L. J. 524 :
175 I. C. 57 : 10 R. S. 279 :
A. I. R. 1938 Sind 103.

———**Ss. 367, 561-A—Expunging of remarks—Judge, when entitled to pass remarks in judgment on conduct of party or witness—Expunging of remarks from judgment—Power of High Court.**

A Magistrate is not bound to confine himself merely to a finding that the accused is not proved guilty. Such a verdict often leaves the accused with a stain on his character in the public estimation though not in law and it is the duty of a Magistrate if he considers that the prosecution case is not only not proved but was deliberately false and concocted to give such a finding in favour of the accused so that the accused should leave the Court without a stain on his character. In arriving at the conclusion that a prosecution case is false and fabricated, the Judge is at liberty to make remarks on the character or conduct of certain witnesses who have appeared to support that case for otherwise he cannot arrive at a finding that the documents on which the prosecution rely are false and fabricated. When he has done so, the remark that the conduct of persons doing such a thing is criminal or contemptible follows and is justified on the findings arrived at. The High Court of course can interfere under S. 561-A and expunge remarks from judgment in cases where remarks are made about a person who is not a party to the proceedings or not a witness in the case. The High Court can also interfere when remarks are made about a party to the proceedings or a witness to the case which are not justified by the findings or when it can be shown that the judgment is due to bias or perverse. *Sheikh Karamat Ullah v. Emperor*.

41 Cr. L. J. 380 :
186 I. C. 799 : 12 R. L. 431 :
A. I. R. 1940 Lah. 42.

———**S. 467—Judgment—Bench of Honorary Magistrates—President in minority—Bench judgment written by President—Judgment, whether in accordance with law.**

In a case where the President of a Bench of Honorary Magistrates is in a minority as to conviction or acquittal, the judgment should be written by some member of the majority since, otherwise, there will be a conviction based on an acquitting judgment, without any reasons for conviction which, under the provisions of the Cr. P. C., the Bench is bound to set out. *Boddipati Lalamma v. Emperor*.

29 Cr. L. J. 207 :
106 I. C. 799 : 1928 M. W. N. 31 :
27 L. W. 239 : 51 Mad. 338 :
54 M. L. J. 769 :
A. I. R. 1928 Mad. 197.

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———**S. 367—Judgment, change in, before pronouncement.**

A judgment, though written and signed, is inoperative until it is pronounced, inasmuch as before pronouncement, it must be taken merely as an expression of opinion. Therefore, a Court can change its opinion before it has pronounced its judgment; although the judgment has been written and signed. *Ramdhir Rai v. Emperor*.

14 Cr. L. J. 562 :
21 I. C. 162 : 11 A. L. J. 745.

———**S. 367—Judgment, contents of.**

A judgment has not to be a resume of the entire evidence or a discussion of the relevancy of all the evidence. A Court is entitled to select such evidence as it considers important and sufficient to prove the point for consideration. *Jhabwala v. Emperor*.

34 Cr. L. J. 967 :
145 I. C. 481 : 6 R. A. 65 :
1933 A. L. J. 799 :
A. I. R. 1933 All. 690.

———**S. 367—Judgment, contents.**

A judgment which merely consists of a few notes on the arguments of the Counsel and a somewhat vague conclusion is not a judgment as it does not comply with the requirements of S. 367. *Mahomed Bakhsh v. Emperor*.

32 Cr. L. J. 252 :
129 I. C. 223 : 31 P. L. R. 1017 :
I. R. 1931 Lah. 159 :
A. I. R. 1930 Lah. 1054.

———**S. 367—Judgment, contents of—Failure to comply with provisions of section, effect of.**

An accused person is entitled to have an independent judgment of the trying Court, and such judgment must be prepared in accordance with, and contain the particulars required by S. 367, otherwise it is no judgment at all. Where a Second Class Deputy Magistrate, thinking that a severer punishment should be inflicted on the accused than what he was authorised to award under the Code, recorded his full opinion and forwarded the proceedings under S. 349 to the Sub-Divisional Magistrate, and the latter convicted the accused and wrote the following judgment:—"I have perused this judgment. I agree with the findings arrived at by the learned trying Magistrate and convict all the eleven accused persons for being members of an unlawful assembly with the common object of committing theft as stated in the charge." Held, that upon the test laid down by S. 367, this was not a judgment at all. *Thakur Singh v. Emperor*.

20 Cr. L. J. 444 :
51 I. C. 268 : A. I. R. 1919 Pat. 290.

———**S. 367—Judgment, contents of—Failure to consider essential points.**

Accused was convicted of offences under Ss. 426 and 447 of the Penal Code. It did not appear from the judgment that the Magistrate had considered the knowledge or the intention with which the accused had done the act complained of as constituting mischief, or that he had come to any conclusion as to whether the accused entered into or upon

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stantially right, the judgment is not in accordance with the provisions contained in S. 367, and is liable to be set aside by the High Court. *Baishnav Charan Das v. Emperor*.

24 Cr. L. J. 311 :
72 I. C. 71.

—S. 367—Appellate judgment—Duty of Judge.

Although the Judge of a Criminal Appellate Court is not required to write a long and elaborate judgment in an appeal heard by him, yet it is his duty not only to examine the evidence but also to write a judgment affording a clear indication that the appeal has been properly tried and that the points urged for the appellant have been duly considered and decided. *Rahman Ali v. Emperor*.

25 Cr. L. J. 246 :
76 I. C. 710 : A. I. R. 1923 Lah. 344.

—S. 367—Appellate judgment, essentials of—When not in accordance with law.

A judgment of an Appellate Court which contains neither the facts of the case nor the points for determination or the discussion of those points, is not a judgment in accordance with law. *Kali Charan Das v. Geli Bewa*.

22 Cr. L. J. 640 :
63 I. C. 336 : 2 P. L. T. 228 :
A. I. R. 1921 J. 23.

—S. 367—Appellate judgment—Essentials of.

An appellate judgment must satisfy the requirements of S. 367, the provisions of which are applicable to the judgments of an Appellate Court. A judgment, therefore, passed in two words 'appeal rejected' is not according to law. An appellate judgment must contain the point or points for determination, the decision thereon and the reasons for the decision. The Appellate Court is not required to write a long and elaborate judgment but it is clearly its duty not only to examine the evidence but also to write a judgment affording a clear indication that the appeal has been properly tried and that the points urged by the appellant have been duly considered and decided. An Appellate Court, which writes a judgment which the High Court is unable to follow without reference to the judgment of the trial Court, obviously fails in the discharge of the duty imposed upon it by the law. *Abdul Wahid v. Emperor*.

39 Cr. L. J. 337 :
173 I. C. 672 : 10 R. Pesh. 52 :
A. I. R. 1937 Pesh. 88.

—S. 367—Appellate judgment—Failure to discuss facts—Revision.

A judgment of an appellate Court which neither discusses the facts of the case nor disposes of the grounds of appeal is not in accordance with law and is liable to be set aside by the High Court in revision. *Hurmat Ali v. Emperor*.

27 Cr. L. J. 114 :
91 I. C. 690 : 1 L. Cas. 399.

—S. 367—Appellate judgment—Order acquitting meagre—Interference in revision.

The High Court should not interfere with an order of acquittal unless there has been a miscarriage of justice. Where, however, the

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judgment of a District Magistrate acquitting on appeal an accused person, was so meagre that it was impossible to form an opinion as to the merits of the case or to say whether there has been a miscarriage of justice or not, the High Court, on the application of the complainant, set aside the order of acquittal and directed the appeal to be re-heard. *Rupa Mandal v. Keshab Mandal*.

5 Cr. L. J. 349 :
5 C. L. J. 452.

—S. 367—Appellate judgment—Points for determination, reason for the decision.

Where the judgment of an Appellate Court does not comply with the provisions of S. 367 and omits to state the points for determination and the reasons for decision, the case should be returned for re-trial. *Surya v. Lachmi Narain*.

13 Cr. L. J. 48 :
13 I. C. 288.

—S. 367—Appellate judgment—Reasons for judgment.

In a case the Amildar Magistrate convicted the petitioners. In appeal, the District Magistrate upheld the conviction basing his judgment on the reasons given by the Magistrate in his judgment: *Held*, that, since, the District Magistrate had expressly adopted the reasons given by the Amildar Magistrate, there was sufficient compliance of the provisions of S. 367 of the Cr. P. C. *Muniga v. Narasimhanna*.

10 Cr. L. J. 268 :
12 M. C. C. R. 211.

—S. 367—Appellate judgment, requirements of.

Per *O. Sullivan, J.*—Where the reasons for decision in the judgment of the Appellate Court are not such as to enable a revisional Court acting under the provisions of Ss. 435 and 439, Cr. P. C., to form any conclusion as to the correctness, legality or propriety of the findings, the judgment is clearly defective and the appeal must be re-heard. *Abdul Karim Mahomed Saleh v. Emperor*.

41 Cr. L. J. 724 :
189 I. C. 226 : 13 R. S. 28 :
A. I. R. 1940 Sind 113.

—S. 367—Appellate judgment—When not legal.

The Appellate Magistrate having once passed an order for the evidence of certain witnesses being recorded by the trial Court, his decision of the appeal without that evidence being recorded held irregular. *Madho Singh v. Emperor*.

41 Cr. L. J. 725 :
189 I. C. 258 : 1940 O. L. R. 420 :
1940 O. W. N. 607 and 927 : 13 R. O. 92 :
A. I. R. 1940 Oudh 396.

—Ss. 367, 421—Appellate judgment—Appeal—Summary dismissal—Judgment—Appellate Court, duty of.

An Appellate Court is not required by law to write a judgment when dismissing an appeal summarily, but it is necessary that it should give reasons for dismissing the same. *Jagarnath Singh v. Emperor*.

25 Cr. L. J. 1237 :
82 I. C. 165 : A. I. R. 1925 Pat. 183.

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commence with a statement of the facts in respect of which the accused is charged and not with circumstances which might be held to provide a motive for the offence. *Bala v. Emperor*.

17 N. L. J. 274 : A. I. R. 1935 Nag. 81.

———S. 367—Judgment improper—Appeal—Procedure.

Where a judgment stated: "I have gone through the record. The conviction under S. 419, Penal Code, is sound. The fine inflicted of Rs. 30 only is very light. I see no reason to interfere and dismiss the appeal." : *Held*, that this was not a proper judgment and the case should either be remanded for re-trial or disposed of by the High Court. *Jodhi Ujjar Gond v. Emperor*.

35 Cr. L. J. 136 :

146 I. C. 447 : 6 R. N. 89 :

A. I. R. 1933 Nag. 328.

———S. 367—Judgment—Reasons.

Careful analysis and appraisement of evidence are essential. Personal views of Judge on particular section of the people should be avoided. *Ramdit v. Emperor*.

35 Cr. L. J. 919 :

149 I. C. 210 : 6 R. A. 872 :

A. I. R. 1934 All. 776.

———S. 367—Judgment, —Reasons.

Court passing lower sentence for murder must give reasons. *Mewa v. Emperor*.

36 Cr. L. J. 1001 :

156 I. C. 786 : 8 R. L. 24 :

A. I. R. 1935 Lah. 337.

———S. 367—Judgment of Sessions Judge, contents of.

It is neither convenient nor commendable for a Sessions Judge to embody his summing up to the assessors in his judgment. But his doing so does not make his judgment illegal or vitiate it so as to render it invalid. *Khudiram Bose v. Emperor*.

10 Cr. L. J. 325 :

3 I. C. 625 : 9 C. L. J. 55.

———S. 367—Judgment written by one and delivered by another Magistrate.

Judgment prepared after transfer and pronounced by successor is without jurisdiction and defect cannot be cured under S. 537. *Jhingur Raut v. Emperor*.

32 Cr. L. J. 1224 :

134 I. C. 625 : 12 P. L. T. 647 :

I. R. 1931 Pat. 481 : A. I. R. 1931 Pat. 386.

———Ss. 367, 537—Judgment, place of, in criminal trial—Non-compliance with provisions of S. 367, whether mere irregularity.

The delivery of judgment and the passing of sentence is an integral part of a criminal trial. It is not a mere formality and, consequently, where a judgment is signed and dated before delivery and is translated to the accused by the Court Interpreter, the Judge himself being absent, it amounts to a breach of the provisions of S. 367 and cannot be treated as a mere irregularity to be cured by S. 537 of the Code. *Rambit v. Emperor*.

24 Cr. L. J. 584 :

73 I. C. 328 : A. I. R. 1923 Rang. 44.

Cr. P. CODE (1898), S. 367**———Ss. 367, 424—Judgment perfunctory—Illegality.**

Where a District Magistrate disposes of an appeal against an order under S. 110, Cr. P. C., passed in a case in which 42 witnesses were examined for the prosecution and 106 for the defence, in a few lines, making only some general observations on the volume of evidence, the judgment is perfunctory and not in accordance with law and should be set aside. *Sonehri v. Emperor*.

23 Cr. L. J. 378 :

67 I. C. 202 : 19 A. L. J. 921.

———Ss. 367, 439—Judgment, contents of.

Where the judgment of a Magistrate makes no attempt to scrutinise the oral evidence of the complainant but summarily accepts that evidence, the judgment cannot be upheld in revision. *Pirbaw v. Baji*.

21 Cr. L. J. 140 :

54 I. C. 620 : A. I. R. 1919 Oudh 32.

———Ss. 367, 537—Judgment—Charge to Jury containing reasons—Omission to repeat reasons in subsequent order—Judgment, legality of—Omission to write regular judgment, effect of.

Where an accused person was tried under S. 395, Penal Code, by a Jury and in the same trial he was tried under S. 396, with the aid of the same Jurors as assessors, and the Sessions Judge after an elaborate charge to the Jury wrote a further order on the charge under S. 396 in which he stated that he agreed with the view of the Jury and found him guilty under S. 396 : *Held*, that the charge to the Jury together with the subsequent order constituted a good judgment in law and the conviction was not bad merely because, the Judge had not repeated the reasons for conviction in the subsequent order. The failure to write a regular judgment might be considered an error in procedure and is a mere irregularity cured by S. 537, Cr. P. C. *Bisheshwar v. Emperor*.

31 Cr. L. J. 599 :

123 I. C. 851 : 6 O. W. N. 1007 :

4 Luck. 721 : A. I. R. 1930 Oudh 57.

———Ss. 367, 537—Judgment, contents of—Omission to write proper judgment, whether vitiates conviction.

Where the judgment of an Appellate Court confirming a conviction ran as follows: "The lower Court's order contains full statement of facts and there is nothing for me to describe. The lower Court's appreciation of evidence in the case appears to me to be correct. The appellants' Pleaders' arguments were not convincing against the appellants' guilt. I do not, therefore, see any reason to interfere in the lower Court's judgment. Appeal dismissed : *Held*, that the judgment did not comply with the requirements of S. 367 and the conviction was vitiated by this irregularity in the circumstances of the case. *Shanmukh Basapa Dhamanji v. Emperor*.

31 Cr. L. J. 925 :

125 I. C. 710 : 32 Bom. L. R. 353 :

A. I. R. 1930 Bom. 163.

———Ss. 367, 537—Language of judgment.

Under S. 367 the judgment of a Criminal Court should be written in the language of the Court or in English. Where an Honorary Magistrate of Hazipur had written his judg-

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an Appellate Court which does not "discuss the evidence in the case and from which it is not possible to find out what the occurrence was which is dealt with in the judgment, is not a judgment which complies with the provision of S. 367, Cr. P. C., and must be set aside. *Gaharali v. Emperor*.

25 Cr. L. J. 901 :
81 I. C. 437 : A. I. R. 1925 Cal. 266.

———Ss. 367, 424—Appellate judgment, contents of.

The judgment of an Appellate Court must contain the point or points for determination, the decision thereon and the reasons for the decision. A judgment which is deficient in these points is illegal and cannot be allowed to stand. *Mangla Majhi v. Emperor*.

22 Cr. L. J. 656 :
63 I. C. 416 : 2 P. L. T. 616 :
A. I. R. 1921 Pat. 504.

———Ss. 367, 424—Appellate judgment, contents of.

This provision of S. 367, Cr. P. C., have been made applicable to appellate judgments by S. 424 of the Code, and it is the duty of an Appellate Court to decide the points raised in appeal and to write a judgment in accordance with law. *Bindra Ban v. Emperor*.

21 Cr. L. J. 223 :
54 I. C. 1007 : 2 U. P. L. R. Lah. 44 :
127 P. L. R. Lah. 1920 :
A. I. R. 1920 Lah. 335.

———Ss. 367, 424—Appellate judgment, contents of.

Though it is not necessary for an Appellate Court to write a long and elaborate judgment, it is clearly its duty not only to examine the evidence but also to write a judgment affording a clear indication that the appeal has been properly tried and that the points urged by the appellant have been duly considered and decided. An Appellate Court fails in the discharge of the duty imposed upon it by law if it writes a judgment which cannot be followed without reference to the judgment of the trial Court. *Qadir Bakhsh v. Emperor*.

29 Cr. L. J. 703 :
110 I. C. 449 : A. I. R. 1928 Lah. 863.

———Ss. 367, 424—Appellate judgment, contents of.

Where a Sessions Judge on appeal differed in opinion from the lower Court as regards the finding of the stolen property in the appellant's house and based the appellant's conviction upon that fact alone : *Held*, that the solitary remark : "I can see no reason to suspect the evidence as regards the finding of property;" did not, in the circumstances, appear to be a sufficient compliance with the provisions of Cr. P. C. as to what a judgment should contain. *Nga Po Han v. Emperor*.

14 Cr. L. J. 570 :
21 I. C. 170 : U. B. R. 1913 I. 169.

———Ss. 367, 424—Appellate judgment—Judgment of affirmance, contents of.

Where in the judgment of the 1st Court, evidence is set out at great length and discussed in detail and the reasons for be-

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lieving the prosecution evidence are fully explained, the judgment of the Court of Appeal, which confirms the judgment of the trial Court, does not become defective in law by reason of the fact that it does not set out again in detail the whole of the evidence and the reasons for believing the prosecution witnesses, if it appears from that judgment that the Appellate Court appreciated the points for its decision and considered the evidence and appreciated the arguments against the credibility of the prosecution witnesses and still believed them. *Kusthuddin Sarkar v. Emperor*.

20 Cr. L. J. 238 :
49 I. C. 862.

———Ss. 367, 424—Appellate judgment not giving points for determination or reasons, legality of.

A judgment of an Appellate Court which does not discuss the points urged in the memorandum of appeal and without giving any reasons, holds that a conviction is correct, is not a legal judgment under S. 424 read with S. 367. *Kalikram v. Emperor*.

29 Cr. L. J. 270 :
107 I. C. 665.

———Ss. 367, 424—Appellate judgment, requisites of.

The provisions of S. 424, read with S. 367, Cr. P. C., are imperative and should be complied with in such a manner as to indicate clearly that the evidence has been gone into and tested, extrinsically as well as intrinsically, and that the Appellate Court has arrived at an independent opinion for itself. Its judgment should not appear to be in the nature of a supplement to the judgment of the Trial Court, but should, without being a long and elaborate one, be adequate in itself to enable the High Court to dispose of a petition in revision without the necessity of going through the trial record. *Bagh v. Emperor*.

24 Cr. L. J. 920 :
75 I. C. 297 : 2 Bar. L. J. 101 :
1 Rang. 301 : A. I. R. 1923 Rang. 188.

———Ss. 367, 424—Appellate judgment—Several accused—Appellate Court, duty of.

Where there are several accused who have appealed, it must appear from the face of the judgment that the case against each of the accused has been taken into consideration and reasons should be given, as far as may be necessary, to show that the Appellate Court has devoted judicial attention to the case of each of the accused. *In re : Cherukath Mammad*.

16 Cr. L. J. 496 :
29 I. C. 336 : A. I. R. 1916 Mad. 1125.

———Ss. 367, 424, 439—Appellate judgment—Appeal—Judgment affirming conviction, form of.

A judgment of an Appellate Court affirming a conviction by the lower Court need not restate or state in different words the evidence or the conclusions at which the Court of first instance has arrived, but it must contain sufficient materials to enable the High Court, in revision, to come to a decision upon the

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the accused was false, frivolous and vexatious.
Ibrahim v. Anant Ram. 34 Cr. L. J. 80 :

140 I. C. 680 : 33 P. L. R. 670 :

I. R. 1933 Lah. 26 :

A. I. R. 1932 Lah. 554 :

—S. 250—Duty of Court.

While making order under S. 250, Court should see that the complaint was false, etc.

Saleh v. Emperor. 33 Cr. L. J. 644 :

138 I. C. 635 : 26 S. L. R. 299 :

I. R. 1932 Sind 85 :

A. I. R. 1932 Sind 150.

—S. 250—False accusation—Meaning of
—Charge of bribery—False charge—Compensation
—Frivolous or vexatious.

As long as a case is frivolous or vexatious, the fact that it is also false is no bar to the application of S. 250. A charge of bribery may not be frivolous, but, if false, is undoubtedly vexatious. *Nga Myo v. Nga Kyan.*

16 Cr. L. J. 92 :

26 I. C. 1004 : 2 U. B. R. 1914 31 :

A. I. R. 1914 U. Bur. 29.

—S. 250—False accusation—Meaning of.

In law no distinction can properly be made between a false accusation as to the motive or intention which prompts a man in doing a certain act, and a false accusation of theft against a person who has removed the property under a bona fide claim of right is a false charge within the meaning of S. 250. *Ravishankar Jagjivan v. Savailal Krishnmalal.*

27 Cr. L. J. 449 :

93 I. C. 240 : 28 Bom. L. R. 89 :

A. I. R. 1926 Bom. 163.

—S. 250—False accusation—Meaning of.

It is only when the Magistrate is of opinion that the accusation against the accused was not only false but also either frivolous or vexatious that he can act under S. 250. The reason is that this section is not to be applied except in cases which are frivolous or vexatious. It is not intended to be applied in serious cases which are to be dealt with under the provisions of S. 211, I. P. C. It is for this reason that a Magistrate must find that the case is frivolous or vexatious before he has jurisdiction to deal with the matter under S. 250. *Ma Pu v. Maung Tun Pe.*

41 Cr. L. J. 506 :

187 I. C. 744 : 12 R. Rang. 351 :

A. I. R. 1940 Rang. 110.

—S. 250—False and vexatious case, what is.

The finding that the complaint in false and malicious, is tantamount to finding it to be vexatious and an order for compensation is justified. *Faiz Mahomed v. Emperor.*

22 Cr. L. J. 120 :

59 I. C. 552 : 14 S. L. R. 168.

—S. 250—Complaint—False and vexatious or frivolous, meaning of - Compensation.

Where there are depositions of some witnesses and a *Zaildar's* report to support a complaint without any rebuttal on the part of the accused, the complaint cannot be said to be

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false and vexatious or frivolous. *Sanwalya v. Baru.*

27 Cr. L. J. 633 :

94 I. C. 409.

—S. 250—False charge—Meaning of.

A charge may be held to be false within the meaning of S. 250 even though it is not false to the knowledge of the person making it in the sense that he has strong grounds of suspicion for holding it to be true. *In re : Dinshahji Hirjibhai.*

33 Cr. L. J. 392 :

137 I. C. 129 : 34 Bom. L. R. 289 :

I. R. 1932 Bom. 221 :

A. I. R. 1932 Bom. 177.

—S. 250—False or vexatious complaint, what is.

An accusation cannot be said to be vexatious within the meaning of S. 250 unless the main intention of the complainant was to cause annoyance to the person accused and not merely to further the ends of justice. A complainant cannot be said to have made a false complaint where he acted on the information supplied to him by another person and which he did not know or believe to be false or vexatious. *Emperor v. Kouro.*

18 Cr. L. J. 1005 :

42 I. C. 733 : A. I. R. 1917 Sind 73.

—S. 250—False report—Liability for—False report by Excise Officer—Order for compensation.

An order for compensation may be made under S. 250 against an Excise Officer who makes a false and frivolous report to a Magistrate. *Radhika Mohan Das v. Hamid Ali.*

28 Cr. L. J. 316 :

100 I. C. 540 : 54 Cal. 371 :

A. I. R. 1927 Cal. 405.

—S. 250—Fine—Limit of.

Under S. 250 (2) all that is prohibited is that compensation to the accused or each or any of them should not exceed Rs. 100 in amount. The section does not mean that if there are a number of accused persons, the total amount awarded to all of them must not exceed the maximum specified in the section. *Fariduddin v. Emperor.*

27 Cr. L. J. 702 :

94 I. C. 894 : 24 A. L. J. 221 :

A. I. R. 1926 All. 295.

—S. 250—Frivolous or vexatious charge.

Complainant's not establishing accusation as witnesses do not support him does not necessarily render accusation false, much less vexatious. *Emperor v. Baloch Daryakhan.*

35 Cr. L. J. 1038 :

149 I. C. 946 : 6 R. S. 250 :

A. I. R. 1934 Sind 18.

—S. 250—Frivolous or vexatious complaint—Compensation, award of.

Compensation can be awarded to the accused when the complaint is shown to be false and either frivolous or vexatious and it is not necessary to show that it is both frivolous. *Kashi Prasad v. Emperor.*

27 Cr. L. J. 300 :

92 I. C. 588 : 24 A. L. J. 161 :

A. I. R. 1926 All. 141.

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essential parts of the judgment, that is to say, the statement of the points for determination, and the reasons for the decision, were not prepared until three weeks after the pronouncement of the judgment in open Court: *Held*, that there was a clear contravention of Ss. 367 and 369, and the conviction and sentence were illegal. *Jhari Lal v. Emperor*.

31 Cr. L. J. 416 :
122 I. C. 531 : 8 Pat. 904 : 11 P. L. T. 195 :
A. I. R. 1930 Pat. 148.

———S. 367—*Delivery of judgment—Judgment dated and signed by successor—No irregularity.*

Under S. 367 it is not necessary that the presiding officer of the Court who wrote the judgment should be the same person as the presiding officer who is required to date, sign and pronounce it. *In re : Sankara Pillai alias Sankaranarayana Pillay*.

7 Cr. L. J. 459 :
18 M. L. J. 197.

———Ss. 367, 537—*Delivery of judgment—Failure to write before pronouncing sentences—Irrregularity.*

The omission of a Magistrate to write a judgment before sentence is pronounced is an omission or irregularity which is covered by S. 537, Cr. P. C., and is curable except where it has occasioned a failure of justice. *Ata Mohammad v. Emperor*.

25 Cr. L. J. 705 :
81 I. C. 193 : A. I. R. 1925 Lah. 137.

———Ss. 367, 537—*Delivery of judgment—Judgment pronounced by another Magistrate—Irrregularity.*

Where a Magistrate after finishing the trial of a case, but before delivering the judgment, is physically incapacitated to come to Court, and, therefore, writes and signs his judgment and sends it to be delivered by another Magistrate, who delivers it, the wrong procedure thus adopted is a mere irregularity and is completely covered by S. 537, Cr. P. C. *Nur Muhammad Khan v. Emperor*.

24 Cr. L. J. 173 :
71 I. C. 525 : 21 A. L. J. 137 :
A. I. R. 1923 All. 276.

———S. 367—*De novo trial—Acquittal—Judgment unsatisfactory owing to omission to decide a vital point—Re-trial.*

In a case of rioting with the common object of taking possession of the complainant's land, a finding on the question of possession being necessary for a proper decision of the case, if a judgment of acquittal is passed without arriving at a finding on the point, it may be set aside and a re-trial ordered. *Surendra Nath Singh v. Janki Nath Ghose*.

27 Cr. L. J. 975 :
96 I. C. 527 : 53 Cal. 471 :
A. I. R. 1926 Cal. 945.

———S. 367—*De novo trial.*

Judgment—Transfer of Magistrate after signing but before pronouncing judgment—Accused, is not entitled to *de novo* trial. *In re : Bhogole China Somayya*.

34 Cr. L. J. 117 :
141 I. C. 174 : 36 L. W. 881 :
1933 M. W. N. 95 : I. R. 1933 Mad. 84 :
A. I. R. 1933 Mad. 251 (1).

———Ss. 367, 551—*A—Expunging of remarks from lower Court's judgment—Com-*

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menting on conduct of persons—Guiding principles—Courts should not act as propagandists.

While on the one hand Courts are at liberty to discuss the conduct of the persons before them, either as parties or as witnesses, untrammelled by any consideration, on the other they are not permitted to travel beyond the record and are bound to exercise due restraint on the language employed by them. In other words they should neither make any such sweeping assertions as are not borne out by the evidence produced before them nor should they use language which is unduly harsh. The most offensive feature of the whole case would be where while commenting on the conduct of the Police Officer, the Court makes an appeal to the Press to take up the particular defects pointed out by it in the working of the Police and to start a public agitation against them. Courts are not expected to pay to the gallery nor to invoke the Press in a manner which is liable to be misunderstood and may land the administration in general in an awkward situation. They should play the part of Judges alone and not that of propagandists and confine their whole attention to the evidence led before them and to the matters requiring determination at their hands. *In re : Advocate-General*.

40 Cr. L. J. 655 :
182 I. C. 281 : 41 P. L. R. 74 :
12 R. L. 8 : 1 L. R. 1939 Lah. 327 :
A. I. R. 1939 Lah. 174.

———S. 367—*Expunging of remarks.*

It is a serious matter for the High Court to expunge remarks from a Magistrate's judgment or order. It will interfere to expunge remarks which are libellous and irrelevant. But if they form an integral part of the judgment or its argument, and if they are inseparable, the Court will not interfere and mutilate a judgment so that it reads disjointedly or incoherently, nor will it interfere merely because the Court may have passed remarks adverse to a witness provided the judgment shows there is some basis for them, however inadequate may appear this basis to the higher Court. It may well be the bounden duty of a Judge or Magistrate in giving his judgment and his reason to comment adversely upon the conduct of witnesses, so also it may be his duty to comment adversely upon the conduct of accused persons even though he may not consider the evidence sufficient to commit them for trial to the Court of Session. Nor will the High Court in revision inquire into question of fact, but in dealing with applications of this nature it will take the Magistrate's judgment as it stands. Where the Magistrate's own order exculpates rather than inculpates the accused, he is not justified in making remarks seriously to his prejudice which will be justified only if his order tended to inculpate rather than exculpate. A Magistrate when he is called upon to investigate a case in which a large number of persons may be involved and may appear to be implicated in some offence, may, in his order, consider the case against a person who is neither a witness nor an accused. He

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theft set aside on appeal—Property not restored to accused—Subsequent order for restoration, validity of.

Where in setting aside a conviction for theft, an Appellate Court omits to pass orders under S. 520, Cr. P. C., for restoration of the property taken from the accused, if the omission is accidental, it can be subsequently corrected under S. 369 of the Code. *In re : Subba Naidu.*

24 Cr. L. J. 159 :

71 I. C. 511 : 15 L. W. 664 : 43 M. L. J. 87 :

1922 M. W. N. 494 : 31 M. L. T. 367 :

A. I. R. 1922 Mad. 329.

—S. 369—Applicability—Ex parte order.

The rule that where an *ex parte* order is passed without notice to the opposite party it must be regarded as a tacit term of such an order that it should be open to reconsideration at the instance of the party, affected is applicable to orders passed under the Cr. P. C. subject to the qualification that inherent power cannot be invoked on a point where the Code has made express provision. *Assistant Government Advocate v. Upendra Nath Mukerji.*

32 Cr. L. J. 551 :

130 I. C. 538 : 11 P. L. T. 892 :

I. R. 1931 Pat. 186 : A. I. R. 1931 Pat. 81.

—S. 369—Applicability.

Order under S. 204, Cr. P. C., directing issue of summons is not a judgment to which S. 369 would apply. *Lalit Mohan v. Noni Lal Sarkar.*

25 Cr. L. J. 464 :

77 I. C. 816 : 27 C. W. N. 651 :

39 C. L. J. 329 : A. I. R. 1923 Cal. 662.

—S. 369—Applicability to maintenance order.

The principal laid down in S. 369 applies to an order passed under S. 488, inasmuch as proceedings under that section are judicial proceedings and the final order or the reasons given for such order in any such proceedings are in effect a judgment. *Nanda Narain Newar v. Manmaya Kamini.*

18 Cr. L. J. 556 :

39 I. C. 700 : 21 C. W. N. 344 :

A. I. R. 1917 Cal. 799.

—S. 369—Applicability—Transfer order.

The principle laid down in S. 369, applies also to final orders which are in the nature of judgments. The section does not apply to orders which are not in the nature of judgments. Generally an order in the nature of a judgment is one which is passed on full enquiry and after hearing both parties. Such an order cannot be altered after it is once passed and signed. The order of transfer cannot be regarded as an order in the nature of a judgment. *Chholey Lal v. Dr. Tinke Lal.*

36 Cr. L. J. 918 :

156 I. C. 163 : 7 R. A. 1059 :

1935 A. L. J. 1063 : A. I. R. 1935 All. 815.

—S. 369—Construction.

S. 369, Cr. P. C., must be read with S. 430, of the Code. *The King v. Nga Ba Saing.*

41 Cr. L. J. 108 :

185 I. C. 142 : 1940 Rang. 145 :

12 R. Rang. 181 : A. I. R. 1939 Rang. 392.

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—Ss. 369, 434, 439—High Court judgment, alteration of.

Neither a Division Bench nor a Full Bench of the Chief Court, Punjab, has power to revise, either on appeal or revision, the judgment of a Single Judge of that Court exercising original jurisdiction. Even a Judge of the High Court cannot himself revise his own judgment. *Hale v. Emperor.*

9 Cr. L. J. 306 :

1 I. C. 506 : 1 P. R. 1909 Cr. :

6 P. W. R. 1909 Cr.

—Ss. 369, 489 (2)—Judgment—Alteration on ground of fraud—Maintenance order, alteration of.

Any order obtained by fraud practised on the Court is one which is to be treated as a nullity. Even the Criminal Courts have power to ignore their orders passed either under a mistake or by fraud. It is not the intention of the Procedure Codes that they should encourage the hindering of justice, and all procedure is intended to help justice. S. 489 (2), Cr. P. C., really suggests that it is open to the Magistrate to vary the order of maintenance or to alter it if circumstances so require. A Magistrate passed an order of maintenance in favour of wife. The husband then obtained a decree for restitution of conjugal rights and informed the Magistrate about it without disclosing that an appeal therefrom was then pending. The Magistrate thereupon cancelled his order of maintenance. The decree having been set aside in appeal, the wife informed the Magistrate accordingly, who, upon such information, cancelled his previous order rescinding the order of maintenance and restored the original one. It was contended that the Magistrate had no jurisdiction to cancel his order under S. 369, and also that the wife ought to have put in a fresh application : *Held*, that S. 369 did not apply to the present case in view of the express provisions of Ss. 488 and 489. The Magistrate had jurisdiction to vary or cancel his previous order as this order cancelling the previous order for maintenance was really obtained by fraud upon the Magistrate in his not being apprised on that date that the decree for restitution of conjugal rights was liable to be set aside on appeal which was then pending and an order obtained by fraud must be treated as having no legal effect : *Held*, also that the wife's making a fresh application was merely a matter of form and not of substance. *Patel Bhagubhai Ranchhodas v. Bai Arvinda.*

39 Cr. L. J. 381 :

173 I. C. 915 : 10 R. C. 591 :

A. I. R. 1937 Cal. 334.

—S. 369—'Judgment', meaning of—Dismissal in default, review of.

The term 'judgment' in S. 369 contemplates only a judgment on the merits. Therefore, a dismissal for default of appearance

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property in the possession of the complainant or what his intention was, if he did so: *Held*, that the judgment was bad and could not be allowed to stand. *Bhabani Prasad Moitra v. Hari Charan Bhattacharjee*.

24 Cr. L. J. 714 :
73 I. C. 938 : 38 C. L. J. 7.

—————S. 367—*Judgment, contents of.*

It is not necessary for a judgment to contain everything recorded in the evidence when an appeal is heard. The judgment should contain sufficient of the evidence as is necessary to ascertain the facts deposed to, and the importance of and the value to be attached to the evidence of the witnesses, and the reasoning based on the evidence on which the Judge founds his decision and his sentence. To put more than this into a judgment is merely to confuse. *Nga Than v. The King*.

4 Cr. L. J. 871 :
184 I. C. 78 : 12 R. Rang. 123 :
A. I. R. 1939 Rang. 263.

—————S. 367—*Judgment, contents of—Several accused.*

A judgment must conform to the provisions of S. 367 which require, *inter alia*, that it shall contain the points for determination, the decision thereon and the reasons for the decision. These requirements must be fulfilled in respect of each individual accused or suspect in cases where there are more than one. *Abdul Karim Mahomed Saleh v. Emperor*.

41 Cr. L. J. 724 :
189 I. C. 226 : 13 R. S. 28 :
A. I. R. 1940 Sind 113.

—————S. 367—*Judgment, contents of.*

Where the judgment of a Deputy Magistrate in appeal contained a long recital of the facts preceding the alleged offence, but did not discuss the evidence or contain anything to indicate that the Magistrate had considered the essential points in the case or the good faith of the accused or the evidence implicating individual accused person: *Held*, that the judgment was not in accordance with law. *Palusu Lakshmaya v. Emperor*.

13 Cr. L. J. 712 :
16 I. C. 520 : 1912 M. W. N. 881 :
12 M. L. T. 335.

—————S. 367—*Judgment—Dacoity case—Contents of judgment.*

The only satisfactory way of writing a judgment in a dacoity case is to give at first a general outline of the case, the dacoity, the course of the investigation and the arrest of the various accused; then the case against and for each accused should be dealt, with in detail, and a conclusion arrived at with regard to each individual. *Nga Mu v. Emperor*.

25 Cr. L. J. 205 :
76 I. C. 573 : 2 Bur. L. J. 199 :
A. I. R. 1924 Rang. 67.

—————S. 367—*Judgment—Delivery by successor—Revision.*

Where a Magistrate delivers, a judgment written out by his predecessor, the judgment is passed without jurisdiction and is liable to

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be set aside in revision. *Jogesh Chandra Roy v. Surendra Mohan Roy*.
33 Cr. L. J. 60 :
134 I. C. 1265 : 35 C. W. N. 838 :
I. R. 1932 Cal. 49 : A. I. R. 1931 Cal. 637.

—————S. 367—*Judgment, dictated to clerk.*

Where the Magistrate did not write the judgment himself but dictated and signed it: *Held*, that the dictation of the judgment contravened the provisions of S. 367. *Manik Lal v. Corporation of Calcutta*.

4 Cr. L. J. 394 :
4 C. L. J. 411.

—————S. 367—*Judgment, essentials of.*

An order couched in the words:—"The appeal is dismissed summarily," does not comply with the requirements of the law, as laid down in S. 367, and is, therefore, illegal. *Gobind Behari v. Emperor*.

22 Cr. L. J. 321 (b) :
61 I. C. 49 : 2 P. L. T. 10 :
A. I. R. 1921 J. 27 (2).

—————S. 367—*Judgment, essentials of—Scope of—Defective judgment.*

All that S. 367 requires is, that the point for determination should be stated, the decision thereon and the reasons for the decision. It cannot be assumed that, because a Magistrate has not referred to the oral evidence, but has drawn inferences from documents and from probabilities, therefore, he has not considered the evidence; if he gives strong and legal reasons for his conclusions, it cannot be said that his judgment is defective. *Durga Singh v. Emperor*.

24 Cr. L. J. 181 :
71 I. C. 597 : 2 P. L. R. 154 Cr :
A. I. R. 1924 Pat. 181.

—————S. 367—*Judgment, essentials of.*

The practice of writing long judgments with a number of repetitions is to be deprecated, the judgment should set out the effect of the evidence fully, the accused's case, the attacks which are made upon the evidence by either side, the Judge's own criticisms of it and the reasons for his conclusions. *In re: Kollam Narayan*.

34 Cr. L. J. 481 :
143 I. C. 46 : 64 M. L. J. 88 :
1932 M. W. N. 801 : 37 L. W. 220 :
56 Mad. 231 : I. R. 1933 Mad. 261 :
A. I. R. 1933 Mad. 233.

—————S. 367—*Judgment, form of—Contents.*

S. 367 does not lay down any particular form which a judgment must take. It is enough, if the points, the decisions and the reasons therefor can be gathered from the body of the judgment itself. If there is any error in recording judgment according to S. 367, but the points for decision, the decision and the reasons therefor can be gathered from the judgment, it is mere irregularity which is curable. *Sukhadayal v. Saraswathi*.

39 Cr. L. J. 370 :
173 I. C. 844 : I. L. R. 1936 Nag. 217 :
10 R. N. 326 : A. I. R. 1937 Nag. 122.

—————S. 367—*Judgment, how to begin.*

The judgment in a criminal case should

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the Cr. P. C. empowers the High Court to revise or review the judgment of one or more of its Judges in a criminal appeal or revision. *In re: Tadisomu Naidu.*

26 Cr. L. J. 370 :
84 I. C. 850 : 46 M. L. J. 456 :
34 M. L. T. 218 : 20 L. W. 18 :
47 Mad. 428 : A. I. R. 1924 Mad. 640.

—S. 369—Review—Powers of High Court.

Under S. 369 a Sessions Court is not competent to review its own order. *Official Receiver, Karachi v. Ganga Ram-Shankar Das.*

18 Cr. L. J. 332 :
38 I. C. 444 : 25 P. R. 1916 Cr. :
A. I. R. 1917 Lah. 163.

—S. 369—Review—Revision, judgment passed in review of.

The High Court has no power to review its judgment pronounced in revision in a criminal case. *Nand Kishore Lal v. Emperor.*

20 Cr. L. J. 447 :
51 I. C. 271 : A. I. R. 1919 Pat. 514.

—S. 369—Review—Revival of proceedings.

Under S. 369 the Magistrate has no jurisdiction to alter or review his first order and his subsequent order reviving the proceedings would be illegal. *Gajo Chaudhury v. Debi Chaudhury.*

24 Cr. L. J. 481 :
71 I. C. 945 : 1 P. L. R. 97 Cr. :
A. I. R. 1923 Pat. 532.

—Ss. 369, 146—Review—Order under S. 146, whether can be reviewed—Clerical mistake—Ex parte order of attachment—Jurisdiction.

Orders under S. 146, Cr. P. C., cannot be reviewed by the same Court, but clerical errors may be corrected under S. 309 of the Code. A Magistrate has no jurisdiction to pass an order under S. 146 behind the back of the parties or *ex parte*. The proper course is to pass orders in the presence of both parties. *Lachmi Singh v. Bhasi Singh.*

19 Cr. L. J. 225 :
43 I. C. 817 : A. I. R. 1917 Pat. 110.

—Ss. 369, 437—Review—First order refusing interference—Subsequent order for further inquiry.

Where a District Magistrate has already dealt with a case in revision and decided that there was no cause for interfering with the order of discharge of the accused, he cannot subsequently order further inquiry under S. 437, Cr. P. C. Such an order is an order reviewing the earlier one and is prohibited by S. 369 of the Code. *Nga Than v. Emperor.*

13 Cr. L. J. 301 :
14 I. C. 765 : 5 Bur. L. T. 37.

—Ss. 369, 439—Review—High Court, power of, to review order—Order enhancing sentence, in absence of accused, validity of.

The High Court has no jurisdiction to review or revise its own orders in criminal matters. An order of enhancement of sentence passed without opportunity being given to the accused of being heard either personally or by Pleader, is null and void *ab initio*, as being without jurisdiction, and does not bar

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the Court from dealing with the matter a second time. *Paras Ram v. Emperor.*

26 Cr. L. J. 543 :
85 I. C. 383 : 1 O. W. N. 891 :
A. I. R. 1925 Oudh 476.

—Ss. 369, 439—Review of order by High Court.

When the High Court has passed an order in revision under S. 439, Cr. P. C., it cannot review its own order. *Ah Lak v. Emperor.*

2 Cr. L. J. 465.

—Ss. 369, 561-A—Review—Powers of High Court.

There is no inherent power in the High Court to alter or review a judgment in a criminal case, and S. 561-A, Cr. P. C., will not confer such a power on the High Court. *Laxmanrao Parashram Deshmukh v. Emperor.*

39 Cr. L. J. 116 :
172 I. C. 299 : 10 R. N. 192 :
A. I. R. 1938 Nag. 74.

—S. 369—Revival of final order.

A Magistrate took cognisance of a case under S. 190 (c) and sent it to the Police for investigation. On receipt of the report of the Police, he made the following order : "Enter false mistake of law." Subsequently, on application by the complainant, the Magistrate revived the proceedings : *Held*, that the first order of the Magistrate was an order finally disposing of the case and had the effect of destroying the proceedings. *Gajo Chaudhury v. Debi Chaudhury.*

24 Cr. L. J. 481 :
71 I. C. 945 : 1 P. L. R. 97 Cr. :
A. I. R. 1923 Pat. 532.

—S. 369—Scope.

General rule of S. 369, when operates, stated—Practice in Bombay High Court—Original Criminal Side, stated. *Emperor v. Abdul Rahiman Akraudin.*

37 Cr. L. J. 753 :
162 I. C. 950 : 38 Bom. L. R. 153 :
60 Bom. 485 : 8 R. B. 437 :
A. I. R. 1936 Bom. 193.

—S. 369—Scope.

Unless it can be shown that there is a legislative enactment giving a power to that effect, cessation by the order of a Magistrate of any criminal proceeding must, until that order is set aside, operate not only as staying the proceedings but as destroying them. *Gajo Chaudhury v. Debi Chaudhury.*

24 Cr. L. J. 481 :
71 I. C. 945 : 1 P. L. R. 97 Cr. :
A. I. R. 1923 Pat. 532.

—Ss. 369, 238 (1), (2)—Scope—General rules of S. 369, when operates—Practice in Bombay High Court Original Criminal Side—Review or alteration of judgment.

The effect of S. 369 may—speaking broadly and without attempting strict accuracy—be put under three heads : (1) it saves powers to correct clerical errors : (2) it provides that as a general rule, no Court shall alter or review its judgment after it has signed it, except to correct clerical errors, and (3) in cases where the judgment has been signed and it is sought (in contravention of the general rule) to alter or review the judgment for the purpose of

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ment in Urdu, the script used being Persian : *Held*, this was irregular, and that the judgment should have been written in Hindi, which was the language of the Court, or in English, and the script should have been in the former case, as directed by the Local Government, in Kaiti, and Roman in the latter. *Held*, also that such an irregularity was cured by S. 537, Cr. P. C. *Dhanukdhari Singh v. Harihar Singh*, 4 Cr. L. J. 162 : 4 C. L. J. 232.

-----S. 367 (5)—Murder—Only of Court, to give reasons when passing sentence short of death.

A Sessions Judge when sentencing an accused to transportation for the offence of murder, is bound to state in his judgment the reason why he is not passing the sentence of death. *Dwarka v. Emperor*, 23 Cr. L. J. 980 : 105 I. C. 804 : 4 C. W. N. 977.

-----S. 367 (5)—Murder—Infliction of lesser sentence—Reasons.

The fact that the accused murdered his victim merely to escape from custody is not a sufficient reason for not imposing capital sentence. *Munnun v. Emperor*, 28 Cr. L. J. 860 : 104 I. C. 636 : 4 O. W. N. 754 : A. I. R. 1927 Oudh 352.

-----S. 367 (5)—Murder.

Sentence — Death sentence not passed —Reasons for not passing it should be recorded by trial Judge. *Naresh Singh v. Emperor*, 36 Cr. L. J. 529 : 154 I. C. 691 : 1935 O. W. N. 321 : 7 R. O. 484 : A. I. R. 1935 Oudh 265.

-----S. 367 (5)—Murder—Lesser penalty—Direction, judicial exercise of—Doubt, benefit of—Enhancement, whether advisable—Sentence, lenient, grounds for—Sex of accused.

A Court of Session possesses a direction in the matter of passing sentence under S. 302, Penal Code, but this discretion must be exercised judicially. An accused person is entitled to the benefit of any reasonable doubt in the matter of sentence as in the matter of conviction. But before passing the lighter sentence, a Judge must satisfy himself that his reasons for doing so are adequate and covered by authority. And while bearing in mind that the primary responsibility for the sentence is his, he should not lose sight of the fact that should he pass a sentence of death, the matter will further be considered by the High Court before the sentence is confirmed. When a sentence of transportation for life has been passed, there are manifest objections to enhancing it, even when a sentence of death ought to have been passed; there is no such objection to commuting a sentence of death to one of transportation for life and such a commutation should not be considered as any reflection on the way in which the Sessions Judge has exercised the discretion given him by law. The mere fact that there was no premeditation or deliberate intention to kill or that the accused is a woman is not a conclusive

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reason for not passing a sentence of death. *Mi She Yi v. Emperor*, 25 Cr. L. J. 1121 : 81 I. C. 945 : 2 Bur. L. J. 277 : 1 Rang. 751 : A. I. R. 1924 Rang. 179.

-----S. 367 (5)—Murder Case—Lesser penalty—Reasons.

Conviction under S. 302, I. P. C.—Death sentence should be imposed—Assessors giving opinion as not guilty is no reason for awarding lesser sentence—Responsibility of awarding sentence rests with the Judge alone. *Local Government v. Siteya*, 34 Cr. L. J. 1168 : 146 I. C. 118 : 30 N. L. R. 9 : 6 R. N. 72 : A. I. R. 1933 Nag. 307.

-----S. 367—Nature of.

The provisions of S. 367 are mandatory and it is no ground for violating these imperative provisions that no serious inconvenience, harm or injustice has resulted from such violation. *Jairam v. Emperor*, 13 Cr. L. J. 559 : 15 I. C. 975 : 8 N. L. R. 84.

-----S. 367—Non-compliance.

Where in a case of six, some prisoners are accused of no less than seven separate offences, yet the Judge has framed one point for decision only, such a compliance with the provisions of S. 367 is perfunctory and perilous. 35 Cr. L. J. 53 : 151 I. C. 976 : 28 S. L. R. 12 : 7 R. S. 70 : A. I. R. 1934 Sind 89.

-----S. 367—Reference—Refusal by Sessions Judge to refer a case—No misdirection—Powers of the High Court to interfere.

Where the Sessions Judge has refused to refer the case under S. 307 and it was not shown that there had been any material misdirection causing a failure of justice : *Held*, that the High Court ought not to interfere. *In re : Kaiyan*, 9 Cr. L. J. 93 : 4 M. L. J. 483.

-----Ss. 367, 423—Remand—Magistrate, failure of, to write proper judgment—Appeal—Procedure.

Where in an appeal to the Court of Session, the Judge finds that the Magistrate has not written a judgment in conformity with the provisions of S. 367, the correct procedure is to accept the appeal and to remand the case for hearing *de novo*. S. 423 of the Code does not authorise the retention of an appeal on the file of the Sessions Judge when asking for a judgment which the Magistrate has failed to record. *In re : Karupiah Pillai*, 21 Cr. L. J. 52 : 54 I. C. 404 : 1920 M. W. N. 120 : 11 L. W. 308 : A. I. R. 1920 Mad. 171.

-----S. 367—Revision—Interference.

Mere irregularity in form of judgment without failure of justice is no ground for revision. *Tippamma Musheppa Karigar v. Emperor*, 33 Cr. L. J. 801 : 139 I. C. 608 : 34 Bom. L. R. 1110 : I. R. 1932 Bom. 519 : A. I. R. 1932 Bom. 473.

-----S. 367—Scope—Heads of charge to Jury, recording of—Conviction, legality of.

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—S. 370—Presidency Magistrate, duty of.

When Presidency Magistrate writes a judgment, he must record proper findings which go to constitute the offence. *Nishikanta Chatterji v. Behari Kahar*. 34 Cr. L. J. 1059 : 145 I. C. 660 : 60 Cal. 656 : 37 C. W. N. 368 : A. I. R. 1933 Cal. 532.

—S. 370 (1)—Procedure—Presidency Magistrate, duty of to give reasons for convicting accused—Reasons not given—Judgment, effect of.

S. 370, Cl. (i), of the Cr. P. C. requires that there should be a statement of the reasons which induce a Presidency Magistrate to believe the evidence for the prosecution. Where, therefore, a Chief Presidency Magistrate convicted an accused, inflicting imprisonment by merely recording the following judgment: "I convict accused. I believe the evidence of complainant and the witnesses for the prosecution": Held, that the judgment did not satisfy the requirements of Cl. (i) of S. 370 of the Code. *Shankar Ramdas v. Emperor*. 16 Cr. L. J. 771 : 21 I. C. 371 : 17 Bom. L. R. 890 : A. I. R. 1915 Bom. 137.

—S. 374.

See Cr. P. C., S. 418 (2).

—S. 374—High Court, duty of—Death sentence.

Reference under S. 374—High Court should come to their own independent conclusion as to guilt or innocence of accused irrespective of verdict of Jury. *Benoyendra Chandra Pandey v. Emperor*. 37 Cr. L. J. 394 : 161 I. C. 74 : 40 C. W. N. 432 : 63 Cal. 929 : 8 R. C. 472 : A. I. R. 1936 Cal. 73.

—S. 374—High Court, power of.

Trial by Jury and conviction—High Court can set aside conviction without remanding case if there is not sufficient evidence. *Emperor v. Asraf Ali*. (F. B.).

34 Cr. L. J. 533 (2) : 143 I. C. 173 : 37 C. W. N. 595 : I. R. 1933 Cal. 354 : A. I. R. 1933 Cal. 426.

—S. 374—Reference—Confirmation of sentence—Duty of High Court.

The accused was unanimously found guilty of murder by a Jury and sentenced to death by the Sessions Judge. On reference to the High Court by the Sessions Judge for confirmation of sentence and an appeal by the accused, their Lordships held that it was utterly unsafe to accept the evidence adduced in the case as conclusive evidence and acquitted the accused. *Emperor v. Panchu Mondal*. 29 Cr. L. J. 833 : 111 I. C. 385 : 32 C. W. N. 702.

—S. 374—Reference—Duty of High Court.

In a reference for confirmation of death sentence, the High Court must satisfy itself that the finding of facts arrived at is justified by the evidence on record. *Arshed Ali v. Emperor*. 27 Cr. L. J. 378 : 92 I. C. 890 : 30 C. W. N. 166.

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—S. 374—Reference—Duty of High Court—Questions of misdirection how far important.

The questions of misdirection are of less importance in a case of reference under S. 374, because on a reference to the High Court, it is bound to come to its own independent conclusions as to the guilt or innocence of the accused, independently of the verdict of the Jury or of the opinion of the Sessions Judge. *Emperor v. Durga Charan Singh*. 39 Cr. L. J. 308 : 173 I. C. 475 : 41 C. W. N. 1312 : 10 R. C. 524 : A. I. R. 1938 Cal. 6.

—S. 374—Reference—Scope—Trial by Jury—Confirmation of sentence—Duty of High Court.

Batchelor, J.—In the Bombay High Court where a prisoner has been sentenced to death, even though the conviction was had on the unanimous verdict of a Jury, the whole case is re-opened before the High Court both on matters of fact as well as on matters of law. *Hayward, J.*—In the High Court in murder cases it is always necessary to consider the evidence in support of the facts found by the Jury in order to ascertain that there has been no misdirection in the charge to the Jury and to determine whether it would or would not be proper in all the circumstances to confirm the sentence of death passed by the Sessions Judge. *Emperor v. Daji Yesaba*. 16 Cr. L. J. 818 : 31 I. C. 994 : 17 Bom. L. R. 1072 : A. I. R. 1915 Bom. 243.

—S. 374—Re-trial.

In a reference under S. 374, the High Court may order a re-trial where there has not been a proper trial in the case. *Emperor v. Rajab Ali Khan*. 28 Cr. L. J. 742 : 103 I. C. 790 : 31 C. W. N. 881 : 46 C. L. J. 31 : A. I. R. 1927 Cal. 631.

—S. 374—Re-trial.

Tests as to whether acquittal or re-trial should be ordered when charge to Jury is found defective stated. *Emperor v. Ashraf Ali*. (F. B.). 34 Cr. L. J. 533 (2) : 143 I. C. 173 : 37 C. W. N. 595 : I. R. 1933 Cal. 354 : A. I. R. 1933 Cal. 426.

—S. 374—Re-trial.

When the evidence cannot be properly weighed by the Court without hearing witnesses and seeing their demeanour in the witness-box and they are not in a position to say whether the facts from which inferences are to be drawn are true or false, re-trial should be ordered. *Benoyendra Chandra Pandey v. Emperor*. 37 Cr. L. J. 394 : 161 I. C. 74 : 40 C. W. N. 432 : 63 Cal. 929 : 8 R. C. 472 : A. I. R. 1936 Cal. 73.

—S. 375—Scope.

S. 375 is not meant to enable a Court to remedy an important error in procedure which might have been calculated to prejudice

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Per *Macpherson, J.*—In recording the heads of the charge to the Jury, as directed under S. 367, it is sufficient for the Sessions Court, at least unless the case was extremely complicated, to record as a head of the charge that the sections of the Penal Code relating to the offence charged had been read and explained to the Jury. *Dhanpat Tiwari v. Emperor.*

31 Cr. L. J. 786 :
125 I. C. 131 : 9 Pat. 148 : 11 P. L. T. 646 :
A. I. R. 1930 Pat. 243.

—S. 367 (5)—Scope of.

Where the sentence of death is not passed for conviction in a case punishable with death, the Sessions Judge should state his reasons for the departure. *In re : Kurumba Hosakeri.*

11 Cr. L. J. 481 :
7 I. C. 397 : 8 M. L. T. 81.

—S. 367 (5)—Sentence of death—Practice.

Sessions Judge in passing sentence of death, remarked in his judgment that "the fact that the accused acted without premeditation will no doubt be considered by the proper tribunal." The idea that a Sessions Judge may devolve on a higher tribunal his responsibility in respect of sentence in a capital case is erroneous. *Dictum of Irwin, J., in Crown v. Tha Sin (I. L. B. R. 216)* that when a Sessions Judge is in doubt whether a sentence of death should be passed or not, he should pass sentence of death, and leave it to be commuted by the High Court, if necessary, dissented from. *Shwe Cho v. Emperor.*

3 Cr. L. J. 25 :
3 L. R. 111.

—S. 367—Trial by Jury—Heads of charge, contents of.

In the case of a trial by Jury, the Judge is not to write a judgment but to record the heads of his charge to the Jury. It is necessary, however, that the charge recorded should be such as to convey sufficient information to the High Court in case of appeal as to the explanation of the law by the Judge and about important questions of fact. *Superintendent & Remembrancer, Legal Affairs v. Wilson.*

27 Cr. L. J. 926 (b) :
96 I. C. 270 : 30 C. W. N. 693 :
43 C. L. J. 537 : A. I. R. 1926 Cal. 895.

—S. 367—Trial by Jury—Joint trial of Jury and non-Jury charges—Judgment as to non-Jury charges merely dealing with head charges, whether defective.

Where a case against several accused persons charged with various offences was tried by a Sessions Judge partly with a Jury and partly with their aid as Assessors and the Judge while he summed up the case at length to the Jury with regard to all the charges, in respect of the non-Jury charges, he merely stated in his judgment without giving any specific reasons that he agreed with the Jury for the reasons set forth in the charge to the Jury: *Held*, that in respect of the non-Jury charges, the judgment did not comply with the requirements

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of S. 367, Cr. P. C., and was, therefore, defective. *Thangaya Nadar v. Emperor.*

27 Cr. L. J. 1164 :
97 I. C. 748 : A. I. R. 1927 Mad. 56.

—S. 367—Trial by Jury—Judge's charge to Jury, how to be recorded.

A Judge's charge to the Jury must be recorded in such a way as would enable the High Court sitting as a Court of Appeal to judge whether the facts and circumstances of the case had been properly placed before the Jury and also whether the law had been correctly explained to them. A mere statement in the heads of charge that the Judge explained certain sections of the Penal Code to the Jury does not satisfy the above requirement. *Khijiruddin v. Emperor.*

27 Cr. L. J. 266 :
92 I. C. 442 : 42 C. L. J. 504 : 53 Cal. 372 :
A. I. R. 1926 Cal. 139.

—Ss. 367, 494—Withdrawal of complaint—Order granting permission to withdraw—Duty of Court to state reason.

A reasoned judgment establishing the propriety of the order, as required by S. 367 is not necessary in the case of the order passed under S. 494, Cr. P. C., but there must be something on record to show why the Magistrate consented to the withdrawal. *Rujulu v. Emperor.*

30 Cr. L. J. 872 :
118 I. C. 63 : 25 N. L. R. 6 :
I. R. 1929 Nag. 255 : A. I. R. 1929 Nag. 133.

—S. 368—Sentence.

The sentence should not be "to receive the supreme penalty." It must direct that the accused be hanged by the neck until he be dead. *Nga Thein Maung v. Emperor.*

37 Cr. L. J. 290 :
160 I. C. 459 : 8 R. Rang. 383 :
A. I. R. 1936 Rang. 46.

—S. 369.

See also Cr. P. C., 1898, Ss. 421, 488.

—S. 369—Alteration of judgment—Enhancement of punishment—Revision.

Where in passing a sentence of fine a Sessions Judge omits to pass a sentence in default of payment of fine, he has no power to correct this oversight by a subsequent order. The proper course in such a case is to submit the proceeding to the High Court and ask the High Court in its revisional jurisdiction to enhance the punishment by inflicting imprisonment in default of payment of fine. *In re : Dhondi Nathaji Raul.*

22 Cr. L. J. 608 :
62 I. C. 880 : 23 Bom. L. R. 846 :
A. I. R. 1921 Bom. 368.

—S. 369—Alteration of judgment.

No Magistrate can add to or alter the proceedings or judgment in any case after they are signed and published. It is especially irregular when made in the absence of the accused and without notice to him. *In re : Surendra Nath Banerjee.*

4 Cr. L. J. 210 :
10 C. W. N. 1062 : 4 C. L. J. 415.

—Ss. 369, 520—Alteration of judgment—Omission accidental, correction of—Conviction for

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such as to show whether the commitment is made in the sound exercise of the discretionary power vested in the Magistrate by law, and if he does not give adequate reasons, the commitment may be quashed. A case which is triable by the Magistrate should not be committed to the Sessions merely with a view to avoid a conflict of decisions. If a connected case is pending in the Sessions Court, the proper course to be followed by the Magistrate is to await the result of the Sessions trial. *Emperor v. Karam Singh*. 31 Cr. L. J. 178 : 120 I. C. 677 : A. I. R. 1930 Lah. 312.

—S. 380.

See also Cr. P. C., 1898, Ss. 106, 349.

—Ss. 380, 408, 562—*Appeal—Proceedings submitted to First Class Magistrate—Sentence by that Magistrate—Appeal, where lies.*

Where proceedings are submitted to a First Class Magistrate under S. 562, Cr. P. C., and he passes sentence in the case under S. 380, the conviction must, for the purposes of appeal, be considered to be within the meaning of S. 408 of the Code and the order is appealable to the Sessions Court. *Emperor v. Bhimappa Ulappa*.

16 Cr. L. J. 738 :
31 I. C. 338 : 17 Bom. L. R. 895 :
A. I. R. 1915 Bom. 263.

—Ss. 380, 562—*Power to acquit—Proceedings submitted to Sub-Divisional Magistrate.*

A Magistrate to whom proceedings are submitted as provided by S. 562, Cr. P. C., may pass such sentence or make such order as he might have passed or made if the case had originally been heard by him. He is not prevented from acquitting the accused, if on a perusal of the evidence he comes to the conclusion that conviction should not have taken place. *Mi Ti Hla v. Mi Kin*.

16 Cr. L. J. 535 :
29 I. C. 663 : 2 U. B. R. (1915) 55 :
A. I. R. 1915 U. Bur. 12.

—S. 380—Procedure.

When a case is submitted under S. 562, a conviction has first of all to be recorded and so when the proceedings reach the Magistrate for disposal under S. 380, that Magistrate has to deal with a person who has been convicted. *Public Prosecutor v. Malaipati Gurappa Naidu*. 34 Cr. L. J. 1045 :

145 I. C. 659 : 1933 M. W. N. 716 :
38 L. W. 428 : 65 M. L. J. 405 :
57 Mad. 85 : 6 R. M. 115 :
A. I. R. 1933 Mad. 728.

—Ss. 380, 562—*Reference to superior Magistrate—Power of Magistrate under S. 380—Disposal of case.*

A Second Class Magistrate found the accused guilty of an offence under S. 325, I. P. C., and submitted the proceedings to the District Magistrate under the proviso to S. 562, Cr. P. C. The District Magistrate returned the case to the Second Class Magistrate, pointing out that S. 562 could

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not be applied: *Held*, that the District Magistrate's action was illegal, in view of the terms of S. 380. *Emperor v. Abdul Lal Shein*. 7 Cr. L. J. 449 : 4 L. B. R. 150.

—S. 380—Scope.

It is not permissible for a Magistrate acting under S. 380 to set aside the conviction of the accused and to acquit him. *Public Prosecutor v. Malaipati Gurappa Naidu*.

34 Cr. L. J. 1045 :
145 I. C. 659 : 1933 M. W. N. 716 :
38 L. W. 428 : 65 M. L. J. 405 :
57 Mad. 85 : 6 R. M. 115 :
A. I. R. 1933 Mad. 728.

—S. 383.

See Penal Code, S. 411.

—S. 383—Ante-dating.

There is no provision in the Code for the ante-dating of a sentence of imprisonment. *Emperor v. Nga Pomun*. 34 Cr. L. J. 447 :

142 I. C. 728 : I. R. 1933 Rang. 45 :
A. I. R. 1933 Rang. 28.

—Ss. 383, 77—*Procedure—Sessions Court upholding sentence of imprisonment and issuing warrant of arrest of accused released on bail—Court, if should ask sureties to ask accused to surrender.*

The procedure on the Sessions Court upholding a sentence of imprisonment is to issue a warrant to the jail under S. 383, Cr. P. C., and where the accused is on bail and is not present, the Court to issue a warrant for his arrest to a Police Officer under S. 77, Cr. P. C. There is no procedure laid down by the Code that the Court should ask the sureties to ask the accused to surrender. *Mumtaz v. Chhutwa*.

41 Cr. L. J. 741 :
189 I. C. 468 : 1940 A. L. J. 309 :
I. L. R. 1940 All. 507 :
1940 A. W. R. 334 : A. I. R. 1940 All. 386.

—Ss. 383, 541—*Sentence of imprisonment in Police lock-up.*

It is illegal to sentence an accused person to suffer imprisonment in a Police lock-up. *Emperor v. Po Thiu*.

15 Cr. L. J. 10 :
22 I. C. 154 : 7 L. B. R. 62 :
A. I. R. 1914 L. Bur. 156.

—S. 384—*Extortion by Police Officer—Deterrent sentence.*

An offence of extortion by a Police Constable calls for a deterrent punishment. *Ramchandra Bhikaji Moharir v. Emperor*.

29 Cr. L. J. 1082 (b) :
112 I. C. 586 : 30 Bom. L. R. 967 :
A. I. R. 1928 Bom. 346.

—S. 386—*Applicability.*

The proviso to S. 386 (1) applies in terms only to the issue of a fresh warrant and does not require the withdrawal of a warrant already issued before expiration of the sentence in default of payment. *Digambar Kashinath v. Emperor*.

36 Cr. L. J. 1034 :
156 I. C. 772 : 37 Bom. L. R. 99 :
59 Bom. 350 : 8 R. B. 33 :
A. I. R. 1935 Bom. 160.

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is not a judgment, and as such, is open to review by the Court. *Ibrahim v. Emperor*.

30 Cr. L. J. 749 :
117 I. C. 243 : I. R. 1929 Rang. 179 :
A. I. R. 1928 Rang. 288.

————S. 369—*Judgment of High Court, what is.*

A judgment of two Judges of the High Court sitting as a Criminal Bench is a judgment of the High Court and no other Judge or Bench of Judges of the High Court has power to override such judgment. *Dabu Raut v. Emperor*.

34 Cr. L. J. 1100 :
145 I. C. 937 : 38 C. W. N. 25 :
6 R. C. 168 : A. I. R. 1933 Cal. 870.

————S. 369—*Judgment, what is—Dismissal under S. 203.*

White, C. J. :—That an order under S. 203 is not a judgment within the meaning of S. 369 and that the revisional powers conferred on Superior Courts cannot be regarded as in any way impliedly restricting the jurisdiction conferred on Magistrates to inquire into offences. *In re : Chinna Kaliappa Goundan and Rubier*.

3 Cr. L. J. 274 :
1 M. L. T. 31 : 15 M. L. J. 79 : 29 Mad. 126.

————S. 369—*Judgment, what is—Order rejecting appeal under S. 419, alteration of.*

Order rejecting appeal for non-compliance with S. 419 does not amount to a judgment and does not prevent Court from considering appeal on merits. *Bansgopal v. Emperor*.

35 Cr. L. J. 441 :
147 I. C. 347 (2) : 1934 A. L. J. 329 :
6 R. A. 458 : 4 A. W. R. 516 :
A. I. R. 1934 All. 206.

————S. 369—*Judgment, what is.*

The word "judgment" in S. 369 means and refers to the judicial act of the Court in finally disposing of the case and indicates the order of the Court when it is read out and signed by the Judge and not the formal order on the judgment subsequently drawn up and issued merely as a clerical act by the ministerial officer of the Court. When the Court delivers and signs the judgment, it becomes final and it has no power thereafter to review its order or alter the judgment in any manner or to any extent. *In re : Arumuga Padayachi*.

27 Cr. L. J. 184 :
91 I. C. 1000 : 23 L. W. 56 :
50 M. L. J. 51 : 1926 M. W. N. 147 :
A. I. R. 1926 Mad. 420.

————S. 369—*Jurisdiction.*

Dismissal of jail appeal by Single Judge—Application for enhancement by Local Government—High Court can entertain application. *Emperor v. Abdul Qayum*.

34 Cr. L. J. 1205 :
146 I. C. 157 : 1933 A. L. J. 957 :
55 All. 715 : 6 R. A. 268 (2) :
A. I. R. 1933 All. 485.

————S. 369—*Review—High Court, power of.*

The High Court has no power to review its order summarily rejecting a criminal appeal. Where a case is disposed of merely for default of appearance or where an order is

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passed to the prejudice of an accused person and by mistake or inadvertence, no opportunity has been given to him to be heard in his defence, the order of the High Court in such a case may be reviewed. *Rajjab Ali v. Emperor*.

20 Cr. L. J. 265 :
50 I. C. 25 : 46 Cal. 60 :
A. I. R. 1919 Cal. 409.

————S. 369—*Review of judgment.*

Under S. 369, the Court when it has signed its judgment has no power to alter or review it, except to correct a clerical error. *Dabu Raut v. Emperor*.

34 Cr. L. J. 1100 :
145 I. C. 937 : 38 C. W. N. 25 :
6 R. C. 168 : A. I. R. 1933 Cal. 870.

————S. 369—*Review of order of one Judge of High Court.*

In the case of a criminal appeal or a criminal revision petition, there is no provision in the Code of Criminal Procedure for dismissal for default of appearance. In a criminal case the matter is not between party and party and it is the duty of the Court to go into the case and dispose of it on the merits. Where a criminal appeal or a revision is dismissed without hearing, there is no judgment at all and the Judge or the Bench which disposed of the matter for default of the appearance can re-hear the matter. The order of dismissal for default in such cases is no judgment at all and the order is tantamount to an adjournment of the case till someone appears and moves the Court to hear him. The High Court, although it is not bound to hear Counsel in support of a criminal revision petition is not entitled to dismiss it for default of appearance but can only dispose of it on the merits. The exception contained in S. 369 of the Cr. P. C. in favour of the High Court is with reference to the power of review in regard to cases decided by a Judge of the High Court presiding over the Sessions when points are reserved for consideration by the Full Bench or on the certification of the Advocate-General. A Division Bench of the High Court has no power to revise its judgment pronounced in a criminal revision case or a criminal appeal. *Kunhammall Haji v. Emperor*.

24 Cr. L. J. 439 :
72 I. C. 599 : 1923 M. W. N. 94 :
44 M. L. J. 450 : 46 Mad. 382 :
A. I. R. 1923 Mad. 426.

————S. 369—*Review—Power of High Court.*

A High Court Judge has no jurisdiction to revise an order passed by himself or by another Judge of the Court. *Emperor v. Kalc*.

24 Cr. L. J. 766 :
74 I. C. 270 : 45 All. 143 :
A. I. R. 1923 All. 473.

————S. 369—*Review—Powers of High Court.*

A High Court has no power under S. 369 to review an order dismissing application for revision made by the accused person. *Gobind Sahai v. Emperor*.

17 Cr. L. J. 47 :
32 I. C. 335 : 14 A. L. J. 61 :
38 All. 134 : A. I. R. 1916 All. 183.

————S. 369—*Review—Powers of High Court.*

Per Odgers, J.—Neither S. 369 nor S. 439 of

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infringement of his rights must be allowed.
Kollivenkatratnam v. Collector of Kistna.

37 Cr. L. J. 836 :
163 I. C. 480 (2) : 43 L. W. 760 :
70 M. L. J. 717 : 1936 M. W. N. 728 :
9 R. M. 23 : A. I. R. 1936 Mad. 560.

—S. 386 (b)—Joint family property

Attachment of delinquent's share in movables of joint family property—Proper procedure is under Cl. (b) and not under Cl. (a). *Pritamdas v. Emperor.*

34 Cr. L. J. 354 :
142 I. C. 524 : I. R. 1933 Sind 102 (1) :
A. I. R. 1933 Sind 43.

—S. 386—Land of agriculturist—Recovery of fine by Criminal Court as arrears of land revenue—Temporary alienation—Attachment.

Fine imposed in a criminal case on an offender is not recoverable as arrears of land revenue. Therefore, the land of a person belonging to an agricultural tribe as defined in the Punjab Alienation of Land Act, cannot be sold in pursuance of a warrant issued by a Magistrate to the Collector authorising him to realise the amount of fine imposed upon such agriculturist on his conviction in a criminal case. But it is competent to the Civil Court to make a temporary alienation of land in a form not prohibited by the said Act with a view to realise the fine. The Punjab Alienation of Land Act merely prohibits the sale or permanent alienation of land and there is nothing in it to prohibit its attachment. *Emperor v. Milkha Singh.* 30 Cr. L. J. 1006 :
119 I. C. 227 : I. R. 1929 Lah. 835 :
A. I. R. 1929 Lah. 667.

—S. 386—Movable property—Surplus proceeds lying with mortgagee for benefit of mortgagor—Liability to distraint.

Surplus proceeds remaining with a mortgagee for payment to the mortgagor, after the appropriations and payments specified in paragraph 4 of S. 69, Transfer of Property Act, are movable property within the meaning of S. 386. Such surplus is not a debt but money held in trust by the mortgagee for the mortgagor notwithstanding that it has been mixed up with the mortgagee's private money and is liable to distraint under S. 386. *Pichu Vadhiar v. Secretary of State.*

18 Cr. L. J. 426 :
38 I. C. 986 : 1917 M. W. N. 20 :
21 M. L. T. 71 : 5 L. W. 664 : 40 Mad. 767 :
A. I. R. 1918 Mad. 1111.

—S. 386 — Objection — Investigation — Procedure.

Where objection is made to an attachment by a Magistrate under S. 386, and a claim is preferred, the Magistrate is bound to investigate the claim as provided by O. XXI, r. 58, C. P. C. *Harimal v. Emperor.*

34 Cr. L. J. 847 :
144 I. C. 883 (i) : 1933 A. L. J. 265 :
6 R. A. 6 : A. I. R. 1933 All. 135 (1).

—S. 386 (1) (b), proviso—Reasons—Magistrate should record special reasons for issuing distress warrant, when it is issued when**Cr. P. CODE (1898), S. 386**

offender has undergone whole of imprisonment in default.

S. 386 (1) (b) Proviso, requires the Magistrate to record his special reasons for issuing a distress warrant only when the warrant is issued after the offender has undergone the whole of the imprisonment in default but it is not necessary where it is issued before. The law does not require that reasons should be given for selling attached property after the disposal of claims. *Emperor v. Sorajini De Chowdhury.*

40 Cr. L. J. 654 :
182 I. C. 315 : 43 C. W. N. 443 :
I. L. R. 1939 1 Cal. 471 : 12 R. C. 39 :
A. I. R. 1939 Cal. 337.

—S. 386—Recovery of fine—Immovable property, sale of—Suit for possession of property sold, whether maintainable—Secretary of State, whether necessary party.

Where immovable property is sold to realise a fine, the sale is illegal and passes no title to the purchaser, and a suit for possession of the property by the owner is maintainable. The Secretary of State is not a necessary party to such a suit. *Madari v. Mehr Din.*

22 Cr. L. J. 399 :
61 I. C. 527.

—S. 386—Recovery of fine.

Sentence of fine, and in default, penal servitude—Sentence in default served—Fine cannot be realised. *Jadabendranath Panja v. Emperor.*

37 Cr. L. J. 524 (2) :
161 I. C. 979 : 40 C. W. N. 604 : 8 R. C. 554 :
A. I. R. 1936 Cal. 149.

—S. 386—Recovery of fine.

Where a sentence of imprisonment is imposed by way of providing a sanction for the payment of a fine if the fine is not paid, and that sentence is served out in its entirety, it is still possible to insist on payment of the fine being made. *Nil Kanth Pal v. Bisaakha Pal.*

36 Cr. L. J. 1267 :
157 I. C. 1031 : 8 R. C. 146 :
A. I. R. 1935 Cal. 546.

—S. 386—Revision—Attachment under—Revision incompetent.

No revision lies against an order of attachment made under S. 386. *Hira Lal v. Emperor.*

16 Cr. L. J. 166 :
27 I. C. 550 : 28 P. L. R. 1915 :
A. I. R. 1915 Lah. 227.

—S. 386—Rules.

The desirability of framing rules regarding the execution of warrants under S. 386 (1) (a) and for the summary determination of claims to property attached in execution of such warrant, by the local Government pointed out. *In re : Pandurang Venkatesh Malgir.*

33 Cr. L. J. 805 :
139 I. C. 541 : 34 Bom. L. R. 1102 :
56 Bom. 364 : I. R. 1932 Bom. 501 :
A. I. R. 1932 Bom. 476.

—S. 386—Salary.

Magistrate acting under S. 386, cannot attach salary, which the salary-earner has not only not drawn, but has not even yet earned.

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correcting errors other than clerical, power to correct such errors being reserved only if it can be derived from any provisions in (a) the Criminal Procedure Code, or (b) in any other law for the time being in force, or (c) (in the case of a High Court established by Royal Charter), by the Letters Patent of such High Court exercising its Ordinary Original Criminal Jurisdiction like that of Bombay no judgment nor any other pronouncement of its decision is signed until the warrant is signed by the presiding Judge. The warrant is drawn up some little time after the sentence has been orally pronounced. The practice has been for the Judges in proper cases to review their sentences though already pronounced in Court so long as the warrant has not been drawn up and signed. That practice does not conflict with S. 369. Consequently, before signing a warrant, the Court can alter or review its sentence. *Emperor v. Abdul Rahman Akraudin*

37 Cr. L. J. 753 ;
162 I. C. 950 : 38 Bom. L. R. 153 ;
8 R. B. 437 : 60 Bom. 485 ;
A. I. R. 1936 Bom. 193.

————S. 369—Subsequent trial—Trial for theft—Conviction and sentence—Subsequent sentence on account of previous conviction, validity of—Penal Code, Ss. 75, 379.

Accused was tried, convicted and sentenced under S. 379, Penal Code. There was also a charge against the accused under S. 75 of the Code read with S. 379, which was not proceeded with until after the sentence in respect of the offence under S. 379 had been passed : *Held*, that the trial came to an end when sentence was pronounced in respect of the offence under S. 379 and that having regard to the provisions of S. 369, the Judge had no power to proceed with the trial of the charge under S. 75 of the Penal Code and sentence the accused to enhanced punishment. *Mari Parsu v. Emperor*.

19 Cr. L. J. 279 ;
44 I. C. 183 : 20 Bom. L. R. 87 ;
42 Bom. 202 : A. I. R. 1918 Bom. 250.

————S. 370.

See also Cr. P. C., 1898, Ss. 342, 362.

————S. 370 (1)—Judgment not stating reason for finding.

A Criminal Court should, in its judgment, state reasons for its finding as required by S. 370 (1), Cr. P. C. *In re : Varadarajulu Pillai*.

23 Cr. L. J. 602 ;
68 I. C. 826 : 16 L. W. 36 ;
31 M. L. T. 400 : A. I. R. 1923 Mad. 144.

————S. 370—Presidency Magistrates—Judgments, contents of—Omission to record particulars in usual printed form, effect of—Reference to previous judgment in final order, propriety of.

In view of the provisions contained in S. 370, Cr. P. C. Presidency Magistrates are not bound to write judgments complying with the requirements of S. 367. All that is required is that they should record certain particulars and in case of conviction and sentence of imprisonment or fine exceeding Rs. 200, a brief statement of the reasons for the conviction. Omission to record some of the particulars

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required by S. 370 in the usual way in the printed form is only a mere irregularity and not an illegality which vitiates a trial. Inasmuch as a Presidency Magistrate is only required to record brief reasons for a conviction, there is no serious objection to his referring to a previous judgment passed by him in the case instead of re-writing those portions of it which should have been included in the final order. *Bishnupada Deb v. Emperor*.

27 Cr. L. J. 1131 ;
97 I. C. 651 : 30 C. W. N. 981 ;
A. I. R. 1926 Cal. 1109.

————S. 370—Presidency Magistrate—Duty of.

Judgments of Presidency Magistrates should strictly follow S. 370. *Man Mohan v. Corporation of Calcutta*.

33 Cr. L. J. 264 ;
136 I. C. 135 : 35 C. W. N. 868 ;
I. R. 1932 Cal. 183 ;
A. I. R. 1932 Cal. 62.

————S. 370—Presidency Magistrate, duty of.

Presidency Magistrate's judgment should furnish some indication that he has considered evidence. Merely recording evidence and saying case is proved, is not enough. Though defect is curable under S. 537, practice of following defective procedure should be discontinued. *Sham Lal v. Emperor*.

33 Cr. L. J. 729 ;
139 I. C. 244 : 36 C. W. N. 852 ;
I. R. 1932 Cal. 587 ;
A. I. R. 1932 Cal. 655.

————S. 370—Presidency Magistrate, duty of.

S. 370 permits, no doubt, a Presidency Magistrate instead of recording a judgment to record merely the reasons for his conviction, but this must be done in such a manner that the High Court in revision may be in a position to judge whether there were sufficient materials before him to support the conviction. Where the record prepared by a Presidency Magistrate did not contain a summary of the evidence, or such a statement of the facts as would enable the High Court to say whether the materials were sufficient to support the conviction, nor was there anything on the record to show that the accused had been previously convicted : *Held*, that the judgment was defective and the conviction should be set aside. *Toolsey Kaharin v. Emperor*.

1 Cr. L. J. 527 ;
8 C. W. N. 587.

————S. 370—Presidency Magistrate, duty of.

The rule, that a Magistrate should state the reasons for conviction in such a manner that a High Court on revision may judge whether there were sufficient materials before the Magistrate to support his order of conviction, does not apply to the Presidency Magistrates. In their case the law, as enacted in S. 370, Cr. P. C., does not demand a full and complete statement of reasons, but only a brief one. *Enamdu v. Emperor*.

1 Cr. L. J. 839 ;
8 C. W. N. 839.

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The warrant can issue only after the salary has come into the salary-carrier's possession or into that of the bailiff in his behalf. *Manning Soe Hlaing v. Ma Thein Khin.*

36 Cr. L. J. 850 :
155 I. C. 742 : 7 R. Rang. 353 :
A. I. R. 1934 Rang. 82.

—S. 386—Warrant.

Authorities taking steps to enforce warrant before expiration of sentence in default—Execution proceedings not ending before sentence in default is served—Delay, not due to faults of authorities—Warrant, need not be withdrawn. *Digambar Kashinath v. Emperor.*

36 Cr. L. J. 1034 :
156 I. C. 772 : 37 Bom. L. R. 99 : 59 Bom. 350 :
8 R. Bom. 33 : A. I. R. 1935 Bom. 160.

—S. 388—Applicability.

S. 388 does not apply to a case where the sentence is one of fine only and there is no provision except S. 388 by which a fine can be ordered to be realised by instalments. *Ali Hussain v. Emperor.*

34 Cr. L. J. 530 :
143 I. C. 120 : 56 C. L. J. 73 :
I. R. 1933 Cal. 343 : A. I. R. 1933 Cal. 308.

—S. 388 (1)—Application.

Sentence of imprisonment and fine—S. 388 (1) has no application, even if sentence of imprisonment is nominal. *V. Mohammed v. Emperor.*

35 Cr. L. J. 608 :
148 I. C. 112 : 11 Rang. 451 :
6 R. Rang. 201 (1) : A. I. R. 1934 Rang. 11.

—S. 388 (2)—Applicability.

S. 388 (2) refers only to order for payment of money which is not punishment inflicted. *V. Mohamed v. Emperor.*

35 Cr. L. J. 608 :
148 I. C. 112 : 11 Rang. 451 :
6 R. Rang. 201 (1) : A. I. R. 1934 Rang. 11.

—S. 388 (1)—Fine—Release on security—Suspension of sentence of imprisonment in default of payment of fine—Distress warrant.

A sentence of imprisonment in default of payment of a fine cannot be suspended unless a distress-warrant for the levy of the fine is issued at the same time. *Emperor v. The Mya.*

7 Cr. L. J. 452 :
4 L. B. R. 151.

—Ss. 390, 391—Borstal Institution, if jail—Superintendent of Senior Training School, if can carry out sentence of whipping—Procedure.

A Borstal Institution being clearly not a jail under S. 391, the Superintendent of the Senior Training School at Thayetmyo is not an officer in charge of a jail and cannot, in his position as Superintendent of the Training School, carry out a sentence of whipping ordered by the Magistrate. Where a youthful offender, for one offence, is ordered to be detained in a training school or a Borstal Institution and, for another offence tried at the same trial, is sentenced to whipping, the Magistrate must act under the provisions of S. 390, and either order the whipping to be inflicted in his own presence, or direct that it shall be inflicted at some convenient jail in the presence of

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the officer in charge of the jail. *Emperor v. Nga Pyu.* (F. B.)

38 Cr. L. J. 33 :
165 I. C. 575 : 4 Rang. 625 :
9 R. Rang. 215 : A. I. R. 1936 Rang. 485.

—S. 390—Sentence of whipping—Whether should be executed on same day—Power of Superintendent of Jail to detain prisoner for carrying out sentence.

A sentence of whipping need not necessarily be carried out on the very day that the sentence is passed. The "words at such place and time as the Court may direct" in S. 390 give a wide discretion to the Court in the matter. Where a prisoner sentenced to whipping is sent to jail late on a Saturday under a warrant which directs the sentence to be carried out as soon as practicable the Superintendent of the Jail would be justified in detaining the prisoner from Saturday to Monday in order to carry out the sentence, if whipping on a Sunday is not allowed by the Jail Rules. *Emperor v. Gopal Murgis.*

29 Cr. L. J. 573 :
109 I. C. 599 : 30 Bom. L. R. 389 :
A. I. R. 1928 Bom. 138.

—S. 391.

Sentence of whipping along with sentence of imprisonment—Sentence of whipping to be executed after imprisonment—Second part of sentence held incorrect. *Emperor v. Rashbehari Singh.*

36 Cr. L. J. 100 :
152 I. C. 291 : 15 P. L. T. 475 :
7 R. P. 179 : A. I. R. 1934 Pat. 551.

—Ss. 392, 393—Sentence of whipping, extent of.

Under the provisions of Ss. 392 and 393, Cr. P. C., not more than one sentence of whipping, and that not exceeding 30 stripes, should be awarded at one time. *Emperor v. Nga Po Kyan.*

4 Cr. L. J. 281 :
U. B. R. Cr. 1906.

—S. 393.

See Cr. P. C., S. 392.

—S. 393—Applicability—Sentences in different cases collectively exceeding seven years' imprisonment—Sentence of whipping, legality of.

The word "sentence" must be read in a general sense, and, if a person is sentenced for any period exceeding the period fixed by the Act whether in conviction in one case or more than one, he cannot be punished with whipping. *Nga Nyi Gyi v. Emperor.*

31 Cr. L. J. 176 :
120 I. C. 697 : 7 Rang. 769 :
A. I. R. 1930 Rang. 138.

—S. 393—Applicability—Sentence of whipping.

A person who is sentenced to imprisonment for more than five years, shall not be punishable with stripes and S. 393, Cr. P. C., applies even if the sentences aggregating more than five years' rigorous imprisonment are passed in different case. *Nur Ilahi v. Emperor.*

39 Cr. L. J. 4 :
171 I. C. 864 : 39 P. L. R. 326 :
10 R. L. 245 : A. I. R. 1937 Lah. 104.

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the accused in the trial and which, in fact, causes the trial to be vitiated. *Emperor v. Hari*.

36 Cr. L. J. 1161 (2) :
157 I. C. 697 : 28 S. L. R. 397 :
A. I. R. 1935 Sind 145.

S. 376.

See Cr. P. C., S. 192.

S. 376—Power and duties of High Court—Right of convict.

Per *Kennedy, J. C.*—As a general rule, the confirming Courts should deal with matters of confirmation as if an appeal were under hearing, and that appeal covered all possible grounds, which might and should have been raised, even if they are not actually raised in the appeal. The Court must scrutinize the evidence and see whether the verdict of the Jury is perverse, whether evidence has been improperly excluded and improperly admitted and whether the trial Judge has directed the Jury on the points of decision and has pointed out to them how far those points, in his opinion, are established or not established by admissible and relevant evidence and has otherwise directed the Jury properly. It is not open to the convict to attack the verdict of the Jury merely on the ground that the Jury should not have believed the evidence nor that the evidence was insufficient, provided there appear sufficient grounds for the verdict, but he must attack the sentence on the ground that the evidence was irrelevant or improperly admitted, or that it is extremely inadequate so much so that it was the duty of the trial Court to tell the Jury that there was no case against the accused. *Gul v. Emperor*.

23 Cr. L. J. 33 ;
64 I. C. 657 : 5 S. L. R. 103.

S. 376—Power of High Court—Jury trial—Death sentence—Confirmation of sentence.

A High Court, in the exercise of its jurisdiction confirming death sentences, has the power to go behind the verdict of the Jury and substitute its own finding for the unanimous finding of the Jury, but as a matter of practice, the High Court will not generally allow the verdict to be attacked arbitrarily, it being necessary for the convict to show *prima facie* that the verdict is unsupported by evidence. *Gul v. Emperor*.

23 Cr. L. J. 33 :
64 I. C. 657 : 5 S. L. R. 103.

S. 376 (b)—Re-trial—Re-trial, order of—High Court, power of.

Under S. 376 (b), the High Court has jurisdiction to order a new trial on the same or an amended charge. *Emperor v. Mehar Ali Sheikh*.

15 Cr. L. J. 481 :
29 I. C. 321 : 19 C. W. N. 556 :
21 C. L. J. 495 : A. I. R. 1916 Cal. 79.

S. 376—Scope—Accused charged with murder and concealment of murder—Sessions Court convicting of murder—No finding on the minor charge—High Court acquitting of murder—Competent to convict of concealment of murder.

Where the appellant was tried for murder and

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concealment of murder, but the Sessions Judge convicted him on the main charge of murder, expressing no opinion whether the minor charge under S. 201, I. P. C., had been established or not. The appellant was acquitted by the Chief Court on the murder charge, the High Court while acquitting on the charge of murder could convict the appellant on the minor charge, provided there was sufficient evidence on the record to support it. *Mohammad Shah v. Emperor*.

14 Cr. L. J. 278 :
19 I. C. 710 : 8 P. R. 1913 Cr. :
223 P. L. R. 1913 :
22 P. W. R. 1913 Cr.

S. 376—Scope—Appeal on trial by Jury—When lies.

S. 376 is to be read with S. 418 (2). It is now an exception to the general rule that an appeal on a trial by Jury will lie only on a matter of law. In a confirmation case, the accused has full liberty to attack the verdict of the Jury not only on questions of law but on questions of fact. *Khadim v. Emperor*.

38 Cr. L. J. 808 :
169 I. C. 716 : 31 S. L. R. 82 :
10 R. S. 17 : A. I. R. 1937 Sind 162.

S. 377—Death sentence—Confirmation of—Procedure—Non-compliance with S. 377—Effect.

Where in the case of a death sentence, the order of confirmation is only made, passed and signed by one of the Judges of the Court of the Resident, the peremptory provisions of S. 377, Cr. P. C., are not complied with, and the sentence will be submitted to the Court of the Resident who will require to dispose of the same under Ss. 375 to 379, Cr. P. C., and who should take into account, when considering their action under the alternative powers of S. 376, their Lordships' views on the other contentions in the appeal and the commutation of sentence already made by the Resident. *Fakira v. Emperor*.

38 Cr. L. J. 498 (P. C.) :
166 I. C. 790 : 1937 O. W. N. 412 :
39 P. L. R. 334 : 1937 O. L. R. 216 :
9 R. P. C. 231 : 3 B. R. 426 :
41 C. W. N. 741 : 1937 M. W. N. 546 :
46 L. W. 134 : 1937 2 M. L. J. 323 :
39 Bom. L. R. 966 :
I. L. R. 1937 Bom. 711 :
64 I. A. 148 : 1937 A. L. J. 1055 (P. C.) :
A. I. R. 1937 (P. C.) 119.

S. 377—Stay pending civil suit.

When Civil Court's final decision will be long delayed and will not dispose of all questions, criminal proceedings should not be stayed. *Emperor v. Dinalshah Rajanshah*.

35 Cr. L. J. 517 (2) :
147 I. C. 356 : 27 S. L. R. 219 :
6 R. S. 170 : A. I. R. 1933 Sind 358.

S. 379—Commitment to Sessions—Commitment in cases not exclusively triable by Sessions Court—Recording of reasons.

In committing cases not exclusively triable by the Court of Sessions, Magistrates should exercise a proper discretion, and give adequate reasons for making commitment to the Court of Sessions. Reasons should be

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commence after expiration of previous one—Legality—Madras Borstal Schools Act, S. 8.

S. 397, Cr. P. C., is not applicable to sentencees of detention under S. 8, Madras Borstal Schools Act and the direction that the sentence of detention should commence after the expiration of the previous sentence of detention is illegal. *In re : Public Prosecutor, Madras.*

39 Cr. L. J. 795 :
176 I. C. 768 : 47 L. W. 473 :
1938 M. W. N. 352 : 11 R. M. 176 :
A. I. R. 1938 Mad. 613.

————S. 397 — ‘Concurrent sentences,’ meaning of—Sentence of imprisonment, what is, implied in—Detention in civil prison, whether amounts to imprisonment.

A “sentence of imprisonment” implies the punishment awarded on conviction of an offence. A person detained in the civil prison is not undergoing a “sentence of imprisonment.” Therefore, when such a person is convicted of an offence and sentenced to a term of imprisonment, such term cannot, under S. 397, Cr. P. C., be made to commence on the expiry of the period for which is detained in the civil prison, but must commence from the date of the order. *Shin Taung v. Emperor.*

17 Cr. L. J. 480 :
36 I. C. 160 : A. I. R. 1917 L. Bur. 159.

————Ss. 397, 398—“Imprisonment” includes imprisonment in default which is a sentence—Subsequent imprisonment cannot begin until expiry of previous imprisonment in default.

The word “imprisonment” as used in S. 397, includes imprisonment in default of payment of fine which by virtue of S. 64, Penal Code, is a sentence; and therefore any subsequent sentence of imprisonment would not begin until the expiry of the sentence of imprisonment in default. *Emperor v. Panjaji Lalaji.*

40 Cr. L. J. 602 :
181 I. C. 979 : 41 Bom. L. R. 277 :
I. L. R. 1939 Bom. 160 : 11 R. B. 374 :
A. I. R. 1939 Bom. 174.

————S. 397—Power of High Court—Sentence in separate trial—Power of High Court to order sentences to run concurrently.

Under S. 397 the High Court has power to direct separate sentencees of separate trials to run concurrently. *Sis Ram v. Emperor.*

30 Cr. L. J. 904 :
118 I. C. 384 : 1929 A. L. J. 800 :
I. R. 1929 All. 864 : 51 All. 888 :
A. I. R. 1929 All. 585.

————S. 397—Scope.

Detention in prison—Failure to give security—Subsequent sentence cannot be ordered to run after expiry of period. *Emperor v. Sukkalsing.*

23 Cr. L. J. 255 :
66 I. C. 191 : 15 S. L. R. 205.

————S. 397—Scope—Separate trials on same day—Concurrent sentence of imprisonment, legality of.

An order that sentences of imprisonment passed upon an accused in two trials held on one and the same day should run concurrently

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is not illegal, inasmuch as until an accused has actually passed into the jail, he is not undergoing a sentence of imprisonment within the meaning of S. 397. *Makhan v. Emperor.*

19 Cr. L. J. 207 (b) :
43 I. C. 623 : A. I. R. 1918 All. 303.

————S. 397—Sentence—Concurrent sentences—Different trial.

It is an error in law to direct that a sentence of imprisonment passed by a Judge on a person in a subsequent trial should run concurrently with the sentence of imprisonment which had been passed on him in a former trial. *Advocate-General v. Govindasawmy.*

13 Cr. L. J. 466 :
19 I. C. 306 : 11 M. L. T. 213 :
1912 M. W. N. 396.

————S. 397—Sentence, when begins to run—“Already undergoing sentence of imprisonment,” meaning of—Separate sentences on same day.

An accused under custody begins to undergo a sentence of imprisonment passed on him from the moment the sentence is pronounced and if a second sentence of imprisonment is passed on him on the same day, subsequently in a separate trial, he is “already undergoing sentence of imprisonment” within the meaning S. 397. *Emperor v. Nga Po Thaung.*

25 Cr. L. J. 1310 :
84 I. C. 478 : 3 Bur. L. J. 32 :
A. I. R. 1924 Rang. 307.

————Ss. 397, 123—Sentence—Security for good behaviour, failure to give—Committal to prison for such failure is not “sentence of imprisonment.”

Where a person is committed to prison under S. 123, Cr. P. C. for failure to give security to be of good behaviour, he is not undergoing a sentence of imprisonment within the meaning of S. 397. *Emperor v. Muthukomaran.*

1 Cr. L. J. 1090 :
I. L. R. 27 Mad. 525.

————S. 397—Separate trials—Separate sentences to run consecutively.

Where separate trials are held and separate sentences passed upon the accused at each trial, the sentences under S. 397 must be served consecutively. *Harak Narain v. Emperor.*

22 Cr. L. J. 520 :
62 I. C. 408 : 19 A. L. J. 310 :
A. I. R. 1921 All. 126.

————S. 397—Separate trials.

Where trials for two offences are separate, S. 397 applies and the sentencees must take effect consecutively. *Imperator v. Khudabua.*

10 Cr. L. J. 236 :
2 S. L. R. 23.

————S. 397—Subsequent Conviction.

Order for detention under S. 123—Subsequent conviction for previous offence—Sentence under subsequent conviction, runs from expiry of order of detention. *Emperor v. Nau E.*

33 Cr. L. J. 174 :
135 I. C. 644 : 6 Rang. 612 :
I. R. 1932 Rang. 52 : A. I. R. 1932 Rang. 50.

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———S. 386—Attachment—Principles applicable.

The principles applicable to attachments under S. 88, Cr. P. C., apply equally to attachments under S. 386. *Hira Lal v. Emperor*.

16 Cr. L. J. 166 :
27 I. C. 550 : 28 P. L. R. 1915 :
A. I. R. 1915 Lah. 227.

———S. 386—Claim.

Attachment of property to recover fine—Claim by third party—Stay of sale to enable claimant to establish his right in Civil Court should be made. *In re : Pandurang Venkatesh Malgi*.

33 Cr. L. J. 805 :
139 I. C. 541 : 34 Bom. L. R. 1102 :
56 Bom. 364 : I. R. 1932 Bom. 501 :
A. I. R. 1932 Bom. 476.

———S. 386—Claim—Bengal Government Rules—Determination of claims to property attached under S. 386—Procedure.

While determining ownership of property attached under S. 386, Cr. P. C. there is no necessity for a Magistrate in Bengal to follow the procedure laid down in O. XXI, r. 58, C. P. C., but on the other hand, he is not entitled to utilise the services of a Police Officer in investigating such claims, nor is he entitled to rely simply on the report of a Police Officer. *Emperor v. Sorojini De Chowdhury*.

40 Cr. L. J. 654 :
182 I. C. 315 : 43 C. W. N. 443 :
I. L. R. (1939) 1 Cal. 471 : 12 R. C. 39 :
A. I. R. 1939 Cal. 337.

———S. 386 (b)—Claim.

Property seized under S. 386 (a)—Petitioners claiming property to be joint—Proper procedure is to proceed under Sub-cl. (b). *Sahdeo Singh v. Ram Kishun Singh*.

33 Cr. L. J. 671 :
138 I. C. 310 : 13 P. L. T. 235 :
I. R. 1932 Pat. 180 :
A. I. R. 1932 Pat. 212.

———S. 386—Condition precedent—Issue of distress warrant—Previous order for payment of fine, necessity of.

Before a distress warrant can be issued under S. 386, it is necessary that the Court issuing that warrant should have sentenced the offender to pay a fine. Where the Traffic Inspector of a Railway made a report to a Magistrate that damage had been caused to the Railway by a motor car and the Magistrate issued a distress warrant under the said section for recovery of a certain sum of money alleged to be the amount of the damage caused : *Held*, that the warrant was wholly illegal. *Abdul Majid v. N. L. Mukharji*.

30 Cr. L. J. 635 :
116 I. C. 524 : 10 P. L. T. 121 :
I. R. 1929 Pat. 300 : A. I. R. 1929 Pat. 108.

———S. 386—Construction.

The provisions of S. 386, Cr. P. C., should be strictly construed. *Secretary of State v. Sengammal*.

18 Cr. L. J. 1 :
36 I. C. 833 : 4 L. W. 613 :
1917 M. W. N. 105 : A. I. R. 1917 Mad. 748.

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———S. 386—Joint family.

No more than the interest of the offender in joint family property can be attached—Proper course is to proceed under C. P. C. O. XXI, r. 47. *In re : Marina Narasanna*.

33 Cr. L. J. 622
138 I. C. 548 : 63 M. L. J. 142 :
55 Mad. 1041 : 36 L. W. 402 :
1932 M. W. N. 457 : I. R. 1932 Mad. 579 :
A. I. R. 1932 Mad. 538.

———S. 386—Joint family property.

Attachment and seizure of undivided share of convicted person in movables, is not legal. *Emperor v. Manmatha Nath*.

34 Cr. L. J. 579 :
143 I. C. 238 : 60 Cal. 851 :
I. R. 1933 Cal. 390 : A. I. R. 1933 Cal. 401.

———S. 386—Joint family property.

Compensation under S. 250 is realizable under S. 386—Hindu complainant dying while joint before property attached—Property passes by survivorship and cannot be attached. *Ramchander Pandey v. Emperor*. (F. B.)

33 Cr. L. J. 958 :
140 I. C. 72 : 13 P. L. T. 536 :
I. R. 1932 Pat. 290 : A. I. R. 1932 Pat. 301.

———S. 386—Joint family property.

Per *Full Bench*, *Kalwant Sahay, J.*, (contra)—Joint family property attached in realization of fine of co-pareener—Money credited to Government—Application for refund by other co-pareeners cannot be entertained. *Suraj Narain Prasad Singh v. Emperor*. (S. B.)

35 Cr. L. J. 685 :
148 I. C. 321 : 15 P. L. T. 57 :
13 Pat. 317 : 6 R. P. 464 :
A. I. R. 1934 Pat. 181.

———S. 386 (1) (a)—Joint family property.

Undivided share of member of joint family in specific movable property is not capable of attachment and sale. *Shrawan v. Emperor*.

34 Cr. L. J. 1263 :
146 I. C. 371 : 29 N. L. R. 320 :
6 R. N. 86 : A. I. R. 1933 Nag. 248.

———S. 386 (1) (a)—Joint family property.

Undivided share in movable property cannot be seized. *Rajendra Prasad Misser v. Emperor*. (S. B.)

33 Cr. L. J. 872 :
140 I. C. 101 : 13 P. L. T. 549 :
12 Pat. 29 : I. R. 1932 Pat. 281 :
A. I. R. 1932 Pat. 292.

———S. 386 (b)—Joint family property—Attachment by seizure of crop for recovery of fine.

Where in execution of a warrant under S. 386 (b) for recovery of the fine imposed on one of the members of a Hindu co-pareenary, the entire crops belonging to the co-pareenary is attached by actual seizure, the attachment infringes the rights of the other members and consequently a claim preferred by the manager of the co-pareenary on the ground of such

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that is all that need be said. I have the right and I have the power." The effect of an order of remission is to wipe out the unremitted portion of the sentence altogether and not merely to suspend its operation. Though an order under S. 401 passed by the Local Government is in the name of the Governor, it is in reality an order of the Provincial Government. Viewing Sub-s. (1) of S. 401, as a whole, it is the clear intention of the Legislature to confer a "power" to suspend or remit a sentence. *Venkatesh Yeshwant Deshpande v. Emperor.* (F. B.)

40 Cr. L. J. 397 :
180 I. C. 594 ; 1938 N. L. J. 423 :

11 R. N. 380 :
I. L. R. 1940 Nag. 1 :
A. I. R. 1938 Nag. 513.

—S. 401—Scope.

Tender age and youth of the murderer—Deceased found in adultery with female relative of accused before the offence was committed—Case held fit one for prerogative by Local Government. *Nawab v. Emperor*

33 Cr. L. J. 580 :
138 I. C. 410 : 33 P. L. R. 279 :
I. R. 1932 Lah. 486 :
A. I. R. 1932 Lah. 308.

—S. 402.

Sec also (i) Cr. P. C., 1898, S. 4.
(ii) Lahore Conspiracy Case Ordinance, 1930.

—S. 402—Enhancement—Appellate Court—Power to enhance sentence.

The District Magistrate on appeal by an accused against the sentence of fine of rupees fifty under S. 325, Penal Code, altered the sentence to one of two months' rigorous imprisonment including seven days' solitary confinement : *Held*, that the alteration amounted to an enhancement and the order of the District Magistrate was illegal. He should have referred the case to the Chief Court for orders. *Kunja v. Emperor.*

1 Cr. L. J. 948 :
5 P. L. R. 416.

—S. 403.

- Acquittal.
- Applicability.
- Autrefois acquit.*
- Charge.
- Competency.
- Competency of Court.
- Competent to try, meaning of.
- Discharge.
- Discharge of accused.
- Dismissal of complaint.
- Fresh trial.
- “Jurisdiction,” meaning of.
- Maintenance Application.
- Miscellaneous.
- Procedure.
- Re-trial after acquittal.
- Re-trial barred.
- Revision.
- Scope.
- “Trial,” meaning of.
- Tried, meaning of.

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- See also* (i) Arms Act, 1878, S. 19 (a).
(ii) *Autrefois acquit.*
(iii) Cr. P. C., 1898, Ss. 195, 195 (1), 203, 204, 208, 222 (2), 235, 236, 247, 249, 253, 348, 403, 437, 531.
(iv) Penal Code, 1860, Ss. 95, 96, 171-D, 498.

—S. 403—Acquittal on charge of abduction, whether bars trial on charge of detention.

An acquittal on a charge of abduction under S. 498 of the Penal Code is no bar to the trial of a charge of detention. *Mahbub Ali Khan v. Emperor.* 24 Cr. L. J. 780 :
74 I. C. 444 : 4 L. L. J. 448.

w—Ss. 403, 476—Acquittal of accused for want of complaint by proper person—Subsequent trial, legality of.

The discharge or acquittal of an accused for want of a complaint under S. 476, Cr. P. C., by a person competent to make such a complaint, does not bar a subsequent trial of the same accused for the same offence on a complaint made by the proper person. *Emperor v. Ambaji Dhakya Katkari.* 29 Cr. L. J. 545 ;
109 I. C. 481 : 30 Bom. L. R. 380 :
52 Bom. 257 : A. I. R. 1928 Bom. 143.

—S. 403—Applicability—Accused acquitted of offences under Ss. 366, 368, 376, Penal Code—Re-trial on husband's complaint under S. 498, Penal Code—Previous acquittal, whether bar to subsequent trial.

The accused was tried under Ss. 366, 368, 376, I. P. C., and was acquitted. On complaint of the husband of the woman, the accused was re-tried and convicted on the same facts under S. 498, I. P. C. : *Held*, that as the earlier Court was incompetent to try the accused under S. 498 in the absence of a complaint by the husband, the later trial of him under the section upon such complaint did not violate the provisions of S. 403, Cr. P. C. *Tikaram v. Emperor.*

16 Cr. L. J. 657 :
30 I. C. 641 : 17 Bom. L. R. 678 :
A. I. R. 1915 Bom. 194.

—S. 403—Applicability—Accused acquitted under S. 427, Penal Code—Second trial under S. 147, Penal Code, whether legal.

The accused was charged under S. 427, Penal Code, for being a member of an unlawful assembly, some of whom threw down and broke the toddy pots in a Palmyra tope. He was acquitted on the ground that he was not present at all at the scene of occurrence. Then he was charged under S. 147, Penal Code, on the ground that some of the party had destroyed the spathes in pursuance of the common object ; *Held*, that though the offences in the two cases were under two different sections of the Penal Code, the facts overlapped so considerably that the principle underlying S. 403 must be held

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———S. 250—*Frivolous or vexatious—Meaning of—False charge—Vexatious—Compensation—Discretion of trying Magistrate.*

The words frivolous or vexatious used in S. 250 are not used *ejusdem generis*, and where a Magistrate holds that a complaint is not only false but vexatious, he has a discretion to award compensation, if he is of opinion that public policy does not necessitate the sanctioning of a prosecution against the complainant. *Crown v. Noto.*

9 Cr. L. J. 268 :
1 S. L. R. 28.

———S. 250—*Frivolous or vexatious—Meaning of—Frivolous or vexatious—Ejusdem generis—False complaint nor frivolous or vexatious.*

The word 'vexatious' in S. 250 must be read as *ejusdem generis* with frivolous. Both the words apply to that class of cases in which the aid of the law has been heedlessly invoked. And, therefore, where a Magistrate holds the complaint to be false or needless, he cannot award compensation under this section. *King-Emperor v. Jethomal.*

9 Cr. L. J. 255 :
1 S. L. R. 12.

———S. 250—*Frivolous or vexatious—Meaning of.*

The term "frivolous or vexatious" covers a deliberately false report. A "vexatious" charge may be partly true, and the idea conveyed by the word is that the object of the person making the accusation should be primarily to harass the persons accused. *Bakaji v. Mukand Singh.*

21 Cr. L. J. 226 :
55 I. C. 98 : A. I. R. 1920 Nag. 108.

———S. 250—*Guardian, liability of—Minor complainant—Guardian not responsible.*

Under S. 250 a guardian or next friend of a minor complainant cannot be ordered to pay compensation to the accused. *Isa v. Ranon.*

13 Cr. L. J. 136 :
13 I. C. 824 :
83 P. L. R. 1912.

———S. 250—*Hearing complainant—Date.*

It cannot be laid down as a proposition that when an order has been made under S. 250 calling upon the complainant to show cause, without fixing any date, the complainant is to come necessarily on the next day and comply with the order. *Rajaram Manjhi v. Panchanan Ghose.*

31 Cr. L. J. 828 :
125 I. C. 294 : 33 C. W. N. 861 :
A. I. R. 1929 Cal. 762.

———S. 250—*Hearing complainant—Date for.*

Where a Magistrate passes an order under S. 250, calling upon the complainant to show cause, without fixing any date, the complainant is to show cause then and there unless and until he obtains some order from the Court adjourning the matter to a further date, and if the Court is unable to sit on that day, it is the duty of the Court to fix a date on which the cause is to be shown and to give notice of the date to the complainant. S. 250 contemplates that the complainant is to

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show cause and where the Court fixes a day for showing cause in the absence of the complainant, it is the duty of the Court to give notice to the complainant of the day fixed. It is not enough to serve notice on the Pleader or pass an order on a petition filed by the Pleader which may not be communicated to the complainant. *Rajaram Manjhi v. Panchanan Ghosh.*

31 Cr. L. J. 828 :
125 I. C. 294 : 33 C. W. N. 861 :
A. I. R. 1929 Cal. 762.

———S. 250—*Hearing complainant—Necessity of.*

A Magistrate shall hear the complainant, before making an order for compensation against him, on that aspect of the case, and unless he does this, the whole proceeding as to compensation is bad. *Haru Tanti v. Satish Roy.*

12 Cr. L. J. 6 :
9 I. C. 54 : 13 C. L. J. 425 : 38 Cal. 302.

———S. 250—*Hearing complainant—Necessity of.*

An order directing a complainant to pay compensation to an accused person who has been discharged, without giving him an opportunity of showing cause why such order should not be made, is bad in law and should be set aside. *Mughla v. Muhammad.*

25 Cr. L. J. 1312 :
82 I. C. 480 : A. I. R. 1923 Lah. 458.

———S. 250—*Hearing complainant—Necessity of.*

An order under S. 250 awarding compensation to an accused person without affording the complainant an opportunity to object to the order is illegal. *Akloo Mistri v. Nawbat Lal.*

21 Cr. L. J. 751 (a) :
58 I. C. 255 : 1 P. L. T. 558 :
A. I. R. 1920 Pat. 211.

———S. 250—*Hearing complainant—Necessity of—Cause shown by complainant, whether should be recorded before ordering compensation.*

The Magistrate shall record and consider any cause which the complainant may show, and having considered that cause, he may, for reasons to be recorded, if he is still satisfied that the accusation is false and either frivolous, or vexatious, direct compensation to be paid. It is only after considering the cause so shown that an order can be passed directing him to pay compensation. Unless and until the directory provisions of S. 250 are complied with, a Magistrate has no power to order payment of compensation. *Ma E Myaing v. The King.*

39 Cr. L. J. 743 :
176 I. C. 508 : 1938 Rang. 163 :
11 R. Rang. 52 : A. I. R. 1938 Rang. 247.

———S. 250—*Hearing complainant—Necessity of.*

Compensation—Discharge of accused—Order awarding compensation before hearing complainant's explanations is bad. *Emperor v. Baloch Daryakhan.*

35 Cr. L. J. 1038 :
149 I. C. 946 : 6 R. S. 250 :
A. I. R. 1934 Sind 18.

———S. 250 (1) (2)—*Hearing of complainant—Necessity of.*

Cr. P. CODE (1898), S. 403

The accused was tried under S. 498 of the Penal Code on the charge that he, between the 10th and 31st December, 1927, took away R from the custody of N with intent to commit illicit intercourse with her and was detaining her at his house. He was acquitted on that charge. He was subsequently prosecuted under Ss. 363 and 366, Penal Code, on the charge that he, on the 10th of December, 1927, kidnapped R from the lawful guardianship of N with intent that she may be seduced to illicit intercourse. The Magistrate who acquitted the accused on the first charge was not competent to try an offence under S. 366, Penal Code, though he was competent to try an offence under S. 363 : *Held*, that the accused was not entitled to have a verdict of not guilty on the plea of *autre fois acquit* as regards the charge under S. 366 but was, however, entitled to such a verdict under S. 363. *Ghann Prasad Singh v. Emperor*.

29 Cr. L. J. 760 :
110 I. C. 792 : 10 P. L. T. 446 :
A. I. R. 1928 Pat. 577.

————S. 403—*Applicability*—*Previous trial without sanction—Jurisdiction of Court to try accused on same facts after sanction—Registration Act, S. 82.*

An accused was placed upon trial for aiding and abetting forgery in connection with a document presented for registration and was acquitted. He was then placed upon his trial for aiding and abetting cheating in connection with the same transaction. He was convicted by the Magistrate but was acquitted on appeal. The District Registrar thereupon gave sanction for his trial for an offence under S. 82 of the Registration Act. He was committed to Sessions and the Sessions Judge made a reference to the High Court suggesting that S. 403, Cr. P. C., was a bar to his trial : *Held*, that the former trial of the accused for the offence of aiding and abetting forgery was in no way a bar to his trial for an offence under the Registration Act, nor was his trial and acquittal of the offence of aiding and abetting the cheating a bar by S. 403 (4) as at the former trial the Court was not competent to charge with or convict or acquit of the offence with which he was subsequently charged by reason of the want of sanction. *Emperor v. Jivan*.

16 Cr. L. J. 144 :
27 I. C. 208 : 13 A. L. J. 4 : 37 All. 107 :
A. I. R. 1915 All. 114.

————S. 403—*Applicability.*

S. 403 does not depend for its application upon additional evidence being available or not, that fact is altogether irrelevant. *Maksuddan Mistry v. Emperor*.

22 Cr. L. J. 63 :
59 I. C. 107 : 2 P. L. T. 31 :
1921 Pat. 108 : A. I. R. 1921 Pat. 22.

————S. 403—*Applicability.*

The true test of deciding whether a subsequent trial comes under Part 2 of S. 403, Sub-s. (1) is to see whether the acquittal or conviction from the first charge necessarily involves an

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acquittal or conviction on the second charge. *Parmananda Das Gupta v. Emperor*. (F. B.)

40 Cr. L. J. 199 :
179 I. C. 506 : 68 C. L. J. 206 :
11 R. C. 557 : I. L. R. 1939 1 Cal. 1 :
A. I. R. 1939 Cal. 65.

————S. 403—*Applicability.*

Trial without jurisdiction—S. 403 is not bar to subsequent trial by Court of competent jurisdiction. *Bhupendra Nath Sahu v. Emperor*.

35 Cr. L. J. 686 (1) :
148 I. C. 437 : 15 P. L. T. 554 :
6 R. P. 478 (1) : A. I. R. 1934 Pat. 411 (1).

————S. 403—*Applicability.*

Two challans, one under S. 451, Penal Code, and another under Ss. 161 and 511 for offences committed in same transaction. Trial under first challan and acquittal—Trial under other challan is not barred under S. 403 (1) or under general principle of *autre fois acquit*. *Hira Lal v. Emperor*.

35 Cr. L. J. 1270 :
151 I. C. 259 : 7 R. C. 95 :
A. I. R. 1934 Cal. 240.

————S. 403—*Applicability.*

Where the facts in a prosecution under S. 121-A, are not the same as in a previous trial though some are common but on the facts of the previous trials a charge under S. 121-A, Penal Code, could not possibly have been framed or a trial held on that charge, and where the present charge not only includes the offences with which the accused were charged in the previous trial but goes beyond them, the case is governed by Sub-s. (2) of S. 403 and not by Sub-s. (1). *Jitendra Nath Gupta v. Emperor*.

169 I. C. 977 :
10 R. C. 69 : A. I. R. 1937 Cal. 99.

————S. 403—*Applicability.*

Where the law requires a previous sanction to be given before a charge can be entertained by a Court, that Court is not a Court of competent jurisdiction until the sanction has been obtained. *Emperor v. Jivan*.

16 Cr. L. J. 144 :
27 I. C. 208 : 13 A. L. J. 4 :
37 All. 107 : A. I. R. 1915 All. 114.

————S. 403—*Applicability—Test.*

In order to apply S. 403 (1), Cr. P. C., it is necessary to see whether under S. 236 of the Code any charge in the previous trial could have been framed for the offences for which the accused is sought to be tried at the second trial. *Hayat Khan v. Emperor*.

19 Cr. L. J. 121 (b) :
43 I. C. 409 : 4 P. L. W. 21 :
A. I. R. 1918 Pat. 165.

————Ss. 403, 423—*Applicability—Conviction set aside—Re-trial.*

When a conviction is set aside and a re-trial ordered, the whole case is re-opened and the accused must be tried again on all the charges originally framed. Having regard to the pro-

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———S. 393—(As amended by whipping Burma Amendment) Act, 1927—*Computation.*

In computing maximum period of imprisonment, period of sentence already undergone before commission of offence should not be taken into account. *Emperor v. Nga'Nayi Nge.*

35 Cr. L. J. 1027 :

149 I. C. 1073 : 12 Rang. 404 :

6 R. Rang. 357 : A. I. R. 1934 Rang. 58.

———S. 393—*Scope—Accused sentenced to whipping—Cumulative sentence of imprisonment for more than five years, whether can be maintained.*

The cumulative sentence of imprisonment of more than five years cannot be maintained in the case of an accused who has been sentenced to undergo punishment of whipping and vice versa. *Karim Shah v. Emperor.*

40 Cr. L. J. 681 :

182 I. C. 530 : 12 R. Pesh. 2 :

A. I. R. 1939 Pesh. 17.

———S. 393—*Scope—Sentence of seven years' imprisonment plus whipping—Legality of.*

An order sentencing the accused to imprisonment for seven years, and whipping in addition to it, is against the provisions of S. 393. *Sona Khan v. Emperor.*

38 Cr. L. J. 429 :

167 I. C. 655 : 9 R. Pesh. 90 :

A. I. R. 1937 Pesh. 22.

———S. 393—*Scope—Whipping, sentence of, when can be passed.*

A sentence cannot be passed of which the execution is prohibited by law. The provisions contained in S. 393 (b) that the persons named therein shall not be punishable with whipping refers to the execution and not to the passing of the sentence of whipping. A sentence of whipping in addition to 7 years' rigorous imprisonment is illegal. *Akbar v. Emperor.*

21 Cr. L. J. 306 :

55 I. C. 466 : 30 P. R. 1919 Cr. :

A. I. R. 1920 Lah. 364.

———Ss. 394, Cl. 2, 395—*Certificate—Certificate before sentence that accused was fit only to receive partial sentence of whipping—"If during the execution of a sentence of whipping"—Sentence partially executed—Sentence in lieu of the unexecuted portion.*

There is no provision of law authorising a Medical Officer to give a certificate before the commencement of the execution of the sentence of whipping that the accused is fit to receive only a portion of the sentence; and such a certificate, if given, is not a certificate given "during the execution of the sentence" within the meaning of S. 394, Cr. P. C., and, consequently, the Magistrate was not competent in the case to have sentenced the accused under S. 395, Cr. P. C., to a term of imprisonment in lieu of so much of the sentence of whipping as was not executed. *In re : Emperor.*

7 Cr. L. J. 5 :

17 M. L. J. 555 : 3 M. L. T. 31 : 31 Mad. 84.

———S. 394—*Sentence of whipping—Powers of Magistrate.*

While considering the question as to whether

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a sentence of whipping is appropriate in any particular case, the Magistrate should not reject this form of punishment on the ground that the accused is too young or frail unless he has medical opinion in support of his own. *Mauing Tin Hlaing v. The King.*

41 Cr. L. J. 22 :

184 I. C. 464 : 12 R. Rang. 147 :

A. I. R. 1940 Rang. 383.

———S. 395.

See Cr. P. C., S. 394.

———Ss. 395 (1), 562—*Sentence of whipping—Magistrate, if can take bond under S. 562—His duty in such cases.*

The accused was sentenced to 25 lashes under S. 379, Penal Code, and as it was reported that owing to an enlarged spleen, the sentence of whipping could not be executed, the Magistrate directed him to enter into a bond under S. 562, Cr. P. C. for one year: *Held*, that this order was clearly beyond the Magistrate's powers. S. 395 (1), Cr. P. C. in such a case allows the Court to remit the sentence altogether or to sentence the offender in lieu of whipping to imprisonment or fine. *The King v. Ba Kyway.*

39 Cr. L. J. 707 (a) :

176 I. C. 224 : 11 R. Rang. 39 :

A. I. R. 1938 Rang. 218.

———S. 395—*Substitution—Substitution of 30 stripes for three months' imprisonment, whether enhancement of sentence.*

Obiter—In the case of adults the substitution of a sentence of thirty stripes for a sentence of one year's rigorous imprisonment or more, or the substitution of a sentence of twenty-five stripes for a sentence of nine months' imprisonment or more or the substitution of a sentence of twenty stripes for a sentence of six months' imprisonment or more cannot be regarded ordinarily as an enhancement of sentence within the meaning of S. 423 (1) (b), Cr. P. C., and in the case of a person under 16 years, the substitution of a sentence of fifteen stripes for a sentence of imprisonment for six months or more the substitution of a sentence of ten stripes for a sentence of imprisonment for three months or more would not ordinarily be an enhancement of the sentence. *Emperor v. Chit Pon. (F. B.)*

30 Cr. L. J. 986 :

119 I. C. 209 : 7 Rang. 319 :

I. R. 1929 Rang. 289 ; A. I. R. 1929 Rang. 177.

———Ss. 395, 423 (1) (b) — *Substitution—Substitution of whipping for imprisonment in appeal, legality of.*

The substitution, by an Appellate Court, of a sentence of thirty stripes for a sentence of three months' rigorous imprisonment is an enhancement of sentence within the meaning of S. 423 (1) (b) and is, therefore, illegal. *Emperor v. Chit Pon. (F. B.)*

30 Cr. L. J. 986 :

119 I. C. 209 : 7 Rang. 319 :

I. R. 1929 Rang. 289 ; A. I. R. 1929 Rang. 177.

———S. 397.

See also Cr. P. C. 1898, Ss. 35, 123.

———S. 397—*Applicability—Direction that sentence of detention in Borstal School should*

Cr. P. CODE (1898), S. 403

without a licence so long as his acquittal on the same facts for a different offence remains in force, as, applying the principle of *autrefois acquit*, he cannot be tried a second time on the same facts cognate to or involved in the offence with which he was previously charged. *Maksuddan Mistry v. Emperor*.

22 Cr. L. J. 63 :
59 I. C. 107 : 2 P. L. T. 31 : 1921 Pat. 108 :
A. I. R. 1921 Pat. 22.

———S. 403—*Autrefois acquit—Revision—Pending trial—Discretion of Court—Quashing a prosecution.*

Inam-Ullah and others were charged before a Court of Session with offences falling within S. 467 read with S. 114, I. P. C. These offences were alleged to have been committed in respect of the forgery of six documents, and the circumstances alleged by the prosecution were such that the forgery of all the six documents constituted one and the same transaction. Inam-Ullah was specifically charged in respect of three only out of the six documents alleged to have been forged. All the accused were convicted by the Sessions Judge, but on appeal Inam-Ullah was acquitted by the High Court. Subsequently fresh proceedings were set on foot by the District Magistrate against Inam-Ullah in respect of the three documents which had not formed the subject of charges against him at the previous trial: *Held*, on application by Inam-Ullah to the High Court to quash these proceedings that the applicant was not entitled as a matter of law to the benefit of S. 403, Cr. P. C., but the circumstances of the case were such that it was inexpedient that any further proceedings in respect of the forgery of the six documents in question should be taken against the applicant. *Emperor v. Inam-Ullah*.

2 Cr. L. J. 790 :
2 A. L. J. 673 : 25 A. W. N. 238.

———S. 403—*Autrefois acquit—Subsequent prosecution on facts different from those of previous prosecution.*

Where the prosecution of an accused rests on facts wholly and completely different from those on which he was previously prosecuted, the principle of *autrefois acquit* cannot be invoked. *Waryam Singh v. Emperor*.

29 Cr. L. J. 3 ;
106 I. C. 339 : 29 P. L. R. 52.

———S. 403—*Autrefois acquit—Test of application.*

In determining whether an accused person is entitled to have a verdict of not guilty entered on the ground of *autrefois acquit* where the first Court was competent to try the subsequent charge, the real test is whether the evidence is the same in both cases. *Chhau Prasad Singh v. Emperor*.

29 Cr. L. J. 760 :
110 I. C. 792 : 10 P. L. T. 446 :
A. I. R. 1928 Pat. 577.

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———S. 403—*Autrefois acquit—Time for raising plea.*

An accused person is entitled at any stage of the proceedings to set up the plea of *autrefois acquit* and to substantiate it if he can. *Chhau Prasad Singh v. Emperor*.

29 Cr. L. J. 760 :
110 I. C. 792 : 10 P. L. T. 446 :
A. I. R. 1928 Pat. 577.

———Ss. 403, 530—*Autrefois acquit—Complaint by public servant to Police—Complaint to Magistrate—Acquittal for want of proper complaint—Subsequent complaint by public servant—Plea of autrefois acquit, if can be successfully raised.*

A complaint was made by a public servant to the Police under S. 353, Penal Code, whereupon the Police filed a charge-sheet before the Magistrate who, on the prosecution evidence, came to the conclusion that the *prima facie* case was not made out under S. 353, but only under S. 186. Accordingly he framed a charge under S. 186 and took evidence of the defence. It was contended for the defence that the trial was illegal under S. 195 (1) (a), Cr. P. C., there being no complaint by the public servant concerned or some other public servant to whom he was subordinate. This plea was upheld and the accused acquitted. The public servant subsequently filed a complaint and the accused raised the plea of *autrefois acquit*: *Held*, that the prior acquittal was void under S. 530, Cr. P. C., and hence the doctrine of *autrefois acquit* did not apply. *In re: Muthu Mooppan*. (F. B.)

38 Cr. L. J. 457 :
167 I. C. 571 : 1937 M. W. N. 17 :
45 L. W. 226 : 1937 1 M. L. J. 334 :
9 R. M. 475 : I. L. R. 1937 Mad. 664 :
A. I. R. 1937 Mad. 301.

———S. 403 (1), (2)—*Autrefois acquit—Offences, several, committed in same transaction—Trial for one offence, whether bars subsequent trial for another.*

A person acquitted or convicted of any offence may, under S. 403 (2), Cr. P. C., be afterwards tried for any distinct offence for which a separate charge might have been made against him on the former trial under S. 235 (1) of the Code. Therefore, an accused person, who has been tried for the offence under S. 342, I. P. C., can be subsequently tried for an offence under S. 147 of the Code, even though the two offences formed the same transaction within the meaning of S. 235 (1), Cr. P. C. *Ram Sahay Ram v. Emperor*.

21 Cr. L. J. 614 :
57 I. C. 278 : 31 C. L. J. 476 :
24 C. W. N. 763 : A. I. R. 1921 Cal. 181.

———S. 403 (1)—*Charge—Conviction on one charge, whether bars subsequent trial on separate and distinct charge.*

Accused were tried and convicted of an offence under S. 352 of the Penal Code on the complaint of A. Subsequently on

Cr. P. CODE (1898), S. 401

———S. 397—*Subsequent conviction.*

Two successive sentences of imprisonment—First conviction quashed on appeal—Second imprisonment runs from date of accused's acquittal in first conviction—(On equitable principles, however, sentence already undergone under first conviction was deducted by reducing sentence in subsequent conviction under S. 439.) *Emperor v. Koural Shah.*

34 Cr. L. J. 24 :
140 I. C. 481 : I. R. 1932 Sind 191 :
A. I. R. 1932 Sind 159.

———S. 399, *applicability of, to Punjab.*

S. 399 has no application in the Punjab where the Reformatory Schools Act of 1897 is in force. *Emperor v. Nur Muhammad.*

19 Cr. L. J. 917 :
47 I. C. 433 : 7 P. R. 1918 Cr. :
25 P. W. R. 1918 Cr. : 91 P. L. W. 1918 :
A. I. R. 1917 Lah. 27.

———S. 401.

See also (i) Confession.

(ii) Penal Code, 1860, S. 302.

———S. 401—*Grounds—Offence under Penal Code, S. 302/149—Young age, minor part played in bad company.*

The accused who was 16 or 17 was constructively guilty under S. 302/149, Penal Code, and was sentenced to transportation for life. In view of the age of the accused, the minor part played by him in the proceeding and the fact that he had fallen in bad company and was merely used as a tool by the murderers, the High Court on appeal while upholding conviction, recommended the case to the Local Government for reduction of sentence to that of three years' rigorous imprisonment. *Joga Singh alias Joga v. Emperor.*

11 L. L. J. 203 :
A. I. R. 1929 Lah. 601.

———S. 401—*Grounds.*

Remission of sentence of whipping by Local Government before Judicial determination of question is not proper. *Nga Ohu Shree v. Emperor.*

35 Cr. L. J. 959 :
149 I. C. 107 : 12 Rang. 344 :
6 R. Rang. 286 : A. I. R. 1934 Rang. 125.

———S. 401—*Grounds.*

Where a lad of seventeen years of age is found to have participated in a murder under the influence of his father and elder brother, it is a fit case for the Local Government to exercise its powers under S. 401. *Kartar Singh v. Emperor.*

33 Cr. L. J. 484 :
137 I. C. 293 : 33 P. L. R. 191 :
I. R. 1932 Lah. 338 :
A. I. R. 1932 Lah. 259.

———S. 401—*Scope.*

Boy of fifteen along with his brother and maternal uncle, mercilessly beating another—Death—Presumption is that boy acted under influence of maternal uncle—Action under S. 401 is proper. *Ghulam Mohammad v. Emperor.*

35 Cr. L. J. 430 (1) :
147 I. C. 578 : 35 P. L. R. 139 :
6 R. L. 403 : A. I. R. 1933 Lah. 1021.

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———S. 401—*Scope—Order by Provincial Government in the name of Governor; in reality an order of Provincial Government.*

Once the Government remits a sentence unconditionally, it is not open to it, in the absence of fraud or mistake to cancel the remission and restore the sentence. Even assuming that it could do so, an order of this kind which has been acted upon to the extent of altering the History Ticket, to the extent of informing the Legislature of the remission, cannot be amended or cancelled or suspended by the Assistant Legal Remembrancer writing to the Superintendent of the Central Jail, a memorandum telling the Superintendent to keep a prisoner in custody until he is told to let him go. That is not the way that orders are amended. When the amending order is passed eight days after an application for *habeas corpus writ* under S. 401 was launched and one month and 12 days after the prisoner was entitled to be released under the original order of remission, only possible *locus poenitentiae* is clearly at an end. *Venkatesh Yeshwant Deshpande v. Emperor.* (F. B.).

40 Cr. L. J. 397 :
180 I. C. 594 : 1938 N. L. J. 423 :
11 R. N. 380 :
I. L. R. 1940 Nag. 1 :
A. I. R. 1938 Nag. 513.

———S. 401—*Scope—Order of unconditional remission of sentence—If can be cancelled and sentence restored, later than date on which prisoner is due for release under order of remission—Powers of Local Government under S. 401—Order of remission, effect of—Order under S. 401, signed by Governor—It is still an order of Provincial Government.*

Per Bose, J.—The Executive Government has not got unfettered and unqualified freedom of action in these matters. Viewed in a broad and liberal light, its powers in this respect are in a sense derived from a statutory delegation of the Royal Prerogative of pardon; not co-extensive with it, and not superior to it, in fact S. 401 (5), Cr. P. C., leaves the right of His Majesty and of the Governor-General, when such right is delegated to him, intact; but certainly of a like general character. That being so, the rights of the executive cannot be greater than those of His Majesty himself except and unless, and only in so far as, they are specifically enlarged by statute. It cannot be said that an order of remission is never open to recall. It may be, in certain circumstances, fraud and mistake; for example, might justify such action. But it cannot be done arbitrarily. The matter vitally affects the liberty of the subject, and so, if such power exists at all, it can, only be exercised in circumstances which a Court of Justice would uphold on general grounds of justice, equity and good conscience, and of public policy. In every case Government must be prepared to substantiate and justify its action and that means that it must give reasons, first to the person concerned, and then, if the matter reaches Court, to that Tribunal. It cannot merely say: "I have done it and

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Compensation to accused, awarding of—
Opportunity for complainant to show cause
why compensation should not be ordered to
be paid must be given. *Municipal Board,
Lucknow v. Abdul Aziz.* 34 Cr. L. J. 44 :
140 I. C. 652 : 9 O. W. N. 943 :
I. R. 1933 Oudh 8 (1) :
A. I. R. 1933 Oudh 37.

S. 250—Hearing complainant—Necessity of.

It is mandatory to give the complainant or informant an opportunity to show cause why compensation should not be ordered to be paid by him. *Municipal Board, Lucknow v. Abdul Aziz.* 34 Cr. L. J. 44 :
140 I. C. 652 : 9 O. W. N. 943 :
I. R. 1933 Oudh 8 (1) :
A. I. R. 1933 Oudh 37.

S. 250—Hearing complainant—Necessity of—Compensation, order to pay—Opportunity to show cause, sufficiency of.

Where a Magistrate passed an order to the following effect: "Judgment delivered, Accused acquitted.....Complainant to pay Rs. 50 compensation to each of the accused under S. 250, and show cause why he should not pay. Subans Singh complainant is absent. His brother verbally shows cause which is insufficient. Order made absolute:" *Held*, that the complainant was in fact given no opportunity of showing cause, and that, therefore, the order could not be sustained. *Subans Singh v. Maha Bir Proshad Singh.* 15 Cr. L. J. 707 :
26 I. C. 155 : 18 C. W. N. 1277 :
A. I. R. 1915 Cal. 225.

S. 250—Hearing complainant—Necessity of.

S. 250 does not require that in the case of a complaint being found frivolous or vexatious, the complainant must be called upon to show cause why he should not be made to pay compensation, it only requires any objection which is urged to be recorded and considered. The section is not intended to multiply the proceedings but to be applied in a summary manner. A party who has the right to make a formal objection and have it recorded can waive that right by his acquiescence. *Pancham v. Emperor.* 24 Cr. L. J. 719 :
73 I. C. 943 : 21 A. L. J. 399 :
A. I. R. 1923 All. 601.

S. 250—Hearing complainant—Necessity of.

The trial Magistrate accepted the resident's contention that the tin shed in question existed for the last six years. He discharged the resident and further directed in view of the facts that the Municipal Committee should pay her ten rupees as compensation without giving the Committee an opportunity of explaining why the compensation should not be awarded and the Committee's action was not grossly careless or vindictive: *Held*, that this was not a case where compensation should have been given: *Held*, also, that the order of the trial Magistrate should be set aside, since the provisions of S. 250, which are mandatory,

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were not complied with. *New Delhi Municipal Committee v. Ram Bai.* 37 Cr. L. J. 935 (a) :
164 I. C. 368 : 9 R. L. 109 : 38 P. L. R. 886 :
A. I. R. 1936 Lah. 702.

S. 250—Hearing complainant—Necessity of.

There was an order of discharge of the accused under S. 376, Penal Code, with a finding that the case was a false one, which was typewritten, and contained finally "I direct, therefore, that the accused be discharged. The case was classified as false." This was signed by the Magistrate and running straight on the same date, with the same typewriter, and obviously all done in one piece, came the further order under S. 250. It started at the bottom of the same side of the page as the judgment, and, after half a line, was continued on the back of the sheet so that it was manifest that the judgment and the further order were typed out at one and the same time: *Held*, that the order of discharge and the further order were one and the same, and the intrusion of the Magistrate's signature in the middle of the page could not affect the merits of the case. *Ma Sin v. Maung Maung Lay.* 37 Cr. L. J. 773 :
163 I. C. 163 : 8 R. Rang. 613 :
14 Rang. 378 : A. I. R. 1936 Rang. 230.

S. 250—Hearing complainant—Necessity of.

Where a Magistrate discharged an accused and in doing so, declared the case to be a mistake of law and maliciously false and vexatious and, therefore, ordered "that the complainant submit, to any cause to be shown by him to-day, is to pay Rs. 50, to the accused as compensation under S. 250 and on the following day made the order absolute as no cause was shown and ordered the complainant to suffer simple imprisonment for 30 days in default of payment of the compensation: *Held*, that, as regards the first part of the order, the requirements of S. 250 were duly fulfilled, as the Magistrate fixed the compensation in his order of discharge. The proviso to S. 250 contemplates that the direction in the first paragraph shall be conditional or in the nature of a Rule, and that that Rule shall not be made absolute until the complainant has shown cause. *Lalit Mohan Singha Roy v. Kunja Behari Ghose.* 15 Cr. L. J. 150 :
22 I. C. 726 : 18 C. W. N. 702 :
A. I. R. 1914 Cal. 548.

S. 250—Hearing complainant—Necessity of.

Where at the time of announcing judgment in a criminal case the complainant is absent and the Magistrate proposes to make an order directing the payment of compensation under S. 250, the proper procedure is to issue a summons for the attendance of the complainant and to give him an opportunity of showing cause why an order under S. 250 should not be made against him. An order under that section made without giving the complainant an opportunity of showing cause against the order is

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applicable and the accused ought not to be tried a second time. *In re : Chinnappa Naidu.*

25 Cr. L. J. 244 :
76 I. C. 708 : 19 L. W. 31 :
1924 M. W. N. 153 :
A. I. R. 1924 Mad. 478.

———S. 403—Applicability.

Accused once convicted for misappropriation of particular sums of money on certain dates again tried for misappropriation of different sum on date falling within same interval—Second trial is not illegal. *Seemakuri Kanyakayya v. Emperor.*

32 Cr. L. J. 223 :
129 I. C. 75 : 32 L. W. 789 :
59 M. L. J. 854 : 1930 M. W. N. 1097 :
I. R. 1931 Mad. 219 : A. I. R. 1930 Mad. 978.

———S. 403—Applicability—Acquittal by Court without legal jurisdiction—Subsequent trial by competent Court, legality of.

Previous acquittal by a Court having no local jurisdiction to try offence is not a bar under S. 403 to the trial of the accused by a competent Court. *In re : Shankar Tulshiram Navle.*

30 Cr. L. J. 54 :
113 I. C. 70 : 30 Bom. L. R. 1435 :
I. R. 1929 Bom. 78 : 53 Bom. 69 :
A. I. R. 1928 Bom. 530.

———S. 403—Applicability—Acquittal for want of sanction—Sanction obtained—Subsequent trial, whether barred.

A verdict of acquittal in a case is immune from challenge ; but it is only when the accused has been " tried " and acquitted of an offence that the immunity arises. Where an accused person is acquitted on the ground that the prosecution has not obtained the necessary sanction for institution of the proceedings, subsequent trial of the accused after obtaining the necessary sanction, is not barred by the provisions of S. 403. *Banerjee, Sanitary Inspector, Howrah Municipality v. Bipin Bchari Ghose.*

27 Cr. L. J. 751 :
95 I. C. 79 : 43 C. L. J. 110 :
30 C. W. N. 382 : A. I. R. 1926 Cal. 691.

———S. 403—Applicability—Burma Municipal Act (III of 1898), S. 92 (2) and (3)—Previous acquittal, when a bar to prosecution—Disobedience of a notice issued by Municipality under S. 92 (2)—Accused acquitted—Subsequent direction under S. 92 (3) to alter building disobeyed—Prosecution for the latter offence not barred by previous acquittal.

The petitioner gave notice to the Municipality of his intention to erect a building, and almost immediately commenced the building. Within 6 weeks from the receipt of the petitioner's notice, the Municipality at first issued two notices, purporting to be under S. 121 but substantially under S. 92 (2) of the Burma Municipal Act, to the petitioner requiring him to keep a passage between his building and the next building for scavenging purposes. The petitioner failed to obey the notice. He was prosecuted for disobeying the notice, but was acquitted on the ground that

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access to the premises for scavenging purposes could be had from the back. After this prosecution failed, the Municipality issued another notice, under S. 92 (2) of the Act requiring space to be left on either side of the building within one month. This notice was disobeyed, too, and the Municipality instituted a fresh prosecution for this disobedience. The petitioner was acquitted on the ground that he has been tried on the same facts before and acquitted. The Municipality then issued a notice under S. 92 (3), requiring the petitioner to alter his buildings so as to leave the space as directed in the previous notices. The petitioner was again prosecuted for disobeying this direction and was convicted: *Held*, that the disobedience of a direction under S. 92 (3) was not the same offence as disobedience of the previous notices under S. 92 (2), nor were the facts constituting the last disobedience facts on which the petitioner could have been charged with a different offence at the previous trials. Some of the facts which constituted the present offence were not in existence at the time of the previous trials. S. 403, Cr. P. C., therefore, did not apply. *Oborno Charan Chowdry v. Emperor.*

9 Cr. L. J. 578 :
2 I. C. 357 : 5 L. B. R. 12.

———S. 403—Applicability.

Section refers to a fresh trial. *Mohammadi Gul Rohilla v. Emperor.*

33 Cr. L. J. 849 :
140 I. C. 49 : 28 N. L. R. 233 :
I. R. 1932 Nag. 118 :
A. I. R. 1932 Nag. 121.

———S. 403—Applicability—Discharge of accused—Re-trial.

S. 403 applies only to cases of acquittal or conviction, and has no application to a case in which an accused person has been discharged. *Parneshwari Das v. Jagan Nath.*

20 Cr. L. J. 403 :
51 I. C. 163 : 17 A. L. J. 867 :
1 U. P. L. R. All. 98 : A. I. R. 1919 All. 315.

———S. 403—Applicability.

Neither S. 403 nor S. 495 applies to security proceedings. *In re : Muthia Moopan.*

14 Cr. L. J. 559 :
21 I. C. 159 : 36 Mad. 315.

———S. 403—Applicability.

Non-acceptance of Jury verdict due to misdirection—Acquittal or conviction may be equally tainted—Re-trial in remand, is part of same trial—S. 403 has no application. *Abdul Khan v. Emperor.*

37 Cr. L. J. 707 :
162 I. C. 931 : 39 C. W. N. 677 :
62 Cal. 928 : 62 C. L. J. 217 :
8 R. C. 669.

———S. 403—Applicability—Penal Code, Ss. 363, 366 and 498—Charge under S. 498—Acquittal—Subsequent charge on same facts under Ss. 363, 366—Former Magistrate not competent to try charge under S. 366—Plea of autre fois acquit—Accused's right to raise the plea at any stage—Tests.

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facts before the Court in this case from those dealt with in the previous case, the conviction was illegal. *Emperor v. Dina Nath*.

1 Cr. L. J. 504 ;
5 P. L. R. 242.

———S. 403—*Fresh trial—Acquittal—Conviction on same facts.*

Where an accused has once been acquitted, he cannot be convicted on the same set of facts for an offence different from the one with which he was charged and acquitted. *Sobha Mal v. Emperor*.

29 Cr. L. J. 289 (a) :
107 I. C. 76 : A. I. R. 1928 Lab. 332.

———S. 403—*Fresh trial—Acquittal—Fresh complaint.*

A previous order of acquittal, in force, whether erroneous or not, is a bar to the subsequent fresh proceedings based upon the facts dealt with before. *Dina Ram v. Emperor*.

4 Cr. L. J. 179 :
1 P. W. R. Cr. 5.

———S. 403—*Fresh trial.*

Acquittal by Court wanting in territorial jurisdiction—Fresh complaint before Court having territorial jurisdiction is barred—Accused can plead *autrefois acquit*. *V. K. Rathnavalu v. K. S. Iyer*.

34 Cr. L. J. 1080 :
145 I. C. 878 : 1933 M. W. N. 713 :
38 L. W. 562 : 65 M. L. J. 529 :
56 Mad. 996 : 6 R. M. 143 :
A. I. R. 1933 Mad. 765.

———S. 403—*Fresh trial—Acquittal of accused on charge of cheating—Subsequent charge for same offence on different evidence—Conviction, whether legal.*

In a charge of cheating the complainant must establish that he was deceived, and thereby dishonestly induced to deliver property. He must disclose all the evidence of deception at the trial and where he fails to secure a conviction of the accused, he is barred by S. 403, Cr. P. C., from instituting a second trial for the same offence based upon different evidence. *In re : Mooka Pillai*.

28 Cr. L. J. 235 :
99 I. C. 1035 : 25 L. W. 220 :
A. I. R. 1927 Mad. 444.

———S. 403—*Fresh trial—Acquittal of one accused, whether justifies refusal to issue process against another.*

When one person has been tried and acquitted of an offence, the expression of a desire by the trial Judge that further criminal proceedings should not be taken in connection with the subject-matter of the trial cannot operate as a bar in law to the issue of process against another person who was neither tried nor acquitted at the previous trial. In such a case the plea of previous acquittal would not be available to the accused and the acquittal of another person would not bar the issue of process against him, but the fact that another person accused upon the same facts of having been implicated in the same offence has been acquitted may properly be taken into consideration by the Magistrate in determining whether upon the materials before him there is suffi-

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cient ground for proceeding to issue process upon the person against whom the complaint has been preferred. In each case the Magistrate must exercise a judicial discretion having regard to the materials duly placed before him. *Subal Chandra Namadas v. Ahadullah Sheikh*.

27 Cr. L. J. 788 :
95 I. C. 388 : 30 C. W. N. 546 :
53 Cal. 606 : 44 C. L. J. 114 :
A. I. R. 1926 Cal. 795.

———S. 403—*Fresh trial.*

Acquittal on charge for allowing prisoner to escape does not bar prosecution for violation of departmental rule in not having roused night officer. *Balchand Ram v. Emperor*.

35 Cr. L. J. 486 :
147 I. C. 773 (1) : 6 R. P. 380 (1) :
A. I. R. 1933 Pat. 670.

———S. 403—*Fresh trial—Acquittal on charge of cheating—Trial on charge of falsification of accounts on same record, legality of—Penal Code, Ss. 420, 477-A.*

Two persons AR and NK were convicted, the former under S. 420 and the latter under Ss. 420/109, Penal Code. They appealed, and NK was acquitted. AR moved the High Court in revision, which held that the conviction should have been under S. 477-A, Penal Code, and directed the Magistrate to commit the case to the Court of Session under that section. The Magistrate issued a notice to both AR and NK, requiring their attendance before him to show cause why they should not be committed to the Court of Sessions. NK protested, relying on the fact that he had been acquitted by the Sessions Judge and that until such acquittal was set aside, the Magistrate could not commit him again, on the record of the proceedings as they then stood, to take his trial for an offence under S. 477-A, Penal Code. The Magistrate, however, expressed his intention of committing both accused to the Sessions. NK then moved the Sessions Judge to set aside the Magistrate's order in so far as it affected his commitment. The Sessions Judge referred the case to the High Court for directions as to the propriety of the Magistrate's order. *Held*, that NK could not, so long as his acquittal under S. 420, Penal Code stood, be properly tried again, upon the record as it then stood, for an offence under S. 477 and that if the Crown wished to proceed against him, they must do so in a proper manner and by a separate proceeding, and not upon the original record. *Emperor v. Nand Kishore Prasad*.

20 Cr. L. J. 667 :
52 I. C. 491 : A. I. R. 1919 Pat. 384.

———S. 403—*Fresh trial.*

Acquittal on charge of murder is bar to trial on charge of culpable homicide not amounting to murder. *Emperor v. Aba Isok*.

33 Cr. L. J. 62 (2) :
134 I. C. 1219 : 33 Bom. L. R. 349 :
55 Bom. 520 : I. R. 1932 Bom. 3 :
A. I. R. 1931 Bom. 309.

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visions of S. 423, Cr. P. C., the provisions of S. 403 in that respect, cannot apply. *Nazim-uddi v. Emperor*.

13 Cr. L. J. 497 :

15 I. C. 641 : 40 Cal. 163.

———Ss. 403, 423 (b), 439 (4)—*Applicability—Appeal against conviction—Acquittal—Retrial—High Court's power to alter the finding and enhance sentence.*

A High Court, when hearing an appeal against a conviction may, as a Court of Appeal, under S. 423, Cl. (b) after the finding of them as a Court of Revision under S. 439, Cr. P. C., enhance the sentence so as to make it appropriate to the altered finding. In such cases the prohibition of re-trial contained in S. 403, Cr. P. C. does not apply as an appeal to a High Court is not a second trial but continuation of the trial in the Sessions Court and throws open the whole case to the interference of the High Court. *Kambam Bali Reddy v. Emperor*.

15 Cr. L. J. 180 :

22 I. C. 756 : 37 Mad. 119 :

A. I. R. 1914 Mad. 258.

———S. 403 (1)—*Applicability—Rash driving resulting in hurt—Conviction under Motor Vehicles Act, S. 5—Fresh prosecution under Ss. 279, 338, Penal Code, whether barred.*

A motor driver, who drove recklessly and thereby caused grievous hurt to a person, was convicted under S. 5, Motor Vehicles Act. He was subsequently prosecuted under S. 279, Penal Code. It was contended on behalf of the accused that the second prosecution was barred under S. 403 : *Held*, that though the accused could not be prosecuted for an offence under S. 279, Penal Code, or for any offence circumscribed by the rash driving, yet his conviction for rash driving could not protect him from prosecution for the consequences of such rash driving under S. 338, Penal Code. *Gur Narain v. Emperor*.

29 Cr. L. J. 271 :

107 I. C. 687 : 26 A. L. J. 160 :

A. I. R. 1928 All. 191.

———S. 403 (1), (4)—*Applicability—Acquittal by Court having no jurisdiction—Fresh trial, whether barred.*

It is only when a person has been tried by a Court of competent jurisdiction for an offence and acquitted of such offence that he cannot be re-tried for the same offence so long as the acquittal remains in force. There is no such bar if the Court acquitting the accused had no jurisdiction to try him for the offence. *Manji Jaiaram v. Kelekhani*.

30 Cr. L. J. 763 :

117 I. C. 267 : I. R. 1929 Nag. 219 :

A. I. R. 1929 Nag. 161.

———S. 403 (2)—*Applicability—Section not applicable—Effect.*

The Court has however the power in an appropriate case not to allow the accused to be prosecuted a second time for matters arising out of the same set of facts even though such a trial is not barred by S. 403 (2). *Ajodhya Nath v. Kshitish Chandra*.

33 Cr. L. J. 439 :

137 I. C. 161 : 35 C. W. N. 1182 :

I. R. 1932 Cal. 272 : A. I. R. 1932 Cal. 291.

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———S. 403 (2)—*Applicability.*

Where accused is guilty of three distinct offences, he can be tried for two of the offences although acquitted in respect of the third. *Muhammed Rafiq v. Emperor*.

33 Cr. L. J. 41.

134 I. C. 1004 : 25 S. L. R. 9 :

I. R. 1931 Sind 156 :

A. I. R. 1931 Sind 116.

———S. 403 (4)—*Applicability—Acquittal—Prosecution on same facts—First Court not competent to try subsequent charge, effect of.*

Cl. (4) of S. 403 permits a second prosecution for an offence constituted by the same acts if the Court by which the accused was first tried was not competent to try the offence subsequently charged. *In re : Palani Goundan*.

26 Cr. L. J. 1087 :

88 I. C. 31 : 48 M. L. J. 490 :

22 L. W. 205 : 1925 M. W. N. 553 :

A. I. R. 1925 Mad. 711.

———S. 403—*Autrefois acquit.*

As far as the Cr. P. C. is concerned, the test of the success of the plea of *autrefois acquit* lies in the similarity of the offences under consideration. *Chit Hlaing Maung v. Emperor*.

32 Cr. L. J. 205 :

128 I. C. 843 : I. R. 1931 Rang. 59 :

A. I. R. 1930 Rang. 360.

———S. 403—*Autrefois acquit, plea of.*

S. 403, Cr. P. C., is intended to reproduce what is the law in England; namely the plea of *autrefois acquit* but in order to plead *autrefois acquit* successfully in India, the accused must have been put in peril either before the Jury or the Magistrate. *In re : Dudekula Lal Sahib*.

19 Cr. L. J. 501 :

55 I. C. 261 : 33 M. L. J. 121 :

22 M. L. T. 69 : 6 L. W. 175 :

40 Mad. 976 : A. I. R. 1918 Mad. 231.

———S. 403—*Autrefois acquit, plea of—When can be raised.*

In order to plead effectually the doctrine of *autrefois acquit* or *autrefois convict*, it must appear that the accused has been legally acquitted or legally convicted. *In re : Muthu Mooppan*. (F. B.)

38 Cr. L. J. 457 :

167 I. C. 571 : 1937 M. W. N. 17 :

45 L. W. 226 : 1937 I. M. L. J. 334 :

9 R. M. 475 : I. L. R. 1937 Mad. 664 :

A. I. R. 1937 Mad. 301.

———S. 403—*Autrefois acquit, principal of, applicability of—Penal Code (Act XLV of 1860), S. 338—Motor Vehicles Act (VIII of 1914), S. 16—Acquittal under S. 338, Penal Code, whether bars trial under S. 16 of Motor Vehicles Act.*

The acquittal of a person charged under S. 338 of the Penal Code with having caused grievous hurt by rashly driving a motor car, on the ground that it is not proved that he was driving the car, is, under S. 403, Cr. P. C., a bar to the trial of that person under S. 16 of the Motor Vehicles Act for driving the car

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—S. 403—*Fresh trial.*

Autrefois acquit, plea of—Charge of criminal breach of trust and cheating on same facts—Charge of cheating compounded with permission of Court—Accused acquitted of cheating—Effect on charge of criminal breach of trust, stated. *Emperor v. John Melver*. (F. B.).

37 Cr. L. J. 637 :
162 I. C. 592 (2) : 1936 M. W. N. 281 :
43 L. W. 548 : 70 M. L. J. 635 : 8 R. M. 1000 :
A. I. R. 1936 Mad. 353.

—S. 403—*Fresh trial—Building house without sanction—Trial—Acquittal—Re-trial.*

A person who has been once tried for building a house without the sanction of a Municipal Committee and acquitted, cannot be re-tried for the same offence simply on the ground that the house continues to stand and thus constitutes a continuous offence. *Saif-ud-Din v. Emperor*.

18 Cr. L. J. 324 ;
38 I. C. 436 : 14 P. W. R. 1917 Cr. ;
A. I. R. 1917 Lah. 143.

—S. 403—*Fresh trial—Calcutta Police Act, S. 54-A, proceedings under, maintainability of, after acquittal on charges under Ss. 380 and 411, Penal Code.*

The petitioner was found in possession of certain bales of jute with reference to which he was tried on charges framed in the alternative under Ss. 380 and 411, Penal Code, and was acquitted, and an order for the return of the bale of jute to him was made. When removing the jute from the *thana* he was re-arrested, and proceedings under S. 54-A, Calcutta Police Act, were started against him: *Held*, that as the petitioner might have been charged in the previous trial with an offence under S. 54-A, Calcutta Police Act, the present proceedings against him were barred. *Manhari Chowdhury v. Emperor*.

19 Cr. L. J. 198 :
43 I. C. 614 : 22 C. W. N. 199 :
27 C. L. J. 434 : 45 Cal. 727 :
A. I. R. 1918 Cal. 406.

—S. 403—*Fresh trial—Calcutta Police Act, S. 68—Indian Merchants Shipping Act, S. 103 (iv)—Conviction for assault on Captain of ship—Subsequent trial for offence under another enactment on the same facts, whether permissible.*

Accused, who was employed on a steamship, assaulted the Captain of the ship and was convicted of an offence under S. 68, Calcutta Police Act. Subsequently the Captain filed a complaint under S. 103 (iv), Indian Merchants Shipping Act, against the accused on the same facts: *Held*, that the prosecution of the accused under S. 103 (iv), Indian Merchants Shipping Act, was barred by the provisions of S. 403, Cr. P. C. *Alfred Laird v. Emperor*.

28 Cr. L. J. 233 :
99 I. C. 1033 : 31 C. W. N. 195 :
A. I. R. 1927 Cal. 224.

—S. 403—*Fresh trial—Causing hurt with weapon—Acquittal for hurt—Whether bars prosecution under S. 19 (c), Arms Act.*

Where hurt is caused by means of a weapon, the acquittal of the accused for the offence under S. 324, Penal Code, does not operate as

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a bar to the trial of the accused for an offence under S. 19 (c) of the Arms Act. *Manjubhai Gordhandas v. Emperor*.

30 Cr. L. J. 1059 :
119 I. C. 641 : 31 Bom. L. R. 536 :
53 Bom. 604 : I. R. 1929 Bom. 513 :
A. I. R. 1929 Bom. 283.

—S. 403—*Fresh trial—Charge of an offence under S. 414 of the Indian Penal Code—Previous conviction under S. 411 in respect of other property stolen at the same time and from the same person.*

Where a person had been convicted under S. 411, I. P. C. in respect of certain property stolen on a particular occasion from a particular person, he could not subsequently be tried for an offence under S. 414 of the Code in respect of other property stolen on the same occasion from the same person. *Emperor v. Mian Jan*.

3 Cr. L. J. 207 :
26 A. W. N. 22 : I. L. R. 28 All. 313.

—S. 403—*Fresh trial—Cheating by false personation—Subsequent false personation in Registration Office for registration of deed—Distinct offences—Acquittal of cheating—Prosecution for offence at Registration Office, whether barred—Registration Act S. 82 (c).*

A person falsely represented himself to be another and borrowed money by executing a deed of mortgage of property standing in the latter's name. He subsequently falsely personated the other in the Registration Office for the purpose of getting the document registered. He was charged with the offence of cheating by false personation under Ss. 419-114 of the Penal Code but acquitted. Proceedings were subsequently instituted against him for an offence under S. 82 (c) of the Registration Act: *Held*, that the offence of cheating by personation was completed at the time the deed of mortgage was signed and the money was borrowed and the offence committed in the Registration Office was a different and subsequent offence, and that consequently the prosecution for the offence under S. 82 (c) of the Registration Act was not barred by S. 403, Cr. P. C. *Me Tok v. Emperor*.

28 Cr. L. J. 908 :
105 I. C. 236 : 6 Bur. L. J. 201 :
A. I. R. 1927 Rang. 303.

—S. 403—*Fresh trial.*

Complainant and Counsel absent due to their mistaking the date—Accused acquitted under S. 247—No fresh complaint on same facts is competent. *Abdul Aziz v. Nur Elahi*.

36 Cr. L. J. 29 :
152 I. C. 156 : 7 R. L. 256 :
A. I. R. 1934 Lah. 211.

—S. 403—*Fresh trial.*

Complaint, absence of—Acquittal of accused under S. 291 and subsequent trial under S. 88, Penal Code, and conviction—S. 403 did not bar subsequent proceedings as in absence of complaint under S. 195, charge in prior proceedings could not have been so framed as to cover S. 188, Penal Code. *Chuhar v. Emperor*.

32 Cr. L. J. 253 :
I. R. 1931 Lah. 160 :
A. I. R. 1930 Lah. 1055.

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the complaint of B, they were charged with offences under Ss. 147 and 333 of the Penal Code. B's allegation was that the accused were assaulting A. when he interfered and tried to stop them and that thereupon the accused turned upon B. and beat him: *Held*, that the second trial was not barred by S. 403 (1) of the Cr. P. C. *Hayat Khan v. Emperor*.

19 Cr. L. J. 121 (b) :
43 I. C. 409 : 4 P. L. W. 21 :
A. I. R. 1918 Pat. 165.

-----S. 403—Competency.

The "competency" of the Court to try an offence does not mean the status or character of the former Court to try the offence with which the accused is subsequently charged, but it also includes within its purview cases in which the Court, though otherwise qualified to try the case could not have done so, because certain conditions precedent for the exercise of its jurisdiction had been fulfilled. *Emperor v. Ram Rakha*.

39 Cr. L. J. 960 :
177 I. C. 894 : 40 P. L. R. 501 :
11 R. L. 375 : A. I. R. 1938 Lah. 625.

-----S. 403—Competent to try, meaning of.

The expression "competent to try" in Cl. (4) of S. 403 of the Cr. P. C., refers to the character and status of the Tribunal when it refers to the competency to try the offence. *Emperor v. Mengraj Devi Das*.

23 Cr. L. J. 305 :
66 I. C. 657.

-----Ss. 403, 259—Discharge—Complainant's absence of—Discharge—Second complaint.

Where an accused has already been discharged under S. 259, Cr. P. C., a Magistrate has jurisdiction to entertain a second complaint against him based on the same facts. *Bijoo Singh v. Emperor*.

18 Cr. L. J. 296 :
38 I. C. 328 : 2 P. L. J. 34 :
3 P. L. W. 432 : A. I. R. 1916 Pat. 109.

-----S. 403—Discharge of accused.

After discharge by Magistrate, Sessions Judge cannot order prosecution for same offence. *Gaya Din Lal v. Emperor*.

147 I. C. 1144 (2) : 11 O. W. N. 264 (2) :
6 R. O. 365 : A. I. R. 1934 Oudh 259 (1).

-----S. 403—Discharge of accused.

Discharge, whether before or after hearing all prosecution evidence, is not an acquittal so as to bar further trial for the same offence and S. 403 empowers the Magistrate to order further inquiry. *Nazir Ahmad v. Emperor*.

36 Cr. L. J. 202 :
152 I. C. 884 : 4 A. W. R. 37 :
7 R. A. 412 : A. I. R. 1934 All. 944.

-----S. 403—Discharge of accused—Withdrawal of complaint—Second complaint.**Cr. P. CODE (1898), S. 403**

There is nothing in law against the entertainment of a second complaint on the same facts on which a person has already been discharged, inasmuch as a discharge is not equivalent to an acquittal. But unless very strong grounds are shown, e. g., new facts are discovered which were not within the knowledge of the prosecution, when the first charge was brought, a person who has once been discharged ought not to be harassed again on the same charge. *In re: Malayil Kottayil Koyassan Kutty*.

18 Cr. L. J. 329 :
38 I. C. 441 : A. I. R. 1918 Mad. 494.

-----Ss. 403, 437—Discharge of accused—Fresh complaint.

The discharge of an accused person or the dismissal of a complaint is no bar to the institution of fresh proceedings otherwise than under S. 437, Cr. P. C. But a Magistrate entertaining a complaint in such circumstances is bound to exercise a proper discretion. *Mi The Kin v. Nga E Tha*.

1 Cr. L. J. 867 :
U. B. R. 1904 Cr. P. 19.

-----Ss. 403, 437—Discharge of accused—Inquiry—Discharge without making any judicial investigation, second complaint.

Where a Magistrate discharged an accused person without making any judicial investigation into the merits of the complaint: *Held*, that he was competent to again inquire into the same charge on a complaint. *Alauddin Khan v. Emperor*.

15 Cr. L. J. 638 :
25 I. C. 838 : 17 O. C. 273 : 1 O. L. J. 487 :
A. I. R. 1914 Oudh 406.

-----Ss. 403, 494—Discharge of accused—Withdrawal of complaint and discharge of accused—Fresh trial.

Where a case under S. 354, Penal Code, was allowed to be withdrawn under S. 494, Cr. P. C., and the accused was discharged and the accused was again put to trial on the same facts on a fresh complaint: *Held*, that the previous order of discharge did not prevent the fresh complaint being enquired into and it was not necessary to get the previous order of discharge set aside before proceeding with the trial of the accused. *Lori Chand Saha v. Niroda Sundari Saha*.

31 Cr. L. J. 1153 :
127 I. C. 63 : 34 C. W. N. 196 :
A. I. R. 1930 Cal. 369.

-----Ss. 403, 494 (a)—Discharge of accused—Fresh complaint.

An order made under S. 494 (a), Cr. P. C., is an order of discharge of the accused person and, therefore, S. 403 does not debar the entertainment of a fresh complaint on the same facts. There is nothing in law to prevent a Magistrate from entertaining a complaint after the discharge of the accused person in a previous Police case on the same facts. *Ramanand Lal v. Ali Hassan*.

26 Cr. L. J. 129 :
83 I. C. 689 : 1924 Pat. 226 :
A. I. R. 1924 Pat. 797.

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jointly filed a complaint against A, charging A with criminal breach of trust and misappropriation in respect of all the items. The complainants thinking that the offences should not be jointly tried, addressed a petition to the Magistrate that the trial should be limited to items concerning B. The Magistrate "filed" the application, but confined the trial to items concerning B. A and B compromised the case. C filed a fresh complaint on the same facts as regards items borrowed from her: *Held*, that the Magistrate was not precluded by law from re-hearing the complaint or from entertaining the fresh complaint of C on the same facts. To set up the plea of *autrefois acquit*, it is essential that there must have been a previous trial of the offence charged, terminating in an order of acquittal.

30 Cr. L. J. 1149 :

120 I. C. 117 : I. R. 1930 All. 5 :

1930 A. L. J. 85 : A. I. R. 1930 All. 92.

—S. 403—*Fresh trial*.

Jury not addressing themselves to alternative charge under S. 307, I. P. C.—Still fresh trial under S. 307 on same facts is barred when accused is acquitted under S. 307, I. P. C., *In re Penu Malcha Janakiramoraju*.

35 Cr. L. J. 783 :

148 I. C. 844 : 1934 M. W. N. 41 :

39 L. W. 433 : 66 M. L. J. 653 :

57 Mad. 554 : 6 R. M. 543 :

A. I. R. 1934 Mad. 311.

—S. 403—*Fresh trial—Madras Local Boards Act, S. 159—Encroachment—Prosecution by District Board—Acquittal on the ground that property was within Union Board—Plea of autrefois acquit*.

The District Board of Tanjore brought a case against the accused for failing to remove an encroachment in a road after notice to remove it. The accused pleaded that the road was within the jurisdiction of the Ayyampet Union and that the District Board had, therefore, no authority to order the removal of the encroachment and the accused was acquitted on this ground; the Union Board, thereupon, sent a fresh notice to the accused to remove the encroachment, the accused was again prosecuted for failure to remove it but was acquitted on the ground that he had once been tried for the same offence on the same facts: *Held*, that the acquittal was wrong as the subsequent case was not on the same facts as the previous one. *Union Board, Ayyampet v. Ramachandra*.

32 Cr. L. J. 228 (a) :

129 J. C. 80 : 1930 M. W. N. 500 :

I. R. 1931 Mad. 224 : 33 L. W. 107 :

A. I. R. 1930 Mad. 971.

—S. 403—*Fresh trial on same facts when barred—Autrefois acquit, doctrine of—'Distinct offence,' meaning of—Penal Code (Act XLV of 1860), Ss. 379, 411—Burma Forest Rules, rr. 21, 71*.

Under the Cr. P. C., the plea of *autrefois acquit* cannot be sustained on the same facts for a different offence unless the requirements of S. 403, Sub-s. (1) are fulfilled,

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and conversely, the plea cannot be defeated in similar circumstances except under Sub-s. (2) of the same section. The expression 'distinct offence' in S. 403, Sub-s. (2), Cr. P. C., means an offence entirely unconnected with the former offence. Where a person was charged under R. 21 of the Burma Forest Rules with having extracted teak timber without a license and under R. 71 for converting timber at a saw pit without a saw pit license, and with other offences, and the prosecution withdrew the former two charges but subsequently prosecuted him afresh on the same facts for offences under Ss. 379 and 411 of the Penal Code: *Held*, that the principle of *autrefois acquit* applied and that the prosecution for offences under Ss. 379 and 411 of the Penal Code was illegal. *Ycok Kuk v. Emperor*.

29 Cr. L. J. 930 :

111 I. C. 850 : 6 Rang. 386 :

A. I. R. 1928 Rang. 252.

—S. 403—*Fresh trial—Penal Code, S. 120-B, 121-A—Conspiracy to overawe Government by killing Europeans—Conviction for conspiracy to overawe Government—Subsequent trial for conspiracy to kill Europeans, maintainability of*.

A person, who has already been convicted of an offence under S. 121-A, Penal Code, for a conspiracy to overawe the Government of India by means of criminal force, to wit, by causing bombs to be thrown at British officers cannot, on the same facts, be subsequently convicted under S. 120-B, Penal Code, for a conspiracy to kill the Europeans, having regard to S. 403 of the Cr. P. C., for in such a case, there are not two conspiracies, one to overawe the Government of India and another to kill the Europeans; but the conspiracy is one, the killing of Europeans being the means to be employed for carrying out the object of overawing the Government of India. *Hussain v. Emperor*.

25 Cr. L. J. 1241 :

82 I. C. 269 : A. I. R. 1925 Lah. 157.

—S. 403—*Fresh trial—Penal Code (Act XLV of 1860), Ss. 120-B, 193, 467, 471—Trial for offence under S. 193—Acquittal—Charge under Ss. 467, 471 on identical facts, whether can be proceeded with*.

Accused was charged with an offence under S. 193 of the Penal Code and was acquitted after a careful trial. He was subsequently charged under Ss. 467 and 471 read with S. 120-B of the Penal Code upon facts which were wholly inseparable from the facts upon which the previous case against him had proceeded: *Held*, that the present charge could not be proceeded with in view of the previous trial. *Cheragali Bepari v. Satish Chandra Ghose*.

26 Cr. L. J. 1023 :

87 I. C. 847 : 30 C. W. N. 384 :

A. I. R. 1926 Cal. 450.

—S. 403—*Fresh trial—Penal Code (Act XLV of 1860), Ss. 366, 376—Acquittal on charge of abduction—Subsequent trial for rape*.

The accused was originally put on his trial

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S. 403—Dismissal of complaint.

Framing of charge—Discovery by Magistrate that complainant had not been examined under S. 200—Order dismissing the complaint—Fresh complaint directed to be filed—Re-examination of witnesses and examination of complainant—Conviction—Order of dismissal, did not amount to acquittal—Subsequent trial held not illegal. *Ali Bux v. Emperor*.
35 Cr. L. J. 1177
150 I. C. 1006 : 1934 A. L. J. 648 :
4 A. W. R. 213 : 7 R. A. 59 (2) :
156 I. C. 678 : 62 Cal. 749 : 8 R. C. 21 :
A. I. R. 1934 All. 877.

S. 403—Fresh trial.

A trial of the same accused for the subsequent conspiracy is not barred by S. 403. *Abdul Rahman v. Emperor*.
36 Cr. L. J. 982 :
156 I. C. 678 : 62 Cal. 749 : 8 R. C. 21 :
A. I. R. 1935 Cal. 316.

S. 403—Fresh trial.

Accused acquitted of a charge of possession of cartridges cannot be deemed to have committed that offence. *Munoo v. Emperor*.
35 Cr. L. J. 36 :
146 I. C. 354 (2) : 19 O. W. N. 895 :
6 R. O. 104 : A. I. R. 1933 Oudh 470.

S. 403—Fresh trial.

Accused acquitted under S. 307, I. P. C.—Trial against under S. 307 is barred. *In re : Perumaththa Janakiramamaryu*.
35 Cr. L. J. 783 :
148 I. C. 844 : 1934 M. W. N. 41 :
39 I. W. 433 : 66 M. L. J. 653 : 57 Mad. 554 :
6 R. M. 543 : A. I. R. 1934 Mad. 311.

S. 403—Fresh trial—Accused charged with abetment of dacoity—Acquittal of abetment—Accused found guilty under S. 216-A, Penal Code, but not convicted—S. 236, scope of.

The present accused was put on trial in a prior case of dacoity on a charge of abetment. He was acquitted of abetment and the Judge, though he was of opinion that the accused was guilty of an offence under S. 216-A, Penal Code, held that he could not convict him of that offence in that trial. The accused was subsequently put on trial under S. 216-A : *Held*, that the subsequent trial was not barred under S. 403, as in the previous trial, there was no question of any doubt at all as to which of the several offences had been committed. *Emperor v. Kanhaiya*.
31 Cr. L. J. 716 :
124 I. C. 553 : A. I. R. 1930 All. 481.

S. 403—Fresh trial—Accused sent to jail for failure to furnish security for keeping peace—Subsequent trial for sedition in connection with same speeches—Autre fois convict, principle of.

Where the accused has already been sent to jail for failure to furnish security under Ss. 108 and 118, Cr. P. C., in connection with seditious speeches made by him, a subsequent trial and conviction under S. 124-A, Penal Code, for the same seditious speeches is against the spirit of S. 403, Cr. P. C. *Ngia Mya Gyi v. Emperor*.
30 Cr. L. J. 630 :
116 I. C. 477 : I. R. 1929 Rang. 157 :
A. I. R. 1928 Rang. 135.

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S. 403—Fresh trial—Accused, trial of, for specific offence—Acquittal—Subsequent trial on same facts.

Where a person is tried for a specific offence and is acquitted, he cannot subsequently be tried for the same offence upon the same facts. *Ram Chander v. Emperor*.
21 Cr. L. J. 164 :
54 I. C. 772 : 18 A. L. J. 85 :
2 U. P. L. R. All. 46 : A. I. R. 1919 All. 90.

S. 403—Fresh trial—Accused tried and convicted under Railways Act—Assault taken into account in imposing sentence—Fresh prosecution for assault—Autre fois convict.

The accused were tried and convicted under the Railways Act. Though there was no charge of assault in that trial and the accused were not on that occasion asked to plead in respect of that offence, the Court nevertheless had committed an assault upon the complainant, and in consideration thereof inflicted heavier fines upon them than upon the other two accused who had not committed any assault. The accused were again charged for assault in connection with the same occurrence : *Held*, that as the fact of assault had been taken into account in the previous trial in imposing the sentence, the accused should not be tried for assault again. *Kailashpati Upadya v. Gopi Koiri*.
31 Cr. L. J. 613 :
124 I. C. 69 : 33 C. W. N. 948 :
A. I. R. 1930 Cal. 60.

S. 403—Fresh trial—Acquittal—Accused of some of co-accused—Whether forms bar to trial of others.

Twenty persons were charged with offences under Ss. 148, 326 and 302 of the I. P. C., three of them were tried before the Sessions Judge, who disbelieved the evidence and expressed an opinion that the facts and circumstances suggested to him a very strong doubt as to the truth of the story, and came to the conclusion that the deceased met with his death under different circumstances. One of the Assessors thought that the case was satisfactorily proved. The Sessions Judge acquitted the three accused. Subsequently, six persons alleged to have been implicated in the transaction were put upon their trial : *Held*, that there was no provision of law which rendered the prosecution of these persons illegal. The High Court under the circumstances did not set aside the order of the Magistrate which directed their prosecution. *Kokai Sardar v. Mehar Khan*.
11 Cr. L. J. 541 :
7 I. C. 932 : 37 Cal. 680.

S. 403—Fresh trial—Acquittal—Bar to future prosecution.

The petitioners were summarily convicted of an offence under S. 164, Punjab Municipal Act, for obstructing and encroaching upon a street. They were some years previously tried for and acquitted of the same offence. There was no evidence in the present case to show that the encroachment on the street for which the accused were convicted was in excess of the encroachment then effected : *Held*, that in the absence of evidence distinguishing the

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—S. 403—*Fresh trial—Properties stolen on different occasions—Presumption that they were received also on different occasions—Separate trial, if valid—Burden of proof.*

Where property is stolen at different dates, the presumption is that the property passed from the hands of thief to the receiver of the stolen property at different dates and the burden is shifted from the Crown to the accused to prove that it passed to him at one and the same time. In the absence of such proof, a subsequent trial in respect of different items of property stolen on a different date is not barred by the provisions of S. 403 by reason of a prior acquittal with regard to another item of property. *Dadlomal v. Emperor.*

27 Cr. L. J. 1256 :
98 I. C. 104 : A. I. R. 1927 Sind 53.

—S. 403—*Fresh trial—Registration Act, S. 82 (c)—Acquittal on charge of forgery—Trial under Registration Act, whether barred—Sanction, whether necessary.*

The acquittal of a person of offences of forgery and abetment thereof under the Penal Code bars his trial for an offence, under S. 82 (c) of the Registration Act, on the same facts. No sanction is required for a prosecution under S. 82 (c) Registration Act. *Maung Singh v. Emperor.*

25 Cr. L. J. 191 :
76 I. C. 431 : 1 Rang. 299 :
A. I. R. 1924 Rang. 213.

—S. 403—*Fresh trial—Re-trial on same facts.*

Where a person has been tried and acquitted of an offence arising out of a particular set of facts, he cannot be tried again for a different offence based on the same set of facts. *Fateh Mohammad v. Emperor.*

27 Cr. L. J. 1019 :
96 I. C. 875 : A. I. R. 1926 Lah. 639.

—S. 403—*Fresh trial.*

Re-trial, order for—Conviction has to be reversed—Reversal does not amount to acquittal referred to in S. 403. *Emperor v. Bahraichi.*

36 Cr. L. J. 1333 :
158 I. C. 200 : 1935 A. L. J. 1077 :
8 R. A. 291.

—S. 403—*Fresh trial.*

S. 403 (1) will operate in cases covered by Ss. 236 and 237, but will not operate in cases covered by S. 235, Sub-s. (1). *In re : Ochhlavai Bhikharbhai.*

35 Cr. L. J. 112 :
146 I. C. 587 : 35 Bom. L. R. 985 :
58 Bom. 23 : 6 R. B. 159 :
A. I. R. 1933 Bom. 447.

—S. 403—*Fresh trials separate charges.*

Under S. 403, Cr. P. C., when a separate charge has been framed against a person under any of the sub-sections other than Sub-s. (1) of S. 235, he cannot be tried for the separate charge when he has once been convicted or acquitted of one charge. *Ghamandi Nath v. Balu Lal.*

30 Cr. L. J. 1089 :
119 I. C. 575 : 1929 A. L. J. 1056 :
I. R. 1929 All. 1071 :
A. I. R. 1929 All. 899.

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—S. 403—*Fresh trial—Trial in Native State—Trial for same offence in British India, legality of.*

A trial by the State Court bars a trial by Courts in British India on the same facts and for the same offence, by virtue of the provisions of S. 403, Cr. P. C. *Teja Singh v. Emperor.*

24 Cr. L. J. 715 :
73 I. C. 939 : 4 L. L. J. 574 :
A. I. R. 1924 Lah. 238.

—S. 403—*Fresh trial.*

Trial of accused under Ss. 19 (b) and 20, Arms Act—Conviction only under S. 20—Appeal—Sessions Judge setting aside conviction and observing Magistrate might commit—Commitment without inquiring under Chap. XVIII—Order of committal is wrong in law—S. 403 does not bar prosecution under S. 19 (b) or S. 23. *Nagendra Nath v. Emperor.*

33 Cr. L. J. 770 :
139 I. C. 470 : 36 C. W. N. 926 :
I. R. 1932 Cal. 628 :
A. I. R. 1932 Cal. 683.

—S. 403—*Fresh trial—Trial under Ss. 407, 411 and 414, Penal Code—Subsequent trial under S. 54-A, Calcutta Police Act—Goods forming the subject in both cases identical—Second trial held bad.*

Where the goods which formed the subject of a charge under Chap. XVII, Penal Code, and of a charge under S. 54-A, Calcutta Police Act, were identical : Held, that the accused should have been tried for all these offences at one trial and should not have been subjected to two trials in respect of his possession of the same goods. *Chaito Kalwar v. Emperor.*

A. I. R. 1928 Cal. 240.

—S. 403—*Fresh trial.*

Under S. 403, Explanation, the dismissal of a complaint of the discharge of the accused is not an acquittal and therefore, is no bar to a further trial under S. 403. *Suraj Bali v. Emperor.*

36 Cr. L. J. 65 :
152 I. C. 245 : 56 All. 750 :
7 R. A. 320 : A. I. R. 1934 All. 340.

—S. 403—*Fresh trial.*

Warrant case—Police withdrawing charge—Order of 'acquittal' is really one of discharge and S. 494 (a) applies—Subsequent trial on private complaint is not barred under S. 403. *Tolladagu Musalayya v. Mateli Ranga Rao.*

34 Cr. L. J. 12 :
140 I. C. 322 : 36 L. W. 641 :
1932 M. W. N. 1230 : I. R. 1932 Mad. 850 :
A. I. R. 1933 Mad. 98.

—S. 403—*Fresh trial.*

When on the ground of there being no proper complaint, Magistrate ordered 'filing' of complaint and release of accused, order does not amount to acquittal and subsequent trial is not barred. *Nafur Sardar v. Emperor.*

34 Cr. L. J. 181 :
141 I. C. 636 : 36 C. W. N. 1038 :
60 Cal. 149 : I. R. 1933 Cal. 153 :
A. I. R. 1932 Cal. 871.

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———S. 403—*Fresh trial—Acquittal on charge under Ss. 325, 147, Penal Code—Subsequent trial under S. 302, Penal Code.*

Acquittal of an accused under Ss. 325, 147, Penal Code, by a Magistrate does not bar a subsequent trial of the accused on the same facts for an offence under S. 302, Penal Code. *Yad Ram v. Emperor.* 27 Cr. L. J. 615 : 94 I. C. 359.

———S. 403—*Fresh trial—Acquittal on charge under S. 498, Penal Code—Prosecution for subsequent detention, whether barred.*

The previous acquittal of an accused on a charge under S. 498, Penal Code, is not a bar to subsequent proceedings under the same section on a charge of subsequent detention of the same woman. *Waryam Singh v. Emperor.*

29 Cr. L. J. 3 :

106 I. C. 339 : 29 P. L. R. 52.

———S. 403—*Fresh trial—Acquittal on charge under S. 465, Penal Code, whether prevents subsequent trial for offence under S. 467.*

A person tried and acquitted on a charge under S. 465, I. P. C. may, on the same facts, be committed to the Court of Session for trial for an offence under S. 467 on allegation of the prosecution that the document said to have been forged is a valuable security. Such a case clearly falls within the purview of S. 403, Cl. 4, Cr. P. C. *Abdul Hakim Khan v. Emperor.* 19 Cr. L. J. 388 :

44 I. C. 740 : A. I. R. 1919 Cal. 464.

———S. 403—*Fresh trial.*

Acquittal on two charges and conviction on two—Appeal against conviction—Order for re-trial—Charges on offences of which accused had been acquitted, cannot be framed. *Lala v. Emperor.* 35 Cr. L. J. 668 :

148 I. C. 339 : 1933 A. L. J. 1446 :

L. R. 15 All. 24 Cr. :

56 All. 210 : 6 R. A. 683 :

A. I. R. 1933 All. 941.

———S. 403—*Fresh trial—Acquittal under S. 147, Penal Code, whether bars trial under S. 186.*

The acquittal of an accused person in a case under S. 147, Penal Code, is no bar to his trial for an offence under S. 186 of the Code. *Tamok Lal Mandar v. Emperor.*

22 Cr. L. J. 222 ;

60 I. C. 334 : 1920 Pat. 235 :

1 P. L. T. 654.

———S. 403—*Fresh trial—Acquittal under S. 498, I. P. C.—Opposite finding on same evidence under S. 363, Indian Penal Code, illegal.*

The petitioner was alleged to have taken or enticed away a married woman from her father-in-law's house together with her two minor sons. He was tried for an offence under S. 498, I. P. C., but was acquitted on appeal by the District Magistrate who held that there was no evidence to show that he was present when the woman ran away with her infants. Then he was tried under S. 363, I. P. C. with having kidnapped the infants. The Magistrate who tried this latter case and the Sessions Judge

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on appeal held on the very same evidence, overruling the finding of the District Magistrate in S. 498 case, that the petitioner did take away the woman with her minor sons : *Held*, (1) that the petitioner having been acquitted of the offence under S. 498, I. P. C., could not, in this or in any other case, be deemed to have committed that offence. *Ganesh Das v. Emperor.* 12 Cr. L. J. 94 :

9 I. C. 551 : 56 P. L. R. 1911.

———S. 403—*Fresh trial.*

An illegal conviction stands on a different footing from a conviction by a Court without jurisdiction and a second prosecution is barred by S. 403, Cr. P. C. *Ram Piyari v. Emperor.*

32 Cr. L. J. 731 :

131 I. C. 373 : I. R. 1931 Lah. 469 :

A. I. R. 1931 Lah. 199.

———S. 403—*Fresh trial.*

Autrefois acquit—Acquittal under S. 291, Penal Code—Fresh trial under S. 291—S. 403 no bar. *Chuhar v. Emperor.*

32 Cr. L. J. 253 :

129 I. C. 224 : I. R. 1931 Lah. 160 :

A. I. R. 1930 Lah. 1055.

———S. 403—*Fresh trial.*

Autrefois acquit bars second trial on same facts—*Autrefois acquit* is based on same principle as *autrefois convict*. *In re : Perumakha Jankiramaraju.* 35 Cr. L. J. 783 :

148 I. C. 844 : 1934 M. W. N. 41 :

39 L. W. 433 : 66 M. L. J. 653 :

57 Mad. 554 : 6 R. M. 543 :

A. I. R. 1934 Mad. 311.

———S. 403—*Fresh trial—Autrefois acquit, plea of—Acquittal on one charge, whether bars re-trial on fresh charge on the same facts—Rioting—Kidnapping—Abduction—Penal Code Ss. 143, 147, 363, 365.*

The accused were charged with kidnapping a minor girl under S. 363, I. P. C., and also with rioting under S. 147 with the common object of kidnapping the girl. The trying Magistrate found that the girl was not proved to be under sixteen years so he held that the charge of kidnapping could not be sustained, and that in consequence, the charge of rioting with the common object of kidnapping also failed. He, however, convicted them under S. 143, I. P. C. of being members of an unlawful assembly, the common object of which was to commit assault and wrongful restraint. On appeal, the Sessions Judge set aside the conviction and the sentence on the ground that the accused, having been acquitted of the charge of rioting in order to kidnap, could not be convicted of being member of an unlawful assembly with a different common object, but at the same time he directed the accused to be tried afresh on charges of abducting the girl in order to confine her secretly and of rioting with that common object under S. 365 and 147, I. P. C.: *Held*, that the accused were entitled to the protection of S. 403, Cr. P. C., and could not be tried afresh for offences under Ss. 465 and 147, I. P. C. *Kala Nath v. Emperor.* 21 Cr. L. J. 689 :

57 I. C. 929 : 24 C. W. N. 855 :

A. I. R. 1920 Cal. 568.

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—Ss. 403, 435, 439—*Fresh trial—Penal Code, Ss. 147, 304—Enquiry by Magistrate—Petition by complainant to District Magistrate for commitment to Sessions, rejection of—Accused acquitted in respect of offence under S. 147 and discharged in respect of offence under S. 304—Sessions Judge, order by, directing commitment, legality of.*

The Police charged the accused before a Sub-Magistrate under Ss. 147, 323 and 325, Penal Code. During the course of the enquiry P. W. No. 1 who had initiated proceedings before the Police, applied to the District Magistrate to commit the case to the Sessions Court. The District Magistrate rejected the petition, holding that the petition was incompetent and that the Police alone had a *locus standi* to move in the matter. The Sub-Magistrate acquitted the accused of the offence under S. 147, Penal Code. After the termination of the trial, P. W. No. 1 applied to the Sessions Judge under S. 436, who ordered the committal of the accused under Ss. 147, and 304, Penal Code: *Held*, (1) that the committal under S. 147, I. P. C., was illegal as the accused had been acquitted in respect of the charge under that section: (2) that the commitment under S. 304 was valid as the Sub-Magistrate who had evidence of facts pointing to an offence under that section must be deemed to have impliedly discharged the accused of that offence and it was competent for the Sessions Judge to set aside that order *suo motu*. *Gaudi Apparazu v. Emperor*.

21 Cr. L. J. 91 :

54 I. C. 491 : 10 L. W. 521 :

38 M. L. J. 194 : 43 Mad. 330 :

A. I. R. 1920 Mad. 94.

—Ss. 403, 439—*Fresh trial—Penal Code, Ss. 34, 114, 304, 323—Commitment to Sessions—Accused acquitted under S. 323, Penal Code—Subsequent commitment to Sessions for trial under S. 304.*

Two persons, A and B, were tried for causing simple hurt to one C. The case was compounded and both the accused persons were acquitted. Subsequently, C died of injury inflicted by A and B. The Magistrate committed A for trial under S. 304, I. P. C., and discharged B. The Sessions Judge, on perusal of the record, directed the commitment of B also for trial under S. 304, and B was accordingly committed: *Held*, (1) that there was no legal bar to the trial of B on a charge under S. 304, Penal Code: (2) that a commitment could only be quashed on a point of law, and as no point of law arose in this case, the commitment could not be set aside. *Sailani v. Emperor*. 15 Cr. L. J. 64 :

22 I. C. 336 : 11 A. L. J. 959 :

36 All. 4 : A. I. R. 1914 All. 191.

—S. 403 (1)—*Fresh trial—Complaint without authority—Order of acquittal, whether bar to new trial.*

The complainant, a soldier, sent an intimation to the District Magistrate that he had authorised his brother to file a complaint against the accused for having enticed away his wife. On trial it appeared that the

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brother had no such authority. Consequently the Magistrate acquitted the accused. The complainant instituted a fresh complaint: *Held*, that the previous acquittal of the accused was no bar to the trial of the fresh charge. *Umer-un-Din v. Emperor*. 9 Cr. L. J. 526 :

2 I. C. 219 : 31 All. 317 :

6 A. L. J. 262.

—S. 403 (1)—*Fresh trial—First trial void ab initio for want of complaint.*

The phrase "has once been tried by a Court of competent jurisdiction" in S. 403 (1) is not one which limits the application of the provisions to reasons affecting the nature or ordinary powers of the Tribunal. It is wide enough to cover a case where the first trial was *ab initio* void owing to the absence of a complaint. In such a case, therefore, S. 403 (1) is no bar to a fresh trial of the accused. *Nauakram v. Emperor*. 19 Cr. L. J. 796 :

46 I. C. 716 : A. I. R. 1918 Nag. 126.

—S. 403 (1)—*Fresh trial—Penal Code (Act XLV of 1860), Ss. 109, 382, 411—Charge of abetment of theft—Receiving stolen property, conviction for, legality of—Subsequent trial for receiving stolen property, whether barred.*

Accused was charged with an offence under S. 382 read with S. 109 of the Penal Code. The Court held that he was not guilty of the offence with which he was charged but was guilty of an offence under S. 411 of the Code. He was not, however, convicted of the latter offence, as the Court imagined that it had no power to convict him of that offence on the charge as it stood. He was subsequently prosecuted for an offence under S. 411 of the Code: *Held*, (1) that having regard to the provisions of S. 236, Cr. P. C., III. (a) the accused could have been charged in the previous trial with an offence under S. 411, Penal Code: (2) that, consequently, the provisions of S. 403 (1) Cr. P. C., applied to the case and the accused could not be tried a second time on a charge under S. 411, Penal Code. *In re: Pundalik Shanker Gujar*. 26 Cr. L. J. 831 :

86 I. C. 479 : 26 Bom. L. R. 440 :

A. I. R. 1924 Bom. 448.

—S. 403 (2)—*Fresh trial.*

Complaint for theft and trespass—Charge for trespass only—Acquittal—Fresh prosecution for theft on same facts—Second trial is not barred. *Ajodhya Nath Kundu v. Kshitish Chandra Kundu*. 33 Cr. L. J. 439 :

137 I. C. 161 : 35 C. W. N. 1182 :

I. R. 1932 Cal. 272 :

A. I. R. 1932 Cal. 291.

—S. 403 (2)—*Fresh trial—Complaint of offences under Ss. 352, 504, Penal Code—Process under S. 352—Trial and acquittal of offence under S. 352—Fresh trial for offence under S. 504, legality of.*

A petition of complaint alleged that the accused had committed offences punishable under Ss. 352 and 504, I. P. C. Process was issued upon the accused directing him to appear and take his trial under S. 352 only. Having

Cr. P. CODE (1898), S. 403**—S. 403—Fresh trial.**

Complaint disclosing several offences on same facts—Trial for one offence and acquittal—Fresh complaint on other offences disclosed by same facts is not barred. *Saroda Deyi v. Satyeshwar Santra*. 36 Cr. L. J. 1364.

158 I. C. 384 (2) : 8 R. C. 180 (1) :
A. I. R. 1935 Cal. 571.

—S. 403—Fresh trial—Companies Act S. 91-B—Autrefois convict—Previous conviction under Companies Act—Subsequent trial under Penal Code, whether barred.

A previous conviction under S. 91-B, Companies Act, does not debar a subsequent trial and conviction of criminal breach of trust on the same set of facts on the principle of *autrefois convict*, as no alternative charge could be framed in the proceedings under the Companies Act. *Mangal Sen v. Emperor*.

30 Cr. L. J. 954 ;
118 I. C. 650 : I. R. 1929 Lah. 810 ;
A. I. R. 1930 Lah. 57.

—S. 403—Fresh trial—Conviction by First Class Magistrate, under S. 408 or in the alternative, under S. 408, 109, Penal Code—Sessions Judge on appeal directing committal to stand trial under S. 477-A—Procedure, legality of.

The applicant was convicted under S. 408 or in the alternative Ss. 408, 109, Penal Code, by a First Class Magistrate. The Sessions Judge on appeal set aside the conviction and sentenced under S. 408 or Ss. 408, 109 and directed that the applicant be committed to the Sessions to stand his trial for an offence under S. 477-A, Penal Code: *Held*, that by the amendment of the Code in 1927, Magistrates of the First Class were given jurisdiction to try charges under S. 477-A, Penal Code, and in view of the provisions of Sub-ss. (1) and (4), S. 403, Cr. P. C., it was not open to the Sessions Judge to direct that upon the same facts as the original charge under S. 408 or Ss. 408-109 had been based, the applicant should be committed for an offence under S. 477-A. Having quashed the conviction of the accused under S. 408 or Ss. 408, 109, Penal Code, the Sessions Judge had no alternative but to acquit the applicant and he had no jurisdiction to order his committal upon a charge under S. 477-A. *Mahadeo Prasad v. Emperor*.

38 Cr. L. J. 368 :
167 I. C. 360 : 1937 A. L. J. 2 :
1936 A. W. R. 1133 :
9 R. A. 522 : A. I. R. 1937 All. 117.

—S. 403—Fresh trial.

Conviction for criminal conspiracy—Individual acts of cheating committed in pursuance to conspiracy—Trial for cheating is barred. *In re : Oekhaival Bhikhabhai*.

35 Cr. L. J. 112 ;
146 I. C. 587 : 35 Bom. L. R. 985 :
58 Bom. 23 : 6 R. B. 159 :
A. I. R. 1933 Bom. 447.

—S. 403—Fresh trial.

A previous conviction for want of juris-

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diction does not bar a second trial on the same facts. *Husain Khan v. Emperor*.

18 Cr. L. J. 546 ;
39 I. C. 690 : 15 A. L. J. 136 :
39 All. 293 : A. I. R. 1917 All. 410.

—S. 403—Fresh trial.

Joinder of charges of murder and causing disappearance of evidence of murder—Acquittal on charge of murder—Second trial for causing disappearance of evidence of the murder is barred. *Emperor v. Bawa Manghoridas*.

11 Cr. L. J. 731 :
8 I. C. 936 : 4 S. L. R. 174.

—S. 403—Fresh trial—Discharge of accused—Fresh trial on some facts, competency of.

Though there is no absolute bar to an accused person being again put in peril of a fresh trial in respect of the same offence in a case where the first trial has ended in an order of discharge, it is a well-recognized and salutary rule of law that a Magistrate of co-ordinate jurisdiction should not entertain a fresh complaint in respect of the same offence when it is based on facts which were known to the complainant and on evidence which was available when the first trial was held. A departure from the rule is in effect an assumption by the Magistrate of the powers of the Appellate Court, and is utterly contrary to sound principle. *Emperor v. Alias*. 31 Cr. L. J. 687 :
124 I. C. 384 : A. I. R. 1929 Sind 242.

—S. 403—Fresh trial.

Dismissal of complaint by competent Tribunal—Complaint can be entertained by another Tribunal of co-ordinate jurisdiction. *Rama Nand v. Sheri*.

35 Cr. L. J. 1062 :
150 I. C. 373 : 3 A. W. R. 569 :
56 All. 425 : 6 R. A. 1078 :
A. I. R. 1934 All. 87.

—S. 403—Fresh trial—Escape of judgment-debtor from custody of amin—Complaint by decree-holder—Dismissal of complaint, whether bar to fresh complaint by amin.

A judgment-debtor escaped from the custody of the amin who had arrested him. The Subordinate Judge gave permission to the amin to prosecute him meanwhile the decree-holder complained and the complaint was dismissed erroneously as incompetent. Then the amin lodged his complaint: *Held*, that previous acquittal was an effective bar to the fresh complaint, as the decree-holder was competent to make a complaint. *Kolandaswami Pillai v. Rajaratna Mudaliar*. 32 Cr. L. J. 27 (a) :
127 I. C. 645 : 58 M. L. J. 579 :
31 L. W. 795 : 1930 M. W. N. 532 :
I. R. 1930 Mad. 1029 :
A. I. R. 1930 Mad. 785 (1).

—S. 403—Fresh trial—Joint complaint by two persons—Subsequent petition to confine trial to offence relating to one complainant—Case compromised—Fresh complaint by the other complainant, competency of—"Acquittal," what constitutes.

A obtained certain sums of money from B and certain sums of money from C who was living under B's protection. B and C

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heard the complainant and his witnesses, the Magistrate acquitted the petitioner of the offence under S. 352, but being of opinion that on the evidence adduced a *prima facie* case of an offence punishable under S. 504 had been made out, ordered process to issue directing the accused to appear and stand his trial under S. 504: *Held*, that S. 403 (2) was applicable to the case, so that the accused could be legally tried again for the offence punishable under S. 504, Penal Code. *Bejoy Krishna Pal v. Balai Chand Bhandari*.

20 Cr. L. J. 43:
48 I. C. 683 : A. I. R. 1919 Cal. 1063.

—S. 403 (2)—*Fresh trial—Prosecution under S. 160, Indian Penal Code—Subsequent prosecution for rioting and hurt, legality of.*

The complainant and the accused had a fight over the carcass of a cow. They were tried on a charge under S. 160, Penal Code, and convicted. The complainant then filed a complaint against the accused under Ss. 147 and 323, Penal Code: *Held*, that S. 403 (2), Cr. P. C., did not bar the subsequent prosecution under Ss. 147 and 323, Penal Code, inasmuch as the offences of rioting and hurt were committed in the same transaction together with the offence under S. 160 of the Penal Code and were distinct offences and could have been joined in the same trial with the charge under S. 160 of the Penal Code under S. 235 and not under S. 236, Cr. P. C. *In re : Dodhu Kala Mahar*.

30 Cr. L. J. 965 :
118 I. C. 693 : 31 Bom. L. R. 922 :
I. R. 1929 Bom. 469 :
A. I. R. 1929 Bom. 451.

—S. 403 (2)—*Fresh trial.*

Under S. 403 (2) a person can be tried for any distinct offence for which a separate charge might have been made against him under S. 235 notwithstanding that he may have been convicted or acquitted of another offence committed in the same transaction. *Subbiah Kone v. Kandaswami Kone*.

33 Cr. L. J. 522 :
137 I. C. 754 : 1932 M. W. N. 105 :
62 M. L. J. 197 : 35 L. W. 265 :
55 Mad. 788 : I. R. 1932 Mad. 454.
A. I. R. 1932 Mad. 362.

—S. 403 (4)—*Fresh trial—Accused convicted under S. 211, Penal Code—Acquittal in revision—Subsequent trial under S. 182, Penal Code, sanction under S. 195, Criminal Procedure Code, having been obtained, whether barred.*

Where it is subsequently sought to prosecute an accused on the same facts under S. 182, Penal Code, he having been once acquitted in revision by the High Court from his conviction under S. 211, Penal Code, and the sanction for the subsequent trial as required by S. 195, Cr. P. C., is obtained, the bar of *autrefois acquit* does not apply. The case is governed by the exception laid down in Sub-s. (4) of S. 403, Cr. P. C. *Emperor v. Ram Rakha*.

39 Cr. L. J. 960 :
177 I. C. 894 : 40 P. L. R. 501 :
11 R. L. 375 : A. I. R. 1938 Lah. 625.

—S. 403 (4)—*Fresh trial—Acquittal by second class Magistrate—Offence, different, constituted by same facts—Subsequent charge before*

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first class Magistrate—Previous acquittal, whether operates as bar.

The accused was charged under S. 406, Penal Code, and was tried and acquitted by a Magistrate with second class powers. He was subsequently charged on the same facts under S. 409 and was brought before a Magistrate with first class powers to take his trial: *Held*, that subsequent charge being with relation to an offence which the first Magistrate could not try, *vide* S. 403 (4), Cr. P. C., the previous order of acquittal with respect to the minor offence for which the accused had already been tried was no bar to the subsequent proceedings. *In re : Venkataranga Josiar*.

18 Cr. L. J. 643 :
40 I. C. 291 : A. I. R. 1918 Mad. 481.

—S. 403 (4)—*Fresh trial—Trial for assault before Village Headman—Subsequent trial for hurt before Magistrate, legality of—Burma Village Act (III of 1889), S. 9.*

A person, having been tried and convicted by a Village Headman under the Burma Village Act for assault, cannot be tried for assault by a Magistrate, but he is liable subsequently to be tried by a Magistrate for the causing of hurt upon the same facts, the Village Headman not being competent to try the offence of voluntarily causing hurt. *Mi Chit v. Mi Nyun*.

20 Cr. L. J. 533 :
51 I. C. 773 : 3 U. B. R. 1919 135 :
A. I. R. 1919 U. Bur. 32.

—S. 403 (4)—*Fresh trial—Trial of several accused by Magistrate first class—Some acquitted, others convicted—Appeal by convicts to Sessions Judge—Power of Sessions Judge to direct commitment of acquitted persons for murder on same facts—Commitment under direction.*

Certain persons were tried by a Magistrate, 1st class, for offences under Ss. 325, 326, 148, Penal Code. They were all convicted of the offences except, A. and B., who were acquitted. On appeal by the convicts, the Sessions Judge quashed the convictions and directed that all accused persons, including A. and B., be committed for trial to the Court of Session as the offence committed was *prima facie* one of murder. In pursuance of that order, the accused were committed to the Court of Session and convicted of an offence under S. 302: *Held*, (1) that the subsequent trial of A. and B. for the offence of murder was justified under S. 403 (4); (2) that the order of the Sessions Judge directing their trial was legal; (3), that the commitment of A. and B., to the Court of Session was valid. *Wadhawa Singh v. Emperor*.

13 Cr. L. J. 742 :
17 I. C. 54 : 7 P. R. 1912 Cr. :
39 P. W. R. 1912 Cr. :
243 P. L. R. 1912.

—S. 403 (4)—*“Jurisdiction,” meaning of.*

The word ‘jurisdiction’ under S. 403 (4) refers not only to the character and status of Tribunal but also includes local jurisdiction as

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for abduction, and acquitted. He was subsequently prosecuted for rape of the female, during the abduction in question. The accused pleaded *autrefois acquit*: *Held*, that the abduction and rape were not distinct offences and the acquittal on the charge of abduction was a bar to subsequent proceedings on rape. *Chit Hlaing Maung v. Emperor*.

32 Cr. L. J. 205 :

128 I. C. 843 : I. R. 1931 Rang. 59 :

A. I. R. 1930 Rang. 360.

—————**S. 403—Fresh trial—Penal Code, Ss. 401, 413—Being member of gang for the purpose of habitually committing theft, trial for—Acquittal—Receiving stolen property, trial for, whether barred.**

Accused was tried along with several other persons for an offence under S. 401, Penal Code, and was acquitted. The case against him consisted of an approver's statement as to his having attended a meeting held with the object of forming a gang for the commission of theft and of evidence as to the discovery of proceeds of certain thefts in his house. The approver's statement was considered unreliable and the evidence as to the discovery of stolen property was held to be insufficient to prove that the accused was a member of the gang. The accused was subsequently prosecuted for an offence under S. 413, Penal Code, in respect of the discovery of the stolen property: *Held*, that the two trials were not based on the same facts, and therefore, S. 403, Cr. P. C. did not bar the subsequent trial. *Chhajju v. Emperor*.

26 Cr. L. J. 1097 :

88 I. C. 185 : A. I. R. 1925 Lah. 537.

—————**S. 403—Fresh trial—Penal Code, Ss. 408, 477-A—Criminal breach of trust—Acquittal—Falsifying accounts—Subsequent trial on same facts, whether competent.**

An accused was entrusted with three sums of money on various dates. He committed criminal breach of trust by dishonestly misappropriating them and was tried under S. 408, Penal Code. It was a part of the prosecution case at the trial that the accused had made false entries in the account-book for the purpose of carrying out the alleged misappropriation and with the intention of concealing his alleged breach of trust. He was unanimously acquitted by the Jury and was subsequently charged under S. 477-A, Penal Code, for having made false entries in the account-book in respect of the said three sums of money: *Held*, that, on the facts of the case, the accused ought not to be put on his trial in respect of these charges, as it would, in effect, amount to trying him again in respect of the same evidence and in respect of the same matters upon which he had already been tried and acquitted by the Jury. *Emperor v. Jhabbar Mulla*.

24 Cr. L. J. 509 :

72 I. C. 973 : 49 Cal. 924 :

A. I. R. 1923 Cal. 179.

—————**S. 403—Fresh trial—Penal Code, S. 411—Stolen property, several articles of, found in possession of accused—Trial in respect of some—Acquittal—Subsequent trial in respect of remaining articles, legality of.**

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Several articles of property stolen from different persons were found in possession of the accused. He was tried in respect of some of the articles upon a charge under S. 411, Penal Code, and was acquitted. He was subsequently prosecuted under the same section in respect of the other properties found in his possession on the same date, but there was no evidence that the articles were received at different times: *Held*, that under S. 403, Cr. P. C. the second trial was illegal. *Ganesh Sahu v. Emperor*.

24 Cr. L. J. 707 :

73 I. C. 931 : 37 C. L. J. 326 :

27 C. W. N. 554 : 50 Cal. 594 :

A. I. R. 1923 Cal. 557.

—————**S. 403—Fresh trial.**

Previous acquittal—Bar to subsequent trial Criminal breach of trust—Acquittal in respect of one item does not bar subsequent trial for another item. *Emperor v. Kashinath Bagaji Sali*.

11 Cr. L. J. 337 :

5 I. C. 970 : 12 Bom. L. R. 226.

—————**S. 403—Fresh trial—Previous acquittal—Summons case—Process issued for offence including previous offence.**

Where a Magistrate issued process against and summoned accused for one of several offences alleged against them and acquitted them of the offence for which they were summoned, no fresh process can be issued against them in view of S. 403 (1) in respect of all the offences alleged against them on previous occasion including the one for which they were summoned and acquitted. *Suresh Chandra Sinha v. Banku Sadhukhan*.

3 Cr. L. J. 115 :

2 C. L. J. 622.

—————**S. 403—Fresh trial—Previous acquittal of two co-accused is no bar to fresh trial of third—Additional facts subsequently ascertained against the third accused.**

A charge of theft was lodged against three persons. Two were placed on trial and acquitted. Subsequently some stolen articles were found from the house of the third accused. He was tried and convicted under S. 411, I. P. C.: *Held*, that the previous acquittal of the two accused was no bar to the trial of the third accused, as some additional facts subsequently ascertained were before the Court to support a charge under S. 411, I. P. C. *Dy. Legal Remembrancer v. Hatim Mollah*.

4 Cr. L. J. 173 :

10 C. W. N. 1031.

—————**S. 403—Fresh trial—Previous acquittals or convictions—Accused tried twice on same facts—Forest Rules, R. 91.**

A person convicted under the Forest Act for felling timber in excess of his license cannot, while that conviction remains in force, be tried again for felling the same timber merely because the evidence of the measurement of the timber given at the first trial was incorrect. *Sau Mya v. Emperor*.

5 Cr. L. J. 412 :

3 L. B. R. 253.

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—S. 403—*Scope—Autrefois acquit—Effect of S. 308—English law compared—“Might have been made.”*

The accused was indicted in the Calcutta Court of Criminal Sessions under five counts which were, *firstly*, the murder of one N under Ss. 302-34, I. P. C., *secondly*, murder of the same man under Ss. 302-114, I. P. C., *thirdly*, abetting the murder of the same man under Ss. 302-109, I. P. C., *fourthly*, the murder of one A, *fifthly*, culpable homicide of A. The accused pleaded not guilty to all the charges. The Jury unanimously acquitted the accused of the first and the fourth charges and differed as to the other counts, there being not as many as six who agreed in opinion. The Judge discharged the jury under S. 305, Cr. P. C., and directed a re-trial. On the re-trial of the accused before a fresh jury on the remaining counts of the indictment, the accused pleaded not guilty as also *autrefois acquit*, and it was urged in defence (1) that as the accused had been acquitted of the charge of murder of A, he could not be tried again for committing culpable homicide on him; and (2) that as he had been acquitted of an offence under Ss. 302-34, I. P. C., in relation to the murder of N, he could not be convicted of an offence in relation to the same man under Ss. 302-109, or 302-114, I. P. C.: *Held*, that S. 403, protected the accused only against a trial for murder and any other offence for which a different charge from the one made against him “might have been made.” But the offence of culpable homicide for which he was tried again was one of the charges actually made against him and on the terms of S. 403, the first objection failed. If the accused had been charged with murder alone, a verdict of not guilty would have protected him from another trial for culpable homicide and were he acquitted of culpable homicide, he would be protected from a trial for any offence involving hurt; but where a charge was made, the case fell outside the provisions of the law dealing with cases where it *might have been made*. That for the purposes of S. 403, the accused was not being tried again but was being tried on the original indictment, and on his first plea of not guilty, S. 308, Cr. P. C., did not affect the construction of S. 403-A. That S. 403 should not be construed with reference to the English Law relating to criminal pleading. Ss. 271 and 272, Cr. P. C., contain all that is necessary as to pleading, and there is no need to supplement their contents by a reference to any other system of judicature. That the plea of not guilty was one not recognised by Cr. P. C. and it was not open to the accused to make any answer to an indictment except guilty or a claim to be tried. S. 403 has nothing to do with pleading, but is in terms of a limitation on the jurisdiction of the Court. A defence under that section may be set up at any time before verdict in any form. That even assuming the case to be governed by the English Law of pleading, *autrefois acquit* was not properly pleaded. That the accused had already pleaded not guilty in the first trial and that plea was still awaiting adjudication and the second plea, was, therefore, unnecessary and of

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no effect. That even if the principles of English Law were to be applied to the present case, the acquittal for murder was no bar to the re-trial for culpable homicide. *Emperor v. Nirmal Kanta Roy*. 15 Cr. L. J. 460 : 24 I. C. 340 : 18 C. W. N. 723 : 41 Cal. 1072 ; A. I. R. 1914 Cal. 901.

—S. 403—*Scope—Conspiracy—Accused once tried on charge of conspiracy, whether can be tried again for fresh entry into conspiracy connected with previous conspiracy.*

What S. 403 lays down, if it is a conspiracy matter to be considered, is that a man cannot be tried again for that particular entry into the conspiracy for which he has already been tried. S. 403 does not say that for any fresh entry into the conspiracy, he cannot be tried. When a person, who is tried and convicted or acquitted on a charge of conspiracy, subsequently enters into a conspiracy, connected with the previous one, by a fresh agreement, such agreement amounts to fresh participation in conspiracy and S. 403 is, therefore, no bar to the trial of such person with regard to such fresh entry. *Purnananda Das Gupta v. Emperor*. (F. B.) 40 Cr. L. J. 199 : 179 I. C. 506 : 68 C. L. J. 206 : 11 R. C. 557 : I. L. R. 1939 I. Cal. 1 : A. I. R. 1939 Cal. 65.

—S. 403—*Scope—Penal Code, S. 323—Petitioner and others tried for affray—Charge under S. 323, if can also be framed against petitioner.*

The offence of causing hurt in the course of an affray in the public street is an entirely distinct offence from the affray itself on the ground, among others, that the affray is committed not alone by the party causing the hurt but by both parties, namely, the party causing the hurt and the party receiving the hurt. Where the two offences are connected with each other in that manner, the matter is governed not by Sub-s. 1 but by Sub-s. (2) of S. 403, and this sub-section definitely provides for a separate trial of the second offence. Consequently when certain persons are being tried for an affray, a charge under S. 323, Penal Code, cannot also be framed against one of them and tried. *Sankatta Rai v. Khaderan Mian*. 37 Cr. L. J. 785 : 163 I. C. 29 : 2 B. R. 572 : 8 R. P. 626 : 17 P. L. T. 723 : A. I. R. 1936 Pat. 503.

—S. 403—*Scope.*

S. 403 is very much wider than the rule of *autrefois acquit* in England and the plea of *autrefois acquit* can be taken at any stage in a trial. But the proper time for a plea is when the accused is called upon to plead. The plea of *autrefois acquit* cannot be ‘constructively’ decided. *Emperor v. John McIver*. (F. B.) 37 Cr. L. J. 637 : 162 I. C. 592 (2) : 1936 M. W. N. 281 : 43 L. W. 548 : 70 M. L. J. 635 : 8 R. M. 1000 : A. I. R. 1936 Mad. 353.

—S. 403—*Scope.*

Cr. P. C. simply lays down the rule on which a plea of *autrefois acquit* or *convict* is founded;

Cr. P. CODE (1898), S. 403**—S. 403—Fresh trial.**

When the Court has once decided that there has been no failure to remove an encroachment and acquitted the accused, it would be illegal to make the same person liable to be tried again for failure to remove the same encroachment by issuing a fresh notice. *Rangachariar v. Venkatasami Chetty*.

36 Cr. L. J. 311 :
153 I. C. 322 : 1934 M. W. N. 1088 :
40 L. W. 834 : 67 M. L. J. 873 :
58 Mad. 513 : 7 R. M. 343 :
A. I. R. 1935 Mad. 56 (2).

—S. 403—Fresh trial.

Where a person is acquitted of a charge under S. 417, Penal Code, for cheating by using a false affidavit, he can, under S. 403 (3), Cr. P. C., be tried for an offence under S. 193, Penal Code, for swearing a false affidavit. The test is not so much whether the facts are the same in both trials as whether the acquittal on the first charge necessarily involves an acquittal on the second charge. *Abdul Hamid v. Emperor*.

36 Cr. L. J. 492 :
161 I. C. 763 : 14 Rang. 24 :
8 R. Rang. 509 : A. I. R. 1936 Rang. 174.

—S. 403—Fresh trial.

Where all that the Judge has done on appeal is to set aside the conviction and sentence, S. 403 does not bar the order for re-trial. *Emperor v. Bahraichi*.

36 Cr. L. J. 1333 :
158 I. C. 200 : 8 R. A. 291.

—S. 403 Expl.—Fresh trial.

Summary dismissal of complaint—Re-trial on fresh complaint—Fresh proceedings will not be quashed by High Court. *Lallain and Khalbali v. Emperor*.

35 Cr. L. J. 1059 :
150 I. C. 376 : 1934 A. L. J. 241 :
3 A. W. R. 571 : 6 R. A. 1076 :
A. I. R. 1934 All. 514.

—S. 403, Illus. (c)—Fresh trial—Accused acquitted by Second Class Magistrate of charge under S. 323, Penal Code—Subsequent trial on same facts under S. 324—Legality.

An accused once acquitted by a Second Class Magistrate of an offence under S. 323, Penal Code, cannot afterwards be tried on the same facts under S. 324, Penal Code, as that charge could have been framed in the first trial. *Bhag Singh v. Emperor*.

39 Cr. L. J. 870 :
177 I. C. 339 : I. L. R. 1938 Lah. 127 :
11 R. L. 298 : 40 P. L. R. 1036 :
A. I. R. 1938 Lah. 614.

—Ss. 403, 195—Fresh trial—Conviction set aside for want of sanction—Subsequent trial, whether barred.

The wording of S. 403, Cr. P. C., is very wide and the expression "Court of competent jurisdiction" in the section does not merely refer to the character and status of the Court to try the offence, but also refers to want of jurisdiction on other grounds; for instance where the trial is held to be without jurisdiction for want of a sanction under S. 195 of the Code. Where, therefore, a conviction is set aside on the ground that there was a want of sanction for the trial, S. 403 does not operate as a

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bar to a second trial of the accused after the necessary sanction has been obtained. *Muhammad Yasin v. Emperor*.

27 Cr. L. J. 849 :
95 I. C. 929 : 7 P. L. T. 383 :
5 Pat. 452 : A. I. R. 1926 Pat. 302.

—Ss. 403, 204, 350—Fresh trial.

Transfer of Magistrate after framing of charge—*De novo* trial—Dismissal of complaint for failure to pay process fees for witnesses—Second complaint on same facts is not barred. *Sheorajsai v. Danu*.

32 Cr. L. J. 603 :
130 I. C. 825 : 27 N. L. R. 13 :
I. R. 1931 Nag. 73 :
A. I. R. 1931 Nag. 39.

—Ss. 403, 235—Fresh trial, when first conviction bad.

When a conviction under S. 365, I. P. C., is bad, a subsequent trial for abduction is not barred by S. 403, Cr. P. C., the case being one which falls under S. 235 (1), Cr. P. C. *Baldeo Prasad v. Emperor*.

3 Cr. L. J. 93 :
3 A. L. J. 2 : 26 A. W. N. 32.

—Ss. 403, 235—Fresh trial—Penal Code, Ss. 201, 202, 176—Previous trial under Ss. 201, 202, Indian Penal Code, resulting in acquittal—Subsequent trial under S. 176, Indian Penal Code, on the same facts—Legality of trial.

Where a person, who was tried and acquitted by a Sessions Judge for offences under Ss. 201, 202, I. P. C., was tried again on the same facts by an inferior Court under S. 176, I. P. C.: *Held*, that the re-trial was barred by S. 403, Cr. P. C., as the case came under Sub-s. (2), and not under Sub-s. (1) of S. 235, Cr. P. C., nor did it come under Sub-s. (2) of S. 403, Cr. P. C., and was not, therefore, excluded from the operation of Sub-s. (1) of S. 403. Besides, as it did not come under Sub-s. (4) of S. 403, the Sessions Judge was competent to try it under S. 176, I. P. C., at the previous trial. *Sharbekhan Gohain v. Emperor*.

3 Cr. L. J. 388 :
10 C. W. N. 518.

—Ss. 403, 435, 436—Fresh trial—Penal Code, Ss. 363, 365, 366, 368—Kidnapping, trial and acquittal on charge of—Trial, subsequent, for offences under Ss. 366, 368, legality of.

Accused was tried under S. 363 of the Penal Code, and was acquitted. Upon an application by the complainant, the Sessions Judge directed fresh inquiry to be made to ascertain whether offences under S. 366 or 368 or any other section of the Penal Code had been committed by the accused: *Held*, that the order directing further inquiry should not have been made inasmuch as kidnapping is an essential element in offences under Ss. 365, 366 and 368, and the accused having already been acquitted of that offence, he could not be put on trial twice for the same offence, nor could he be convicted under Ss. 366 or 368, unless and until the prosecution established that he had committed the offence of kidnapping. *Muhammad Saleh v. Emperor*.

20 Cr. L. J. 526 :
51 I. C. 686 : A. I. R. 1919 Pat. 70.

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Chap. XXXI, Cr. P. C. *Kali Kumar Mitter v. Emperor*. 38 Cr. L. J. 876 :

170 I. C. 26 : I. L. R. 1937 1 Cal. 123 :
10 R. C. 122 : A. I. R. 1937 Cal. 413.

—Ss. 404, 408, 410—Forum of appeal—*Determination*.

The Court to which an appeal lies from the judgment of the Judge is determined by the status of the Judge on the day he pronounces judgment. Ss. 408 and 410, Cr. P. C., are to be read subject to the provisions of S. 404. *Jalal v. Emperor*.

38 Cr. L. J. 350 :
167 I. C. 75 : 9 R. S. 162 :
30 S. L. R. 456 : A. I. R. 1937 Sind 22.

—S. 404—Scope—Forum of appeal.

All that S. 404 indicates is that the appeals are to be against judgments and orders but that section has nothing to do with the forum of the appeal which is provided for by Ss. 406, 407, 408, 410 and 411 of the Code, and the determination of the forum of appeal must depend on the interpretation of the words used in those sections. *Bakshi Ram v. Emperor*.

39 Cr. L. J. 345 :
173 I. C. 663 : 1937 A. L. J. 1152 :
10 R. A. 493 : I. L. R. 1938 All. 157 :
1937 A. W. R. 1147 : A. I. R. 1938 All. 102.

—Ss. 404, 411—Sentence of whipping—*Appeal, forum of*.

There is no appeal to the High Court from a sentence of whipping passed by a Presidency Magistrate, in view of Ss. 404 and 411, Cr. P. C. *Motiram v. Emperor*.

38 Cr. L. J. 985 :
170 I. C. 757 : 39 Bom. L. R. 470 :
10 R. B. 142 : A. I. R. 1937 Bom. 336.

—S. 406.

See also (i) Appeal.

(ii) Cr. P. C., 1898, Ss. 107, 118.

—S. 406—Appeal, forum of.

Where a Magistrate sentences a person proceeded against under S. 110 for a period of three years, an appeal does not lie to the District Magistrate. *Fazal Mammud v. Emperor*.

36 Cr. L. J. 936 :
156 I. C. 284 (1) : 7 R. Pesh. 121 :
A. I. R. 1935 Pesh. 55.

—S. 406—Scope—Appeal—Reference to Sessions Judge.

Obiter.—Ordinarily S. 406 is meant for cases in which a reference to the Sessions Judge is not necessary, i.e., where a man has been either ordered to furnish security for one year or having been ordered to furnish security for more than a year has furnished it and wants to appeal. In such cases, he would go to the District Magistrate in appeal and there would then be no reference to the Sessions Judge, who could deal with such cases only as a Court of revision. *Qamar Din v. Emperor*.

23 Cr. L. J. 454 :
67 I. C. 726 : 66 P. L. R. 1922 Cr. :
A. I. R. 1922 Lah. 475

—S. 407.

See also (i) Appeal.

(ii) Conviction.

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(iii) Cr. P. C., 1898, Ss. 4, 195,
195 (b).

—S. 407—Forum of appeal—Trial begun by Second Class Magistrate—Magistrate invested with First Class powers before decision.

Where a Second Class Magistrate subsequent to his entering upon the trial of a case is invested with the powers of a First Class Magistrate and gives his decision in the latter capacity, appeal from his order lies to the Sessions Judge and not to the District Magistrate. *Durga Das v. Emperor*.

28 Cr. L. J. 50 :
99 I. C. 82 : A. I. R. 1927 Lah. 138

—S. 407—Forum of appeal.

Trial by Magistrate with Second Class powers—Magistrate vested with First Class power before delivering judgment—Appeal lies to District Magistrate.

33 Cr. L. J. 516 :
137 I. C. 854 : 36 C. W. N. 302 :
I. R. 1932 Cal. 394 : A. I. R. 1932 Cal. 460.

—S. 407—Forum of appeal—Trial by Second Class Magistrate—Before conclusion of trial, Magistrate's powers enhanced.

Where accused was tried and convicted by a Magistrate who, at the commencement of the trial, held only Second Class powers but who was invested with First Class powers before judgment was passed : Held, that enhancement of powers before conclusion of trial did not affect question of trial and the appeal lay to the District Magistrate. *Emperor v. Nga Paw*.

8 Cr. L. J. 48 :
4 L. B. R. 239.

—S. 407—"Person convicted at a trial", meaning of.

A person against whom an order under S. 22, Cattle Trespass Act, is made is a 'person convicted at a trial' within the meaning of S. 407. *In re : Ponnusami*.

5 Cr. L. J. 86 :
I. L. R. 29 Mad. 517.

—S. 407—Transfer—Appeal against order sanctioning prosecution—Power of District Magistrate to transfer.

As S. 407 deals with appeals from convictions only, a District Magistrate is not empowered to transfer, to a 1st Class Magistrate subordinate to him an appeal against an order sanctioning prosecution. *Lal Singh v. Emperor*.

13 Cr. L. J. 273 :
14 I. C. 637 : 9 A. L. J. 260 :
34 All. 244.

—Ss. 407, 408—Forum of appeal—Case taken cognizance of by Second Class Magistrate—Magistrate invested with First Class powers during pendency of trial.

Where a Magistrate takes cognizance of a case as a Second Class Magistrate but during the pendency of the trial, he is invested with First Class powers and a substantial part of the trial is held after the Magistrate is invested with such powers, the case falls under S. 408, Cr. P. C., and an appeal from an order of conviction passed by the Magistrate lies to the Court of

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illegal and cannot be allowed to stand. *Kalka v. Ranjit Singh*. 27 Cr. L. J. 128 :

91 I. C. 704 : 24 A. L. J. 170 :
A. I. R. 1926 All. 241.

———S. 250 (Prov.)—*Hearing complainant—Necessity of—Absence of complainant on days of hearing—Effect.*

A Magistrate is bound to hear the complainant before making any order against him under proviso to S. 250. No inference can be drawn against the complainant from the mere fact that he has been absenting himself on the appointed days of hearing. *In re : Mahadev Ramkrishna Karkare*. 23 Cr. L. J. 574 :

68 I. C. 414 : 24 Bom. L. R. 805 :
A. I. R. 1922 Bom. 409.

———S. 250—*High Court—Whether can award compensation.*

Quaere.—Whether it is open to the High Court in criminal revision to award compensation to the accused under S. 250. *Aminullah v. Emperor*. 29 Cr. L. J. 274 :

107 I. C. 690 :
26 A. L. J. 328 :

1 L. T. 40 All. 103 : A. I. R. 1923 All. 95.

———S. 250—*Imprisonment—Award, when competent.*

An order for imprisonment in default of payment of compensation cannot be included in the order for compensation made against a complainant, as the imprisonment cannot be ordered until some attempt has been made to levy the compensation in the manner provided to S. 386 for the levy of a fine. *Ram Narayana Acharjee v. Atul Chandra Das*. 18 Cr. L. J. 1014 :

42 I. C. 758 : A. I. R. 1918 Cal. 436.

———S. 250—*Imprisonment—When competent.*

In view of Sub-s. (2) of the section, the second part of the order should be that the compensation shall be recovered as if it were a fine, and in the event of its not being so recovered, the complainant should suffer simple imprisonment for 30 days. *Lalit Mohan Singha Roy v. Kunja Behari Ghose*. 15 Cr. L. J. 150 :

22 I. C. 726 : 18 C. W. N. 702 :
A. I. R. 1914 Cal. 548.

———S. 250—*Imprisonment—When competent.*

It is only if the compensation awarded under S. 250 cannot be recovered, that the imprisonment can be awarded, but the Magistrate may, if he thinks fit to do so, take action under S. 388 (2). *Bhikwa Kunbi v. Ramji*. 1 Cr. L. J. 762 :

17 C. P. L. R. 104.

———S. 250—*Imprisonment—When competent.*

S. 250 does not give any power to the Magistrate to order imprisonment in default of payment of fine. It is only on the failure of the attempt to recover the amount awarded as compensation that the Magistrate can pass an order directing the imprisonment of the complainant. Where, therefore, in an order discharging the accused the Magistrate made a

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note to the effect that the complainant would be called upon to show cause why he should not pay compensation and after giving the complainant time to answer the charge, the Magistrate came to the conclusion that he should be directed to pay compensation and called upon him to do so or undergo imprisonment in default. *Held*, (1) that the proceeding awarding compensation did not contravene the provisions of S. 250 and was not illegal; (2) that even if it was regarded as separate order contravening S. 250, the defect merely amounted to an irregularity which did not prejudice the accused and was cured by S. 537; (3) that the provisional order for imprisonment was beyond the jurisdiction of the Magistrate. *Dhanukodi Asari v. Muthusamy Aiyar*. 17 Cr. L. J. 314 :

35 I. C. 490 : 4 L. W. 32 :
1916 2 M. W. N. 159.
A. I. R. 1917 Mad. 628.

———S. 250—*Imprisonment—Award, when competent.*

It is illegal to award imprisonment in default by an order under S. 250, requiring compensation to be paid. It is only when recovery is found to be impracticable that the defaulter may be sentenced to imprisonment. *Bakaji v. Mukand Singh*. 21 Cr. L. J. 226 :

55 I. C. 98 : A. I. R. 1920 Nag. 108.

———S. 250—*Imprisonment—Award, when competent.*

It is illegal to award imprisonment in default of payment of compensation. Imprisonment can only be awarded if the compensation cannot be recovered. *Akloo, Mistri v. Nawbat Lal*. 21 Cr. L. J. 751 (a) :

58 I. C. 255 : 1 P. L. T. 558 :
A. I. R. 1920 Pat. 211.

———S. 250—*Imprisonment—Commencement of.*

The imprisonment which may be awarded under S. 250 (3), cannot be directed to begin at the expiry of a term of detention in the Civil Jail, which the complainant has been ordered to undergo by a Civil Court under the Cr. P. C. *Emperor v. Ma Kha Gyi*. 26 Cr. L. J. 821 :

88 I. C. 469 : 4 Bur. L. J. 9 :
3 Rang. 93 : A. I. R. 1925 Rang. 202.

———S. 250—*Imprisonment—Limit of period—Complainant to pay compensation to each of several accused—Proper order for imprisonment in default.*

Where a complainant has to pay compensation to each of several accused, the imprisonment which the Magistrate orders in default of payment should be ordered in respect of default of payment to each of the accused. *Ma Pu v. Maung Tun Pe*. 41 Cr. L. J. 506 :

187 I. C. 744 : 12 R. Rang. 351 :
A. I. R. 1940 Rang. 110.

———S. 250—*Imprisonment—Limit of period.*

The term of 30 days specified in S. 250 (3) can be imposed in respect of the default made in payment of compensation to each of the

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Magistrate and the latter explains to him the procedure which will be followed if he claims to be tried as a European British subject and the procedure which will be followed if he waives his right to be tried as such, and he elects to be tried according to the latter procedure, the result of the waiver is to render Ss. 408 and 446, Cr. P. C., inapplicable to the case, and the accused has no right of appeal to the High Court. *Dawson Downing v. Emperor.*

18 Cr. L. J. 986 :
42 I. C. 602 : 2 P. L. W. 79 :
A. I. R. 1918 Pat. 59.

—S. 408—Change in powers—Second Class Magistrate invested with First Class powers during pendency of trial—Conviction—Appeal, whether lies to District Magistrate or Sessions Court.

The moment a Second Class Magistrate is invested with the powers of a First Class Magistrate, he becomes a First Class Magistrate and any conviction by him in cases which were taken up by him as a Second Class Magistrate are convictions by a First Class Magistrate, and appealable to the Court of Session and not the District Magistrate. *Trinmala Venkatarreddy v. Sikatapu Ramayya.*

29 Cr. L. J. 71 :
106 I. C. 583 : 1927 M. W. N. 669 :
26 L. W. 685 : 39 M. L. T. 497 :
53 M. L. J. 733 : 51 Mad. 257 :
A. I. R. 1928 Mad. 55.

—Ss. 408, 413—Compensation—Cattle Trespass Act, S. 22—Offence—Conviction—Fine—Appeal.

A person who is directed to pay compensation under S. 22, Cattle Trespass Act, can be said to be convicted of an offence, but the compensation awarded against him though recoverable as a fine is not a "fine" within the meaning of Penal Code and other penal statutes. Therefore, an appeal against his conviction lies under S. 408, Cr. P. C., and does not fall within the restrictive provisions of S. 413 of that Code. *Rodricks v. Papa Dada.*

22 Cr. L. J. 624 :
63 I. C. 160 : 23 Bom. L. R. 836 :
A. I. R. 1922 Bom. 191.

—S. 408 (4), 530 (k)—Competency of Court—Penal Code (Act XLV of 1860), Ss. 408, 409, 477-A—Acquittal by Magistrate not empowered to try case, whether bars subsequent trial—Procedure—Jurisdiction.

A complaint was made against the accused disclosing offences punishable under S. 409 and 477-A, Penal Code. The case was by some mistake made over for trial to an Honorary Magistrate exercising the powers of a Magistrate of the Second Class. He proceeded to deal with the case as one under S. 408, I. P. C., and finally acquitted the accused. Subsequently the complainant presented a further complaint to the District Magistrate praying for the trial of the accused under Ss. 409 and 477-A, Penal Code. The District Magistrate thereupon took cognizance of the case and referred the complaint to a First Class Magistrate for disposal: *Held*, that inasmuch as the Second Class Magistrate who

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had dealt with the case was not empowered to commit accused persons for trial to the Court of Session, the District Magistrate had jurisdiction to take cognizance of the second complaint having regard to the provisions of S. 530 (k) and S. 408 (4), Cr. P. C. *Krishnadhon Ghose v. Mahindra Nath Dutt.*

20 Cr. L. J. 112 :
48 I. C. 992 : 23 C. W. N. 518 :
29 C. L. J. 30 : A. I. R. 1919 Cal. 511.

—S. 408—Forum of appeal.

A person was convicted by a Magistrate of the first class and was sentenced to a day's imprisonment and to a fine of Rs. 50, in default of payment of which he was to suffer a month's imprisonment further. But, as a matter of fact, he was neither sent to jail nor was actually imprisoned: *Held*, that an appeal lay to the Sessions Judge, as there was a combination of the sentences of imprisonment and fine. *Alam v. Emperor.* 12 Cr. L. J. 389 :
11 I. C. 253 : 8 A. L. J. 524 : 33 All. 510.

—S. 408—Forum of appeal—Aggregate fine exceeding Rs. 50.

In case a Magistrate of the first class passes two sentences of fine amounting in the aggregate to more than Rs. 50, an appeal is competent to the Court of Session under S. 408. *Shidlingappa Gurulingappa v. Emperor.*

27 Cr. L. J. 926 :
96 I. C. 270 : 28 Bom. L. R. 668 :
A. I. R. 1926 Bom. 416.

—S. 408—Forum of appeal—Appeal—Co-accused—One sentenced to 4 months' imprisonment, other to fine of Rs. 50.

It is not in the fitness of things that a Sessions Judge should be able to decide a case involving a sentence of four months' imprisonment and at the same time be forced to refer to the Chief Court a pettier sentence based on the same or closely similar incidents. Two persons were tried together before a first Class Magistrate. One was sentenced to imprisonment exceeding one month and the other to a fine not exceeding Rs. 50: *Held*, that both had a right of appeal to the Sessions Court under S. 408 and that the right was not taken away by S. 413 of the Code. *Emperor v. Naurati.*

17 Cr. L. J. 27 :
32 I. C. 155 : 30 P. R. 1915 Cr. :
A. I. R. 1916 Lah. 193.

—S. 408—Forum of appeal—Appeal from sentence passed by Assistant Sessions Judge—Trial Judge officiating as Sessions Judge—Effect.

An appeal from a conviction and sentence by an Assistant Sessions Judge, where the sentence is less than four years' rigorous imprisonment, lies to the Sessions Court, and the fact that by the time the appeal is ready, the Assistant Sessions Judge who tried the case has been promoted to officiate as Sessions Judge, does not give the High Court any jurisdiction to try the appeal. In such a case, it is open to the Officiating Sessions Judge, on receipt of the appeal, to either send the case to the High Court for disposal or to admit the

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laid down in Ss. 177 to 184 and 188, Cr. P. C.
In re : *Shanker Tulshiram Navle*.

30 Cr. L. J. 54 :
113 I. C. 70 : 30 Bom. L. R. 1435 :
I. R. 1929 Bom. 78 : 53 Bom. 69 :
A. I. R. 1928 Bom. 530.

—Ss. 403, 488—*Maintenance application*
—*Dismissal for default—Fresh application,*
maintainability—Res judicata.

Where a Magistrate to whom an application for maintenance is made knows or has reason to believe that a similar application on the same facts has previously been adjudicated upon, he ought not to act on the application without considering the previous decision, but if he does so, it cannot be held that he is wrong in law and that his proceedings are void regardless of the merits. A previous application for maintenance which was dismissed for default without an adjudication on the merits does not bar a subsequent application for the same relief. *Maung Hla Maung v. Ma On Kin*.

28 Cr. L. J. 912 :
105 I. C. 240 : 6 Bur. L. J. 200 :
5 Rang. 697 : A. I. R. 1927 Rang. 328.

—Ss. 403, 488—*Maintenance application*
—*Dismissal—Subsequent application not barred.*

The dismissal of an application for maintenance does not constitute a legal bar to an order granting maintenance on a subsequent application. *Po So v. Ma Kyin Me*.

9 Cr. L. J. 21 :
4 L. B. R. 337 : 14 Bur. L. R. 259.

—S. 403—*Miscellaneous—Lower Burma Courts Act, 1900, S. 12—Re-trial of accused—Conviction and sentence by Judge of High Court set aside by a Bench.*

The accused was convicted at a Criminal Sessions before a Judge of the Chief Court and sentenced to death. In a proceeding under S. 12 of the Lower Burma Courts Act, 1900, the conviction and sentence were set aside by a Bench on the ground that the verdict had not been arrived at in due course of law ; but the accused was not acquitted. The District Magistrate then took cognizance of the case against the accused and transferred it to a subordinate Magistrate for inquiry with a view to the recommitment of the accused. In an application for revision on behalf of the accused, it was argued that the District Magistrate's order was illegal, inasmuch as the original commitment was still valid and subsisting, and the trial upon that commitment had not been completed : *Held*, after reference to Ss. 423, 434 and 439, Cr. P. C., and in view of the provisions of S. 403 read with Ss. 273 and 333, that the District Magistrate's order was legal. *Hla Gyi v. Emperor*.

3 Cr. L. J. 15 :
3 L. B. R. 87 : 11 Bur. L. R. 360.

—S. 403—*Procedure—Plea of previous acquittal—Magistrate, duty of.*

A decision that a prosecution is barred under the provisions of S. 403 ought not to be arrived at without an investigation of the facts put forward on behalf of the complainant. *Radha Kissen v. Fateh Chand*.

22 Cr. L. J. 67 :
59 I. C. 323 : 23 C. W. N. 543.

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—S. 403—*Procedure—Plea of previous acquittal—Court, duty of.*

On a charge of cheating and criminal breach of trust where the plea taken by the accused was that he had already been tried and acquitted in another Court on a charge involving the same set of facts : *Held*, (1) that this was a matter to be ascertained after hearing the evidence and ascertaining what the facts in both the cases were ; (2) that if it was found necessary to frame a charge, the accused would be able to set up his previous acquittal as a plea in defence. *M. N. Mukherjee v. Matangi Charan Palit*.

20 Cr. L. J. 572 :
52 I. C. 60 : 23 C. W. N. 599 :
A. I. R. 1919 Cal. 57.

—S. 403—*Re-trial after acquittal.*

Under S. 403, Cr. P. C., an acquittal under S. 244 operates as a bar to a trial for the same offence and a District Magistrate cannot order a re-trial of the acquitted person. In re : *Sinnu Gounden*.

15 Cr. L. J. 236 :
23 I. C. 188 : 26 M. L. J. 160 :
1914 M. W. N. 273 : A. I. R. 1914 Mad. 628.

—S. 403 (1)—*Re-trial barred.*

Acquittal under S. 247 bars a further trial under S. 403 (1), Cr. P. C. *Suku Ram Koch v. Krishna Deb Sarma*.

30 Cr. L. J. 585 :
116 I. C. 174 : 49 C. L. J. 119 :
33 C. W. N. 260 : I. R. 1929 Cal. 462 :
A. I. R. 1929 Cal. 189.

—Ss. 403 (1), 439—*Revision—Ground that proceedings are barred under S. 403 (1) not taken in revision petition—High Court can take notice of it suo motu.*

Where subsequent proceedings are *prima facie* barred under S. 403 (1) by acquittal of accused in prior proceedings but this ground is not taken by the accused in the revision petition filed against his conviction in the subsequent proceedings, the High Court is entitled to take notice of the fact *suo motu*. *Jagannath Rao Dani v. Emperor*.

A. I. R. 1935 Nag. 23.

—S. 403—*Scope—Acquittal by Magistrate disqualified under S. 556.*

If a person put on his trial for an offence produces an order of acquittal, passed by a Court which, on the face of it, is a Court of competent jurisdiction, in that it had both territorial jurisdiction and jurisdiction under the second Schedule of Cr. P. C., in respect of the offence charged, the Court before which such order of acquittal is produced is not entitled to impeach the competency of the Court which passed the order on the ground that the presiding officer of the Court may perhaps have laboured under the disqualification prescribed by S. 556, Cr. P. C. Until such order of acquittal has been set aside and a new trial ordered by some competent Court, the person acquitted is entitled to plead it under S. 403, Cr. P. C., in connection with any further proceeding that may be taken against him. *Darbari Mal v. Emperor*.

12 Cr. L. J. 575 :
12 I. C. 839 : 8 A. L. J. 1129.

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———S. 408 (b)—*Forum of appeal—Different sentences by Assistant Sessions Judge.*

Where an Assistant Sessions Judge sentences one of the several accused in a case to rigorous imprisonment for more than four years and others to a term of four years each, an appeal lies to the High Court, although the accused sentenced to the higher term of imprisonment does not appeal. *Har Dayal v. Emperor.* 16 Cr. L. J. 606 :

30 I. C. 158 : 13 A. L. J. 719 :
37 All. 471 : A. I. R. 1915 All. 356.

———S. 408 (b)—*Forum of appeal—“In any case”—Appeal from the sentence of Assistant Judge—Appeal by persons sentenced to less than 4 years while another accused in the case has been sentenced to more than 4 years.*

Whenever an Assistant Sessions Judge sentences any of the accused in a case to more than 4 years' imprisonment, the appeal always lies to the High Court, whether it be by the person who is sentenced to 4 years or by one who is sentenced to less than 4 years in the same case; and the Sessions Judge has no jurisdiction to entertain an appeal from persons sentenced to less than 4 years. *Palani Koravan v. Emperor.* 5 Cr. L. J. 496 :

17 M. L. J. 248.

———S. 408 (b)—*Forum of Appeal—Sentence of imprisonment for four years plus fine.*

The phrase “sentence of imprisonment for a term exceeding four years” in clause (b) of S. 408 has reference to the substantive sentence of imprisonment apart from any sentence of fine or imprisonment in default of the payment of the fine. Therefore, where a Magistrate specially empowered under S. 30, Cr. P. C., sentences an accused to four years' rigorous imprisonment and a fine, and in default of payment of fine, to further rigorous imprisonment, an appeal from the sentence lies to the Sessions Court and not to the High Court. *Khuda Bakhsh v. Emperor.*

19 Cr. L. J. 742 (b) :
46 I. C. 518 : 19 P. R. 1918 Cr. :
33 P. W. R. 1918 Cr. :
A. I. R. 1918 Lah. 384.

———S. 408 (c)—*Forum of appeal—Appeal to Sessions Judge against conviction under S. 124-A, Penal Code, wrongly admitted and sentence reduced—Order held without Jurisdiction—Appeal to High Court, beyond limitation—Time, whether can be extended under Limitation Act, S. 5.*

An accused was convicted for an offence under S. 124-A, Penal Code. An appeal was filed to the Sessions Judge, who overlooking the provisions of S. 408 admitted the appeal and reduced the sentence. The accused again appealed to the High Court, but beyond the period of limitation : *Held*, that the order of the Sessions Judge was made without jurisdiction, as an appeal in such cases lay only to the High Court under S. 408 : *Held*, also, that there was sufficient cause for extension of time under S. 5, Limitation Act. *Krishna Chandra Pangoria v. Emperor.*

38 Cr. L. J. 972 :
170 I. C. 874 : 10 R. A. 191 :
1937 A. L. J. 365 :
A. I. R. 1937 All. 466.

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———S. 408 (3)—*Forum of appeal.*

An Assistant Sessions Judge convicted an accused for the offence under Ss. 304 and 147 and passed a sentence of four years on each count. The two sentences were to run concurrently : *Held*, that an appeal lay to the Sessions Judge. *Tulsi Ram v. Emperor.*

14 Cr. L. J. 119 :
18 I. C. 679 : 11 A. L. J. 111 :
35 All. 154.

———Ss. 408, 414—*Right of appeal—Conviction under S. 562.*

S. 408 gives a right of appeal immediately a conviction is recorded under S. 562 without waiting for the passing of the subsequent sentence (if any). S. 414 has no application to such a case and a right of appeal conferred by S. 408 is not taken away by S. 414. *Shankar Sukul v. The King.*

41 Cr. L. J. 877 :
190 I. C. 226 : 1940 Rang. 381 :
13 R. Rang. 76 :
A. I. R. 1940 Rang. 223.

———S. 408—*Right of appeal—Conviction without sentence.*

S. 408 gives a right of appeal from an order of conviction. Therefore a person who is convicted but released under S. 562 of the Code has a right of appeal. *Emperor v. Manohar Das.*

1 Cr. L. J. 1098 :
24 P. R. Cr. 1904.

———S. 408—*Right of appeal—Several accused tried jointly—One accused awarded appealable sentence—Appeal by others, right of.*

Where at the joint trial of two or more persons by a first class Magistrate, an appealable sentence is passed upon any one of them, all the convicted persons have the same right of appeal, even though their sentences may be of the kind against which appeal would have been barred by S. 413, Cr. P. C., if they had been tried singly. *Emperor v. Jaisukh.*

17 Cr. L. J. 173 :
33 I. C. 653 : 16 P. R. 1916 Cr. :
21 P. W. R. 1916 Cr. :
A. I. R. 1916 Lah. 302.

———Ss. 408, 413—*Right of appeal—Joint trial of several accused—Sentences, varying—Appeal by persons sentenced to appealable terms—Right of accused sentenced to non-appealable terms.*

In an appeal under S. 408 by some of the accused who are awarded appealable sentences in a trial in which the other accused are awarded non-appealable sentences, it is not competent to the latter to have their case examined as if an appeal lay in their case as well. *In re : Annasami Nadavan.*

19 Cr. L. J. 623 :
45 I. C. 527 : 7 L. W. 571 :
24 M. L. T. 182 :
A. I. R. 1919 Mad. 1163.

———Ss. 408, 413—*Right of appeal—Several persons convicted at one trial—Different sentences.*

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and it would seem that the rule could be invoked by an accused person at any stage of the proceedings. *Emperor v. John Mc Iver*. (F. B.) 37 Cr. L. J. 637 : 162 I. C. 592 (2) : 1936 M. W. N. 281 : 43 L. W. 548 : 70 M. L. J. 635 : 8 R. M. 1000 : A. I. R. 1936 Mad. 353.

—S. 403—Scope—Test of application—Principle.

The question as to whether a particular trial is barred by reason of previous prosecution ending in conviction or acquittal is a question to be determined on the facts and circumstances of a particular case. The true test is not so much whether the facts are the same in both trials as whether the acquittal or conviction from the first charge necessarily involves an acquittal or conviction on the second charge. The provisions contained in S. 403 are complete by themselves on the subject of the effect of previous acquittal or conviction and no question of exercise of inherent jurisdiction or the application of the rule of *res judicata* arises where there are specific provisions in the law. *Jitendra Nath Gupta v. Emperor*. (S. B.) 38 Cr. L. J. 818 : 169 I. C. 977 : 10 R. C. 69 : A. I. R. 1937 Cal. 99.

—S. 403—Scope—Test for determining identity of offences.

One of the tests for determining the identity of the offences is whether the evidence necessary to support the indictment would have been sufficient to procure a legal conviction of the first. It is inexpedient to address a joint complaint to the Magistrate with reference to two independent transactions affecting two individuals separately and which do not present any common feature excepting that the accused is the same. *Hukam Singh v. Emperor*. 30 Cr. L. J. 1149 : 120 I. C. 117 : I. R. 1930 All. 5 : 1930 A. L. J. 85 : A. I. R. 1930 All. 92.

—S. 403—Scope.

The general principle of S. 403 is that a man should not be put upon the trial twice over on the same facts. The section should be interpreted liberally. *In re : Chinnappa Naidu*. 25 Cr. L. J. 244 : 76 I. C. 708 : 19 L. W. 31 : 1924 M. W. N. 153 : A. I. R. 1924 Mad. 478.

—S. 403—Scope.

The principles underlying the English Common Law pleas of *autrefois convict* and *autrefois acquit* have been embodied so far as India is concerned, within the limits, however narrow they may be, of the language of S. 403 itself. The language of the section should not be stretched nor should the principles be extended in any way so as to give benefit to the accused, of the spirit underlying the provisions of the section, for, it would be bewildering and, indeed, might result in great injustice to the community

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at large. *Purnananda Das Gupta v. Emperor*. (F. B.) 40 Cr. L. J. 199 : 179 I. C. 506 : 68 C. L. J. 206 : 11 R. C. 557 : I. L. R. 1939 1 Cal. 1 : A. I. R. 1939 Cal. 65.

—S. 403—Scope.

Under S. 403 an accused cannot be tried a second time on the same facts for an offence cognate to or involved in the offences with which he was previously charged. *Manari Chowdhury v. Emperor*. 19 Cr. L. J. 198 : 43 I. C. 614 : 22 C. W. N. 199 : 27 C. L. J. 434 : 45 Cal. 727 : A. I. R. 1918 Cal. 406.

—S. 403—Scope.

When a prosecution is barred on account of a previous trial, S. 403, directs that the accused shall not be tried. An order of acquittal, therefore, is improper, as no such order can be passed without a trial. *Oborno Charan Chowdry v. Emperor*. 9 Cr. L. J. 578 : 2 I. C. 357 : 5 L. B. R. 12.

—S. 403 (4)—Scope.

S. 403 (4) refers to the character and status of the Tribunal when it refers to competency to try the offence. *Ganapath Bhatta v. Emperor*. 14 Cr. L. J. 214 : 19 I. C. 310 : 24 M. L. J. 463 : 13 M. L. T. 360 : 36 Mad. 30?

—S. 403—‘Trial’, meaning of.

The word “trial” in S. 403, does not necessarily imply decision on the merits. *In re : Guggilapu Peddaya*. 12 Cr. L. J. 41 : 9 I. C. 253 : 34 Mad. 253.

—S. 403—‘Tried’, meaning of.

The word ‘tried’ in the early part of S. 403 (1) should not be treated as surplusage, and the section does not apply to a case where even the particulars of the offence were not stated to the accused, under S. 242. *Bezawada Kotayya v. Konathalapalli Venkayya*. 19 Cr. L. J. 497 : 45 I. C. 257 : 40 Mad. 977 : A. I. R. 1918 Mad. 212.

—S. 403 (1)—‘Tried’, meaning of.

The word ‘tried’ in S. 403 (1) does not necessarily import a trial on the merits but only refers to the nature of the proceedings that were had. *Suku Ram Koch v. Krishna Deb Sarmia*. 30 Cr. L. J. 585 : 116 I. C. 174 : 49 C. L. J. 119 : 33 C. W. N. 260 : I. R. 1929 Cal. 462 : A. I. R. 1929 Cal. 189.

—S. 404.

See also (i) Appeal.
(ii) Cr. P. C. 1898, Ss. 408, 520.

—S. 404—Appeal—Right of—Law governing.

The right of appeal in criminal matters is a statutory one, and is primarily governed by S. 404 which forms the commencement of

Cr. P. CODE (1898), S. 250

accused in whose favour such payment has been ordered. *Emperor v. Ma Kha Gyi.*

26 Cr. L. J. 821 :
88 I. C. 469 : 4 Bur. L. J. 9 :
3 Rang. 93 : A. I. R. 1925 Rang. 202.

—S. 250—Informant—Meaning of.

It is open to a Magistrate under S. 250 to pass an order directing a person, upon whose information given to a Police Officer or to a Magistrate the proceedings were started, to pay compensation to the accused. *Fariduddin v. Emperor.*

27 Cr. L. J. 702 :
94 I. C. 894 : 24 A. L. J. 221 :
A. I. R. 1926 All. 295.

—S. 250—Information—Meaning of.

A statement made by a person on oath before a Magistrate charging other persons of certain offences comes under the words "upon information given to a Magistrate" in S. 250, and amounts to a complaint as defined in S. 4 (h) of the Code. *Gajadhar v. Emperor.*

179 I. C. 758 : 1939 O. W. N. 125 :
11 R. O. 203 : 1939 O. L. R. 73 :
A. I. R. 1939 Oudh 101.

—S. 250—Information—Meaning of.

"Information" in S. 250 is limited to the information given and entered in the cognizable register under S. 154 of the Code. *Walimahomed v. Emperor.*

21 Cr. L. J. 49 :
54 I. C. 401 : 13 S. L. R. 166.

—S. 250—Information—Meaning of—Information of offence given by one person to another with view to prosecution—Compensation, liability for.

Where one person gives information to another charging a third person with an offence with the intention that the information should be conveyed to a Magistrate with a view to a prosecution, the person first giving the information is the person upon whose information the accusation is made within the meaning of S. 250. *Emperor v. Bhawal Singh.*

19 Cr. L. J. 76 :
43 I. C. 108 : 15 A. L. J. 879 :
40 All. 79 : A. I. R. 1918 All. 111.

—S. 250—Information—What is.

Information given to a Village Magistrate cannot be regarded as information given to the Police of an offence within the meaning of S. 250, even where the Village Magistrate is bound to report the offence to the Police. *In re : Arulanatham.*

13 Cr. L. J. 29 :
13 I. C. 221 : 1911 M. W. N. 558 :
10 M. L. T. 550 : 22 M. L. J. 138.

—S. 250—Interpretation—"Information," meaning of.

S. 250 is a penal section and must be construed strictly. Words ought not to be introduced into it which would extend the liability to pay compensation to any person beyond the actual complainant or person who gives the information on which the case is started. *Wali Mahomed v. Emperor.*

21 Cr. L. J. 49 :
54 I. C. 401 : 13 S. L. R. 166.

—S. 250—Interpretation—"Person"**Cr. P. CODE (1898), S. 250**

meaning of—*Municipal Committee, whether can be directed to pay compensation.*

The word "person" in S. 250 includes not only a natural person but also a juristic person; for instance, a Municipal Committee. A Municipal Committee is, therefore, not exempt from the operation of S. 250. *Municipal Committee, Lahore v. Rattan Chand.*

24 Cr. L. J. 463 :
72 I. C. 623 : A. I. R. 1923 Lah. 31.

—S. 250—Interpretation—"The Magistrate by whom the case is heard," meaning of.

The expression "the Magistrate by whom the case is heard" in S. 250, means the Magistrate by whom the case is decided, irrespective of whether he has or has not heard the evidence. *Ram Debi v. Gobind Sahai.*

22 Cr. L. J. 406 :
61 I. C. 646 : 3 U. P. L. (A.) 114 :
19 A. L. J. 651.

—S. 250—Interpretation.

The question as to whether an order is a consequential or incidental order depends upon the terms of the order under consideration in each particular case and the circumstances in which it was made.

35 Cr. L. J. 1 :
145 I. C. 837 : 11 Rang. 361 :
6 R. Rang. 64 : A. I. R. 1933 Rang. 288.

—S. 250 (1)—Interpretation—"May," significance of.

The word 'may' in S. 250 (1) only relates to the manner in which opportunity to show cause is to be given. *Municipal Board, Lucknow v. Abdul Aziz.*

34 Cr. L. J. 44 :
140 I. C. 652 : 9 O. W. N. 943 :
I. R. 1933 Oudh 8 (1) :
A. I. R. 1933 Oudh 37.

—S. 250—Jurisdiction—Case triable by Magistrate—Power to award compensation—Possibility that case triable exclusively by Court of Sessions might arise, if proved, effect of.

A Magistrate made an order for compensation under S. 250, Cr. P. C., in a case under Ss. 463 and 323, Penal Code, both of which were within the Magistrate's jurisdiction. The Sessions Judge made a reference on the ground that if there was any offence, it was one under S. 467, Penal Code, which was exclusively triable by the Court of Sessions. But it was found by both the Courts that no offence was committed at all : *Held*, that it was not incumbent on the Magistrate to go out of the way to find that a case exclusively triable by a Court of Sessions might arise from the facts before him, if they were proved, and the Magistrate was entitled to act under S. 250. *Bal-kishen v. Emperor.*

31 Cr. L. J. 563 :
123 I. C. 756 : 1930 A. L. J. 465 :
A. I. R. 1930 All. 280.

—S. 250—Jurisdiction to award compensation, determination of.

The question whether a case is one 'triable by a Magistrate' within the meaning of S. 250, and whether the Magistrate has consequently power to make an order for compensation under that section is not to be entirely regulate

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Session and not to the District Magistrate.
Emperor v. Maganlal Jhavarchand.

28 Cr. L. J. 474 :
101 I. C. 602 : 29 Bom. L. R. 482 :
A. I. R. 1927 Bom. 366.

—Ss. 407, 408—*Forum of appeal—Trial by Second Class Magistrate—Magistrate invested with first class powers before conclusion of trial—Conviction.*

An appeal from an order of conviction passed by a Magistrate, who commenced the trial as a Second Class Magistrate, but who was invested with first class powers before the conclusion of the trial, lies to the Sessions Judge and not to the District Magistrate. *Babu Ram v. Emperor.*

28 Cr. L. J. 781 :
104 I. C. 109 : 8 Lah. 203 :
28 P. L. R. 489 : A. I. R. 1927 Lah. 398.

—Ss. 407, 408—*Forum of appeal.*

Where the trial of a case was held by a Second Class Magistrate but before hearing arguments he was invested with first class powers: *Held*, that an appeal from the judgment of the Magistrate lay to the Sessions Judge and not to the District Magistrate. *Sheobhanjan Singh v. Emperor.*

26 Cr. L. J. 914 :
86 I. C. 978 : 1925 Pat. 120 :
6 P. L. T. 553 : A. I. R. 1925 Pat. 472.

—Ss. 407, 422—*Notice—Notice to officer appointed by Local Government not given—Illegality—Acquittal.*

Where an appeal under S. 407, is heard by a Magistrate specially empowered to hear such appeals, it is incumbent on the Magistrate to give notice of such hearing under S. 422 of the Code, to the officer appointed by the Local Government in that behalf and an omission to give such notice before hearing the appeal cannot be treated as an irregularity. The disposal of such an appeal without notice to the officer is not a legal disposal of the appeal. *Emperor v. Shivalingappa Basappa.*

24 Cr. L. J. 700 :
73 I. C. 812 : 24 Bom. L. R. 1150 :
A. I. R. 1923 Bom. 74.

—S. 408.

—Aggregate sentences, meaning of.

—Appeal to High Court

—Applicability

—Change in powers

—Compensation

—Forum of appeal

—Right of appeal

—Scope

—Sentence

—' Trial, ' if includes judgment

—S. 408

See also (i) Appeal

(ii) Cr. P. C. 1898, Ss. 35 (3),
222 (2), 263, 520

—S. 408 (b)—*Aggregate sentences, meaning of.*

Concurrent sentences do not come within the expression aggregate sentences for the purposes of S. 35 or for the purpose of raising the status

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of the forum of appeal. *Gurasahay Ram v. Emperor.*

19 Cr. L. J. 90 :
43 I. C. 250 : 3 P. L. W. 249 :
3 P. L. J. 138 : A. I. R. 1917 Pat. 33.

—S. 408 (3)—*Aggregate sentences.*

The words " aggregate sentences " in S. 408 (3) relate to a case of consecutive sentences and not to concurrent sentences. *Tulsi Ram v. Emperor.*

14 Cr. L. J. 119 :
18 I. C. 679 : 11 A. L. J. 111 :
35 All. 154.

—S. 408 (b)—*Appeal to High Court Sentences by Magistrate with powers under S. 30, Criminal Procedure Code—Accused sentenced to two years' imprisonment, appeal by.*

A Magistrate of the First Class, invested with special powers under S. 30, Cr. P. C., sentenced one of the accused to two years' rigorous imprisonment and the other accused to five years' rigorous imprisonment. The former appealed to the Sessions Judge, who declined jurisdiction: *Held*, that the appeal lay to the Chief Court under S. 408 (b), Cr. P. C. *Ahmad Khan v. Emperor.*

17 Cr. L. J. 299 :
35 I. C. 171 : 5 P. R. 1916 Cr. :
122 P. L. R. 1916 : A. I. R. 1916 Lah. 441.

—S. 408 (b)—*Appeal to High Court—Sentence of five years' rigorous imprisonment—Appeal to Sessions Judge, legality of—Procedure.*

Accused was convicted of an offence under S. 394 of the Penal Code by a Magistrate having special powers and was sentenced to five years' rigorous imprisonment. His petition of appeal was sent from jail to the Sessions Court and was summarily dismissed by the Sessions Judge: *Held*, (1) that under S. 408 (b) the appeal lay to the High Court and not to the Sessions Court; (2) that the Sessions Judge had acted without jurisdiction in entertaining and dealing with the appeal, and that his proceedings were void under S. 530 (r), Cr. P. C., (3) that the accused was entitled to refer an appeal to the High Court. *In re : Abdulla.*

26 Cr. L. J. 293 :
82 I. C. 437 : 2 Rang. 386 :
A. I. R. 1925 Rang. 39.

—S. 408—*Applicability—Second Class Magistrate submitting case to First Class Magistrate—Latter sentencing accused on evidence on record—S. 408, if applies.*

Where a case is submitted to a First Class Magistrate by a Second Class Magistrate under S. 349, Cr. P. C., and the former sentences the accused to fine below Rs. 50, the case comes within the express words of Ss. 408 and an appeal, if it could be claimed at all, would be under this section and not under S. 407. *Kishori Singh v. Emperor.*

38 Cr. L. J. 990 :
170 I. C. 920 : 41 C. W. N. 833 :
I. L. R. 1937 2 Cal. 469 :
10 R. C. 212 : A. I. R. 1937 Cal. 394.

—Ss. 408, 446—*Applicability—European British subject, waiver by, of right to be tried as such, effect of—Appeal—Court, proper.*

Where a European British subject charged with an offence is brought before a District

Cr. P. CODE (1898), S. 413

all, the whole appeal must be heard. *Rijhu v. Emperor*. 32 Cr. L. J. 1017 :

133 I. C. 163 (a) : I. R. 1931 Pat. 323 :
12 P. L. T. 539 : A. I. R. 1931 Pat. 351 (1).

———S. 412—Scope—Plea of guilty—Right to set up illegality of conviction in appeal.

In view of the provisions of S. 412, Cr. P. C., a person who pleads guilty to a charge is not barred from contending in appeal that his conviction is illegal. *Chunilal Hargovan v. Emperor*. 27 Cr. L. J. 1148 :

97 I. C. 668 : 28 Bom. L. R. 1023 :
A. I. R. 1927 Bom. 67.

———S. 413.

Sec also Cr. P. C., 1898, Ss. 297, 408.

———S. 413—Aggregate of sentences—Appeal—Sentence of one month's imprisonment each under more than one section to run concurrently—Appeal to Sessions Judge.

Concurrent sentences for the purpose of appeal must be taken in the aggregate. Where accused were convicted by a Deputy Magistrate under more than one sections of the Penal Code and sentenced to one month's imprisonment under each section, sentences to run concurrently : *Held*, that an appeal lay to the Sessions Court. *Abdul Khalek v. Emperor*. 13 Cr. L. J. 877 :

17 I. C. 813 : 17 C. W. N. 72.

———S. 413—Aggregate of sentences.

Where a Magistrate passes two separate sentences of fine of Rs. 40 on the accused, the aggregate of the two sentences may be taken into account so as to save the right of appeal. *Akabbar Ali v. Emperor*. 33 Cr. L. J. 90 :

134 I. C. 1196 : 35 C. W. N. 752 :
59 Cal. 19 : I. R. 1932 Cal. 76 :
A. I. R. 1931 Cal. 642.

———S. 413—Aggregate of sentences.

Where two sentences of fine are passed, it is the aggregate which is to be looked into for purpose of determining the right of appeal. *Nawab Ali v. Jinnab Bibi*. 33 Cr. L. J. 704 (2) :

138 I. C. 720 : 59 Cal. 1131 :
36 C. W. N. 407 : I. R. 1932 Cal. 525 :
A. I. R. 1932 Cal. 551.

———S. 413—Applicability—Complaint under S. 78, Punjab Municipal Act—One accused acquitted and remaining fined Rs. 10 each—Appeal, if lies.

A complaint was lodged by the Municipal Committee, through its Oetroi Superintendent against four persons under S. 78, Punjab Municipal Act. One out of them had been acquitted, the remaining three sentenced to pay a fine of Rs. 10 each. An appeal was filed against this order : *Held*, that the appeal was not tenable, S. 413, Cr. P. C., being a bar to it. *Narsullah Beg v. Emperor*. 39 Cr. L. J. 199 :

172 I. C. 846 : 38 P. L. R. 636 :
10 R. L. 372.

———S. 413—Applicability.

In construing the provisions of S. 413, it is no doubt permissible to refer to the words

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used in S. 408, but the language of S. 413 is so clear, expressed as it is in general terms, that it would be wholly wrong to try and limit it by reference to the wording of S. 408. *Kishori Singh v. Emperor*. 38 Cr. L. J. 990 :

170 I. C. 920 : 41 C. W. N. 833 :
I. L. R. 1937 2 Cal. 469 : 10 R. C. 212 :
A. I. R. 1937 Cal. 394.

———S. 413—Applicability—Test to see if case comes within S. 413.

What has to be seen in considering whether a case is hit by S. 413, is whether the sentence in question was one not exceeding the limit prescribed, and whether it was a sentence passed by a Court of the class mentioned therein. If these conditions are satisfied, S. 413 would apply, whether the sentence was passed under S. 349 or S. 380 or otherwise. *Kishori Singh v. Emperor*. 38 Cr. L. J. 990 :

170 I. C. 920 : 41 C. W. N. 833 :
I. L. R. 1937 2 Cal. 469 : 10 R. C. 212 :
A. I. R. 1937 Cal. 394.

———S. 413—Construction—Appeal, right of, when appealable and non-appealable sentences passed in one judgment—Reference to High Court.

S. 413 declares in quite unambiguous terms that in those cases in which a Court passes only a light sentence, the convicted person shall have no right of appeal. The words used in the section cannot bear the construction that no appeal lies at the instance of a convicted person against a judgment in which no other sentence than one not exceeding one month has been passed. Consequently, where at a joint trial some accused persons are sentenced to appealable sentences and some to non-appealable sentences, the former alone can appeal. This strict interpretation might, on occasions lead to apparent injustice, e. g., where on appeal by those having right of appeal, the conviction is set aside. Under the existing practice such injustice can be removed by the procedure of a reference for revision to the High Court under S. 435 or 438, Cr. P. C. *Unar Gool v. Emperor*. 18 Cr. L. J. 72 :

37 I. C. 56 : 10 S. L. R. 156 :
A. I. R. 1917 Sind 34.

———S. 413—Fine—Sentence of Rs. 50 fine only by a First Class Magistrate—Appeal.

No appeal lies to the Sessions Court against a sentence of Rs. 50 fine passed by a First Class Magistrate. *In re : Chode Balavi Ramaswami*. 12 Cr. L. J. 63 (b) :

9 I. C. 340 : 9 M. L. T. 322.

———S. 413—Jurisdiction—Magistrate passing non-appealable sentence—Enhancing sentence to render it appealable—Appeal—Jurisdiction.

A Magistrate passed a non-appealable sentence on an accused, but subsequently at the request of the accused, enhanced the sentence so as to make it appealable. The accused appealed to the Sessions Judge who rejected the appeal on the ground that the Magistrate could not legally add to the sentence and, therefore, no appeal lay. The High Court set aside this order and held that an appeal lay.

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appeal and postpone it till the return of the Sessions Judge. *Garib Lall v. Emperor*.

19 Cr. L. J. 442 :
44 I. C. 970 : 3 P. L. J. 192 : 5 P. L. W. 24 :
A. I. R. 1918 Pat. 240.

—S. 408—*Forum of appeal—Concurrent sentence under other provisions, whether affects forum of appeal.*

The fact that a concurrent sentence of one year has been passed against an accused under some other provisions of the Penal Law does not preclude a Sessions Court from dealing with an appeal under the provisions of S. 408. *Jagadish Chandra Ray v. Emperor*.

28 Cr. L. J. 672 :
103 I. C. 208 : 10 N. L. J. 135 :
A. I. R. 1927 Nag. 255.

—S. 408—*Forum of appeal—Determination—Magistrate taking length of trial into account, effect of.*

The fact that the Magistrate in determining the length of sentence, took into account the length of time the appellant had been under trial does not affect the question of what Court of Appeal has jurisdiction in the case. *Jagadish Chandra Ray v. Emperor*.

28 Cr. L. J. 672 :
103 I. C. 208 : 10 N. L. J. 135 :
A. I. R. 1927 Nag. 255.

—S. 408—*Forum of appeal, illegal sentence—Sentence on reference by Subordinate Magistrate.*

A District Magistrate to whom a case had been submitted by a second class Magistrate under S. 349 passed a sentence of five years' imprisonment on one of the accused: *Held*, that in view of the last clause of S. 349 a District Magistrate acting under this section must be regarded as a Magistrate not empowered under S. 30 and that, therefore, in spite of the sentence of five years' imprisonment, which was *ultra vires*, appeal lay not to the Chief Court, but to the Court of Session. *Nga Pya v. Emperor*.

6 Cr. L. J. 289 :
4 L. B. R. 53.

—S. 408—*Forum of appeal.*

Where the total term of imprisonment to which an appellant has been sentenced either by an Assistant Sessions Judge or by a Magistrate empowered under S. 30 does not exceed four years in the aggregate, the appeal lies to the Court of the Sessions Judge. *Jagadish Chandra Ray v. Emperor*.

28 Cr. L. J. 672 :
103 I. C. 208 : 10 N. L. J. 135 :
A. I. R. 1927 Nag. 255.

—Ss. 408, 435—*Forum of appeal—Magistrate having jurisdiction over the whole district—Two Sessions divisions in one District.*

Where a district contained two Sessions Divisions, and a Magistrate was authorized to try offences committed in any portion of the district and his headquarters were headquarters of one of the Sessions Divisions, appeals from the Magistrate's judgment lie to the Sessions Court within whose jurisdiction the headquarters of

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the Magistrate are situate irrespective of the place where the offence was committed. *Ambu Podaval v. Emperor*.

4 Cr. L. J. 443 :
16 M. L. J. 444 : 1 M. L. T. 402.

—Ss. 408, 562—*Forum of appeal—Appeal against conviction without sentence.*

An appeal lies to the Court of Sessions against a conviction without sentence by a 1st class Magistrate under S. 562, Cr. P. C. *Mi Shwe Nyum v. Emperor*.

1 Cr. L. J. 543 :
U. B. R. 1904 Cr. P. C. 7 :
10 Bur. L. R. 321.

—S. 408 (b)—*Forum of appeal.*

Accused sentenced by Assistant Sessions Judge under S. 376, Penal Code, for four years' rigorous imprisonment and whipping—Trial by Jury—Jury unanimous—Appeal against conviction. *Kajjan v. Emperor*

35 Cr. L. J. 1288 (2) :
151 I. C. 289 : 1934 O. L. R. 717 :
11 O. W. N. 1133 : 7 R. O. 108 :
A. I. R. 1934 Oudh 433 (1).

—S. 408 (b)—*Forum of appeal—Assistant Sessions Judge—Some accused sentenced to imprisonment for over four years, others for less period.*

Where at a criminal trial held by an Assistant Sessions Judge, some of the accused were sentenced to an imprisonment for more than four years and some for less than that period: *Held*, that an appeal by the latter would also lie to the High Court under S. 408 (b). *Richha v. Emperor*.

16 Cr. L. J. 353 :
28 I. C. 737 : 13 A. L. J. 272 :
A. I. R. 1915 All. 20.

—S. 408 (b)—*Forum of appeal—Assistant Sessions Judge, trial by—Sentence of imprisonment exceeding four years inflicted on one accused—Smaller sentence inflicted on others.*

Where an accused person has been sentenced by an Assistant Sessions Judge to imprisonment for more than four years, all other accused persons convicted at the same trial must appeal against their convictions to the High Court even though they themselves have received sentences for less than four years and even if the accused who has been awarded more than four years does not choose to appeal. *Debi Din v. Emperor*.

27 Cr. L. J. 175 :
91 I. C. 959 : 24 A. L. J. 151 :
A. I. R. 1926 All. 160.

—S. 408, Cl. (b)—*Forum of appeal—Concurrent sentences one of 4 years, and other of 7 days.*

The accused was tried and convicted under Ss. 420 and 494, Indian Penal Code. For cheating, he was sentenced to four years' and for abetment of bigamy to seven days' rigorous imprisonment. The sentences were ordered to run concurrently: *Held*, that an appeal lay to the Sessions Court and not to the High Court. *Tulsidas Lakshman v. Emperor*.

10 Cr. L. J. 250 ;
3 I. C. 171 : 11 Bom. L. R. 544.

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not two punishments similar in kind but a combination of two punishments of different kinds. *Emperor v. Hemandas Devansingh*.

37 Cr. L. J. 455 :
161 I. C. 267 : 8 R. S. 134 :
A. I. R. 1936 Sind 40.

———Ss. 414, 415—Fine—Appeal—Requisites for avoiding S. 414.

Two sentences of fine must be above Rs. 50 in order to avoid S. 414, Cr. P. C. *Provincial Government v. Bhivram*.

41 Cr. L. J. 544 :
188 I. C. 80 : 1940 N. L. J. 242 :
12 R. N. 332 : A. I. R. 1940 Nag. 264.

———S. 414—Re-trial—Criminal trial—Theft by servant—Summary trial—Sentence of imprisonment—Appeal—Re-trial, when ordered.

Where a Railway watchman had been sentenced on summary trial to one month's rigorous imprisonment for theft of a silver topped stick from a Railway carriage and the conviction was affirmed on appeal by the Sessions Judge : *Held*, that the charge in the case was a simple charge of theft of the kind suitable for summary trial and though the watchman was liable to be dismissed as a result of conviction, there was no ground upon which a re-trial could be ordered. *Jagdish Prasad v. Emperor*.

30 Cr. L. J. 869 :
118 I. C. 312 : I. R. 1929 Pat. 504 :
A. I. R. 1929 Pat. 716.

———S. 414—Scope.

S. 414 says in what cases there shall be no appeal. It does not say in what cases there shall be an appeal. *Hira Lal v. Emperor*.

25 Cr. L. J. 1244 :
82 I. C. 172 : 22 A. L. J. 751 :
46 All. 828 : A. I. R. 1924 All. 765.

———S. 414—Summary Procedure.

Summary procedure, though legal, is inappropriate in cases in which Government servants, no matter what their rank, are concerned as accused persons. *Robert John v. Emperor*.

33 Cr. L. J. 108 :
135 I. C. 220 : 33 P. L. R. 177 :
I. R. 1932 Lah. 92 :
A. I. R. 1932 Lah. 188.

———S. 415.

See also Cr. P. C., 1898, S. 414.

———S. 415—Aggregate sentence—Conviction in which aggregate combined sentences do not exceed Rs. 50—Appeal to Sessions Judge, if lies.

There can be no appeal to a Sessions Judge from a conviction by Sub-Divisional Magistrate in which the aggregate combined sentences do not exceed Rs. 50. The combination of punishments which is contemplated by S. 415 refers to a combination of the punishments of imprisonment and fine, but this section can have no application in a case in which two non-appealable sentences of fine have been passed and the aggregate amount of fine does not exceed Rs. 50. *Kali Charan Sardar v. Adhar Mandal*.

40 Cr. L. J. 652 :
182 I. C. 258 : 43 C. W. N. 360 :
I. L. R. 1939 I Cal. 325 :
12 R. C. 38 : A. I. R. 1939 Cal. 274.

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———Ss. 415, 413—Aggregate sentence—Sentences of fines only under Ss. 147 and 379, Penal Code—Whether can be combination of punishments—Revision or appeal, which lies.

The six applicants were convicted by a Special Magistrate under Ss. 147 and 379 in respect of an occurrence and two of them were also convicted on another charge under S. 379, Penal Code, which offence was said to have been committed two days after the occurrence. On the charges relating to the previous incident all the six were sentenced to a fine of Rs. 8 each under both the sections and on the separate charge under S. 379, the two accused were sentenced to pay a fine of Rs. 8 each : *Held*, that the sentence of fine of Rs. 2 each was a combination of two punishments, one imposed under S. 147 and the other under S. 379, Penal Code, but if a separate sentence of fine had been imposed under each of the sections, it would nevertheless have been a combination of punishments within the meaning of S. 415, and consequently no revision against the conviction was maintainable but the remedy was by way of an appeal. *Makrand Singh v. Ganga*.

38 Cr. L. J. 1062 :
171 I. C. 337 : 1937 O. W. N. 1088 :
1937 O. L. R. 547 : 10 R. O. 114 :
A. I. R. 1937 Oudh 524.

———Ss. 415, 413—Aggregate sentence—Sentences, whether should be of different kinds.

Two or more punishments of the same kind (e. g., fine only) can constitute a combination of two punishments within the meaning of S. 415 and the presence of the words, "or S. 414" and "or more" in S. 415 clearly leads to the conclusion that the punishments referred to in that section include not only punishments of different kinds but also punishments of the same kind. *Makrand Singh v. Ganga*.

38 Cr. L. J. 1062 :
171 I. C. 337 : 1937 O. W. N. 1088 :
1937 O. L. R. 547 : 10 R. O. 114 :
A. I. R. 1937 Oudh 524.

———S. 415—Combination of punishments.

An accused who was convicted of rioting only and was sentenced to pay a fine of Rs. 20, filed an appeal under S. 415-A. He alleged that as two other accused who were convicted at the same trial and sentenced to pay two fines Rs. 20 for rioting and Rs. 25 for an offence under S. 355, I. P. C., had a right of appeal under S. 415-A, he had also the right of appeal : *Held*, that none of the accused had any right of appeal as there was no combination of punishments in one sentence within the meaning of S. 415. *In re : Paluwadi Venkaramayya*.

41 Cr. L. J. 403 :
187 I. C. 103 : 1939 M. W. N. 1039 :
50 L. W. 614 : I. L. R. 1939 Mad. 1035 :
1939 2 M. L. J. 403 : 12 R. M. 693 :
A. I. R. 1940 Mad. 111.

———S. 415—Scope.

S. 415 is explanatory and apparently was entered in the Code to remove all possible

Cr. P. CODE (1898), S. 408

S. 413, Cr. P. C., prohibits an appeal against a sentence of less than one month's imprisonment or a fine of less than Rs. 50 passed by a District Magistrate or a Court of Session and the mere fact that such sentences were passed on some of the accused while heavier sentences were passed on the rest, would not give to the former a right of appeal only because there is consolidated appeal by all convicted persons. *In re : Urama Mudali*.

15 Cr. L. J. 371 :
23 I. C. 739 : 16 M. L. T. 33 :
A. I. R. 1914 Mad. 433.

———Ss. 408, 412, 562—*Right of appeal—Conviction without sentence, plea of guilty but no sentence passed.*

There is no law which precludes an appeal from a conviction without a sentence. Subject to the law of limitation, a convict is entitled to prefer his appeal even after the expiry of the term for which he was bound down to keep the peace. Where an accused person has been convicted on the strength of his own plea by a Magistrate of the first class and is released under the provisions of S. 562, Cr. P. C., his right of appeal is absolutely barred inasmuch as no sentence is passed upon him. *Hayala v. Emperor*.

18 Cr. L. J. 401 :
38 I. C. 961 : 20 P. R. 1917 Cr. :
18 P. W. R. 1917 Cr. :
A. I. R. 1917 Lah. 413.

———Ss. 408, 413, 562—*Right of appeal—Conviction without sentence.*

An order under S. 562, Cr. P. C., is appealable under S. 408, Cr. P. C., and is not restricted by the provisions of S. 413 of the same Act. *Madhav Raghvendra Kulkarni v. Emperor*.

27 Cr. L. J. 873 :
96 I. C. 121 : 28 Bom. L. R. 671 :
A. I. R. 1926 Bom. 282.

———Ss. 408, 413, 415—*Scope.*

S. 408 distinctly lays down that any person convicted on a trial by a Magistrate of the first class may appeal to the Court of Session. S. 413 is an exception to the general rule laid down in S. 408. S. 415 is explanatory and apparently was entered in the Code to remove all possible doubts which might arise in the cases considered therein. *Alam v. Emperor*.

12 Cr. L. J. 389 :
11 I. C. 253 : 8 A. L. J. 5240 :
33 All. 510.

———Ss. 408, 439 (5), 562—*Scope—Conviction without sentence—Appeal—Revision.*

An order of conviction without sentence under S. 562, Cr. P. C., is appealable under S. 408. No revision can be entertained where an appeal is allowed. *Ma Chit Sv v. Emperor*.

11 Cr. L. J. 152 :
4 I. C. 1027 : 5 L. B. R. 129.

———S. 408, Proviso (b)—*Sentence—Detention in Borstal School whether sentence—Appeal—Forum.*

An order of detention in a Borstal School is not a sentence of imprisonment within the

Cr. P. CODE (1893), S. 410

meaning of proviso (b) to S. 408. In respect of any order of detention in a Borstal School for any period, passed by a Magistrate, there is a right of appeal to the local Court of Session, and the only circumstances in which the appeal against such an order will lie to the High Court is when a co-accused, who has been tried together with the juvenile affected by the order, has been sentenced to imprisonment for a term exceeding four years. In such a case the appeal will lie to the High Court under the provisions of proviso (b) to S. 408, Cr. P. C. Where, therefore, under the provision of S. 25 (1), Burma Prevention of Crime (Young Offenders) Act, the accused have been directed to be detained in a Borstal School for a period of five years by the Second Additional Special Power Magistrate, their appeal lies to the Court of Session of the District. *Nga Tha v. Emperor*.

37 Cr. L. J. 793 :
163 I. C. 144 : 8 R. Rang. 611 :
14 Rang. 143 : A. I. R. 1936 Rang. 229.

———S. 408—“Trial” if includes ‘judgment’—*Trial and arguments before Assistant Sessions Judge—Before delivery of judgment, Judge made Additional Sessions Judge—Appeal from conviction, where lies.*

The words “trial” in the Cr. P. C. has been used in a restricted sense and does not include judgment in the case. The “conclusion of the trial” of a case takes place before the judgment is delivered, and the judgment, therefore, is no part of the trial and is outside the scope of a trial as contemplated by the Code. Where, therefore, a trial was held before an Assistant Sessions Judge and after the conclusion of the arguments but before the delivery of the judgment, the Magistrate got an order that he was made an Additional Sessions Judge from the date he commenced the trial of the case and subsequently delivered the judgment convicting the accused : *Held*, that the appeal from the conviction lay to the Sessions Judge and not to the High Court. That the order making him Additional Sessions Judge though retrospective in terms, could, in view of the provisions of S. 39, take effect only from the date on which the order was communicated to him. *Bakshi Ram v. Emperor*.

39 Cr. L. J. 345 :
173 I. C. 663 : 1937 A. L. J. 1152 :
10 R. A. 493 : I. L. R. 1938 All. 157 :
1937 A. W. R. 1147 :
A. I. R. 1938 All. 102.

———S. 409, proviso—*Powers under.*

Transfer of case by High Court from one Sessions Judge to another—Latter has power to transfer it to Additional Sessions Judge, unless contrary is expressed. *Kedarnath Sahay v. Emperor*.

35 Cr. L. J. 1167 :
150 I. C. 927 (2) : 15 P. L. T. 318 :
7 R. P. 39 : A. I. R. 1934 Pat. 114.

———S. 410—*Scope.*

The section is to be read subject to the provisions of S. 404, Cr. P. C. *Jalal v. Emperor*.

38 Cr. L. J. 350 :
167 I. C. 75 : 9 R. S. 162 :
30 S. L. R. 456 : A. I. R. 1937 Sind 22.

Cr. P. CODE (1898), S. 417

be interfered with lightly. Although in exceptional circumstances the High Court will interfere in revision even with an acquittal, the High Court will not consider doing so until the normal procedure has been followed and has failed. The normal procedure for the party aggrieved is to apply to the District Magistrate, who will then refer the matter, if he thinks proper, to Government, and Government can, if they think proper, sanction proceedings under S. 417, Cr. P. C., and where this course has not been followed, the High Court will not interfere. *Karachi Municipal Corporation v. Tharoomal Khushaldas*.

38 Cr. L. J. 665 :
169 I. C. 40 : 9 R. S. 254 (2) :
A. I. R. 1937 Sind 100.

—S. 417—Appeal against acquittal.

A. was challaned for an offence under S. 411, Penal Code. The Magistrate discharged him of that offence but added that he should be sent up for trial under S. 379. The Police again challaned him under Ss. 454 and 411, Penal Code, and he was duly tried by another Magistrate and convicted. On appeal, the Sessions Judge set aside the conviction on the ground that the Magistrate had no jurisdiction to try the accused for the offence of which he had already been discharged. The Local Government appealed against the Sessions Judge's order of acquittal: *Held*, that although the view of law relied upon by the Sessions Judge was erroneous, yet there were no sufficient grounds for an appeal against the order of acquittal, and that under the circumstances, there was no justification for setting aside that order. *Emperor v. Kiru*.

12 Cr. L. J. 364 :
11 I. C. 132 : 10 P. R. 1911 Cr. :
24 P. W. R. 1911 Cr. : 205 P. L. R. 1911.

—S. 417—Appeals against acquittals.

Appeals by Government from orders of acquittal should be made only in cases of some importance. *Emperor v. Kiru*.

12 Cr. L. J. 364 :
11 I. C. 132 : 10 P. R. 1911 Cr. :
24 P. W. R. 1911 Cr. : 205 P. L. R. 1911.

—S. 417—Appeal against acquittal—Distinction between an appeal from acquittal and conviction—Interference of.

Under Cr. P. C. appeals from convictions and acquittals are on an equal footing. In order to justify interference with a judgment of acquittal on the question of fact, it is sufficient if the finding is clearly wrong on the evidence and unreasonable in the opinion of the Appellate Court, whether or not unreasonableness amounts to perversity, stupidity or incompetence, or the Court below can be said to have obstinately blundered in coming to it. Upon sound principles of criminal jurisprudence, the indications of error in the judgment of acquittal ought to be clearer and more palpable and the evidence more cogent and convincing in order to justify its being set aside than would be necessary in the case of a judgment of conviction. *Emperor v. Chattar Singh*.

1 Cr. L. J. 781 :
7 P. R. 1904 Cr. : 5 P. L. R. 343.

—S. 417—Appeal against acquittal—Erroneous view of evidence by lower Court—Appellate Court, duty of.**Cr. P. CODE (1898), S. 417**

The Cr. P. C., makes no distinction between an appeal from a conviction and an appeal from an acquittal. Consequently if in an appeal from an acquittal, the Appellate Court thinks that the lower Court has taken an erroneous view of the evidence, it has no jurisdiction to refuse to convict. *Emperor v. Kadir Bux*.

16 Cr. L. J. 604 :
30 I. C. 156 : 9 S. L. R. 17 :
A. I. R. 1915 Sind 8.

—S. 417—Appeal against acquittal—Grounds.

For an appeal against an order of acquittal to be accepted by the Chief Court, it must be shown not merely that the correctness of the judgment appealed against is open to doubt, but that it is so clearly wrong that its maintenance would amount to a miscarriage of justice. *Emperor v. Kiru*.

12 Cr. L. J. 364 :
11 I. C. 132 : 10 P. R. 1911 Cr. :
24 P. W. R. 1911 Cr. : 205 P. L. R. 1911.

—S. 417—Appeal against acquittal—Interference.

High Court has full power to review at large the evidence on which acquittal was founded and reverse acquittal. No limitation is placed on the power. But in exercising the power High Court should act in accordance with well-known rules and principles. *Sheo Swarup v. Emperor*.

151 I. C. 322 (b) :
1934 O. L. R. 808 : 11 O. W. N. 1119 :
1934 A. L. J. 905 : 40 L. W. 436 :
15 P. L. T. 607 : 1934 M. W. N. 1017 :
67 M. L. J. 664 : 4 A. W. R. 471 :
60 C. L. J. 276 : 39 C. W. N. 15 :
36 Bom. L. R. 1185 : 56 All. 645 :
7 R. P. C. 63 (P. C.) :
A. I. R. 1934 P. C. 227 (2).

—S. 417—Appeals against acquittals.

There is nothing in the language of S. 417, Cr. P. C., to limit appeals against acquittals to cases in which Courts have, owing to some error of law or misappreciation of evidence, come to a wrong decision on the evidence before them. There is no distinction under the Code between the right of appeal against an acquittal and the right of appeal against a conviction. *In re : Sinnu Goundan*.

15 Cr. L. J. 236 :
23 I. C. 188 : 26 M. L. J. 160 :
1914 M. W. N. 273 : A. I. R. 1914 Mad. 628.

—S. 417—Appeal against acquittal—Party entitled to appeal.

The law gives Government the right to appeal against any acquittal and that right cannot be taken away by the Chief Court, any more than the right to appeal against a conviction can be taken away from any private person. *Emperor v. Arjan*.

19 Cr. L. J. 85 :
43 I. C. 245 : 43 P. R. 1917 Cr. :
A. I. R. 1918 Lah. 41.

—S. 417—Appeal against acquittal—Party entitled to appeal—Procedure.

The exercise of the discretion to prefer an appeal under S. 417, against any order of acquittal made by a Court other than a High Court, rests with the Local Government

Cr. P. CODE (1898), S. 412**—S. 411**

See Cr. P. C., 1893, S. 404.

—S. 411—Aggregate sentence—Concurrent sentences of six months' imprisonment each—Right of appeal.

If two concurrent sentences of six months' imprisonment each are passed by a Presidency Magistrate, no appeal will lie under S. 411. *Suknandan Singh v. Emperor.*

13 Cr. L. J. 787 :
17 I. C. 531 : 17 C. L. J. 392.

—S. 411—Appeal not entertainable—Point of law involved—Appeal heard as a revision.

No appeal lies against a conviction by a Presidency Magistrate where the sentence awarded is only one day's simple imprisonment and a fine of Rs. 150. A non-appealable case may be entertained as a revision if a point of law arises upon the findings. *Datta Ram v. Emperor.*

10 Cr. L. J. 255 :
3 I. C. 285.

—S. 411—Sentence of whipping by Presidency Magistrate—Appeal, if lies.

There is no appeal to High Court from a sentence of whipping passed by a Presidency Magistrate in view of Ss. 404 and 411, Cr. P. C. *Moti Ram v. Emperor.*

38 Cr. L. J. 985 :
170 I. C. 757 : 39 Bom. L. R. 470 :
1 R. B. 142 : A. I. R. 1937 Bom. 336.

—Ss. 411, 562—Sentence of six months' rigorous imprisonment passed by Presidency Magistrate—Co-accused bound over under S. 562—Appeal, if lies.

No appeal lies as provided by S. 411 from a sentence of six months' rigorous imprisonment passed by a Presidency Magistrate. Neither S. 407 nor S. 408 has any application to an order made by a Presidency Magistrate. Appeals in such cases are prescribed by S. 411. There is no provision for an appeal against an order under S. 502, even if in such a case a co-accused is bound over under S. 502, *Kali Kumar Mitter v. Emperor.*

38 Cr. L. J. 876 :
170 I. C. 26 : I. L. R. 1937 :
1 Cal. 123 : 10 R. C. 122 :
A. I. R. 1937 Cal. 413.

—S. 412—Appellate Court, power to re-open.

When a charge has been framed under S. 221 (7), Cr. P. C., against an accused to the effect that he is a previous convict, and he has pleaded guilty to such charge, S. 412 of the above Code leaves the Appellate Court without power to re-open the question whether the accused is a previous convict. *Emperor v. Kissan Yesau.*

9 Cr. L. J. 56 :
4 N. L. R. 163.

—S. 412—Applicability—Penal Code, S. 380—Plea of guilty based on erroneous conception of right to property—Appeal, right of.

Where an accused person pleads guilty on

Cr. P. CODE (1898), S. 412

a charge under S. 380, Penal Code, but the said plea is founded upon an erroneous conception of the accused's right in the property, S. 412 is inapplicable to the case and cannot shut out his right of appeal. *Emperor v. Sat Narain.*

32 Cr. L. J. 576 :
130 I. C. 693 : 1931 A. L. J. 201 :
I. R. 1931 All. 309 : A. I. R. 1931 All. 265.

—S. 412—Applicability—Petroleum Act S. 15 (a)—Guilty, plea of—Written statement by accused, value and effect of—Procedure.

Accused was charged with having in his possession a quantity of kerosine oil without a licence or pass; he pleaded guilty and filed a written statement in which he raised the defence that he did not trade in kerosine oil that the oil belonged to a firm which had a transport licence, and that under that licence, he had been employed to convey the oil from the Railway station to the firm's godown: *Held*, that the plea of guilty must be taken in connection with the written statement, that the plea was really not a plea of guilty and was of no value, and that it was incumbent on the Magistrate to try the case on the merits. Per *Newbold J.*—The principle of S. 412 should ordinarily be applied in cases in which the High Court is asked to exercise its revisional powers. Where a Court of revision holds the conviction of an accused person to be bad on the ground that a plea of guilty should not have been recorded it should order a retrial of the accused. *Emperor v. Akub Ali.*

21 Cr. L. J. 547 :
56 I. C. 851 : 31 C. L. J. 122 :
A. I. R. 1920 Cal. 522.

—S. 412—Applicability—Revision—Power of High Court.

The High Court in criminal revision is not bound by S. 412, but may examine the record for the purpose of seeing whether the applicants have had a fair trial and whether their plea of guilty was based on a proper conception of the facts. *Ali Hossein v. Emperor.*

32 Cr. L. J. 206 :
128 I. C. 845 : I. R. 1931 Rang. 67 :
A. I. R. 1930 Rang. 349.

—S. 412—Procedure.

Accused pleading guilty. Court should consider whether he has fully understood nature of charge before convicting him. *Nga Ywa v. Emperor.*

36 Cr. L. J. 336 :
153 I. C. 390 : 12 Rang. 616 :
7 Rang. 208 : A. I. R. 1935 Rang. 49.

—S. 412—Right to Appeal.

Several accused—Some bound over on plea of guilty—Others sentenced—Right of appeal of former is barred. *Tejuma Jagumal v. Emperor.*

32 Cr. L. J. 1142 :
134 I. C. 379 : 25 S. L. R. 337 :
I. R. 1931 Sind 123 : A. I. R. 1931 Sind 151.

—S. 412—Scope.

Except in the cases provided for in S. 412, an appeal cannot be admitted on the limited ground of sentence only; if it is admitted at

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under S. 417 from judgment of acquittal of graver offence is competent. *Mohammadi Gul Rohilla v. Emperor*. 33 Cr. L. J. 849 : 140 I. C. 49 : 28 N. L. R. 233 :

I. R. 1932 Nag. 118 : A. I. R. 1932 Nag. 121.

S. 417—Applicability.

Though the High Court will not lightly interfere with an order of acquittal passed by the trial Court which has had the advantage of seeing the witnesses and observing their demeanour, no such reason can apply when the trial Court has convicted the accused and it is the Appellate Court which has acquitted him. *Emperor v. Mohammad Khan*.

32 Cr. L. J. 348 :
129 I. C. 489 : I. R. 1931 Lah. 201 :
A. I. R. 1930 Lah. 403.

S. 417—Applicability.

Where the judgment is clearly wrong and perverse, an appeal from an acquittal must be accepted. *Emperor v. Ramzan*.

32 Cr. L. J. 1130 :
134 I. C. 112 : 32 P. L. R. 877 :
I. R. 1931 Lah. 880 : A. I. R. 1932 Lah. 12.

S. 417—Burden of proof.

In an appeal against an acquittal by the Court of Session, the Crown must satisfy the Court that the guilt of the accused is proved beyond any reasonable doubt. *Emperor v. Ram Dat*.

34 Cr. L. J. 538 :
143 I. C. 129 : 10 O. W. N. 585 :
I. R. 1933 Oudh 161 : A. I. R. 1933 Oudh 340.

S. 417—Burden of proof.

In an appeal against an order of acquittal, it is for the Crown to show that the judgment of the Sessions Judge is wrong. *Sultan v. Emperor*.

36 Cr. L. J. 1243 :
157 I. C. 691 : 37 P. L. R. 632 :
8 R. L. 137.

S. 417—Burden of proof.

In appeals from acquittal, the Public Prosecutor must make out strong and cogent grounds to justify interference. The accused must be presumed to be innocent until his guilt is satisfactorily proved and if there is any reasonable doubt, the accused must have the benefit of it. The Appellate Court must be slow to differ from the opinion of the trial Judge as regards the testimony of witnesses unless there are good grounds for it. *Emperor v. Paragi*.

33 Cr. L. J. 929 :
139 I. C. 756 : 9 O. W. N. 321 :
I. R. 1932 Oudh 391.

S. 417—Discharge—Interference.

A District Magistrate is not justified in setting aside an order of discharge which virtually amounts to an acquittal on his own initiative. *Kallu v. Emperor*.

35 Cr. L. J. 1151 :
150 I. C. 852 : 1934 O. L. R. 649 :
11 O. W. N. 818 : 7 R. O. 68 :
A. I. R. 1934 Oudh 327.

Ss. 417, 439—Discharge—Revision—Appeal by Government—Proper procedure.

Cr. P. CODE (1898), S. 417

The High Court will not interfere in revision with an order of discharge even if the order is illegal. The proper course to be followed by a complainant who is aggrieved by such an order is to move the District Magistrate to initiate an appeal by the Government. *Emperor v. Dito*.

30 Cr. L. J. 251 :
114 I. C. 110 : I. R. 1929 Sind 62 :
A. I. R. 1928 Sind 176.

S. 417—Grounds for interference.

An appeal on behalf of Government in the exercise of the powers conferred by S. 417 should not be entertained when the judgment appealed from is based upon facts and the conclusions of the Court are such as may reasonably be arrived at upon the facts found even though in the opinion of the Appellate Court there should have been a conviction. *Public Prosecutor v. Lakshamma*.

31 Cr. L. J. 897 :
125 I. C. 558 : 31 L. W. 716 :
59 M. L. J. 520 : A. I. R. 1930 Mad. 704.

S. 417—Grounds for interference.

An order of acquittal arrived at upon evidence should not, as a rule, be set aside unless the Appellate Court holds it to be manifestly wrong or perverse or unless it can be said that the Court which tried the case has manifestly erred. An order of acquittal should not be set aside merely because the Appellate Court is of opinion that if it had been trying the case itself, it would have arrived at a different conclusion. *Emperor v. Ram Karan*.

26 Cr. L. J. 1141 :
88 I. C. 453 : 2 Lah. Cas. 2 :
7 L. L. J. 528 : A. I. R. 1925 Lah. 600.

S. 417—Grounds for interference.

Appeal against acquittal—Appellate Court should be satisfied not only that accused is guilty but also he has been acquitted on unreasonable grounds and should be slow to differ from trial Judge's opinion as regards value of evidence of witnesses. *Emperor v. Bharat Singh*.

33 Cr. L. J. 932 :
139 I. C. 740 : 9 O. W. N. 145 :
I. R. 1932 Oudh 390.

S. 417—Grounds for interference—Appeal against acquittal—Finding of acquittal, when to be interfered with.

An Appellate Court cannot interfere in the order of acquittal unless the original Court's finding is clearly wrong and unreasonable on the evidence in the case. *Emperor v. Bakhtawari*.

14 Cr. L. J. 525 :
20 I. C. 1005 : 26 P. W. R. 1913 Cr. :
328 P. L. R. 1913.

S. 417—Grounds for interference.

Appeal against acquittal—Trial Court acting perversely—Unreasonable and distorted conclusions drawn from evidence—Miscarriage of justice—Crown case strong—Appeal must be allowed. *Emperor v. Nga Po Yin*.

35 Cr. L. J. 786
148 I. C. 806 : 6 R. Rang. 252
A. I. R. 1933 Rang. 387

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The Sessions Judge then struck out the added sentence but declined to go into the merits on the ground that the original sentence was not open to appeal: *Held*, that the Sessions Judge ought to have heard the appeal on the merits. *Emperor v. Keshavlal*. 11 I. C. 615 : 13 Bom. L. R. 550.

———**S. 413—Right of appeal—Accused sentenced to non-appealable sentence—“Notwithstanding anything hereinbefore contained,” interpretation of.**

The words “notwithstanding anything hereinbefore contained” in S. 413, Cr. P. C., are very important and set aside any right of appeal which might be held to have been created by Ss. 407 to 410, Cr. P. C. Therefore, an accused, who is convicted and sentenced to a sentence which is not appealable at the same trial with other accused who are convicted and sentenced to appealable sentences, has no right of appeal. *Hussain-Khan v. Emperor*.

18 Cr. L. J. 546 :
39 I. C. 690 : 15 A. L. J. 136 :
39 All. 293 : A. I. R. 1917 All. 410.

———**S. 413—Right of appeal—Joint trial—Appealable sentences—Appeal whether lies against non-appealable sentence.**

Where several persons are tried jointly and convicted at one trial, some of them receiving appealable and the others non-appealable sentences, the latter do not obtain a right of appeal merely owing to the fact of their joint trial with the others. *Jhagru v. Emperor*.

24 Cr. L. J. 679 :
73 I. C. 775 : A. I. R. 1923 All. 609.

———**S. 413—Right of appeal—Joint trial—Appealable and non-appealable sentences—“Case,” meaning of—Acquittal of some accused, effect of.**

No appeal lies at the instance of a person against whom a non-appealable sentence has been passed, on the ground that appealable sentences have been passed against others jointly tried with him. Only persons on whom appealable sentences have been passed have the right of appeal. Where several accused are tried jointly, the adjudication as against each of the accused is a ‘case’ within the meaning of S. 413. The moment sentences are passed against each of the accused, the case is split into a number of cases within the meaning of that section. It does not follow as a matter of course that because some of the accused tried along with others are acquitted in appeal on the merits, the others should necessarily have the benefit of finding of the Appellate Court. *In re : Venkatakhishnayya*. 18 Cr. L. J. 454 : 39 I. C. 294 : 31 M. L. J. 837 : 40 Mad. 591 : A. I. R. 1918 Mad. 918.

———**S. 413—Right of appeal—Joint trial by first class Magistrate—Appealable sentence against one of accused—Right of appeal of other accused.**

If at a joint trial of two or more persons by a first class Magistrate, an appealable sentence is passed against any one of them,

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all the persons convicted have the same right of appeal even though their sentences may be of the kind against which an appeal would be barred by S. 413 if the trial had not been joint. *Sheopal v. Emperor*.

14 Cr. L. J. 170 :
19 I. C. 170 : 15 O. C. 386.

———**S. 413—Right of appeal—Several accused tried jointly—Sentences, appealable and non-appealable—Appeal—Practice.**

Under S. 413 the right of appeal exercisable by a person who has received an appealable sentence carries with it a right of appeal also by any other person convicted at the same trial, even though that particular person has received a sentence which, if it stood alone, would not be appealable. *Lal Singh v. Emperor*.

17 Cr. L. J. 513 :
36 I. C. 481 : 14 A. L. J. 518 :
38 All. 395 : A. I. R. 1916 All. 236.

———**Ss. 413, 439—Right of appeal—Appealable sentences against some accused—Appeal—Sessions Judge, whether can deal with case of all accused—Procedure.**

When dealing with the appeal of accused persons who has received appealable sentences, a Sessions Judge is competent to deal with the applications made by the co-accused who have received non-appealable sentences. *Biswanath Singh v. Emperor*.

22 Cr. L. J. 297 :
60 I. C. 793 : 3 U. P. L. R. Pat. 44.

———**S. 413—Scope—Power of Sessions Judge to go into merits.**

Where a Magistrate has passed a sentence exceeding one month, there is an appeal, whether the sentence passed was legal or illegal. When a Sessions Judge is once seized of an appeal, the whole appeal becomes open to his Court and he ought to hear the appeal on the merits. *Emperor v. Keshav Lal*.

12 Cr. L. J. 431 :
11 I. C. 615 : 13 Bom. L. R. 550.

———**S. 413—Scope.**

S. 413 is an exception to the general rule laid down in S. 408. *Alam v. Emperor*.

12 Cr. L. J. 389 :
11 I. C. 253 : 8 A. L. J. 524 : 33 All. 510.

———**S. 414.**

See also Cr. P. C., 1898, Ss. 263, 408.

———**S. 414—Appealable order.**

A person was convicted under S. 447, Penal Code, and S. 24, Cattle Trespass Act, and fined Rs. 50 for the former and Rs. 20 for the latter in the exercise of summary powers: *Held*, that the order was appealable. *Kandhai v. Emperor*.

33 Cr. L. J. 278 :
136 I. C. 248 : 8 O. W. N. 1373 :
I. R. 1932 Oudh 104 :
A. I. R. 1932 Oudh 27.

———**S. 414—Applicability.**

S. 414 applies not only to a case where one sentence only is imposed. What is meant is

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persons, that an appeal from his decision must necessarily prevail, or that the High Court should be called upon to disturb the ordinary course of justice, by putting in force the arbitrary powers conferred on it by S. 272. The doing so should be limited to those instances in which the lower Court has so obviously blundered and gone wrong as to produce a result mischievous at once to the administration of justice and the interest of the public. 4 All. 148, Rel. on : 9 All. 528 (F. B.) : 16 All. 212 and 21 All. 122, Ref. *Emperor v. Ram Adhin Singh*.

A. I. R. 1931 All. 439.

———S. 417—Grounds for interference.

It is not the practice of the Oudh Chief Court to interfere with an order of acquittal unless the judgment of the Court below is manifestly wrong. *Emperor v. Parameshwar Din*.

35 Cr. L. J. 66 :
146 I. C. 431 : 10 O. W. N. 742 :
6 R. O. 116 : A. I. R. 1933 Oudh 372.

———S. 417—Grounds for interference—
Appeal against acquittal—Conviction in appeal,
when proper—Quantum of proof necessary.

On an appeal from an acquittal the High Court found the evidence for the prosecution was infinitely more reliable than that produced by the defence, and yet, not being satisfied that the case was conclusively proved in the sense in which this has to be done before an appeal from an acquittal can be accepted, it refused to convict the respondent. *Emperor v. Ibrahim*.

28 Cr. L. J. 212 :
99 I. C. 1012 : 27 P. L. R. 197.

———S. 417—Grounds for interference.

Perversity or error of lower Court is not condition precedent to interference—Fact that High Court if trying the accused would have come to different conclusion, is not sufficient. *U Ba U v. Emperor*.

35 Cr. L. J. 855 :
148 I. C. 1069 : 6 R. Rang. 269 :
A. I. R. 1934 Rang. 44.

———S. 417—Grounds for interference.

Powers under S. 417 should be most sparingly used and only when such unreasonable or distorted conclusions have been drawn producing positive miscarriage of justice. *Emperor v. Baldeo Koer*.

32 Cr. L. J. 1073 :
133 I. C. 795 :
1931 A. L. J. 1002 :
I. R. 1931 All. 747 :
A. I. R. 1931 All. 712.

———S. 417—Grounds for interference.

Sound principles of criminal jurisprudence require that the indication of error in a judgment of acquittal ought to be clearer and more palpable and the evidence more cogent and convincing in order to justify its being set aside than would be necessary in the case of a conviction. *Emperor v. Turezi*.

21 Cr. L. J. 349 :
55 I. C. 685 : 125 P. L. R. 1920 :
A. I. R. 1920 Lah. 21.

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———S. 417—Grounds for interference.

The Chief Court of Oudh is loath to interfere with an order of acquittal and will only do so if it is proved without any doubt not only that the accused person is guilty, but that he has been acquitted on unreasonable grounds. *Ghafoor Khan v. Emperor*.

32 Cr. L. J. 694 :
131 I. C. 436 : 8 O. W. N. 101 :
I. R. 1931 Oudh 196 :
A. I. R. 1931 Oudh 116.

———S. 417—Grounds for interference.

The High Court will not interfere in a judgment of acquittal unless the lower Court has been perverse in its judgment or taken such unreasonable and distorted conclusions of the facts as to cause a miscarriage of justice. Per Ross, J.—The mere fact that an inadmissible piece of corroborative evidence was brought on the record, through a technical error, cannot stand in the way of conviction by the High Court. Per Jwala Prasad, J.—The reason that another Tribunal or other Judge might have arrived at a view other than that formed by the trial Court is not a reason for disturbing a verdict of acquittal arrived at upon a full consideration of the circumstances and evidence in the case. *Emperor v. Ku Ja Dusadh*.

23 Cr. L. J. 410 :
67 I. C. 506 : 3 P. L. T. 396 :
A. I. R. 1923 Pat. 119.

———S. 417—Grounds for interference.

The High Court will not interfere with the findings of the trial Court in a case tried with the aid of Assessors where the Judge acquits the accused with the unanimous approval of the Assessors and the questions involved relate purely to the facts of the case, unless it comes to the conclusion that the decision was one at which no body of sensible men could arrive at. The High Court will, however, interfere where the evidence of guilt is overwhelming and the judgment perverse. *Emperor v. Ram Prasad*.

30 Cr. L. J. 1116 :
119 I. C. 901 : I. R. 1929 Pat. 629 :
A. I. R. 1929 Pat. 508.

———S. 417—Grounds for interference.

The indications of error in a judgment of acquittal ought to be more clear or more palpable in order to justify its being set aside. *Emperor v. Ramzan*.

32 Cr. L. J. 1130 :
134 I. C. 112 : 32 P. L. R. 877 :
I. R. 1931 Lah. 880 :
A. I. R. 1932 Lah. 12.

———S. 417—Grounds for interference.

The indications of the guilt of the accused must be obvious or the evidence too strong to be rejected before the High Court will interfere in an appeal against an order of acquittal. *Pallia v. Emperor*.

20 Cr. L. J. 188 :
49 I. C. 604 : 12 P. W. R. 1919 Cr. :
A. I. R. 1919 Lah. 356.

———S. 417—Grounds for interference—
Appeal against acquittal—Power of Government

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doubts which might arise in the cases considered therein. *Alam v. Emperor*.

12 Cr. L. J. 389 :
11 I. C. 253 : 8 A. L. J. 524 : 33 All. 510.

———Ss. 415, 439—Scope—“Any two or more of the punishments”, meaning of.

S. 415 refers to two or more punishments of different kinds. It has no application in a case in which two non-appellable sentences of fine have been passed and the aggregate amount of fine does not exceed Rs. 50. *In re : Paluvadi Venkataramayya*.

41 Cr. L. J. 403 :
187 I. C. 103 : 1939 M. W. N. 1039 :
50 L. W. 614 : I. L. R. 1939 Mad. 1035 :
1939 2 M. L. J. 403 : 12 R. M. 693 :
A. I. R. 1940 Mad. 111.

———Ss. 415-A, 449 (1) (c)—Scope—Conviction by High Court Criminal Sessions—Leave to appeal—European British subject—Affidavit by accused as to nationality, admissibility of—Grant of leave—Right of co-accused though not European British subject—Limitation for application.

Where more persons than one are convicted in one trial by the High Court Criminal Sessions and leave to appeal is granted to one of them under S. 449 (1) (c) on the ground of his being a European British subject, such leave should also be granted to others even if they are not proved to be European British subjects in view of the provisions of S. 415-A of the Code. An application for leave to appeal under S. 449 (1) (c) from a sentence by the High Court Criminal Sessions, an affidavit by the accused as to his nationality is admissible. An application for leave to appeal by a European British subject is governed for purposes of limitation by Art. 155, Limitation Act, and must be filed within 60 days from the date of the sentence appealed from. *Gallagher v. Emperor*.

28 Cr. L. J. 481 :
101 I. C. 657 : 54 Cal. 52 :
A. I. R. 1927 Cal. 307.

———S. 415-A—Scope.

S. 415-A, Cr. P. C., gives a general and a limited right of appeal. *Shankar Sukul v. The King*.

41 Cr. L. J. 877 :
190 I. C. 226 : 1940 Rang. 381 :
13 R. Rang. 76 : A. I. R. 1940 Rang. 223.

———S. 415-A—Scope.

Several accused—Order against some under S. 562 (1) and conviction of others under S. 457, Penal Code—Appeal by all the accused is competent. *Mayandi Nadar v. Pala Kudamban*.

36 Cr. L. J. 589 :
154 I. C. 879 : 1934 M. W. N. 1318 :
41 L. W. 22 : 58 Mad. 517 :
69 M. L. J. 101 : 7 R. M. 503 :
A. I. R. 1935 Mad. 157.

———S. 415—‘Therein’, meaning of.

S. 415 is intended to apply to cases in which two or more punishments mentioned in S. 413 or S. 414, have been combined. *Kandhai v. Emperor*.

33 Cr. L. J. 278 :
136 I. C. 248 : 8 O. W. N. 1373 :
I. R. 1932 Oudh 104 : A. I. R. 1932 Oudh 27.

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———S. 417.

———Acquittal.
———Appeal.
———Applicability.
———Burden of proof.
———Discharge.
———Grounds for interference.
———Interference.
———Interlocutory order.
———Limitation.
———Partial acquittal.
———Power of High Court.
———Principles.
———Procedure.
———Revision.
———Right of accused.
———Right of appeal.
———Scope.

———S. 417.

See also Cr. P. C., 1898, Ss. 110, 227, 345, 423.

———S. 417—Acquittal, appeal against—Erroneous view of evidence—Interference, when justified.

The power of appeal against the acquittal under S. 417 is one that should be exercised sparingly by Government. But the discretion to exercise that right to appeal appertains to Government and is not subject to the control of the Court. The Cr. P. C. makes no distinction between an appeal from an acquittal and an appeal from a conviction. In an appeal from an acquittal if the Court thinks the lower Court has taken an erroneous view of the evidence, it has no jurisdiction to refuse to convict. *Emperor v. Moti Khoda*.

25 Cr. L. J. 786 :
81 I. C. 306 : 26 Bom. L. R. 113 :
A. I. R. 1924 Bom. 355.

———S. 417—Acquittal, appeal against—Interference, when justified—Approver, statement of—Corroboration—Accused seen talking to deceased.

Two little girls were collecting fodder near their village and the accused was seen talking to them shortly before sunset. Two days afterwards the bodies of the girls were discovered lying in a field with injuries on their persons which indicated that their death was due to violence. An approver gave evidence that the girls had been put to death by the accused and himself for the sake of their ornaments. Held, that the evidence that the accused was seen talking to the girls on the evening on which they disappeared did not amount to a material corroboration of the approver's statement. *Emperor v. Ram Karan*.

26 Cr. L. J. 1141 :
88 I. C. 453 : 2 L. C. 2 :
7 L. L. J. 528 : A. I. R. 1925 Lah. 600.

———Ss. 417, 439—Acquittal—Interference in revision—Principles—Normal procedure not resorted to—Interference by High Court.

The right of an accused person who has been acquitted, that he should not be tried a second time, is a valuable right and is not to

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to refer appeals, exercise of—High Court, duty of—Procedure.

The power of appeal under S. 417 should be exercised sparingly by the Government. The discretion to exercise that power, however, is not subject to the control of the High Court, and where, in such an appeal, the Court is of opinion that the lower Court has acted on an erroneous view of the evidence, and that it should have convicted the accused, it has no jurisdiction to refuse to convict. As between an appeal against an acquittal and an appeal against a conviction, the Cr. P. C. makes no distinction. *Emperor v. Sakharan Manaji.*

21 Cr. L. J. 17 :
54 I. C. 161 : 21 Bom. L. R. 1054 :
A. I. R. 1920 Bom. 217.

—S. 417—Grounds for interference.

The Prosecutor must make out strong and cogent grounds to justify interference with a judgment of acquittal. *Rama Murti v. Jai Indra Bahadur Singh.*

34 Cr. L. J. 661 :
143 I. C. 852 : 10 O. W. N. 345 :
I. R. 1933 Oudh 215 :
A. I. R. 1933 Oudh 257.

—S. 417—Grounds for interference.

The right of appeal against an acquittal vested in the Crown should be used sparingly and with circumspection. An appeal against an acquittal should not be filed on a technical ground. *Public Prosecutor v. Mayandri Nadar.*

34 Cr. L. J. 948 (1) :
145 I. C. 371 : 6 R. M. 53 :
A. I. R. 1933 Mad. 230.

—S. 417—Grounds for interference—Demeanour of witnesses noted by Court—Duty of Appellate Court.

Where a Sessions Judge of experience stated in the most emphatic terms that the demeanour of the eye-witnesses was evasive, that they inspired him with no confidence, and that no man could be convicted on their testimony : Held, that, before the Court of Appeal could justifiably accept their evidence, it must be assured in the most positive and convincing manner that there was no ground for this criticism. The consideration that the Court of Appeal itself would have arrived at a different conclusion, had it tried the accused person as a Court of original jurisdiction, is immaterial. *Emperor v. Bishen Singh.*

15 Cr. L. J. 203 :
22 I. C. 987 : 125 P. L. R. 1914 :
27 P. W. R. 1914 Cr. :
A. I. R. 1914 Lah. 427.

—S. 417—Grounds for interference.

Where in an appeal from acquittal the High Court after considering the evidence is inclined to the view that there are facts or circumstances disclosed by the evidence which may not unreasonably be accepted as grounds for the conclusion arrived at by the trial Judge, the High Court will not interfere. *Emperor v. Maung Aung Gyaw.*

38 Cr. L. J. 295 :
166 I. C. 645 : 9 R. Rang. 278 :
A. I. R. 1937 Rang. 7.

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—S. 417—Grounds for interference—Jury trial—Murder—Non-direction as to minor offence—Misdirection.

Where the facts of a case show that it is a case of either murder or nothing else, the non-direction by a Sessions Judge of the attention of the Jury to the fact, that even if an offence under S. 302 of the Penal Code has not been made out, the fact established might constitute a minor offence, does not amount to a misdirection. A mere failure on the part of the Sessions Judge to point out to the Jury all the matters which may be considered by them in evidence, that is, matters which have been established by the evidence, does not necessarily amount to a misdirection to justify a High Court to interfere with an order of acquittal. *Emperor v. Bhimlal Chamar.*

23 Cr. L. J. 47 :
64 I. C. 671 : A. I. R. 1922 Pat. 321.

—S. 417—Grounds for interference—Appeal against acquittal.

Where the findings of fact of Trial Court are in favour of the accused's innocence, a Court of Appeal will not in an appeal against order of acquittal interfere with the verdict unless the indications of mistake in the judgment of the lower Court are obvious or the evidence as to the accused's guilt is too strong to be rejected. It is immaterial that the Appellate Court might have arrived at a different conclusion had it been trying the accused as a Court of original jurisdiction. *Emperor v. Jawai.*

19 Cr. L. J. 275 :
44 I. C. 179 : 19 P. W. R. 1918 Cr. :
70 P. L. R. 1918 : A. I. R. 1918 Lah. 54.

—S. 417—Grounds for interference—Acquittal—Appeal—High Court, interference by.

The High Court hesitates to set aside an acquittal on appeal, and does not do so unless there has been a miscarriage of justice. *Emperor v. Purna Chandra Ghose.*

26 Cr. L. J. 71 :
83 I. C. 631 : 28 C. W. N. 579 :
A. I. R. 1924 Cal. 611.

—Ss. 417, 423—Grounds for interference—Appeal from acquittal—High Court, when interferes.

In an appeal from an acquittal, High Court is not entitled to weigh the evidence and decide whether or not the lower Court has come to a wrong conclusion unless it is able to hold that the finding of the trial Court is manifestly wrong or preverse or such as no reasonable man can arrive at upon the evidence. *Emperor v. Abdul Latif.*

28 Cr. L. J. 55 :
99 I. C. 87 : A. I. R. 1927 Lah. 178.

—Ss. 417, 423—Grounds for interference—Practice of Sind Judicial Commissioner's Court.

It is the practice of the Court of the Judicial Commissioner of Sind in all appeals, especially criminal appeals, to pay deference to the opinion of the Judge presiding over the trial Court. But the Cr. P. C. makes no distinction between an appeal from a conviction and an appeal from an acquittal and the Appellate

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concerned, and cannot be questioned by the High Court in dealing with such appeal. The provisions of S. 418 of the Code apply equally to all criminal appeals, whether made by Government or by accused person; and, except as provided in S. 423, there is no distinction between the mode of procedure and the principles upon which an appeal by Government against an acquittal and an appeal by a convicted person against his conviction and sentence are to be decided. *Emperor v. Mussammal Gulbi*.

1 Cr. L. J. 674 :
17 P. L. R. 75.

———S. 417—*Appeal against acquittal and appeal against conviction—Distinction.*

Appeal against acquittal and appeal from conviction—No distinction. But indications of error in judgment of acquittal should be clearer and more palpable and the evidence more cogent and convincing. *Emperor v. Sher Singh*.

34 Cr. L. J. 598 :
143 I. C. 499 : 34 P. L. R. 704 :
I. R. 1933 Lah. 361 : A. I. R. 1933 Lah. 388.

———S. 417—*Appeal against acquittal and appeal from conviction, distinction between.*

Although there is no difference in law between an appeal from an acquittal and an appeal from a conviction, it is not the practice to interfere with an order of acquittal unless the indications of error in the judgment are clear and the evidence too strong to be rejected. *Emperor v. Muhammad Khan*.

36 Cr. L. J. 419 :
153 I. C. 889 : 35 P. L. R. 641 : 7 R. L. 472 :
A. I. R. 1934 Lah. 710.

———S. 417—*Who can Appeal—Appeal by Local Government from judgment of acquittal.*

Under Cr. P. C. the Local Government has the same right of appeal against an acquittal as a person convicted has of appealing against his conviction and sentence, and there is no distinction between the mode of procedure and the principles upon which both classes of appeals are to be decided. *Emperor v. Po Saing Aung Pe*.

1 Cr. L. J. 1022 :
2 L. B. R. 303.

———S. 417—*Appeal from acquittal—Appellate Court cannot convict of an offence not charged in the grounds of appeal.*

In an appeal from an order acquitting a person of a specific offence, the Court will not convict that person of an offence entirely different from that charged against him in the grounds of appeal. Where, therefore, the grounds of appeal were clearly directed against the acquittal of the respondent upon a charge of murder and it was nowhere suggested that he had committed an offence under S. 201, I. P. C., the Chief Court declined to convict him of the latter offence. *Emperor v. Mahana Singh*.

12 Cr. L. J. 73 :
9 I. C. 436 : 63 P. L. R. 1911.

———S. 417—*Appeal from acquittal—Culpability of accused—Benefit of doubt.*

Before the Chief Court will interfere with an

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acquittal, the culpability of the accused must be very clear and indubitable. Where, therefore, in an appeal from an order of acquittal passed by the Sessions Judge on appeal from a conviction under S. 219 of the Municipal Act, 1911, it appeared that the proceedings of the Municipal Committee were highly misleading to the respondent: *Held*, that this was not a fit case for interference by the Chief Court. *Emperor v. Lachhman Das*.

19 Cr. L. J. 710 B. :
46 I. C. 294 : 30 P. W. R. 1918 Cr. :
A. I. R. 1918 Lah. 286.

———S. 417—*Appeal from acquittal—Trial Court, finding of, value of—Appellate Court, interference by, when justified.*

If in an appeal from an acquittal the evidence is all oral and its credibility is a mere matter of opinion without involving other considerations, the opinion of the Court which heard the witnesses must be treated as almost conclusive. The indications of mistake must be obvious or the evidence too strong to be rejected, before the Appellate Court will interfere. *Emperor v. Samand*.

22 Cr. L. J. 172 :
59 I. C. 924.

———S. 417—*Appeals from acquittal and conviction—Distinction.*

Appeals against acquittal are to be judged by a standard different from that applicable to those against conviction. *Emperor v. Muzaffar*.

32 Cr. L. J. 1079 :
32 P. L. R. 405 : I. R. 1931 Lah. 833 :
133 I. C. 465 : A. I. R. 1931 Lah. 465.

———S. 417—*Applicability—Alteration of conviction from major to minor offence whether amounts to acquittal—Appeal by Government, competency of.*

Alteration of a conviction from one under S. 353, Penal Code, to one under S. 352 of the Code, does not amount to an acquittal, and no appeal lies in such case under S. 417. *Emperor v. Gian Singh*.

29 Cr. L. J. 905 :
111 I. C. 665 : A. I. R. 1928 Lah. 230.

———S. 417—*Applicability.*

Judgment of acquittal will not be interfered with in absence of strong and cogent grounds. *Emperor v. Hub Lal*.

34 Cr. L. J. 858 :
144 I. C. 942 : 6 R. O. 22 :
10 O. W. N. 323 : A. I. R. 1933 Oudh 254.

———S. 417—*Applicability.*

No appeal lies by the Local Government under S. 417 against an order of acquittal passed by a Special Magistrate appointed under the provisions of Bengal Act, XII of 1932. *Superintendent and Remembrancer of Legal Affairs, Bengal v. Lachmi Narayan Sarwan*.

34 Cr. L. J. 1070 :
145 I. C. 773 (1) : 60 Cal. 1482 :
38 C. W. N. 107 : 6 R. C. 137 (1) :
A. I. R. 1933 Cal. 776 (1).

———S. 417—*Applicability.*

(Per Full Bench, Niyogi J., *contra*).—Appeal by accused against conviction in respect of minor offence heard and decided—Appeal

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—S. 417—*Procedure—Appeal from acquittal—Presentation of appeal—Direction by Local Government—Public Prosecutor to present appeal—Direction to be given to Public Prosecutor—Appeal filed by other person, not competent—Acquittal by Deputy Magistrate in Behar—Appeal against acquittal filed by Legal Remembrancer of Bengal—Whether appeal competent.*

Under S. 417 the direction by the Local Government to present an appeal to the High Court from an order of acquittal must be given to a Public Prosecutor. It may be given in a letter, whereby the Public Prosecutor is appointed as such; but it does not follow that the mere fact that a person has been directed to present such an appeal to the High Court involves his appointment as Public Prosecutor for the purposes of the case. Where the liberty of subject is involved and an appeal is sought to be preferred against an order of acquittal, the statute must be strictly construed and full compliance with its provisions required. The Secretary to the Government of Behar and Orissa requested the Legal Remembrancer of Bengal to file an appeal against an order of acquittal passed by a Deputy Magistrate in Behar. Accordingly, the appeal was presented by the Deputy Legal Remembrancer to the High Court; *Held*, that the appeal was incompetent. *Emperor v. Gaya Prasad*.

15 Cr. L. J. 46 :

22 I. C. 190 : 18 C. L. J. 519 :

18 C. W. N. 279 : 41 Cal. 425 :

A. I. R. 1914 Cal. 560.

—S. 417—*Revision—Acquittal, order of—Appeal competent—Revision—High Court, whether will interfere.*

When an appeal lies against an order of acquittal, the High Court will not, on the report of the District Magistrate, interfere in revision and set aside the acquittal. *Ganga Singh v. Ramzan*.

26 Cr. L. J. 337 :

84 I. C. 641 : 6 L. L. J. 50 :

A. I. R. 1923 Lah. 601 (2).

—S. 417—*Rights of accused—Appeal against acquittal—Presumption of innocence—Interference—Principles.*

Per *Jwala Prasad, J.*—In an appeal from an acquittal, as in the case of an appeal from a conviction, the appellant is entitled to go into facts and ask the Appellate Court to take a view of the facts different from that taken by the trial Court. But the accused in an appeal from an acquittal retains his right of being presumed to be innocent until the charge is fully brought home to him. He has the right which he had in the trial Court of being given the benefit of a reasonable doubt as to his guilt. He must also have the benefit of the opinion of the trial Court upon the credibility of the witnesses whom that Court had the advantage of seeing face to face and judging of their demeanour and he has the right to ask that the acquittal should not be set aside unless the trial Court has taken a perverse view of the evidence and has arrived at an un-

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natural and distorted conclusion. *Emperor v. Deboo Singh*.
31 Cr. L. J. 148 :
120 I. C. 634 : 8 Pat. 496 : 10 P. L. T. 838 :
A. I. R. 1929 Pat. 491.

—S. 417—*Right of accused—Presumption of innocence—Appeals against acquittal and conviction—Distinction.*

The rules and the limitations affecting appeals from acquittals are on a par with those relating to appeals from convictions. An appeal from the verdict of the jury stand upon a different basis. In an appeal from an order of acquittal there is always a presumption in favour of the innocence of the accused. This presumption very materially affects the question of onus which except within a limited range of cases lies upon the Crown, and where the finding of the subordinate tribunal is in favour of the accused, the burden lies upon the prosecution to prove that the finding reached by the Court below, was not justified by the evidence. Where the evidence against the accused is too scanty or insufficient to support the charge, the finding of the Court below cannot be displaced. Again, where the case is somewhere on the border line or very near it and it was possible for the Court upon a balance of probabilities, to hold a person guilty or not guilty, the reversal of the order of acquittal is not only undesirable and inexpedient but is calculated to cause a miscarriage of justice. Where, however, the balance of evidence is distinctly against the accused or where material evidence has been misappreciated, overlooked or ignored, the High Court is bound to step in as much in the interest of the administration of justice as of the public generally. *Emperor v. Ram Adhin Singh*.

A. I. R. 1931 All. 439.

—Ss. 417 and 439—*Rights of accused—Appeal against acquittal—Right of accused to go into findings of fact.*

In an appeal against acquittal, the accused is entitled to ask the Court to consider all the evidence before it and all the possible grounds which may be raised against the conviction. If, therefore, the Counsel for the accused is entitled to argue on the facts of the case to show that the accused has not committed an offence under S. 304, Penal Code, then although the acceptance of those arguments may not automatically set aside, the conviction under S. 335, Penal Code, yet if the Court were satisfied that no offence was committed, it would undoubtedly exercise *suo motu* its powers under S. 439 (1), and set aside the conviction. *Public Prosecutor v. Panchaksharam*.

39 Cr. L. J. 871 :

177 I. C. 432 : 1938 M. W. N. 605 :

48 L. W. 142 : 1938 2 M. L. J. 225 :

11 R. M. 323 : A. I. R. 1938 Mad. 723.

—S. 417—*Right of appeal, extent of.*

Right of Local Government to appeal in criminal cases is not restricted. *Emperor v. Nur Ahmad*.

35 Cr. L. J. 1229 :

151 I. C. 114 : 1934 A. L. J. 839 :

3 A. W. R. 783 : 7 R. A. 88 :

A. I. R. 1934 All. 842.

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—S. 417—Grounds for interference.

Appeal from acquittal—High Court will not generally interfere unless judgment is wrong and there is miscarriage of justice. *Emperor v. Chattr Singh*. 34 Cr. L. J. 384 : 142 I. C. 312 : I. R. 1933 Pesh. 10 : A. I. R. 1933 Pesh. 27.

—S. 417—Grounds for interference.

High Court should be satisfied that conclusions of Sessions Judge are at least manifestly wrong, before interfering with acquittal. *Emperor v. Nalha Singh*. 35 Cr. L. J. 349 : 147 I. C. 234 : 35 P. L. R. 75 : 6 R. L. 361 : A. I. R. 1934 Lah. 212.

—S. 417—Grounds for interference.

In an appeal from an acquittal, the order of the Magistrate will be reversed only if it is palpably wrong. *Emperor v. Soopi*. 31 Cr. L. J. 141 : 120 I. C. 539 : 31 P. L. T. 391 : A. I. R. 1930 Lah. 84.

—S. 417—Grounds for interference.

In an appeal from an order of acquittal, the High Court cannot interfere unless the judgment of the Court below is wrong and perverse, or without jurisdiction and based upon obvious errors in procedure. Where a judgment of acquittal is based at the most on a doubtful weighing of facts and not on any irregularity or negligence or other matter affecting the jurisdiction or the irregularity of the trial, the High Court will not interfere. *Deputy Superintendent v. Amulya Charan Awan*. 15 Cr. L. J. 160 : 22 I. C. 736 : 18 C. W. N. 666 : A. I. R. 1915 Cal. 287.

—S. 417—Grounds for interference.

In an appeal from an order of acquittal the High Court will not interfere unless the findings of the lower Court are obviously wrong or the evidence is too strong to be rejected. *Emperor v. Muhammad Shafi*. 19 Cr. L. J. 723 : 46 I. C. 403 : 25 P. R. 1918 Cr. : 29 P. W. R. 1918 Cr. : A. I. R. 1918 Lah. 105.

—S. 417—Grounds for interference.

In exercising the power conferred by the Code and before reaching its conclusion upon facts, the High Court should and will always give proper weight and consideration to such matters as : (1) the views of the trial Judge as to the credibility of the witnesses ; (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact he has been acquitted at his trial ; (3) the right of the accused to the benefit of any doubt ; and (4) the slowness of an Appellate Court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses : *Held*, on facts that where the accused was a relative of the deceased by marriage and could have had no motive for the crime, the High Court should not interfere with an acquittal on the

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mere ground that he had the means and opportunity of committing the crime. *Emperor v. Nga Mya Maung*. 38 Cr. L. J. 927 : 170 I. C. 502 : 10 R. Rang. 92 : A. I. R. 1936 Rang. 90.

—S. 417—Grounds for interference—Appeal against acquittal, principles governing.

In order to justify interference with a judgment of acquittal on a question of fact, it is sufficient if the finding is clearly wrong on the evidence and unreasonable in the opinion of the Appellate Court, whether or not the unreasonableness amounts to perversity, stupidity or incompetence, or the Court below can be said to have obstinately blundered in coming to it : but upon sound principles of criminal jurisprudence, the indications of errors in the judgment of acquittal ought to be clearer and more palpable and the evidence more cogent and convincing in order to justify its being set aside than would be necessary in the case of a judgment of conviction. *Emperor v. Bakhtawar Lal*. 28 Cr. L. J. 556 : 102 I. C. 492 : 28 P. L. R. 313 : A. I. R. 1927 Lah. 549.

—S. 417—Grounds for interference.

Conditions justifying interference with acquittal stated. Mere fact that lower Court has not been incompetent, stupid or perverse or has not blundered is not sufficient to dismiss appeal against acquittal. *Emperor v. Sheo Janak Pandey*. (F. B.) 35 Cr. L. J. 364 : 147 I. C. 238 : 1933 A. L. J. 1573 : 6 R. A. 443 : A. I. R. 1934 All. 27.

—S. 417—Grounds for interference.

High Court will interfere only if it is proved without any doubt not only that the accused person is guilty but that he has been acquitted on unreasonable grounds. *Emperor v. Magbool Ahmad Khan*. 33 Cr. L. J. 920 : 139 I. C. 751 : 9 O. W. N. 3 : 7 Luck. 511 : I. R. 1932 Oudh 383 : A. I. R. 1932 Oudh 317.

—S. 417—Grounds for interference.

In appeal by Government against acquittal, accused starts with a double presumption when two opinions can be formed on evidence and one of them has been formed by trial Court, appellate Court will not disagree. If only one can be formed and trial Court has gone counter to it, judgment is liable to interference. *Government Advocate, North-West Frontier Province v. Amir Mamza*. 36 Cr. L. J. 443 : 153 I. C. 35 : 7 R. Pesh 70 : A. I. R. 1934 Pesh 129.

—S. 417—Grounds for interference.]

Interference with acquittal should only be made when there is miscarriage of justice. *Emperor v. U San Win*. 33 Cr. L. J. 701 : 138 I. C. 523 : 10 Rang. 312 : I. R. 1932 Rang 170 : A. I. R. 1932 Rang. 146.

—S. 417—Grounds for interference.

It is not because a Judge or a Magistrate has taken a view of a case in which Government does not coincide, and has acquitted accused

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acquitted at their trial. *Emperor v. Aftab Mohammad Khan*. 41 Cr. L. J. 647 :
188 I. C. 649 : 1940 A. W. R. 85 :
1940 A. L. J. 206 : 13 R. A. 55 :
A. I. R. 1940 All. 291.

Ss. 417, 423—Scope.

No distinction is drawn in Cr. P. C. between an appeal from an acquittal and an appeal from a conviction. An appeal from an acquittal may lie on a question of fact and there are no special rules for dealing with the evidence in such appeal. An Appellate Court should give weight to the opinion of the Trying Court which had the witnesses before it and was, therefore, able to judge from their demeanour whether or not they were telling the truth. *Deputy Legal Remembrancer, Behar and Orissa v. Matukdhari*. 17 Cr. L. J. 9 :
32 I. C. 137 : 20 C. W. N. 128 :
A. I. R. 1917 Cal. 687.

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See also Cr. P. C., 1898, Ss. 238 (1), 297, 298, 417, 423.

S. 418—Appellate Court—Duty of.

Appellant can contend that evidence for prosecution was insufficient to support conviction. Appellate Court should examine the evidence and come to its own finding. Appellate judgment must also comply with S. 367 especially when facts are intricate and evidence contradictory. What High Court should consider in revision stated. *Aghare Dulla v. Emperor*. 32 Cr. L. J. 1197 :
134 I. C. 619 : 12 P. L. T. 601 : 11 Pat. 143 :
I. R. 1931 Pat. 475 : A. I. R. 1931 Pat. 379.

S. 418—Applicability.

An appeal from the verdict and judgment in a trial held at the Sessions of the High Court does not lie under the provisions of S. 418. *H. W. Scott v. Emperor*. (F. B.) 36 Cr. L. J. 595 :
154 I. C. 837 : 13 Rang. 104 : 7 R. Rang. 318 :
A. I. R. 1935 Rang. 67.

S. 418—Applicability.

The provisions of S. 418 (1) apply to a Government Appeal under S. 417. Consequently, no point other than a point of law can be raised on either side at the hearing of an appeal of this nature. *Emperor v. Terbi*. 36 Cr. L. J. 1467 :
158 I. C. 913 : 1935 O. W. N. 1153 :
1935 O. L. R. 624 : 8 R. O. 135 :
A. I. R. 1936 Oudh 108.

S. 418—Construction.

160 I. C. 160 : 'when the trial was by Jury' in 1936 O. L. R. 160 : when the trial was in fact by Jury v. Emperor. A. I. R. 1936 Oudh 108.

C. 800 : Appeal—Jail app. 34 Cr. L. J. 441 :
All. 68 : 1 Counsel. 1932 A. L. J. 1103 :
A. I. R. 1933 All. 155 :
A. I. R. 1933 All. 128.

—Grounds. of S. 420, which under S. 419, the in trial by Jury along with

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others sentenced to death, can appeal on matter of law and fact. *Emperor v. Rashbehari Lal*.

34 Cr. L. J. 83 :
140 I. C. 846 : 13 P. L. T. 440 :
I. R. 1933 Pat. 27 : A. I. R. 1932 Pat. 302.

S. 418 Grounds for interference.

Before the High Court interferes with a conviction in a trial by Jury, it has to be satisfied that there was a misdirection on the part of the Sessions Judge or that there was improper admission or exclusion of evidence. *Golam Asphia v. Emperor*. 33 Cr. L. J. 477 :
137 I. C. 497 : I. R. 1932 Cal. 336 :
A. I. R. 1932 Cal. 295.

S. 418—High Court—Duty of.

All that the High Court has to see is whether the offence charged is proved against each of the accused persons, and for this purpose, the High Court has to take the definition of "proved" given in the Evidence Act. *Emperor v. Sheo Dayal*. 35 Cr. L. J. 360 :
147 I. C. 15 : 55 All. 689 : 6 R. A. 437 :
A. I. R. 1933 All. 535.

S. 418—Misdirection and non-direction—Questions of law—Interference in appeal.

Misdirection or non-direction is a matter of law and if his defect has affected the Crown or the accused, the order of the trial Court should be set aside. *Emperor v. Mohammad Israil*. 31 Cr. L. J. 33 :
120 I. C. 264 : 1929 A. L. J. 1261 :
A. I. R. 1930 All. 24.

Ss. 418, 428—Procedure—Acquittal by Appellate Court on ground of misdirection—Legality—Re-trial by Appellate Court itself, whether legal.

It is open to the Appellate Court to acquit the accused if it sets aside a verdict on the ground of misdirection but Court will do so only in special circumstances, as where the accused has been harassed by repeated trials or when the evidence is so clearly insufficient or incredible that no Jury can reasonably convict. Otherwise as a matter of practice the proper course is to direct a re-trial. An Appellate Court cannot direct a re-trial before itself. *Dhiraji v. Akasi*. 27 Cr. L. J. 785 :
95 I. C. 385 : 24 A. L. J. 506 :
A. I. R. 1926 All. 429.

S. 418—Question of law—Sentence.

In the case of a trial by Jury under the provisions of Chap. XXIII of the Cr. P. C., an appeal lies only on a matter of law under S. 418 of the Code. For the purposes of such an appeal, a question of sentence is deemed to be a matter of law. *U Zagriya v. Emperor*. 26 Cr. L. J. 1371 :
89 I. C. 459 : 4 Bur. L. J. 44 :
3 Rang. 220 : A. I. R. 1925 Rang. 239.

S. 418—Scope.

An appeal against acquittal lies on a matter of fact and no limitation is laid down that the High Court must find that the view of the Court which acquitted the accused was perverse. *Emperor v. Basant*. 34 Cr. L. J. 1232 :
146 I. C. 244 : 6 R. A. 279 :
A. I. R. 1933 All. 574.

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by the complaint. The criterion is the form of the proceedings, that is, whether they were conducted under Chap. XVIII or Chap. XXI of the Code. *Shiam Lal v. Nand Ram*.

32 Cr. L. J. 670 :
131 I. C. 36 : 53 All. 461 :
1931 A. L. J. 898 :
I. R. 1931 All. 340 :
A. I. R. 1931 All. 395.

—S. 250—*Master and servant—Servant's liability for compensation—Responsibility of servant for information lodged on behalf of master.*

The question whether a servant is responsible under S. 250 for an information lodged on behalf of his master, is one of fact and depends on the question whether the servant is merely the mouthpiece of the master and is merely giving expression to his master's accusation, or whether he joins personally in the accusation himself. *Jadami Pershad Singh v. Mahadeo Kandoo*.

11 Cr. L. J. 201 :
5 I. C. 693 : 14 C. W. N. 326.

—S. 250—*Miscellaneous.*

When complaint is difficult of proof, and complainant may not be responsible for it, S. 250 should not be used in which case he may be mulcted in fine. *Emperor v. Baloch Daryakhan*.

35 Cr. L. J. 1038 :
149 I. C. 946 : 6 R. S. 250 :
A. I. R. 1934 Sind 18.

—S. 250—*Procedure—Acquittal and compensation by separate orders.*

Where a Magistrate finding a complainant to be frivolous or vexatious, at once, after acquitting the accused, called upon the complainant to show cause why he should not pay compensation to the accused, and on his failure to show cause, made the order absolute, the High Court declined to interfere in revision holding, that although the procedure was not altogether regular, the two orders of the Magistrate might be regarded as passed in one continuous proceeding. *Ajab Lal Khirher v. Emperor*.

2 Cr. L. J. 523 :
9 C. W. N. 810 : I. L. R. 32 Cal. 783 :

—S. 250—*Procedure—Acquittal and compensation by separate orders.*

Where a proceeding taken by a Magistrate to award compensation to the accused under S. 250 is a continuation of the original proceeding against the accused, no objection can be taken to the proceeding merely on the ground that the Magistrate has signed two separate orders, one in respect of the acquittal of the accused, and the other directing payment of compensation to him. *Jairaj Singh v. Banssi*.

27 Cr. L. J. 35 :
91 I. C. 67 : 23 A. L. J. 1054 :
A. I. R. 1926 All. 165.

—S. 250—*Procedure.*

An omission to record reasons is, however, a mere irregularity which is curable under S. 537. *Palani Goundan v. Krishnappa Goundan*.

39 Cr. L. J. 207 :
129 I. C. 37 : 59 M. L. J. 319 :
32 L. W. 283 : I. R. 1931 Mad. 181 :
1930 M. W. N. 1047 :
A. I. R. 1930 Mad. 329.

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—S. 250—*Procedure in awarding compensation.*

A Magistrate in acquitting the accused called upon the complainant to show cause why an order for compensation should not be made against him. On the same day and on the next page, he recorded the statement of the complainant and then made an order against him to pay compensation : *Held*, that this was sufficient compliance with the provisions of S. 250, Cr. P. C. *Emperor v. Sudagar Ram*.

19 Cr. L. J. 444 (b) :
44 I. C. 972 : 31 P. R. 1917 Cr. :
A. I. R. 1918 Lah. 58.

—S. 250—*Procedure—Compensation—Order "to show cause"—Adjournment.*

An order awarding compensation under S. 250 must form part of the order of discharge or acquittal. A complainant is not entitled to an adjournment in order to enable him "to show cause" against an order for compensation being passed against him ; nor should he be given an opportunity to produce further evidence after all the evidence tendered by him in support of the allegations made in his complaint has been already taken at the trial of the case itself. *Ghurbin v. Emperor*.

15 Cr. L. J. 193 :
22 I. C. 977 : 12 A. L. J. 143 :
36 All. 132 : A. I. R. 1914 All. 86.

—S. 250—*Procedure—Compensation, order for—Order not made on same day as order of discharge.*

The mere fact that an order for compensation is not made on the same day as the order of discharge, but on a subsequent day fixed on the application of the complainant for an adjournment to show cause in response to a notice issued on the same day on which the accused was discharged, would not make the order bad for non-compliance with the provision contained in Cl. (b) of S. 250. *In re : Nagindas Chauhan*.

21 Cr. L. J. 371 :
55 I. C. 851 : 22 Bom. L. R. 184 :
A. I. R. 1920 Bom. 314.

—S. 250—*Procedure—Compensation, order for, at what stage to be made.*

An order under S. 250 for compensation should be passed simultaneously with the order of discharge or acquittal, and not in a separate proceeding. *Chutahi Ahir v. Emperor*.

20 Cr. L. J. 774 :
53 I. C. 614 : A. I. R. 1919 All. 398.

—S. 250—*Procedure—Compensation, order for, made in complainant's absence.*

An order for compensation made in the absence of the complainant, when no opportunity is afforded to the complainant of making an objection, is bad in law and must be set aside. Before making an order for compensation, the Magistrate should record and consider what objections the complainant may make. *Gulzari Lal v. Gauga Ram*.

13 Cr. L. J. 268 :
14 I. C. 652 : 9 A. L. J. 170.

—S. 250—*Procedure—Compensation, order for, not included in order of acquittal, validity of.*

An order for compensation against a com-

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Cr. P. C. for differentiating between a judgment passed on an appeal filed under S. 420, Cr. P. C. by an appellant in jail and a judgment on a similar appeal filed through Counsel under S. 419. *Gaya Din v. Emperor*.

23 Cr. L. J. 148 (a) :
65 I. C. 612 : 24 O. C. 304 :
9 O. L. J. 1 : A. I. R. 1922 Oudh 56.

—————Ss. 419, 420—*Appeal—Jail appeal dismissed—Regular appeal not competent.*

A represented appeal under the provisions of S. 419 is not maintainable after a jail appeal filed under provisions of S. 420 has been summarily dismissed under the provisions of S. 421 (1). *Jodha v. King-Emperor*.

41 Cr. L. J. 711 :
189 I. C. 83 : 1940 O. L. R. 408 :
1940 O. W. N. 594 : 13 R. O. 50 :
A. I. R. 1940 Oudh 369.

—————S. 419—*Copies necessary for appeal.*

Under S. 419 where the order appealed against is not complete in itself and the reasons of the order are given in another judgment, a copy of such judgment must also be filed along with the memorandum of appeal. *Parma Nand v. Mohan Lal*.

30 Cr. L. J. 235 :
114 I. C. 61 : I. R. 1929 Lah. 221 :
A. I. R. 1929 Lah. 614.

—————S. 419—*Copy of order, necessity.*

Under S. 419 the Court of Appeal has a discretion to dispense with the copy of order or judgment appealed against not only at the time of filing the appeal but even at any subsequent stage. *Parma Nand v. Mohan Lal*.

30 Cr. L. J. 235 :
114 I. C. 61 : I. R. 1929 Lah. 221 :
A. I. R. 1929 Lah. 614.

—————S. 419—*Procedure—Appeal, criminal—Summary dismissal—Opportunity to be given to appellant to be heard.*

Before an appeal presented under S. 419 can be dismissed summarily, the appellant is entitled to a reasonable opportunity of being heard in support of his petition. Therefore, when a petition of appeal is adjourned to another date, notice of the adjournment should be given to the appellant. *Shambhari Singh v. Emperor*.

20 Cr. L. J. 271 :
50 I. C. 31 : A. I. R. 1919 Pat. 54.

—————S. 420—*Appeal—Jail appeal dismissed—Appeal through Counsel.*

Once an appeal presented by a convict from jail had been dismissed, it is not open to the same prisoner to file another memorandum of appeal through a Counsel. *Ram Jas v. Emperor*.

37 Cr. L. J. 362 :
160 I. C. 969 : 1936 O. W. N. 194 :
1936 O. L. R. 125 : 8 R. O. 292 :
A. I. R. 1936 Oudh 219.

—————S. 420—*Appeal—Jail appeal dismissed—Appeal through Counsel.*

Where an accused in jail files an appeal under the provisions of S. 420, which is dismissed, another appeal under S. 419, through

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a Pleader is not maintainable. *Pem Mahton v. Emperor*.

37 Cr. L. J. 58 :
159 I. C. 241 : 14 Pat. 392 :
16 P. L. T. 683 : 2 B. R. 62 :
8 R. P. 259 : A. I. R. 1935 Pat. 426.

—————Ss. 420, 421, 439—*Appeal preferred through Mukhtar—Subsequent appeal through Jail, rejection of, effect of—Revision.*

Where in ignorance of the fact that a convict had already preferred an appeal against his conviction through a *Mukhtar*, the Sessions Judge rejected an appeal subsequently preferred by the convict through Jail: *Held*, that the High Court had, in revision, power to set aside the order of rejection and to direct the Sessions Judge to re-hear the appeal after giving the convict an opportunity of appearing by Counsel. *Emperor v. Meva Ram*.

26 Cr. L. J. 1621 :
90 I. C. 917 : 23 A. L. J. 105 :
48 All. 208 : A. I. R. 1926 All. 178.

—————S. 420—*Appeal through Jail—Right to argue appeal in person—Crown engaging Counsel for accused—Accused wishing not to be represented by him—Counsel's duty to conduct appeal.*

When a prisoner sentenced to death subject to confirmation by the High Court, presents his appeal from Jail under the provisions of S. 420 of the Cr. P. C., he is not entitled to appear in person to argue his appeal before the High Court. If, as a concession, a Counsel is, in such a case, retained by the Crown to argue his appeal before the High Court but the accused refuses to give him any instructions, stating that he does not wish to be represented by him, it is the duty of the Counsel to conduct the appeal on behalf of the accused without considering what the accused's views may be on the subject. The concession of the Crown towards the accused may or may not be appreciated by the accused but it in no way affects the conduct of the appeal. *Ram Prasad Bismill v. Emperor*.

28 Cr. L. J. 679 :
103 I. C. 407 : 4 O. W. N. 638 :
A. I. R. 1927 Oudh 312.

—————S. 420—*Jail appeal dismissed by Vacation Judge—Appeal, second, whether maintainable.*

Where an appeal presented by a convict under S. 420 of the Cr. P. C. through the officer-in-charge of the Jail is dismissed under S. 421 by the Vacation Judge of the High Court, a second appeal to the High Court against the same conviction is barred and is not maintainable. *Kunhammad Haji v. Emperor*.

24 Cr. L. J. 439 :
72 I. C. 599 : 1923 M. W. N. 94 :
44 M. L. J. 450 : 46 Mad. 382 :
A. I. R. 1923 Mad. 426.

—————S. 420—*Jail appeal—Notice to accused.*

Where an accused person is in jail and makes his appeal through the Jailor under S. 420 of the Cr. P. C., it is not necessary to issue a notice of hearing to him and the Court is competent to dismiss the appeal summarily

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Court should not hesitate to convict in an acquittal appeal more than it should hesitate to acquit in an appeal from a conviction, provided there are valid grounds for reversing the decision of the learned Judge of the trial Court. *Emperor v. Sulleman Khan*.

27 Cr. L. J. 1347 :
98 I. C. 467 : A. I. R. 1927 Sind 92.

—S. 417—Interference.

A reasonable decision of a Court entitled to deal with the matter should not be set aside merely because the High Court took a different view. *Emperor v. Kuru*.

36 Cr. L. J. 635 :
155 I. C. 118 : 35 P. L. R. 581 :
7 R. L. 641 : A. I. R. 1934 Lah. 523.

—Ss. 417, 449—Interlocutory order—Appeal.

S. 417, Cr. P. C., gives no power of appeal against an interlocutory order refusing to amend a charge, but if such an order is followed by an original or appellate order of acquittal, the Local Government has power to appeal against such acquittal. *Emperor v. Stewart*.

27 Cr. L. J. 1217 :
97 I. C. 1041 : A. I. R. 1927 Sind 28.

—S. 417—Limitation.

An appeal against acquittal should be brought as early as possible though limitation for it is six months. *Emperor v. U. San Win*.

33 Cr. L. J. 701 :
138 I. C. 523 : 10 Rang. 312 :
I. R. 1932 Rang. 170 : A. I. R. 1932 Rang. 146.

—S. 417—Limitation—Application for admission of appeal should be filed as early as possible.

Although there is subsisting a departmental circular stating that sanction to an appeal will be refused if it is filed after the expiration of three months, that does not mean that it is proper to wait for a period of three months, or anything like three months, before appealing against an acquittal. *Emperor v. Maung Aung Gyaw*.

38 Cr. L. J. 295 :
166 I. C. 645 : 9 R. Rang. 278 ;
A. I. R. 1937 Rang. 7.

—S. 417—Limitation.

Appeal should be preferred by Government with all reasonable expedition possible. *Mohammadi Gul Rohilla v. Emperor*.

33 Cr. L. J. 849 :
140 I. C. 49 : 28 N. L. R. 233 :
I. R. 1932 Nag. 118 :
A. I. R. 1932 Nag. 121.

—S. 417—Partial acquittal.

Order of acquittal on graver offence and conviction on lesser one—Appeal by accused on conviction—Dismissal of appeal—Local Government cannot appeal against acquittal but can apply under S. 439 for enhancement of sentence. *Modkia v. Emperor*.

33 Cr. L. J. 728 :
139 I. C. 63 : I. R. 1932 Nag. 85 :
A. I. R. 1932 Nag. 73.

—Ss. 417, 439—Partial acquittal—Appeal, competency of—Revision.**Cr. P. CODE (1898), S. 417**

Where an accused person is charged with offences under Ss. 395 and 302, Penal Code, and is acquitted of the latter charge and is convicted on the former charge, an appeal lies at the instance of the Local Government against the acquittal on the charge of murder in spite of the fact that the acquittal is only partial and the accused has been convicted of a lesser offence. In such a case, the High Court will not by virtue of the provision contained in Cl. (5) of S. 439, Cr. P. C., entertain an application by way of revision at the instance of the Local Government for enhancement of sentence under S. 395 I. P. C. or to set aside the conviction under that section and substitute one under S. 396 I. P. C. *Sitaram v. Emperor*.

26 Cr. L. J. 1364 :
89 I. C. 452 : 12 O. L. J. 421 :
2 O. W. N. 550 : A. I. R. 1925 Oudh 723.

—S. 417—Power of High Court.

Appeal against conviction before Bench—Bench may form opinion that some other conviction has been wrongly upheld in previous appeal. *Mohammadi Gul Rohilla v. Emperor*.

33 Cr. L. J. 849 :
140 I. C. 49 : 28 N. L. R. 233 :
I. R. 1932 Nag. 118 :
A. I. R. 1932 Nag. 121.

—S. 417—Principles—Interference with acquittal.

In an appeal against a conviction, it is only necessary to satisfy the Appellate Court that there is a reasonable doubt as to the guilt of the accused to induce the Appellate Court to interfere, but when there is a reasonable doubt as to the guilt of the accused, the Appellate Court will not interfere with an acquittal. Nor will the Court in this or any other proceedings forget that the burden of proof lies upon the prosecution. It is for the prosecution to prove the guilt of the accused; it is not for the accused to prove his innocence. The High Court will not interfere merely because there is room for an honest difference of opinion. The High Court will not interfere unless it is quite clear that the Judge or the Magistrate whose judgment of acquittal is appealed against is wrong. It is not intended that S. 417 should be used in every case where Government thinks there should be a conviction. It is not a power lightly to be used. It should be used only when there can be no reasonable doubt upon the record as to the guilt of the accused. *Emperor v. Gulab Shah Kadir Shah*.

39 Cr. L. J. 504 :
174 I. C. 835 : 10 R. S. 269 :
32 S. L. R. 689 : A. I. R. 1938 Sind 80.

—S. 417—Procedure.

Appeal against acquittal after dismissal of appeal against conviction—Appeal should be heard by Bench of Judges who did not appear in previous appeal. *Mohammadi Gul Rohilla v. Emperor*.

33 Cr. L. J. 849 :
140 I. C. 49 : 28 N. L. R. 233 :
I. R. 1932 Nag. 118 :
A. I. R. 1932 Nag. 121.

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———Ss. 421, 369, 561-A — *Dismissal in default—Judgment — Restoration.*

An appeal can be rejected under S. 421 without any formality. No judgment need be recorded in such a case and no reason of any description need be given. Where an appeal is dismissed in the absence of the appellant and his Pleader after giving them a reasonable opportunity of being heard in support of the appeal, the dismissal must be taken to be under S. 421, and is not open to review. *Nazar Mohammad Khan v. Hara Singh Bedi.*

27 Cr. L. J. 23 ;
91 I. C. 55 : 2 Lah. Cas. 103 :
A. I. R. 1926 Lah. 196.

———Ss. 421, 422, 423—*Dismissal in default—Order of dismissal of appeal for default can be set aside by District Magistrate—Dismissal of appeal for non-appearance illegal—Duty to call for records and pass judgment after perusal—Notice of hearing of appeal must be issued—Hearing without notice, illegal.*

A District Magistrate who has ordered the dismissal of a Criminal Appeal, merely by reason of the non-appearance of the appellant, is competent to set aside such order and thereafter to hear and decide the appeal according to law. The Cr. P. C. does not permit the dismissal of an appeal upon the ground that the appellant does not appear to support it. If an appeal is not dismissed summarily under S. 421, its disposal is governed by S. 423 and notwithstanding the non-appearance of the parties, the Court is bound to send for the record, peruse it and give judgment. Ss. 421 and 423 of the Code, read together, make it imperative, on a Criminal Appellate Court to hear the appeal at the time and the place named in the notices of appeal issued by it, and a hearing, of which no notice has been given, is, therefore, illegal. *Ratan Chand v. Emperor.*

9 Cr. L. J. 553 :
2 I. C. 247 : 5 N. L. R. 76.

———Ss. 421, 423,—*Dismissal in default—Appeal—Dismissal of appeal for non-appearance of appellant, legality of—Duty of Court to decide on merits.*

Under the Code of Criminal Procedure an appeal cannot be dismissed for non-appearance of the appellant on the day of hearing but the Court is bound to decide the appeal on the merits even if the appellant does not appear. *Roora v. Emperor.*

31 Cr. L. J. 979 :
126 I. C. 77 : 11 Lah. 242 :
31 P. L. R. 501 : A. I. R. 1930 Lah. 659.

———Ss. 421, 422, 423—*Hearing appellant.*

Under S. 421, Cr. P. C., an Appellate Court has no power to dismiss an appeal summarily without hearing the Advocate for the appellant, and such hearing should be on all points. Once the Appellate Court, decides to admit the appeal, it becomes unnecessary for the Advocate to address it further, and the power of Appellate Court to dismiss the appeal summarily comes to an end, and that section ceases to apply

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to the case. The provisions of S. 422 then become mandatory, and it is the duty of the Court *inter alia* to cause notice to be given to the appellant or his Advocate of the time and place at which such appeal will be heard. Under such circumstances, S. 423 also applies and only confers the power to dismiss the appeal after hearing the appellant or his Advocate, if he appears, and the Public Prosecutor, if he appears, besides perusing the record. Once the appeal has been admitted, it cannot be dismissed without hearing the accused or his Advocate. *Ta Pu v. Emperor.*

25 Cr. L. J. 933.
81 I. C. 549 : 3 Bur. L. J. 18 :
A. I. R. 1924 Rang. 294.

———Ss. 421, 561-A—*Hearing Appellant—Dismissal without hearing—Appellant—Re-hearing.*

The language of S. 421, Cr. P. C., requires a reasonable opportunity to be given to the appellant to be heard in support of his appeal, and if such reasonable opportunity is not given, the Court has no jurisdiction to dismiss the appeal. Where a criminal appeal is dismissed without reasonable opportunity having been given to the appellant or his counsel of being heard, the Court has inherent power to make an order that the appeal should be re-heard after giving the appellant or his Counsel a reasonable opportunity of being heard in support of the appeal. *Muhammad Sadiq v. Emperor.*

26 Cr. L. J. 1169 :
89 I. C. 593 : 7 L. L. J. 108 :
A. I. R. 1925 Lah. 355.

———S. 421—*Hearing pleader.*

A pleader in presenting an appeal was called upon by the District Magistrate to argue it the same day that the appeal was presented and the latter refused to grant him time to acquaint himself with the evidence in the case before he was heard : *Held*, that the District Magistrate's order dismissing the appeal summarily should be set aside, and the appeal should be re-heard, inasmuch as the appellant's pleader was not afforded reasonable opportunity of being heard in support of the appeal as required by S. 421, Cr. P. C. *Emperor v. Gurshida Balapa Jati.*

2 Cr. L. J. 58 :
7 Bom. L. R. 89.

———S. 421—*Hearing pleader—Advocate filing appeal not Advocate for appellant called upon to support appeal—Reasonable opportunity, if given.*

Where the Advocate filing the petition of appeal is not himself the Advocate for the appellant, a reasonable opportunity for hearing the Advocate cannot be said to have been given where he is called upon forthwith to support the appeal. *Nga Shwe Hmun v. Emperor.*

16 Cr. L. J. 538 :
29 I. C. 666 : U. B. R. 1915 II 52 :
A. I. R. 1915 U. Bur. 11.

———S. 421—*Hearing pleader—Appeal, hearing of—Practice in mofussil—Reasonable opportunity of being heard.*

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———S. 417—Scope.

Appeal against acquittal—Principles to be followed stated—Distinction between appeal against conviction and appeal against acquittal pointed out. *Emperor v. Rai Singh-Narain Singh*.

35 Cr. L. J. 137 :
146 I. C. 665 : 34 P. L. R. 1010 :
6 R. L. 254 : A. I. R. 1933 Lah. 871.

———S. 417—Scope—Bengal Regulation VIII of 1816—Bengal Regulation III of 1829—Legal Remembrancer, whether Public Prosecutor—Appeal presented by Legal Remembrancer, whether competent.

Although the office of Legal Remembrancer, Bengal, which received legislative sanction in Regulation VIII of 1816, was abolished by Regulation III of 1829, it was revived in 1844 or 1845, and the fact that the office is now the creation of executive or administrative order in no way obscures the identity of the officer. Therefore, an appeal against an acquittal presented to the High Court by the Superintendent and Remembrancer of Legal Affairs, Bengal, who by notification of date the 19th May, 1915, has been appointed by the Local Government to be by virtue of his office Public Prosecutor in all cases heard by the High Court of Bengal in the exercise of its appellate jurisdiction, is not incompetent. *Superintendent and Remembrancer of Legal Affairs, Bengal v. Tularam Barodia*.

20 Cr. L. J. 170 :
49 I. C. 490 : 23 C. W. N. 96 :
46 Cal. 544 : A. I. R. 1919 Cal. 203.

———S. 417—Scope—Fact and Law—High Court's power.

An appeal by the Government from an order of acquittal under S. 417, the High Court is a Court of Appeal on the facts as well as on law, and will decide whether as a matter of fact the accused made the false statement intentionally. *Government of Bengal v. Gannoo Mahto*.

10 Cr. L. J. 499 :
4 I. C. 124 : 9 C. L. J. 378.

———S. 417—Scope.

Grounds of appeal relating only to one section of Penal Code—Acquittal—Court cannot ascertain whether offence fell under any other section. *Emperor v. Ahmad Din*.

36 Cr. L. J. 165 :
152 I. C. 615 : 7 R. L. 296 :
A. I. R. 1934 Lah. 84.

———S. 417—Scope.

High Court has power of interference in case of erroneous acquittal—Distinction between appeal from conviction and appeal from acquittal pointed out. *Emperor v. Bhuro*.

35 Cr. L. J. 1142 :
150 I. C. 726 : 7 R. S. 21 :
A. I. R. 1934 Sind 184.

———S. 417—Scope—Obvious error in decision resulting in injustice—Government should make appeal.

Per *Ram Lal, J.*—(In order of reference). If a Judge or the Executive Government find that an obvious error in a decision has been com-

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mitted, whether the question involved is of greater or lesser public importance, a case of injustice is established and one in which it is the duty of Government to make an appeal. A case, however petty it may appear to an Administrator, is often a matter of great importance to the party affected by the decision, and it is the duty of the Executive Government to view the matter from this angle when considering the question of an appeal under S. 417. *Sham Lal v. Chaman Lal*.

40 Cr. L. J. 942 :
184 I. C. 358 : 41 P. L. R. 1 & 37 :
12 R. L. 212 : A. I. R. 1939 Lah. 406.

———S. 417—Scope—Setting aside of wrongful conviction—Opinion on abstract point cannot be obtained.

The object of S. 417 is not to obtain from the Chief Court opinions on abstract points which do not arise on the facts established in the case, but the object is only to enable the Local Government to have a wrongful acquittal converted into a conviction or to have a re-trial. *Emperor v. Patch Din*.

11 Cr. L. J. 65 :
4 I. C. 863 : 14 P. R. 1909 Cr.
34 P. W. R. 1909 Cr.

———S. 417—Scope.

The appellant is entitled to go into facts and ask the Court to come to a different view of the facts from that taken by the trial Court. *U Ba U v. Emperor*.

35 Cr. L. J. 855 :
148 I. C. 1069 : 6 R. Rang. 269 :
A. I. R. 1934 Rang. 44.

———S. 417—Scope.

With regard to the power of the High Court to interfere in appeal there is no difference between an appeal from an acquittal and an appeal from a conviction. In the Lahore High Court the inclination is in the interests of the person acquitted to attach more value and give greater prominence than other High Courts to the judgment of the lower Court. *Bhai Khan v. Emperor*.

32 Cr. L. J. 485 :
130 I. C. 324 : 31 P. L. R. 1026 :
I. R. 1931 Lah. 260 : A. I. R. 1931 Lah. 18.

———Ss. 417, 162—Scope—Finding of fact arrived by lower Court—Duty of Appellate Court—Presumption of innocence of accused, whether lessened by fact of acquittal.

In case of an appeal at the instance of the Government under S. 417 as a matter of jurisdiction, the whole case is at large before the High Court both as to the facts and as to the law. The Appellate Court will be slow to disturb a finding of fact arrived at by a Judge who has had opportunities for assessing the value of evidence which the Appellate Court has not had. But the Appellate Court pursuing this principle will be slow to substitute a view of the facts of its own for an opposite view of the facts held by the Judge below, where the latter are, upon the evidence, reasonable views, even though the Judges in the Appellate Court might have preferred a view of their own if the matter had been *res integra*. Moreover, the presumption of innocence and the title of the accused to the benefit of any doubt are certainly not lessened by the fact that they have been

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plainant, made after calling upon the latter to show cause and recorded as a postscript to and at the same time as the order of acquittal, on the same piece of paper and forming part of the same order, is not illegal merely on the ground that it has not been included in the order of acquittal. *Ram Narayan Acharjee v. Atul Chandra Das.* 18 Cr. L. J. 1014 : 42 I. C. 758 : A. I. R. 1918 Cal. 436.

—S. 253—*Procedure—Compensation, order for, without examining all complainant's witnesses, legality of.*

Before making an order against a complainant under S. 250 awarding compensation to the accused, notice should be given to the complainant and he should be permitted to adduce evidence. It is illegal to make such an order before concluding the examination of all witnesses of the complainant. *In re : Jonnalagadda Appalanarasayya Bhukta.* 22 Cr. L. J. 161 (a) : 59 I. C. 913 : 12 L. W. 388 : 39 M. L. J. 484 : 1920 M. W. N. 785 : 44 Mad. 51 : A. I. R. 1921 Mad. 597.

—S. 250—*Procedure—Compensation without examination of all prosecution witnesses.*

Compensation under S. 250, can be awarded only after the complainant has had an opportunity of producing all his evidence. Where, therefore, the Court refuses to examine all the witnesses produced by the complainant, whether their names appear in the list filed or not, the order for compensation is illegal. *Sya Kyaw v. Emperor.* 25 Cr. L. J. 1280 : 82 I. C. 288 : 3 Bur. L. J. 26 : A. I. R. 1924 Rang. 293.

—S. 250—*Procedure—Complaint, dismissal of, without examining all witnesses—Compensation.*

It is only after the examination of all the evidence a complainant wants to adduce that a Magistrate can come to a conclusion that the case is false and vexatious, and though a Magistrate is entitled to discharge the accused at any stage, he cannot award any compensation to the accused without examining all the complainant's witnesses. *Parthasarathi Naicker v. T. Krishnaswami Iyer.* 29 Cr. L. J. 114 : 106 I. C. 706 : 24 L. W. 86 : 51 Mad. 337 : 54 M. L. J. 641 : A. I. R. 1928 Mad. 169.

—S. 250—*Procedure.*

Duty of Magistrate when ordering compensation—*Procedure to be followed stated.* *Emperor v. Sarup Singh.* 34 Cr. L. J. 767 : 144 I. C. 412 : 27 S. L. R. 78 : 1933 Sind 186 : A. I. R. 1933 Sind 226.

—S. 250—*Procedure—Enquiry, nature of—Composition of offence—Effect.*

An inquiry as to whether a charge is not frivolous or vexatious, under S. 250, can only be instituted for the purpose of deciding whether compensation should be paid to the accused person. Proceedings under S. 250 are inapplicable where the accused person has himself by agreement with the prosecutor arrived at a

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settlement and been a party to the compounding of the offence. *In re : Harkisondas Haridas.* 2 Cr. L. J. 186 : 10 Bom. L. R. 1056 :

—S. 250—*Procedure—False and vexatious complaint—Order of compensation—Order passed at the same time as order of discharge.*

A Magistrate in discharging an accused recorded, at the same time when he ordered the discharge, his conclusion to the effect that the case was one in which the complainant ought to be ordered to pay compensation for making a frivolous and vexatious complaint. He then, recorded the complainant's objection, and added, under Cl. (b) of S. 250, to his order of discharge, a direction that the complainant should pay compensation : *Held*, the procedure was a sufficient compliance with S. 250. *Emperor v. Punamchand.* 4 Cr. L. J. 423 : 8 Bom. L. R. 847.

—S. 250—*Procedure—Frivolous and vexatious accusations—Compensation to be awarded along with order of discharge or acquittal.*

S. 250 is not intended to meet the case of false accusations but to meet frivolous and vexatious accusations. If a Magistrate wishes to direct payment of compensation in a frivolous case, he is to give the direction by his order of discharge or acquittal. Before pronouncing an order of discharge or acquittal, he has to call upon the complainant and to record and consider any objection that the complainant may make. An order for payment of compensation made in a separate proceeding after the accused has been discharged or acquitted is illegal. *Ram Singh v. Mathura.* 13 Cr. L. J. 247 : 14 I. C. 599 : 9 A. L. J. 308.

—S. 250—*Procedure—Notice to complainant to show cause—Hearing complainant—Necessity of.*

An order directing the complainant to pay compensation under S. 250, cannot be made without issuing notice to the complainant to show cause against it as required by the proviso to the section, which is imperative. *Imperator v. Achar.* 10 Cr. L. J. 220 : 2 S. L. R. 4.

—S. 250—*Procedure—Opportunity should be given to complainant to show cause before order is passed under S. 250 (2)—Compliance with Sub-section—What amounts to.*

S. 250 (1), contemplates that the Magistrate may, in the order of discharge or acquittal call upon the complainant to show cause why he should not pay compensation ; It is not correct to say that Sub-section contemplates or requires two orders ; one, the order in which he acquits or discharges the accused ; the other, the order in which he calls upon the complainant, if he thinks proper—to show cause why he should not pay compensation. Should the Magistrate in his order under Sub-s. (1) S. 250, say : " I find " instead of " I am of the opinion " it cannot be concluded therefrom that he has made up his mind that the complainant should pay compensation or that he has come to an unalterable decision that the complaint was false and either frivo-

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———S. 418—Scope.

Appeal lies both on matters of fact and of law except on trial by Jury—Severity of sentence is matter of law. *Mangal Singh v. Emperor*.

32 Cr. L. J. 858 :
132 I. C. 232 : 8 O. W. N. 344 :
I. R. 1931 Oudh 248 :
A. I. R. 1931 Oudh 171.

———S. 418—Scope.

Offence triable with Assessors—Case tried by Jury—Conviction—Appeal lies only on matters of law. *Dakhani v. Emperor*.

34 Cr. L. J. 441 :
142 I. C. 800 : 1932 A. L. J. 1103 :
55 All. 68 : I. R. 1933 All. 155 :
A. I. R. 1933 All. 128.

———S. 418 (1), 410, 536—Scope—Trial by Jury when it ought to be by Assessors—Appeal on fact, if maintainable.

Per Biscas, J. (McNair, J. contra).—Trial by Jury is not necessarily and in all circumstances a "privilege" which the accused is bound to accept as such or which must be presumed as a matter of law to be so "beneficial" as may be thrust on him. If it is a question of choice, it should be for the accused and the accused alone to make the election. It may be that it was the policy but not intention of the Legislature to treat trial by Jury as a privilege. A Jury trial would be a privilege only if and to the extent it could be regarded as sacrosanct, not where no finality attaches to it as in a Sessions trial held in a High Court. Any sentimental advantage that may be supposed to be inherent in such a mode of trial on notions derived from British criminal jurisprudence would be far outweighed by the "liabilities" incident thereto, in so far as it tended to affect the right of appeal. Where, therefore, through no fault of his a trial by Jury is imposed on an accused person in disregard of the express provisions of the statute which entitle him as of right to a trial with the aid of Assessors, it would be a manifest injustice to deprive him of a right of appeal which he would otherwise have had under the law. Such a result should be avoided by all means, unless of course this is necessitated by the constraining language of the Code. The words "where the trial was by Jury" in S. 418 (1), Cr. P. C., admit of two meanings and they must mean "where the trial in fact was by Jury," and "where trial was lawfully by Jury." S. 536, Cr. P. C., merely cures an admitted irregularity in procedure, but even so it says nothing as to whether a trial which should have been a trial with the aid of Assessors but was in fact held by a Jury should be deemed to have been held as a valid trial by Jury, or conversely whether a trial which should have been by Jury but was actually held with the aid of Assessors should be deemed a valid trial with Assessors. In any case S. 536 does not and cannot affect the right of appeal which is governed by S. 418 (1) read with S. 410. Where the trial ends in an acquittal, and

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there is or is not an appeal by the Local Government, there will be obviously no prejudice, and the trial may stand. But where it ends in a conviction, and the accused appeals, and the accused is sought to be shut out of an appeal on facts, he will certainly have been prejudiced and on a strict reading of S. 536 (1) the trial will be incurably bad. To render the trial valid in such a case, the right of appeal on facts would indeed have to be conceded. Prejudice may arise also in another way, where the Judge takes a view more favourable to the accused than the Jury but is unable to give effect to it because the trial is a trial by Jury. *Per McNair, J.*—The principle on which S. 418 is founded is that once the Jury have come to a decision on a question of fact, that decision is final and cannot be challenged either by the Judge of first instance or by the Judges in the Court of Appeal. In a trial with Assessors, the Judge is the Judge of fact, though his decision is aided by the expression of opinion of the Assessors, and his decision on questions of fact is liable to challenge. The accused has secured, as a result of being tried by a Jury when he ought to have been tried with the aid of Assessors, a privilege as valuable as if not more valuable than the right of appeal on facts. *Goloke Behari Takal v. Emperor*.

39 Cr. L. J. 161 :
173 I. C. 65 : 66 C. L. J. 25 :
42 C. W. N. 129 : 10 R. C. 441 :
I. L. R. 1938 1 Cal. 290 :
A. I. R. 1938 Cal. 51.

———S. 418—Verdict of Jury—Appeal.

Where the Judge, after convicting the accused accepting the unanimous verdict of the Jury against them, no appeal lies on the merits of the case under S. 418. *Emperor v. Chapai*.

35 Cr. L. J. 285 :
147 I. C. 53 : 10 O. W. N. 971 :
6 R. O. 213.

———S. 418—Verdict of Jury—Appeal—Finding of fact.

In an appeal from a conviction in a trial by Jury, it is not open to the High Court to go behind the finding of fact arrived at by Jurors. *Shabrati v. Emperor*.

35 Cr. L. J. 566 :
147 I. C. 1176 : 11 O. W. N. 202 :
6 R. O. 366 : A. I. R. 1934 Oudh 122 (1).

———S. 419—Appeal—Jail appeal, summary dismissal of—Regular appeal, whether lies.

The practice in the Allahabad High Court is that a summary dismissal of a jail appeal by a Judge does not, in any way, debar the filing of an appeal filed by Counsel. *Lachman Chamar v. Emperor*.

36 Cr. L. J. 300 (1) :
153 I. C. 153 (1) : 7 R. A. 453 :
4 A. W. R. 344 : A. I. R. 1934 All. 988 (1).

———Ss. 419, 420—Appeal—Scope—Jail decided—Appeal through Counsel not maintainable.

Where an appeal received from an appellant while in jail is dismissed, a subsequent appeal on his behalf filed through Counsel cannot be entertained because there is no warrant in

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the arguments adduced on behalf of the appellant or has applied its mind to the consideration of the facts of the case. *Krishna Pati v. Emperor*.

127 I. C. 847 : I. R. 1930 Pat. 751 :
12 P. L. T. 561 : A. I. R. 1930 Pat. 520.

S. 421—Recording of reasons.

Where a judgment does not give reasons for the decision and contains only the words, "Heard, I see no reason to interfere," it is not a sufficient compliance with the requirements of S. 421. *Barjoo Mahfo v. Emperor*.

36 Cr. L. J. 261 (1) :
153 I. C. 152 : 16 P. L. T. 72 : 7 R. P. 304 :
A. I. R. 1935 Pat. 37.

Ss. 421, 369, 436—Recording of reasons—Summary dismissal—Reasons for order.

A Court of the Criminal Appeal is not bound, when dismissing an appeal summarily under S. 421 to write a judgment as defined in S. 367. It is, however, advisable that it should give, as concisely as possible, at least the main reasons which govern its order in order to assist the High Court in dealing with a possible application for revision, and also because the presence of reasons gives information to the appellant that his appeal has received such consideration as it is entitled to have from the Appellate Court. *Ramrao v. Emperor*.

18 Cr. L. J. 993 :
42 I. C. 721 : 13 N. L. R. 169 :
A. I. R. 1917 Nag. 203.

S. 421—Scope—Appeal under S. 476-B—Summary dismissal.

An appeal under S. 476-B, Cr. P. C., is subject to all the provisions applicable to criminal appeals as laid down in S. 419 and the following sections and may, therefore, be summarily dismissed under S. 421 of the Code. *Mahomed Boyetulla v. Emperor*.

32 Cr. L. J. 325 :
129 I. C. 317 : 34 C. W. N. 923 : 58 Cal. 402 :
I. R. 1931 Cal. 157 : A. I. R. 1931 Cal. 3.

S. 421—Scope.

Dismissal of appeal summarily in exercise of powers under S. 421, is a judgment within S. 369. *Shahu v. Emperor*.

36 Cr. L. J. 831 :
155 I. C. 736 : 7 R. S. 206 :
A. I. R. 1935 Sind 84.

S. 421—Scope.

It is enough if opportunity of being heard is given to appellant or his Pleader. When it is given, neglect of either debars claim for second hearing. *Shahu v. Emperor*.

36 Cr. L. J. 831 :
155 I. C. 736 : 7 R. S. 206 :
A. I. R. 1935 Sind 84.

S. 421—Sending for record—Appeal, summary rejection of—Procedure.

A Magistrate is not required to call for the record in an appeal in which the only question is a mere question of fact and the judgment of the Court below is so plain and clear that calling for the record would be a mere waste of time, but it is not right to reject an appeal summarily when a point of law, which on the

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the face of it, is not without substance, has been raised. Nor is it right to refuse to call for the record when the judgment under consideration is a long and intricate judgment requiring obviously careful consideration. *Sukhdeo Pathak v. Emperor*. 19 Cr. L. J. 209-A :
43 I. C. 785 : 4 P. L. W. 39 : 3 P. L. J. 389 :
1918 Pat. 287 : A. I. R. 1918 Pat. 653.

S. 421—Sending for record—Credibility of witnesses impeached.

Where the conviction is based on the evidence of witnesses whose credibility is impeached by the accused on reasonable grounds, the appeal should not be summarily rejected under S. 421 without sending for the records. *Rangacharlu v. Emperor*.

4 Cr. L. J. 57 :
I. L. R. 29 Mad. 236.

S. 421—Summary dismissal.

A Criminal Appellate Court should hear the Pleader and ought not to dismiss an appeal summarily after the record has been sent for and received. *Lalit Kumar Sen v. Emperor*.

27 Cr. L. J. 382 :
92 I. C. 894 : 42 C. L. J. 551 :
A. I. R. 1926 Cal. 174.

S. 421—Summary dismissal.

A Magistrate dismissing an appeal summarily under S. 421 is not bound to write a judgment as defined in S. 367. *Kundan v. Emperor*.

14 Cr. L. J. 512 :
24 I. C. 600 : 12 A. L. J. 851 : 36 All. 496 :
A. I. R. 1914 All. 311.

S. 421—Summary dismissal.

After a criminal appeal is admitted, the Court has no jurisdiction to dismiss it summarily. *Ram Hari Chakraverty v. Santosh Kumar Manna*.

23 Cr. L. J. 733.
69 I. C. 461.

S. 421—Summary dismissal.

An Appellate Court has power to dismiss an appeal summarily on receiving the petition and perusing the same. But when the record is sent for and received, the appellant is entitled to be heard in support of his appeal. *Surendra Nath Ghose v. Emperor*.

27 Cr. L. J. 412 :
93 I. C. 76 : 42 C. L. J. 554 :
A. I. R. 1926 Cal. 161.

S. 421—Summary dismissal after sending for record, legality of—Desirability of noting points for which record is sent for, pointed out.

Where a Sessions Judge before whom a criminal appeal is presented, hears the Pleader but is in doubt whether he should summarily dismiss the appeal, but in order to satisfy himself as to the points raised by the appellants' Lawyer, he sends for the record of the case and having perused the same, dismisses the appeal summarily, it is not open to the appellants to say that they were not given sufficient opportunity at the time they presented the appeal. It is true that the Judge does not, in such a case, commit any illegality in the course so adopted by him but it is desirable in all cases where a busy Sessions Judge sends for the record in a criminal appeal, which is presented to him for admission, that he should

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after perusal of the papers submitted to it.
S Loung v. Emperor.

27 Cr. L. J. 933 :
96 I. C. 389.

———S. 420, 367—*Jail appeal—Summary dismissal—Practice of Oudh Court.*

The practice which has been followed in recent years of treating jail appeals summarily dismissed by Judges of the Oudh Chief Court as not finally dismissed unless and until they are sealed at the end of period of limitation, has no justification in law. Such appeals, as soon as a Judge or a Bench of Judges has decided them and signed and dated their order are decided appeals, and in such cases, a represented appeal subsequently filed is not maintainable.
Jodha v. King-Emperor.

41 Cr. L. J. 711 :
189 I. C. 83 : 1940 O. L. R. 408 :
1940 O. W. N. 594 : 13 R. O. 50 :
A. I. R. 1940 Oudh 369.

———Ss. 420, 421, Proviso—*Jail appeal—Appellant, if can insist on personal hearing—Power of Appellate Court.*

The rule 'hear the other side' *audi alteram partem* cannot be extended without qualification, to criminal appeals presented by a convict from jail under S. 420, Cr. P. C., The relevant provisions are contained in Ss. 419, 420 and 421, Cr. P. C. It is clear that the proviso to the last section deals with appeals presented under S. 419, and by the language used, the Legislature has expressly restricted the right of the appellant to be heard to cases under S. 419. By necessary implication the right to be heard under S. 420, Cr. P. C., has been denied though the inherent power of the Court to do justice by directing the accused to be produced before it for being heard upon his case, is not in any way limited. In spite of the restriction contained in the proviso to S. 421, wherever the Appellate Court considers it desirable that the accused should be heard, the Court has power to direct the production of the prisoner before it for disposing of the appeal. But it cannot be said that a convicted person presenting his appeal under S. 420 from jail has a right to be heard in person. *Jalam Bharatsingh v. Emperor.*

39 Cr. L. J. 578 :
175 I. C. 352 : 40 Bom. L. R. 317 :
10 R. B. 535 : I. L. R. 1938 Bom. 357 :
A. I. R. 1938 Bom. 279.

———Ss. 420, 422—*Jail appeal—Right of appellant to appear in person.*

Where in an appeal by a convict in jail, the stage has been reached of the appellant being given notice under S. 422, Cr. P. C., he is entitled, if he so desires to appear in person if he is not represented by a Pleader. *Lal Bahadur v. Emperor.*

29 Cr. L. J. 334 :
108 I. C. 122 : 26 A. L. J. 275 :
50 All. 543 : I. L. T. 40 All. 123 :
A. I. R. 1928 All. 84.

———S. 421.

———Admission.

———Admission of appeal.

———Appeal.

———Applicability.

———Dismissal, finality of.

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———Hearing appellant.

———Hearing pleader.

———Jail appeal.

———Power of Appellate Court.

———Procedure.

———Recording of Reasons.

———Scope.

———Sending for record.

———Summary dismissal.

———S. 421.

See also (i) Cr. P. C., 1898, Ss. 367, 370.
(ii) Criminal trial.

———Ss. 421, 422, 424—*Admission—Notice to appellant.*

It is competent to an Appellate Court to issue notice to the appellant and hear his arguments before admitting an appeal. *Maroti v. Kasabai.*
27 Cr. L. J. 1404 :
98 I. C. 716 : A. I. R. 1927 Nag. 88.

———S. 421—*Admission of appeal—Practice—Hearing of appellant.*

Practice in the mofussil to admit criminal appeals without any hearing condemned. *Munshi Abdul Latif v. Ahmed.*

34 Cr. L. J. 812 :
144 I. C. 704 : 37 C. W. N. 235 :
6 R. C. 9 : A. I. R. 1933 Cal. 515.

———S. 421—*Appeal—Duty of Court.*

An appeal should not be dismissed merely because the appellants do not appear to support the appeal, but the Appellate Court should consider whether there is sufficient ground for interfering which would imply judicial consideration of the appeal on merits. *Gulab Das v. Emperor.*

37 Cr. L. J. 93 :
159 I. C. 334 : 16 P. L. T. 607 :
2 B. R. 73 : 8 R. P. 273 (2) :
A. I. R. 1935 Pat. 460.

———S. 421—*Appeal—Partial dismissal at time of presentation—Effect.*

Court is bound by an order dismissing an appeal in part passed at the time of presentation of the appeal and the only portion of the appeal which will remain for decision will be that in respect of which there was no order for dismissal. *Kuldip Das v. Emperor.*

34 Cr. L. J. 118 :
141 I. C. 154 : 11 Pat. 697 :
I. R. 1933 Pat. 44 : A. I. R. 1933 Pat. 38.

———S. 421—*Applicability.*

S. 421 applies to all appeals including those under S. 476-B. *Baidyanath Giri v. Emperor.*

32 Cr. L. J. 735 :
131 I. C. 536 (1) : 12 P. L. T. 336 :
I. R. 1931 Pat. 216 :
A. I. R. 1931 Pat. 144.

———S. 421—*Dismissal, finality of.*

An order passed under S. 421, dismissing an appeal filed under S. 419, Cr. P. C. is *prima facie* final. *Shahu v. Emperor.*

36 Cr. L. J. 831 :
155 I. C. 736 : 7 R. S. 206 :
A. I. R. 1935 Sind 84.

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to straightaway argue the case. *Kolapali Narasimha Murti v. Emperor*. 32 Cr. L. J. 40 : 127 I. C. 803 : 32 L. W. 203 : 1930 M.-W. N. 686 : I. R. 1930 Mad. 1043 : 53 Mad. 865 : 59 M. L. J. 836 : A. I. R. 1930 Mad. 863.

S. 421 (1)—Summary dismissal—Duty of Court.

Clause (1) of S. 421 requires that the Appellate Court shall peruse the petition of appeal and the judgment appealed against and then if it considers that there is no ground for interfering, it may dismiss the appeal summarily. The order of the Appellate Court should show on the face of it that the Court had conformed to the requirements of the section to enable the revisional Court to find out whether the appeal was judicially disposed of. *Shambehari Singh v. Emperor*. 20 Cr. L. J. 271 : 50 I. C. 31 : A. I. R. 1919 Pat. 54.

S. 421—Summary dismissal—Hearing Counsel.

Where a petition of appeal signed by a Pleader is presented to a Magistrate by the party in person, the appeal cannot be dismissed without giving the Pleader a reasonable opportunity to appear. *Ranga Charlu v. Emperor*.

4 Cr. L. J. 57 : I. L. R. 29 Mad. 236.

S. 421—Summary dismissal—Hearing in support of appeal—Right of reply—Practice.

S. 421, Cr. P. C., lays down that the appellant in a criminal appeal or his pleader should have a reasonable opportunity of being heard in support of the appeal. This must be taken to include the possible right of reply, if necessary. *Amanat Sardar v. Nagendra Biswas*.

12 Cr. L. J. 9 : 9 I. C. 65 : 38 Cal. 307.

S. 421—Summary dismissal—Judgment, contents of.

S. 421 empowers an Appellate Court to dismiss an appeal summarily, but in doing so the Court must record an order giving reasons for the dismissal and showing that the points raised were duly considered by it. *Gobind Behari v. Emperor*.

22 Cr. L. J. 321 (b) : 61 I. C. 49 : 2 P. L. T. 10 : A. I. R. 1921 Pat. 27.

S. 421—Summary dismissal—Partial.

Terms of S. 421 exclude the possibility of partial summary dismissal. *Emperor v. Dahu Raut*.

36 Cr. L. J. 838 (2) : 155 I. C. 386 : 1935 O. W. N. 576 : 1935 M. W. N. 469 : 39 C. W. N. 626 : 4 L. W. 792 : 68 M. L. J. 653 : 37 P. L. R. 314 : 16 P. L. T. 387 : 61 C. L. J. 259 : 1935 A. L. J. 802 : 37 Bom. L. R. 557 : 62 Cal. 983 : 7 R. (P. C.) 194 : 1935 A. W. R. 691 (P. C.) : A. I. R. 1935 (P. C.) 89.

S. 421—Summary dismissal—Proper judgment.

The powers which are capable of being exercised under S. 421 should be exercised with

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considerable caution, and where there has been a dispute as to facts and where the credibility of witnesses for the prosecution has been impugned, it is proper for the Appellate Court to call for the records and look at the evidence. It is also desirable that in dismissing an appeal summarily, some indications should be recorded which may be a guide to any Court which may be asked to act in revisional jurisdiction. *Padarath Kurmi v. Emperor*. 24 Cr. L. J. 477 : 72 I. C. 893 : A. I. R. 1922 Pat. 552.

S. 421—Summary dismissal—Recording of reasons for.

Where an appeal is summarily dismissed under S. 421, it is not necessary that the reasons for the decisions should be recorded. It must be taken if an appeal is summarily dismissed, that there were no sufficient grounds for interfering. *Nitya Pal v. Beni Madhab Ghose*.

2 Cr. L. J. 344 : 9 C. W. N. 623.

S. 421—Summary dismissal.

Under S. 421, Cr. P. C., where the Court hears the appellant's Pleader before calling for the record, though in many cases it may be useful to hear the Pleader again to elucidate some point raised by a perusal of the record, there is no illegality in summarily dismissing the appeal without hearing the pleader again after the record is called for. *Dewal Mahton v. Emperor*.

31 Cr. L. J. 1131 : 126 I. C. 911 : 9 Pat. 768 : A. I. R. 1930 Pat. 499.

S. 421—Summary dismissal when improper.

In a case in which there are disputed questions of fact and a large number of documents, and the trial Court has come to certain findings, an appeal ought not to be summarily dismissed without sending for the record. *Rahimmaddi v. Emperor*.

22 Cr. L. J. 349 (a) : 61 I. C. 173 : A. I. R. 1921 J. 7.

S. 421 (2)—Summary disposal of appeal after calling for record and perusing it—Pleader for appellant once heard when presenting appeal—If should be heard again before dismissal.

S. 421 provides that on receiving the petition under S. 419 or S. 420 the Appellate Court shall peruse the same, and if it considers that there is no sufficient ground for interfering, it may dismiss the appeal summarily, provided that no appeal under S. 419, shall be dismissed unless the appellant or his pleader has had a reasonable opportunity of being heard in support of the same. Sub-s. (2) provides that, before dismissing the appeal under this section, the Court may call for the record, but shall not be bound to do so. There is nothing contained in the section about the right of the appellant or his pleader to have two reasonable opportunities of being heard by the Court. Provision is made only for one reasonable opportunity. Consequently, the Appellate Court, before dismissing an appeal summarily after calling for record and perusing the same

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Criminal appeals, which are supported by a pleader, are, in practice in the *mofussil*, admitted without any hearing except on the question of bail, the only cases which are usually dealt with under S. 421, Cr. P. C. being jail appeals. Therefore, where a pleader was called upon to support a criminal appeal the very moment that he filed it: *Held*, that he did not have a reasonable opportunity of being heard in support of the appeal within the meaning of S. 421, Cr. P. C., and that the order summarily rejecting the appeal should be set aside. If the Court desires to hear a Criminal appeal under S. 421 before admitting it, a week's notice should be given to the appellant's pleader. *Ramtohal Dusadh v. Emperor*.

9 Cr. L. J. 401 :
1 I. C. 868 : 36 Cal. 385 :
13 C. W. N. 684.

S. 421—Hearing pleader.

There is nothing in S. 421 to prevent a Court from hearing the appellant's pleader at the time when he presents the appeal if the appellant's pleader desires that course. If the records are sent for after hearing the pleader, there is no duty cast upon the Court under that section to hear the appellant or his Pleader again though it is preferable to do so because the arguments of the pleader about the evidence can then be better appreciated. *Basavanappa Basava v. Emperor*.

28 Cr. L. J. 467 :
101 I. C. 595 : 29 Bom. L. R. 488 :
A. I. R. 1927 Bom. 361.

S. 421—Hearing pleader.

Where the District Magistrate heard the pleader of the applicant under S. 421, Cr. P. C., and then decided to send for the record of proceedings, and after perusing the same, disposed of the case: *Held*, that the District Magistrate was not bound to give a second hearing to the pleader, as his order after the perusal of the record was one under S. 421, and not under S. 423, Cr. P. C. *Emperor v. Jivayo*.

10 Cr. L. J. 204 :
2 S. L. R. 39.

S. 421—Jail appeal—Procedure—Summary dismissal.

A convict filed an appeal from jail to the Court of Sessions and also presented a petition of appeal through a legal practitioner: *Held*, that the Sessions Judge was not competent to dismiss the appeal from jail summarily but should have heard the convict's pleader. *Bhawani Dehal v. Emperor*.

4 Cr. L. J. 373 :
3 A. L. J. 693 : 26 A. W. N. 303.

S. 421.

Jail appeal—Summary dismissal—Discretion is unfettered. *Allah Baksh v. Emperor*.

33 Cr. L. J. 259 (1) :
136 I. C. 281 (1) : 1931 A. L. J. 644 :
53 All. 797 : I. R. 1932 All. 169 (1) :
A. I. R. 1931 All. 555.

S. 421—Jail appeal summarily rejected—Appeal subsequently through Counsel, whether entertainable.

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An order dismissing an appeal under S. 421, Cr. P. C., is a final order, therefore, where a petition of appeal by a prisoner in Jail is received through the Superintendent of the Jail and is summarily rejected, he is not entitled to be heard upon a petition of appeal presented subsequently on his behalf by Counsel. *Khiali v. Emperor*.

23 Cr. L. J. 505 :
68 I. C. 41 : 20 A. L. J. 789 :
44 All. 759 : 4 U. P. L. R. All. 63 :
A. I. R. 1922 All. 480.

Ss. 421, 430—Jail appeal, rejection of—Appeal through Counsel, whether maintainable.

Where an appeal has once been presented by a prisoner in Jail through an officer in charge of the Jail and dismissed, it is no longer open to him to file another appeal through Counsel. The order on the first appeal is final and cannot be re-opened. *Ram Autar v. Emperor*.

25 Cr. L. J. 1313 :
82 I. C. 545 : 11 O. L. J. 536 :
1 O. W. N. 354 : A. I. R. 1924 Oudh 425.

S. 421—Power of Appellate Court.

A Criminal Appellate Court ought not to dismiss an appeal because nobody appears for the appellant, it is the duty of that Court to examine the matter and to come to some sort of decision on the merits. *Baldeo Dubey v. Emperor*.

24 Cr. L. J. 475 :
72 I. C. 891 : 1 P. L. R. 29 Cr.

S. 421—Procedure—Appeal—Right of Counsel to refer to certified copies.

At the hearing of an appeal under S. 421, Counsel for the appellant is entitled to refer to certified copies of the evidence. *Manga v. Emperor*.

9 Cr. L. J. 55 :
11 O. C. 360.

S. 421—Procedure—Criminal appeal—Presentation of papers—Appeal, hearing of—Special posting.

A criminal appeal should not be heard at the time of the presentation of the papers, even for the purposes of dismissal under S. 421, Cr. P. C. The posting for the purpose of hearing must be a special posting after a reasonable time, not less than a week. *In re Turka Hussain Sahib*.

26 Cr. L. J. 411 :
84 I. C. 1051 : 20 L. W. 623 :
47 M. L. J. 661 : 1924 M. W. N. 893 :
48 Mad. 385 : A. I. R. 1924 Mad. 895.

S. 421—Procedure—Magistrate, on presentation of appeal, allowing Pleader of appellant to argue case in full—Appellant is allowed reasonable opportunity within meaning of S. 421—It is unnecessary to hear appellant or his Pleader again after arrival of record in Appellate Court.

All that S. 421 requires that the Appellate Court before dismissing an appeal summarily, must afford the appellant or his Pleader a reasonable opportunity of being heard. It would be a sufficient compliance with the Statute if such reasonable opportunity is afforded either on the first presentation of the appeal or if the Appellate Court sends for the record, after the record has been received. Hence where a Magistrate allows

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Appeal by—Compensation awarded to complainant—Notice of appeal to complainant.

Although there is no provision in the Cr. P. C. providing for notice of an appeal by the accused being given to the complainant, yet it is settled practice of the Calcutta High Court, in a case where compensation has been awarded to the complainant, to give notice of the appeal to him, and an acquittal, in the absence of such notice, is liable to be set aside by the High Court in revision. *Bharasa Now v. Sukhdeo.*

27 Cr. L. J. 1086 :

97 I. C. 62 : 43 C. L. J. 583 :

53 Cal. 969 : A. I. R. 1926 Cal. 1054.

—————S. 422—*Notice to complainant.*

In an appeal against conviction and order for compensation, an absence of notice to the complainant is not material. *Peria Kalathi v. Venkatesa.*

33 Cr. L. J. 596 :

138 I. C. 385 : 1932 M. W. N. 722 :

I. R. 1932 Mad. 561.

—————S. 422—*Notice to Public Prosecutor, absence of—Effect.*

One of the fundamental principles of law is that no order should be passed to the detriment or prejudice of a party without giving him an opportunity of being heard in defence. Where no notice of the hearing of an appeal by the accused is given to the Public Prosecutor as provided by S. 422, the High Court will set aside an order of acquittal passed by the Appellate Court. *Bharasa Now v. Sukhdeo.*

27 Cr. L. J. 1086 :

97 I. C. 62 : 43 C. L. J. 583 :

53 Cal. 969 : A. I. R. 1926 Cal. 1054.

—————S. 422—*Petty offence—Setting aside—Acquittal.*

The Court will not lightly set aside an acquittal especially where the offence is a petty one. *Peria Kalathi v. Venkatesa.*

33 Cr. L. J. 596 :

138 I. C. 385 : 1932 M. W. N. 722 :

I. R. 1932 Mad. 561.

—————S. 422—*Scope.*

S. 422 deals only with appeals and there is no similar section dealing with revisions, nor does any section apply this procedure to revisions. *Sat Narain Lal v. Emperor*

41 Cr. L. J. 876 :

190 I. C. 225 : 1940 A. L. J. 462 :

I. L. R. 1940 All 539 : 13 R. A. 188 :

1940 A. W. R. 379 : A. I. R. 1940 All. 426.

—————Ss. 422, 495—*Scope—Complainant, if has right of audience—Acquittal.*

When the Crown appears, it is undesirable to allow a complainant or any one else to appear as well. The principle applies with even greater force to appeals, especially when S. 422 does not require or even contemplate, the complainant's presence. It would be unfortunate to allow private passions and prejudices to creep into the conduct of a criminal trial, when it can be avoided. It would be even more undesirable to leave the matter in two sets of hands with a possible conflict of

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interest, undesirable generally from the broad view point of public policy, undesirable also because it would be unfair to the accused. Therefore, if the other side is properly represented by the Crown, not only has the complainant no right of audience but ordinarily he should not be allowed to appear at all. *Jalaluddin v. Kartikram.* 38 Cr. L. J. 433 :

167 I. C. 569 : 19 N. L. J. 158 :

9 R. N. 202 : A. I. R. 1937 Nag. 123.

—————S. 423.

- Acquittal, appeal from.
- Alteration of conviction.
- Alteration of finding.
- Alteration of sentence.
- Amendment.
- Appeal.
- Appellate Judgment, contents of.
- Applicability.
- Construction.
- Conviction.
- Conviction for graver offence.
- Costs, award of.
- Dismissal for default.
- Dismissal in default.
- Dismissal of appeal.
- Duty of Appellate Court.
- Enhancement of sentence.
- Interference.
- Jury trial.
- New Case.
- Objection.
- Powers of Appellate Court.
- Procedure.
- Property.
- Provisions imperative.
- Remand.
- Restoration of property.
- Re-trial.
- Reversal of finding.
- Revision.
- Right to reply.
- Scope.
- Scope of.
- Summary dismissal.
- Verdict of Jury.

—————S. 423.

See also (i) Appeal.

(ii) Appellate Court.

(iii) Cr. P. C., 1898, Ss. 107, 145, 148 (3), 193, 237, 289 (2), 297, 306, 307, 342, 366, 417, 421, 439, 514.

(iv) Fugitive Offenders Act, 1881, (44 & 45 Vic. Ch. 69), Ss. 14, 19.

(v) Penal Code, 1860, Ss. 243, 289, 302.

—————S. 423 (1) (a)—*Acquittal, appeal from—Duty of prosecution.*

In an appeal against an acquittal, although the accused was not acquitted on the merits, it is for the Crown to establish, and to establish beyond reasonable doubt that the conviction of the accused on the merits ought to have been sustained. *Emperor v. Padam Singh.*

31 Cr. L. J. 954 :

126 I. C. 5 : 1930 A. L. J. 955 :

A. I. R. 1930 All. 490.

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the Pleader for the appellant to argue his client's case in full, the appellant is allowed a reasonable opportunity of being heard in support of his appeal within the meaning of S. 421, and it is unnecessary to hear the appellant or his Pleader again after the arrival of the record in the Appellate Court. *Akramaddin v. Emperor*.

40 Cr. L. J. 839 :
183 I. C. 742 : I. L. R. 1939 1 Cal. 314 :
12 R. C. 179 : A. I. R. 1939 Cal. 541.

-----**Ss. 421, 422—Procedure—Appeal against conviction on two charges—Admission of appeal as to one charge and summary dismissal as to the other—Piece-meal disposal, legality of.**

A person was convicted on two separate charges in one trial. On appeal, the Sessions Judge summarily dismissed the appeal on one charge and admitted the appeal on the other charge, and the appeal on the second charge was ultimately allowed : *Held*, that the procedure adopted by the Sessions Judge in disposing of the appeal piece-meal, though undesirable, was not illegal. *L. M. Ismail v. Emperor*.

28 Cr. L. J. 765 :
103 I. C. 845 : 5 Rang. 274 :
A. I. R. 1927 Rang. 239.

-----**S. 421—Recording of reasons.**

A Sessions Judge or a Magistrate whose orders are subject to revision by the High Court ought to give some reasons for summarily dismissing a criminal appeal under S. 421. *Jagnarain Dubey v. Ghinhu Dubey*.

36 Cr. L. J. 191 :
152 I. C. 801 : 16 P. L. T. 48 :
7 R. P. 246 : A. I. R. 1935 Pat. 32.

-----**S. 421—Recording of reasons—Appcal, dismissal of—Magistrate called upon to show cause why it should not be re-heard—Duty of Magistrate.**

When a Magistrate is called upon by the High Court to show cause why an appeal dismissed by him summarily should not be re-heard, the Magistrate is bound to give reasons which had actuated him to dismiss the appeal. It is not enough for him to say "I should not be justified in taking up their Lordships' time over this trumpery case." *Ram Hari Chakraverty v. Santosh Kumar Manna*.

23 Cr. L. J. 733 :
69 I. C. 461.

-----**S. 421—Recording of reasons.**

Court should record reasons for rejection of appeal summarily. *Abdul Latif v. Ahmad*.

34 Cr. L. J. 812 :
144 I. C. 704 : 37 C. W. N. 235 :
6 R. C. 9 : A. I. R. 1933 Cal. 515.

-----**S. 421—Recording of reasons.**

It is not necessary for an Appellate Court in dismissing an appeal summarily to write a judgment. *Emperor v. Nga Sein Gyi*.

4 Cr. L. J. 284 :
U. B. R. Cr. 1906.

-----**S. 421—Recording of reasons.**

It is necessary that a Magistrate dismissing a case summarily under S. 421 should state

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his reasons for thus dismissing it. An Appellate Court should exercise its powers under S. 421 with great care. *Thakuri v. Emperor*.

34 Cr. L. J. 1017 (1) :
145 I. C. 652 (1) : 6 R. B. 197 :
A. I. R. 1933 Pat. 160.

-----**S. 421—Recording of reasons—Summary dismissal—Judgment, contents of—Appellate Court, duty of.**

It is the duty of an Appellate Court in dealing with an appeal under S. 421 to record reasons for dismissing it summarily, and its judgment should show that the evidence and arguments advanced have been considered. *Ganesh Ram v. Gyan Chand*.

21 Cr. L. J. 139 :
54 I. C. 619 : A. I. R. 1920 Pat. 522.

-----**S. 421—Recording of reasons, summary dismissal—Judgment, whether should set forth reasons.**

Where a Court rejects an appeal under S. 421, it should record shortly its reasons for such rejection in view of the possibility of such an order being challenged by an application for revision. *Brij Mohan Lal v. Emperor*.

26 Cr. L. J. 4 (b) :
83 I. C. 484 : A. I. R. 1925 Oudh 290.

-----**S. 421—Recording of reasons—Summary dismissal—Judgment, writing of, necessity of.**

S. 421 empowers an Appellate Court to dismiss an appeal summarily without writing a judgment or giving reasons, but it is within the power of the High Court in revision to say after having regard to the facts of each particular case whether or not the Appellate Court has exercised a proper discretion in acting under that section. If the High Court finds that the case is one which should not have been dealt with summarily, the High Court will send the case back ordering the Appellate Court to hear it on its merits and pass a judgment. *Nga Ba Myit v. Emperor*.

19 Cr. L. J. 316 :
44 I. C. 332 : A. I. R. 1919 L. Bur. 154.

-----**S. 421—Recording of reasons—Summary dismissal—Reasons.**

In dismissing appeals under S. 421, some reason should be given, and without such reason, the summary dismissal would involve either a remand of the appeal to be admitted and heard or an examination of the evidence by the High Court. *Rama Kant Pandit v. Emperor*.

19 Cr. L. J. 304 :
44 I. C. 208 : 4 P. L. W. 212 :
A. I. R. 1918 Pat. 660.

-----**S. 421—Recording of reasons—Summary dismissal without recording reasons, propriety of.**

Though it is not illegal to dismiss an appeal summarily under S. 421 without giving any reasons, the Appellate Court which thus summarily disposes of an appeal without discussing the arguments of the Advocate for the appellant takes a risk that the appeal would be remanded unless the High Court is satisfied that the Appellate Court really has considered

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—S. 423—*Alteration of conviction—Penal Code Ss. 147, 323—Charge and conviction under S. 147—Appeal—Conviction, alteration of, to one under S. 323.*

In the absence of a charge under S. 323, Penal Code, framed against an accused person during the trial, a conviction under S. 147, Penal Code, cannot be altered in appeal to one under S. 323 of the Code. *Rakhal Chandra Biswas v Jamini Kanta Banerjee*. 26 Cr. L. J. 1018 (a); 87 I. C. 842 : 30 C. W. N. 528 : A. I. R. 1926 Cal. 431.

—S. 423—*Alteration of conviction—Penal Code Ss. 147, 323, 358—Charges under Ss. 147, 353—Conviction under S. 323—Appellate Court, conviction by, under S. 147, legality of.*

Accused were charged by the trying Magistrate under Ss. 147 and 353, Penal Code, but were ultimately convicted under S. 323 of the Code. On appeal the Sessions Judge pointed out that the conviction under S. 323, could not be maintained, but holding that the accused had been guilty of rioting, he altered the conviction to one under S. 147, Penal Code, maintaining the sentences imposed under S. 323 : Held, that the procedure adopted by the Sessions Judge was not illegal. *Mahangu Singh v. Emperor*. 19 Cr. L. J. 735 (b) : 46 I. C. 415 : 1918 Pat. 192 : 3 P. L. J. 565 : A. I. R. 1918 Pat. 257.

—S. 423—*Alteration of conviction—Penal Code (Act XLV of 1860), Ss. 183, 353.*

An Appellate Court has power under S. 423, to alter a conviction from one under S. 353 to one under S. 183, Penal Code. *Kunhambu v. Emperor*. 14 Cr. L. J. 239 : 19 I. C. 335 : 1912 M. W. N. 1110.

—S. 423—*Alteration of conviction—Penal Code, Ss. 380, 403—Trial and charge for theft—Conviction for criminal misappropriation, legality of.*

Where a person has been charged and tried for an offence under S. 380, Penal Code, he can be legally convicted under S. 403 of the Code if he has not been taken by surprise by such a procedure. *Biru v. Emperor*. 30 Cr. L. J. 413 : 115 I. C. 25 : 11 L. L. J. 113 : I. R. 1929 Lah. 361 : A. I. R. 1929 Lah. 508.

—S. 423—*Alteration of conviction—Penal Code, Ss. 411, 457—Charge, alteration of—Appellate Court, power of.*

A charge cannot be so altered by an Appellate Court as to make it necessary for the accused to meet an absolutely different case from that with which he was charged in the Trial Court. Where an accused person is tried for an offence of house-breaking in order to commit theft, under S. 457, Penal Code, together with other accused persons charged with the offence of being in possession of stolen property on different dates, under S. 411, Penal Code, he cannot, in the Appellate Court, be charged with and convicted for an offence under S. 411, Penal Code. *Mula v. Emperor*. 26 Cr. L. J. 1494 : 90 I. C. 150 : 23 A. L. J. 924 : A. I. R. 1926 All. 33.

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—S. 423—*Alteration of conviction—Penal Code, Ss. 420, 471—Cheating—Using forged document as genuine—Appeal—Conviction under S. 420, whether can be convicted into one under S. 471—Notice to accused—Prejudice—Knowledge of forgery, proof of.*

The offence of cheating under S. 420, Penal Code, is an entirely different offence from that under S. 471 of the Code, viz., using as genuine a forged document knowing it as such, and a conviction for the former offence cannot be altered by an Appellate Court into one for the latter offence unless the accused has notice of the fact and is not prejudiced by the want of notice. *Akbar Hussain v. Emperor*. 26 Cr. L. J. 1358 : 89 I. C. 398 : 8 N. L. J. 87 : A. I. R. 1925 Nag. 294.

—S. 423—*Alteration of conviction.*

The fact that the accused were acquitted of the offence of murder is no bar to their conviction under S. 307, Penal Code, in appeal. *Emperor v. Sheo Narain Singh*. 37 Cr. L. J. 12 : 158 I. C. 945 : 1935 O. W. N. 1177 : 1935 O. L. R. 630 : 8 R. O. 148 : A. I. R. 1936 Oudh 44.

—S. 423—*Alteration of conviction.*

The High Court has, under the combined provisions of Ss. 423 and 439, power to alter a conviction under S. 326, Penal Code, to one under S. 302. *Mehdi v. Emperor*. 35 Cr. L. J. 250 : 146 I. C. 949 : 35 P. L. R. 238 : 6 R. L. 291 : A. I. R. 1933 Lah. 661.

—S. 423—*Alteration of conviction.*

Under S. 423 an Appellate Court can alter the finding while maintaining the sentence without enhancing it, and the power of an Appellate Court to alter the finding cannot be limited. *Lakhan Singh v. Emperor*. 35 Cr. L. J. 973 : 149 I. C. 533 : 11 O. W. N. 534 : 6 R. O. 572 : A. I. R. 1934 Oudh 200.

—S. 423—*Alteration of conviction.*

Under S. 423 (b) in an appeal from conviction, the Appellate Court may alter the finding maintaining the sentence or with or without altering the finding reduce the sentence. *Superintendent and Remembrancer of Legal Affairs, Bengal v. Hossein Ali*. 39 Cr. L. J. 684 (a) : 175 I. C. 799 (1) : 42 C. W. N. 1040 : 11 R. C. 38 : A. I. R. 1938 Cal. 439.

—S. 423—*Alteration of conviction.*

Where a person is tried and convicted of a particular offence, it is illegal for a Court of Appeal to alter the conviction to one for an altogether different offence. *Raghu Singh v. Emperor*. 21 Cr. L. J. 496 : 56 I. C. 592 : 1 P. L. T. 221 : A. I. R. 1920 Pat. 590.

—Ss. 423, 439 (4)—*Alteration of conviction—Penal Code, Ss. 109, 205, 419—Personation—Cheating by personation—Conviction under S. 205—Appeal—Conviction altered to one for*

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note in the order-sheet the points for which he is sending for the record in order to satisfy himself as to the correctness of the submissions made by the appellants before him. It will be difficult in many cases, if not in all, for a busy Sessions Judge to remember the submissions which were advanced by the appellants' advocate which had satisfied him to this extent that he was forced to send for the record.

Basdeo Koiri v. Emperor. 39 Cr. L. J. 254 :
172 I. C. 944 : 18 P. L. T. 915 :
4 B. R. 204 : 10 R. P. 369 :
A. I. R. 1938 Pat. 12.

————S. 421—*Appeal prima facie barred by time—Summary dismissal—Pleader, whether must be heard.*

S. 421 contemplates an appeal that has been properly put on the file of the Appellate Court and it cannot, therefore, be said that in every case, where the Appellate Court dismisses an appeal as time-barred without hearing the pleader of the appellant, his order amounts to an illegality. Ordinarily, however, an appellant should, in such a case, be given an opportunity of being heard in the matter through his Pleader before an order is made dismissing the appeal summarily as barred by time.

Nuruddin Shaikh Adam v. Emperor.

28 Cr. L. J. 653 :
103 I. C. 109 : 29 Bom. L. R. 701 :
A. I. R. 1927 Bom. 445.

————S. 421—*Summary dismissal.*

Appellant's pleader heard at presentation of appeal—Record sent for—Summary dismissal thereafter without hearing is illegal. *Hatem Ali v. Emperor.*

33 Cr. L. J. 602 :
138 I. C. 384 : I. R. 1932 Cal. 453 :
A. I. R. 1932 Cal. 397.

————S. 421—*Summary dismissal—Appellate Court, duty of.*

An Appellate Court is not required by law to write a judgment when dismissing an appeal summarily, but it is desirable that in dealing with an appeal under S. 421, the Court should give some reason for dismissing the appeal summarily. It should record at least so much as would satisfy the High Court when an application for revision is made, that it had fully considered all the questions in issue and had appreciated the simplicity or gravity of the case.

Gurnhari Behera v. Emperor.

19 Cr. L. J. 151 :
43 I. C. 439 : 2 P. L. J. 695 :
4 P. L. W. 153 : A. I. R. 1918 Pat. 597.

————S. 421—*Summary dismissal.*

Appellate Court is not entitled to dismiss an appeal summarily in terms of S. 421 unless the Court is satisfied that there is no sufficient ground for interfering in accordance with the relief sought in the appeal, and where the appeal is not dismissed summarily, the Court is bound in order to the disposal of the appeal, to comply with the provisions of S. 422 as to notice, and with the provisions of S. 423 as to

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sending for the record, if such record is not already in Court. *Emperor v. Wahu Raut.*

36 Cr. L. J. 838 (2) :
155 I. C. 386 : 1935 O. W. N. 576 :
1935 M. W. N. 469 :
39 C. W. N. 626 : 41 L. W. 792 :
68 M. L. J. 653 : 37 P. L. R. 314 :
16 P. L. T. 387 : 61 C. L. J. 259 :
1935 A. L. J. 802 : 37 Bom. L. R. 557 :
62 Cal. 983 : 1935 A. W. R. 691 :
7 R. P. C. 194 (P. C.) :
A. I. R. 1935 (P. C.) 89.

————S. 421—*Summary dismissal—Application under S. 105 (6), Criminal Procedure Code.*

An application under S. 105 (6), Cr. P. C., preferred by way of appeal against an order granting sanction to prosecute, should not be summarily rejected without giving the applicant's pleader reasonable opportunity of being heard in support of the same. *Raj Kumar Singh v. Tincoveri Mazumdar.*

9 Cr. L. J. 189 :
12 C. W. N. 248.

————S. 421—*Summary dismissal—Complicated case—Appellate Court, duty of.*

Though S. 421, Cr. P. C. gives an Appellate Court power to summarily dismiss an appeal, that power must be exercised with judicial discretion; and appeals in cases which are complicated both in law and in fact should not be disposed of under this section. *Kailash Chandra Chakrabarty v. Emperor.*

19 Cr. L. J. 228 (A) :
43 I. C. 820 : A. I. R. 1918 Cal. 106.

————S. 421—*Summary dismissal—Discretion.*

Although it is not required by law that a Sessions Judge should write a regular judgment when exercising the powers of summary dismissal given to him by S. 421, Cr. P. C. still the matter being one for discretion on the part of the subordinate Appellate Courts, it is very important that such discretion should be exercised upon sound and reasonable lines.

Aman Ali v. Emperor.

11 Cr. L. J. 631 :
8 I. C. 379 : 13 O. C. 309.

————S. 421—*Summary dismissal—Dismissal of appeal at the time of presentation, legality of.*

It cannot be laid down as a rule of law that a criminal appeal should not be heard at the time of presenting the papers even for the purpose of dismissal under S. 421, Cr. P. C., and that there must be a special posting of the appeal after a reasonable time for the purpose of hearing under S. 421, and there is no distinction in this respect between appeals relating to facts and appeals raising questions of law. But it is a wise rule in proceeding under S. 421 to give sufficient time to the appellant or his pleader and to inform him that he will be heard on a particular day in support of the appeal with a view to action being taken under S. 421 inasmuch as in the great majority of cases when an appeal is presented, neither the appellant nor his Pleader may be in a position

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Chap. VIII, Cr. P. C., and who has failed to give the required security, should be detained in person with rigorous and not with simple imprisonment as had been ordered by the trial Magistrate, the person not being a convict, the High Court is not limited in the exercise of its revisional powers by the conditions imposed in S. 423 (1) (b). It can act under Cl. (c) of that section and has jurisdiction to alter the order. *Emperor v. Maung Chabilo*.

38 Cr. L. J. 168 :

166 I. C. 298 : 9 R. S. 135 : 30 S. L. R. 322 :

A. I. R. 1936 Sind 188.

———Ss. 423, 439—*Altering finding—Powers of Appellate Court—Reversal and alteration of finding—Distinction—Accused charged with two offences—Acquittal of one and conviction for other—Appellate Court altering conviction into acquittal and vice versa—Legality of.*

There is clearly a distinction between reversing a finding and merely altering it. Where an order of acquittal is to be converted into an order of conviction, it amounts to a reversal of the order. On the other hand where the conviction under one section is altered to a conviction under some other section maintaining the sentence or reducing it or altering it, it amounts merely to an alteration of the finding and not to reversal of the finding. S. 423 (1) is not applicable to a case where there is an express order of acquittal and no appeal from a conviction pending before the Appellate Court. In such a case the Appellate Court has no power to reverse the finding at all. It cannot by convicting the accused of the offence of which he has been acquitted reverse the finding by regarding it as if it were merely an alteration of the finding. When a person accused of two offences is acquitted of one offence but convicted of the other and there is no Government appeal, the Appellate Court cannot by convicting him of the offence of which he had been acquitted reverse the finding of the lower Court by regarding it as if it were merely an alteration of the finding. It may report the case to the High Court for proper orders if it considers the acquittal to be wrong. *Sarda Prasad v. Emperor*.

38 Cr. L. J. 521 :

168 I. C. 17 : 1937 A. L. J. 143 :

1937 A. W. R. 66 : 9 R. A. 623 :

A. I. R. 1937 All. 240.

———S. 423 (1) (b)—*Alteration of sentence of 3 months' rigorous imprisonment into one month's imprisonment and a fine—Payment of fine—Alteration, whether amounts to enhancement.*

Where a District Magistrate on appeal altered the sentence of three months' rigorous imprisonment to one month's rigorous imprisonment and a fine of Rs. 100 or in default, one month's further rigorous imprisonment and the fine was paid and the appellant did not wish to have the original sentence restored: *Held*, that in the circumstances of the case, the alteration did not amount to an enhancement. *Kirpa Ram v. Emperor*.

16 Cr. L. J. 603 :

30 I. C. 155 : 7 P. R. 1915 Cr. :

26 P. L. R. 1916 : A. I. R. 1914 Lah. 539.

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———S. 423 (d)—*Amendment—Expunging remarks against witnesses by subordinate Courts—High Court, power of—"Amendment," meaning of.*

A High Court has no authority to expunge remarks from judgments of subordinate Criminal Courts which reflect on certain witnesses in cases in which the effective orders of the lower Courts are not before the High Court in appeal or in revision. The word "amendment" in S. 423 (d) means amendment of an effective order of the Court below. *A. C. Dunn v. Emperor*.

23 Cr. L. J. 349 :

66 I. C. 1005 : 20 A. L. J. 261 :

44 All. 401 : 4 U. P. L. R. All. 166 :

A. I. R. 1922 All. 107.

———S. 423—*Appeal against order of conviction passed on one of the accused—Whether Appellate Court can disturb order of acquittal as regards other accused.*

A. and D. were tried for a certain offence, A. was convicted and D. was acquitted. An appeal was preferred on behalf of A. to the Sessions Judge: *Held*, that the Sessions Judge had no jurisdiction to pass an order effecting the acquittal of D. *Darbari Mal v. Emperor*.

12 Cr. L. J. 575 :

12 I. C. 839 : 8 A. L. J. 1129.

———Ss. 423, 537 (2)—*Appeals from trial by Jury and trial with Assessors, difference between.*

The considerations governing the appeal from the trial held with the aid of Assessors differ greatly from those governing an appeal from the trial by a Jury. In the latter case the appeal is restricted by the provisions of Ss. 423 (2) and 537, whereas in the former case, the whole case is before the Appellate Court. *Champa Pasin v. Emperor*.

29 Cr. L. J. 325 :

108 I. C. 81 : A. I. R. 1928 Pat. 326.

———S. 423—*Appellate judgment, contents of.*

An Appellate Court is not required to write a long and elaborate judgment, but it is clearly its duty, not only to examine the evidence, but also to write a judgment affording a clear indication that the appeal has been properly tried and that the points urged by the appellant have been duly considered and decided. An Appellate Court, which writes a judgment which a High Court is unable to follow without reference to the judgment of the trial Court, obviously fails in the discharge of the duty imposed upon it by the law. *Dalip Singh v. Emperor*.

23 Cr. L. J. 9 :

64 I. C. 377 : 2 Lah. 308 :

4 U. P. L. R. Lah. 9 :

24 P. L. R. 1922.

———S. 423 (1) (b)—*Applicability—If applies to cases of acquittal, partial or total.*

The words "alter the finding maintaining the sentence" occurring in S. 423 (1) (b) (2) must be read as a whole. The powers under S. 423 (1) (b) of altering the finding and then as a Court of Revision enhancing the punishment cannot

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is not bound to hear the appellant or his pleader again, if he was once heard when presenting the petition of appeal. *Maunatha Nath Sirkar v. Union Board of Dhatrigram*.

37 Cr. L. J. 904 :
164 I. C. 270 : 40 C. W. N. 128 :
9 R. C. 187.

—S. 422.

See Cr. P. C., 1898, S. 412.

—Ss. 422, 495—Acquittal—Appeal by private party—Interference.

When the Crown does not only not appeal against acquittal but the Government Advocate states that the Local Government did not want to appeal, even if the High Court has power to interfere at the instance of a private prosecutor, the practice is not to interfere except in exceptional cases. *Jalaluddin v. Kartikram*.

38 Cr. L. J. 433 :
167 I. C. 569 : 19 N. L. J. 158 :
9 R. N. 202 : A. I. R. 1937 Nag. 123.

—S. 422—Dismissal in default—Notice—Practice.

When notice is issued to an appellant in a criminal case to appear at headquarters, and on the date fixed, the officer before whom he is cited to appear is not present at the headquarters, the appeal ought not to be dismissed in default. The proper course in such cases is to fix a fresh date and issue fresh notice. An appeal in a criminal case cannot be dismissed in default. *Nihal Singh v. Emperor*.

2 Cr. L. J. 66 :
11 P. R. Cr. 1905 : 6 P. L. R. 440.

—S. 422—Grounds for admission—Admission on limited grounds, legality of.

An appeal which is to be heard under S. 422 is the whole appeal and all the grounds taken in the petition of appeal are open for consideration at the final hearing. The appellant cannot be restricted to certain selected grounds out of those specified in his petition. A restricted order for admission is not contemplated by S. 422 and must be deemed *ultra vires*. It is not, therefore, proper to restrict a criminal appeal on the question of sentence only. *Gaya Singh v. Emperor*.

26 Cr. L. J. 862 :
86 I. C. 718 : 6 P. L. T. 381 :
4 Pat. 254 : A. I. R. 1925 Pat. 453.

—S. 422—Grounds for admission—Restrictive order for admission, whether valid.

A restrictive order for admission of a criminal appeal is not contemplated by S. 422 and must be deemed *ultra vires*. Therefore, where a criminal appeal was admitted for consideration of the sentence only: *Held*, that the whole appeal should be heard and that the appellant could not be restricted to any selected ground out of those specified in his petition. *Nofar Sheikh v. Emperor*.

14 Cr. L. J. 485 :
20 I. C. 741 : 18 C. L. J. 582 :
18 C. W. N. 145.

—S. 422—Notice—Appeal by accused—Notice to complainant, whether necessary—Omission to give notice—Revision.

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Where an appeal by an accused is not dismissed summarily, S. 422 does not require that notice of the appeal should be given to the complainant. It is, however, the practice to give notice to the complainant as well as to the District Magistrate in a case instituted upon a complaint, but failure to give notice to the complainant does not furnish a ground for interference in revision. *Mangal Chand v. Mohan*.

19 Cr. L. J. 927 :
47 I. C. 443 : 14 N. L. R. 131 :
A. I. R. 1917 Nag. 122.

—S. 422—Notice not sent to District Magistrate—Irregularity—Revision—High Court, whether will interfere.

The Trying Magistrate convicted the accused and sentenced him to a fine. On appeal, the Sub-Divisional Magistrate reversed the conviction and acquitted the accused without sending any notice to the District Magistrate. The complainant applied to the High Court in revision, *Held* : that the omission to send the notice to the District Magistrate was no doubt an irregularity but as no objection had been raised by him to the proceedings in the Appellate Court, the High Court would not interfere. *Devendra Marrappa Jingowda v. Emperor*.

26 Cr. L. J. 751 :
86 I. C. 287 : 25 Bom. L. R. 251 :
A. I. R. 1923 Bom. 264.

—S. 422—Notice of appeal to District Magistrate.

Under S. 422 notice of appeal in a criminal case must, in all cases, be served upon the officer mentioned therein. Where notice of an appeal had to be served under the Criminal Rules of Practice on the District Magistrate, the fact that the appeal, which was heard ultimately by a Joint Magistrate, was originally filed before the District Magistrate would not relieve the Court hearing the appeal from giving notice to the District Magistrate. *Mohamed Mustafa Rawther v. Shanmuga Thevan*.

25 Cr. L. J. 1389 :
83 I. C. 349 : A. I. R. 1925 Mad 375.

—S. 422—Notice, omission of—Effect.

Obiter.—The omission to issue notice under S. 422 is fatal to the proceedings before the Appellate Court. *Htunda Meah v. Anamal Chettyar*.

37 Cr. L. J. 832 :
163 I. C. 242 (2) : A. I. R. 1936 Rang 247.

—S. 422—Notice to complainant—Absence of notice—Interference, if called for.

Under S. 422 notice of appeal is not necessary to the complainant and he has no right of audience. Although there has been a practice in the Central Provinces to issue notice to complainant in certain class of cases and it is desirable to do so if he is likely to be personally affected, the High Court will not necessarily interfere if it is not issued. *Jalaluddin v. Kartikram*.

38 Cr. L. J. 433 :
167 I. C. 569 : 19 N. L. J. 158 :
9 R. N. 202 : A. I. R. 1937 Nag. 123.

—S. 422—Notice to complainant—Accused—

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turn upon a chance. Cl. (b) of S. 423 (1) does not apply to cases of acquittal, partial or total, but to cases of conviction, and Cl. (a) applies to cases of acquittal and if the appellate powers of the Court are to be exercised to convert an acquittal into a conviction, then they should be exercised on an appeal against an acquittal under S. 423 (1) (a) and not on an appeal against a conviction under S. 423 (1) (b). *Jado Rahim v. Emperor*.

40 Cr. L. J. 93 :
178 I. C. 520 : 11 R. S. 93 : 1939 Kar. 75 :
A. I. R. 1938 Sind 202.

S. 423—Construction—Power of Appellate Court under S. 238.

S. 423 is to be read with Ss. 236, 237 and 238. The powers conferred upon the Appellate Court by S. 423, are limited by the provisions of Ss. 236, 237 and 238. *Nand Kishore v. Emperor*.

41 Cr. L. J. 111 :
185 I. C. 151 : 1939 A. L. J. 941 :
12 R. A. 304 : 1939 A. W. R. 661 :
A. I. R. 1939 All. 710.

S. 423 (1) (a)—Construction that the accused be re-tried, application of.

The words "that the accused be re-tried" in S. 423 (1) do not apply to a case where the order of acquittal is passed on appeal. *Emperor v. U Kadoc*.

37 Cr. L. J. 1008 :
164 I. C. 769 : 9 R. Rang. 139 :
A. I. R. 1936 Rang. 369.

Ss. 423 (2), 297—Construction—Trial by Jury, misdirection—Interference by High Court—'Erroneous', in S. 423 (2), meaning of.

If the High Court finds in a case of trial by Jury that there is a misdirection, it has to examine the evidence to see whether the verdict was erroneous and has caused a failure of justice. If it cannot so find, it cannot interfere. One meaning of word 'erroneous' S. 423 (2), is that if the Court after examining the evidence finds that, even if the misdirection had not occurred, the Jury could not reasonably without being perverse or unduly foolish have come to any other decision it will not interfere. It is, however, clear from S. 423 (2), that even if there is a misdirection, the High Court is not entitled to alter or reverse the verdict or verdicts unless these verdict or verdicts are "erroneous" by reason of such misdirection and before the High Court interferes, it must also find that there has been a failure of justice under S. 537. *Arnold Monteath Mathews v. Emperor*.

41 Cr. L. J. 482 :
187 I. C. 456 : 12 R. L. 492 :
A. I. R. 1940 Lah. 87.

S. 423—Conviction—From principal offence to abetment.

When a person has been charged with a certain offence and has been convicted of that offence, the Appellate Court cannot ordinarily, on finding that the conviction is not sustainable, convict the accused of abetment of that offence. The power to alter a finding, given to the Appellate Court by S. 423 should not be used arbitrarily, but

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only in accordance with Ss. 237 and 238 of the Code. *Padmanaba Payi Kanniah v. Emperor*.

11 Cr. L. J. 49 :
5 I. C. 145.

S. 423—Conviction for graver offence—Power of Appellate Court.

An Appellate Court is competent, acting under S. 423, to alter a conviction into one of an offence which is graver than the one for which the accused were charged and convicted, provided such a course does not prejudice the accused, and it is not necessary to order a re-trial expressly on the altered charge. *Kauromal v. Emperor*.

25 Cr. L. J. 1057 :
81 I. C. 881 : A. I. R. 1925 Sind 105.

S. 423—Costs, award of.

S. 423 (d) read with S. 439 does not authorise the High Court, in revision, to award costs of the proceedings before it. *Kapoor Chand v. Suraj Prasad*. (F. B.)

34 Cr. L. J. 414 :
142 I. C. 537 : 1933 A. L. J. 188 :
I. R. 1933 All. 125 : A. I. R. 1933 All. 264.

S. 423—Dismissal for default—Appellate Court, duty of.

Under S. 423 it is incumbent on the Appellate Court to go through the record and to dispose of appeal on the merits. It cannot dismiss the appeal merely because there is default in the appearance of the pleader for the appellant. *Bansi Mirdha v. Brojeswar Dutt*.

25 Cr. L. J. 1150 :
81 I. C. 974 : 50 Cal. 972 :
27 C. W. N. 947 : 39 C. L. J. 278 :
A. I. R. 1924 Cal. 95.

S. 423—Dismissal for default.

Under S. 423 a Court of Appeal has to peruse the record and to form an opinion as to whether there is or is not sufficient ground for interference, and cannot, therefore, dismiss an appeal on the ground of the absence of the appellant and his pleader. *Trimbak Balvant Vaidya v. Emperor*.

27 Cr. L. J. 1167 :
97 I. C. 751 : 28 Bom. L. R. 1022 :
50 Bom. 673 : A. I. R. 1926 Bom. 548.

S. 423—Dismissal for default.

Under S. 423 an Appellate Court cannot dismiss an appeal in default; it is bound to inquire into the merits. *Tain v. Emperor*.

31 Cr. L. J. 939 :
124 I. C. 848 : 7 O. W. N. 208 :
A. I. R. 1930 Oudh 334.

S. 423—Dismissal in default—Duty of Appellate Court.

In dealing with the petition of appeal of a person convicted of a criminal offence, the Appellate Court is bound, in all cases where the appellant is not represented personally or by pleader, to peruse the petition of appeal and the copy of the judgment accompanying it, and determine upon such perusal whether the appeal should be admitted or summarily rejected, and if the appeal is admitted, to consider whether there is any ground for interfering with the conviction or sentence. It is illegal to record an order dismissing an

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———S. 423—Alteration of conviction—*Acquittal, setting aside of—Appellate Court, power of.*

Accused was charged with offences under Ss. 143 and 379, Penal Code. He was convicted under S. 143 and acquitted of the offences under S. 379. On appeal, the Sessions Judge upheld the conviction under S. 143 and also passed an order setting aside the acquittal in respect of the offence under S. 379: *Held*, that the Sessions Judge had no jurisdiction to set aside the acquittal as this was not a case of altering conviction within the meaning of S. 423, Cr. P. C. *Prasanna Chandra v. Upendra Nath.*

24 Cr. L. J. 938 :
75 I. C. 362 : 37 C. L. J. 409 :
27 C. W. N. 555 :
A. I. R. 1923 Cal. 658.

———S. 423—Alteration of conviction.

Alteration of sentence—Sentence of imprisonment can be altered to one of whipping. Period of imprisonment already undergone should be considered by Appellate Court in passing sentence of whipping. *Emperor v. Nga Aung Myal.*

33 Cr. L. J. 758 :
139 I. C. 284 : 10 Rang. 317 :
I. R. 1932 Rang. 177 :
A. I. R. 1932 Rang. 150.

———S. 423—Alteration of conviction.

An Appellate Court cannot alter a conviction of an accused into one of abetment. If an accused who abetted an offence was present at the commission of it, he is rightly convicted of the principal offence. *In re : Perumal Naidu.*

15 Cr. L. J. 694 :
26 I. C. 142 : A. I. R. 1915 Mad. 538.

———S. 423—Alteration of conviction.

An Appellate Court is competent to alter a conviction of cheating to one of criminal breach of trust. *Jagannath Misra v. Emperor.*

34 Cr. L. J. 419 :
142 I. C. 704 (1) : I. R. 1933 Pat. 170 (2) :
A. I. R. 1933 Pat. 26.

———S. 423—Alteration of conviction—*Appellate Court, powers of.*

In the case of an accused charged with offences under more than one section of the Penal Code, it is open to the Appellate Court under S. 423 of the Cr. P. C., to alter the conviction from one section to another, even though the trial Court may have acquitted the accused under the latter section. *Janki Prasad v. Emperor.*

27 Cr. L. J. 901 :
96 I. C. 213 : A. I. R. 1926 All. 700.

———S. 423—Alteration of conviction.

Conviction under Ss. 147 and 323, I. P. C.—*Appeal—District Magistrate quashing conviction under S. 147 and altering that under S. 323 to one under S. 325—Sentence maintained—Effect held to amount to enhancement of sentence and beyond power of*

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District Magistrate—Order not be maintained. *Kehr Singh v. Emperor.*

35 Cr. L. J. 108 :
146 I. C. 442 : 6 R. L. 228 (2) :
A. I. R. 1933 Lah. 933 (1).

———S. 423—Alteration of conviction.

Charge under S. 304 read with S. 147, Penal Code—Sessions Judge convicting only under S. 304—Finding as to case under S. 147 also—High Court can in appeal convict under S. 147. *Roghunath v. Emperor.*

34 Cr. L. J. 1064 :
145 I. C. 849 : 1933 A. L. J. 1377 :
55 All. 834 : 6 R. A. 174 :
A. I. R. 1933 All. 565.

———S. 423—Alteration of conviction.

Conviction under S. 302, I. P. C., can be altered to one under Ss. 366—109, if no prejudice to accused is caused. *Sharif v. Emperor.*

34 Cr. L. J. 266 :
142 I. C. 182 : I. R. 1933 Pesh. 5 :
A. I. R. 1931 Pesh. 9.

———S. 423—Alteration of conviction.

High Court can alter conviction for principal offence to one of abetment thereof. *Khuman v. Emperor.*

32 Cr. L. J. 905 :
132 I. C. 529 : 8 O. W. N. 755 :
I. R. 1931 Oudh 289 : A. I. R. 1931 Oudh 274.

———S. 423—Alteration of conviction.

High Court will not, in appeal, alter a conviction under S. 302, Penal Code, to a conviction under one of the sections dealing with offences against property. *Ghaums v. Emperor.*

27 Cr. L. J. 1004 :
96 I. C. 860 : 2 Lah. Cas. 316 :
27 P. L. R. 610 : 7 Lah. 561 :
A. I. R. 1926 Lah. 691.

———S. 423—Alteration of conviction.

If the acquittal on the one charge and the conviction on the other are based on identically the same facts, the Appellate Court has power to change the section and convict the accused of the right offence. *Alimuddin v. Meah Jan.*

13 Cr. L. J. 457 :
15 I. C. 89 : U. B. R. 1911 I. 100.

———S. 423—Alteration of conviction—*Madras Local Boards Act, Ss. 159 (1), 163 (1)—Conviction under S. 159—Appeal—Conviction, whether can be changed to one under S. 163.*

Petitioner was convicted of an offence under S. 159 (1), Madras Local Boards Act. On appeal the Appellate Court found that the section under which the accused had been convicted had no application but it went to convict the accused under S. 163 (1) of the Act. On revision: *Held*, that the petitioner not having been charged with or tried for or convicted of an offence under S. 163 (1) Madras Local Boards Act, the Appellate Court had no jurisdiction to change the conviction to one under that section. *In re : Thiruppal Kadanatha Pillai*

26 Cr. L. J. 1360 :
87 I. C. 924 : 21 L. W. 520 :
A. I. R. 1925 Mad. 706.

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—S. 423—Enhancement of sentence—*Appeal against conviction by accused—Appellate Court, if can enhance amount of fine in absence of appeal by Crown.*

It is objectionable on appeal to enhance the sentences of fine as under S. 423, Cr. P. C., an Appellate Court cannot, in an appeal by the accused from conviction, enhance the sentence passed by the lower Court. *Abdul Rahman v. Emperor.*

37 Cr. L. J. 950 :
164 I. C. 462 : 38 P. L. R. 247 :
9 R. L. 130 (1) :
A. I. R. 1936 Lah. 729.

—S. 423—Enhancement of Sentence—*Appeal—Alteration of sentence of fine into one of whipping.*

Where the trying Magistrate is not competent to award a sentence of whipping, alteration of a sentence of fine into one of whipping by the Appellate Court amounts to an enhancement of sentence and is *ultra vires*. *Yusaf v. Municipal Committee, Murree.*

31 Cr. L. J. 166 :
120 I. C. 787 : 31 P. L. R. 264 :
A. I. R. 1930 Lah. 318.

—S. 423—Enhancement of sentence—*Appellate Court, power of—Alteration of sentence amounting to enhancement.*

The trial Court sentenced the accused to rigorous imprisonment for two months and a fine of Rs. 50, or in default, one month's rigorous imprisonment. On appeal the District Magistrate changed the sentence to one of one month's rigorous imprisonment and a fine of Rs. 200, or in default, to two months' rigorous imprisonment. On an application for revision : *Held*, that the sentence awarded by the District Magistrate amounted to an enhancement of the sentence passed by the trial Court and could not be allowed to stand. *Bhola Singh v. Emperor.*

25 Cr. L. J. 1186 :
82 I. C. 50 : 3 Pat. 638 :
5 P. L. T. 622 :
A. I. R. 1924 Pat. 563.

—S. 423—Enhancement of sentence by Appellate Court—*Alteration of form of sentence only is not enhancement.*

Where a Magistrate finds an accused person guilty of acts which in law constitute a single offence, but by erroneously splitting them, convicts him of two distinct offences and passes either two distinct sentences or one combined sentence for the two supposed offences, the Appellate Court, if it concurs in the finding, is competent to alter the two convictions to the proper one for the single offence committed, while maintaining the aggregate of the two sentences or the whole of the combined sentence inflicted by the Magistrate. Such an alteration is one of form only and does not involve an enhancement of sentence in violation of S. 423 of the Cr. P. C., 1898. *Balbhadrī Bani v. Tribhulan Nath.*

6 Cr. L. J. 43 :
3 N. L. R. 67.

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—S. 423—Enhancement of Sentence—*Conviction for causing hurt with dangerous weapon—Alteration in appeal to simple hurt—Sentence maintained.*

Where a conviction for 2 months' rigorous imprisonment of an accused person for voluntarily causing hurt with a dangerous weapon under S. 324, Penal Code, was altered in appeal into one for simple hurt under S. 323 but the sentence was maintained : *Held*, that the omission to reduce the sentence did not amount to an enhancement of sentence. *In re : Ranga Swami Kanda Pillai.*

28 Cr. L. J. 824 :
104 I. C. 440 : 39 M. L. T. 20 :
53 M. L. J. 694 :
A. I. R. 1927 Mad. 789.

—S. 423—Enhancement of sentence.

Conviction under Ss. 147 and 325 of I. P. C.—Sentences of imprisonment on each charge—Sentences to run consecutively—On appeal sentences directed to run concurrently and each accused bound down to keep the peace for three years—Order held not to amount to enhancement of sentence. *Jafar Husain v. Emperor.*

20 Cr. L. J. 302 :
50 I. C. 350 : 14 P. L. R. All. 44 :
A. I. R. 1919 All. 375.

—S. 423—Enhancement of sentence—*Court Fees Act (VII of 1870), S. 31—Direction to accused to pay complainant's Court-fees—Enhancement of sentence.*

S. 31 of the Court Fees Act provides that all fees ordered to be re-paid under the section shall be recoverable "as if they were fines," but does not thereby make them part of the sentence. The making of an order by an Appellate Criminal Court, under S. 31 of the Court Fees Act, does not ordinarily amount to an enhancement of sentence within the meaning of S. 423, Cr. P. C., but it may be made as an incidental order to bring the judgment into conformity with the law. *In re : Ediga Thimmiah.*

25 Cr. L. J. 1213 :
82 I. C. 141 : 1924 M. W. N. 489 :
20 L. W. 293 : 47 M. L. J. 355 :
47 Mad. 914 : A. I. R. 1925 Mad. 136.

—S. 423—Enhancement of sentence.

High Court having before it on appeal a record of criminal proceedings can proceed to exercise powers of revision and enhance sentence. *Chunbidya v. Emperor.*

36 Cr. L. J. 482 :
153 I. C. 936 : 1935 M. W. N. 177 :
68 M. L. J. 166 : 41 L. W. 188 :
37 Bom. L. R. 160 :
16 P. L. T. 181 : 39 C. W. N. 350 :
60 C. L. J. 598 : 1935 A. L. J. 602 :
1935 A. W. R. 142 : 57 All. 158 :
7 R. P. C. 129 P. C. : A. I. R. 1935 (P. C.) 35.

—S. 423—Enhancement of sentence—*Imprisonment to insolvent accused on default of enhanced fine.*

Where the accused is insolvent and unable to pay the fine, an alteration of a sentence

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cheating—Revision—High Court, power of, to re-alter conviction.

An accused person was convicted of an offence under S. 205/109, Penal Code, but on appeal, the Sessions Judge altered the conviction to one under S. 419 of the Code. On revision, the High Court was of opinion that the offence was one under S. 205/109 and not under S. 419, Penal Code: *Held*, that the substitution of a conviction under S. 419 for one under S. 205/109 by the Sessions Judge did not amount to an acquittal of the accused with regard to the offence under the latter section and that S. 439 (4) of the Cr. P. C. was no bar to the High Court re-altering the conviction from one under S. 419 to one under S. 205/109, Penal Code. *Ganpat Lal v. Emperor*.

28 Cr. L. J. 529 :
102 I. C. 337 : 6 Pat. 217 ;
8 P. L. T. 470 : A. I. R. 1927 Pat. 199.

—S. 423 (1) (b)—*Alteration of conviction—Accused charged alternatively under S. 366-A, or S. 498, Penal Code—No finding by lower Court in respect of S. 498—Conviction under S. 366-A—Acquittal under S. 498, if implied—High Court, if can alter conviction from S. 366-A to S. 498.*

Where an accused is alternatively charged under S. 366-A, or S. 498, Penal Code, the conviction under S. 366-A, Penal Code, does not, by necessary implication, involve an acquittal on the charge under S. 498, Penal Code, and where the Court below has omitted apparently by an oversight, to record a finding one way or the other, whether specifically or in the alternative under S. 498, Penal Code, the High Court is competent under S. 423 (1) (b), Cr. P. C., to alter the conviction under S. 366-A, Penal Code, into a conviction on the alternative charge under S. 498, Penal Code. *Emperor v. Jagannath Gir*.

38 Cr. L. J. 621 :
168 I. C. 833 : 1937 A. L. J. 547 :
9 R. A. 676 : 1937 A. W. R. 203 :
A. I. R. 1937 All. 353.

—S. 423 (1) (b)—*Alteration of conviction.*

S. 423 (b) does not authorise an Appellate Court to pass a finding which the first Court could not have passed. Therefore, where the first Court has convicted a person of an offence under S. 150, Punjab Municipal Act, upon the complaint of a person who is authorised by the Committee to prosecute offenders under that section, the Appellate Court cannot alter the conviction to one under a section under which the complainant is not authorised to prosecute. *Ahmad Din v. Emperor*.

18 Cr. L. J. 511 :
39 I. C. 479 : 4 P. R. 1917 Cr :
A. I. R. 1917 Lah. 233.

—Ss. 423 (b) (2), 537—*Alteration of conviction—Conviction for theft—Appeal—Acquittal of theft and conviction for being member of unlawful assembly, legality of—Prejudice.*

If the prosecution established certain acts constituting an offence and the Court misapplies the law by charging and convicting an accused person for an offence other than

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that for which he should have been properly charged, and if notwithstanding such error the accused by his defence endeavoured to meet the accusation of the commission of these acts, then the Appellate Court may alter the charge or finding and convict him for an offence which those acts properly constitute, provided the accused be not prejudiced by the alteration in the finding. Such an error is one of form rather than of substance. The accused was convicted by the trial Court for theft of a tree under S. 379, Penal Code. The lower Appellate Court found that the accused *bona fide* believed the tree to be his own and set aside the conviction for theft but convicted the accused under S. 143, Penal Code, on the ground that he had gone with his men to the spot armed with lathis: *Held*, that the conviction was illegal inasmuch as the defences for the two charges must be distinct and the accused must be held to have been prejudiced by the alteration of the conviction to one under S. 143. *Dibakar Das v. Saktidhar*.

28 Cr. L. J. 404 :
101 I. C. 180 : 31 C. W. N. 527 :
54 Cal. 476 : A. I. R. 1927 Cal. 520.

—S. 423—*Alteration of finding—Notice to appellant.*

The Magistrate charged the accused persons under S. 406, Penal Code. He found them not guilty under that section, but, without framing a fresh charge, convicted them under S. 417. On appeal the Sessions Judge found that the convictions under S. 417, were irregular, but altered them to convictions under S. 406, without giving the accused an opportunity of showing cause against being convicted of offences punishable under that section: *Held*, that the Sessions Judge acted illegally. A re-hearing of the appeal was ordered. *Mi Mo Dha v. Emperor*.

5 Cr. L. J. 420 :
3 L. B. R. 283.

—S. 423—*Alteration of finding.*

S. 423 empowers an Appellate Court to alter the finding of the trying Magistrate, maintaining the sentence and the word 'finding' is not limited to a finding upon a point of law as distinct from a finding upon a point of fact. *Mahangu Singh v. Emperor*.

19 Cr. L. J. 735 (b) :
46 I. C. 415 : 1918 Pat. 192 : 3 P. L. J. 565 :
A. I. R. 1918 Pat. 257.

—Ss. 423 (1), (b), (c), 439—*Alteration of finding—Jurisdiction of High Court to alter or reverse order other than orders referred to in Cls. (b) and (a), S. 423—Reference by Sessions Judge recommending rigorous imprisonment for suspect failing to give security—Order could be altered.*

Under S. 423 (1) (b), it is competent to the High Court as a Revisional Court reading that section with S. 439, Cr. P. C., to alter or reverse an order other than the orders referred to in Cls. (b) and (a). Where, therefore, a Sessions Judge makes a reference to the High Court recommending that a person who has been bound over in proceedings under

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sentence where none is passed by the Sessions Judge for the latter offence. *Ambika Thakur v. Emperor.*

41 Cr. L. J. 191 :
185 I. C. 529 : 18 Pat. 544 :
21 P. L. T. 45 : 6 B. R. 203 :
12 R. P. 389 : A. I. R. 1939 Pat. 611.

———**Ss. 423 and 439—Enhancement of sentence—Conviction of two offences—Appeal—One of the convictions set aside—Sentence not reduced.**

Where on appeal from a conviction for two offences, the conviction for one offence was set aside and that for the other retained: *Held*, that to retain the same sentence in appeal amounts to enhancement of the sentence and is contrary to law and the sentence should therefore be reduced. *In re : Somasundaram Pillay.*

7 Cr. L. J. 361 :
3 M. L. T. 312.

———**Ss. 423 (1) (a) (3)—Enhancement of sentence—Order for detention in Borstal School for any period under Burma Prevention of Crimes (Young Offenders) Act, if enhancement of sentence.**

An order for detention in a Borstal School for any period permitted by the provisions of the Burma Prevention of Crimes (Young Offenders) Act can never amount to an enhancement of sentence within Cl. (a) (3) of S. 423 (1). *Emperor v. Ah. Hwe.*

37 Cr. L. J. 790 :
163 I. C. 74 : 14 Rang. 119 :
8 R. Rang. 609 : A. I. R. 1936 Rang. 227.

———**S. 423 (1) (b)—Enhancement of sentence—Accused convicted of offence punishable with fine only but bound over under S. 562—Imposition of fine in appeal, whether enhancement of sentence.**

Where an accused is convicted under S. 14-25 of the Northern India Ferries Act, by the trying Magistrate but is bound over under S. 562, Cr. P. C., as a first offender, and on an appeal, the Sessions Judge maintains the conviction but fines the accused on the ground that S. 562 does not apply to an offence punishable with fine only, although the imposition of fine in the circumstances of the case can hardly be said to be an enhancement of sentence, as no sentence was given to the applicant by the trying Magistrate still the imposition of fine entails a greater burden on the accused than the execution of a bond under S. 562, Cr. P. C. *Shital Prasad v. Emperor.*

39 Cr. L. J. 889 :
177 I. C. 386 : 1938 O. W. N. 969 :
11 R. O. 48 : 1938 O. L. R. 421 :
A. I. R. 1938 Oudh 233.

———**S. 423 (1) (b)—Enhancement of sentence—Conviction—Alteration in appeal—Sentence maintained, whether amounts to enhancement.**

It is not open to an Appellate Court, when setting aside the conviction of one of two or more offences, to confirm the sentence imposed by the trial Court, the reason being that when a single sentence is awarded for two offences, part of it must be deemed to have been incurred for the one offence and part for the other, so that to maintain the whole sentence for only one of the offences amounts to such

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an enhancement as is prohibited by S. 424 (1)(b). In applying that portion of S. 423 (1) (b), which allows an Appellate Court to alter the finding maintaining the sentence but not so as to enhance the same, the test of enhancement must be found not among the technicalities of penal definition, but by answering the broad question whether the Appellate Court has inflicted punishment more severe than that originally awarded. But when an Appellate Court, adopting the view taken by the Original Court as the act committed by the accused and only differing from it in its application of the law, alters a finding from a graver to a less grave offence, and maintains the same sentence as that of the trial Court, neither the letter nor the spirit of S. 423 is violated so as to constitute it an enhancement of punishment. *In re : Ranga Swami Kanda Pillai.*

28 Cr. L. J. 824 :
104 I. C. 440 : 39 M. L. T. 20 :
53 M. L. J. 694 : A. I. R. 1927 Mad. 789.

———**S. 423 (1) (b)—Enhancement of sentence—Penal Code (Act XLV of 1860), Ss. 342, 384, 420—Extortion and cheating, conviction for—Appeal—Acquitting accused of one charge but retaining sentence—Enhancement of sentence.**

The accused was convicted under Ss. 342, 384 and 420 of the Penal Code, and sentenced to three months' rigorous imprisonment for his conviction under S. 342, three months' rigorous imprisonment under S. 384, and six months' rigorous imprisonment and a fine of Rs. 100, in default, one month's further rigorous imprisonment, under S. 420. The three sentences were to run consecutively. On appeal, the Sessions Judge maintained the convictions under Ss. 342 and 384; and was of opinion that the conviction under S. 420 was not correct. He confirmed the sentence of three months under S. 342, and passed a sentence of nine months under S. 384: *Held*, that the offences under Ss. 384 and 420 of the Penal Code being distinct offences, the order of the lower Court in effect enhanced the sentence and was, therefore, illegal. *Ramchandra Bhikaji Moharir v. Emperor.*

29 Cr. L. J. 1082 (b) :
112 I. C. 586 : 30 Bom. L. R. 967 :
A. I. R. 1928 Bom. 346.

———**S. 423 (1) (b) (3)—Enhancement of sentence—Sentence—Alteration of imprisonment to whipping, whether enhancement.**

The alteration of a sentence of imprisonment to one of whipping is an enhancement of sentence and is not authorised by the provisions of S. 423 (1) (b) (3), Cr. P. C. *In re : Kyauing Nga Hwe.* 30 Cr. L. J. 328 :
114 I. C. 523 : I. R. 1929 Rang. 91 :
A. I. R. 1928 Rang. 265.

———**S. 423—Interference.**

The High Court will refuse to interfere where the finding of the Appellate Court is neither perverse nor unreasonable. *Emperor v. Sangaram.* 34 Cr. L. J. 545 (2) :
143 I. C. 152 : 9 O. W. N. 1198 :
I. R. 1933 Oudh 167 : A. I. R. 1933 Oudh 85.

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lous or vexatious. What is to be regarded

is the substance and not the form, before an

order is passed under Sub-s. (2) the complain-

ant shall be given an opportunity to show

cause, and when an order under Sub-s. (2) is

passed, all the conditions laid down in the

Sub-section are complied with. Talib

Dattar v. Sujan Saly. 38 Cr. L. J. 121 :

166 I. C. 33 : 9 R. S. 116 :

30 S. L. R. 359 : A. I. R. 1936 Sind 240.

S. 250—Procedure—Order awarding

compensation not contained in order of discharge.

Where a Magistrate discharged an accused

and ordered payment of compensation to him,

under S. 250 of the Cr. P. C., at a later stage

when another co-accused against whom a

charge had been framed was acquitted : Held,

that the order awarding compensation was

without jurisdiction as it was not contained

in the order of discharge : Held, also, that

this was not a mere irregularity which could

be covered by S. 537 of the Cr. P. C.

Manheyal v. Musammal Rabbah. 15 Cr. L. J. 290 :

23 I. C. 498 : 10 N. L. R. 8 :

A. I. R. 1914 Nag. 68.

S. 250 (1)—Procedure—Order calling

on complainant to show cause against compensa-

tion written after discharge order, legality of.

Where a Magistrate signs and dates his order

of discharge and then records an order on the

same day calling on the complainant to show

cause why he should not be directed to pay

substantial compliance with requirements of

S. 250 (1). Ghulam Muhammad v. Vir Bhan. 102 I. C. 560 : A. I. R. 1927 Lah. 515.

S. 250—Procedure—Order of compensa-

tion—Complainant's explanation found

unsatisfactory—No finding that case was false

and frivolous or vexatious—Order for compensa-

tion, legality of—Omission to record complainant's

objections.

Before making an order of compensation

under S. 250, the Magistrate must strictly

follow the procedure laid down therein, viz.,

that he should be of opinion that a case is

false and either frivolous or vexatious ; he

should then call upon the complainant for his

explanation and then after hearing his

explanation, record his opinion that the case

was false and frivolous or vexatious. A

Magistrate should not make an order of

compensation merely because the explanation

given by the complainant is unsatisfactory.

The mere fact that a Magistrate is trying a

case summarily does not justify his omission to

record the complainant's objections to an order

directing compensation, and such an omission

is not a mere irregularity which can be cured

by S. 537, Cr. P. C. Pir Mahomed v. Yacob. 30 Cr. L. J. 458 :

115 I. C. 334 :

A. I. R. 1929 Sind 113.

S. 250—Procedure—Order of compensation

and prosecution—Legality of.

Magistrate by granting or by expressing an

Cr. P. CODE (1898), S. 250

intention to grant sanction to prosecute the

complainant under S. 211, Penal Code, is not

precluded from awarding under S. 250, Cr. P. C.

reasonable compensation to the accused.

Nanhe Khan v. Chanhaya. 7 Cr. L. J. 231 :

2 P. W. R. Cr. 89.

S. 250—Procedure—Order of compensa-

tion and prosecution—Legality of.

There is no ground or reason in law to prevent

compensation being granted to an accused

also directs a prosecution of the complainant

for bringing a false charge. The provisions of

S. 250 may be used to supply one form of

punishment for a serious false charge

deliberately and maliciously made. The

section is as applicable to such false charges

as it is to a merely frivolous charge brought

with the sole intent of annoying. In re :

Gopala Bhan Changua. 14 Cr. L. J. 75 :

17 I. C. 411 : 15 Bom. L. R. 49 : 37 Bom. 367.

S. 250—Procedure—Order for compensa-

tion, form of.

S. 250, Cr. P. C. contemplates two different

orders, one under Sub-s. (1) calling upon the

complainant to show cause and the other

under Sub-s. (2) ordering payment of

compensation, and the order under Sub-s. (1)

should be made simultaneously with the order

of discharge. There is, however, no substantial

contravention of the law where the Magistrate

before writing out an order of discharge gives

the complainant an opportunity to show cause

and then passes an order discharging the

accused and calling upon the complainant to

pay compensation to the accused. Wahed Ali

Akron v. Sarajuddin Uthi. 31 Cr. L. J. 411 :

122 I. C. 298 : A. I. R. 1929 Cal. 332.

S. 250—Procedure—Order—When must

be made.

An order as to compensation under S. 250,

Cr. P. C., is not invalid if it is not pronounced

in the same breath as the order of acquittal,

that is to say, if it is written a few minutes or

even, for good and sufficient cause, a few days

later, provided it is substantially a continua-

tion of the order of acquittal and part of the

same proceedings. Ghannal Narain v. Emperor. 24 I. C. 592 : 7 S. L. R. 123 :

A. I. R. 1914 Lah. 29.

S. 250—Procedure—Order—When must

be made.

An order directing the complainant to show

cause why he should not pay compensation to

the accused under S. 250 should be made at

the same time as the order discharging the

accused. The failure to do so is not a defect

curable by S. 537 of the Code. Suresh Chandra

Gupta v. Abdul Jabbar. 85 I. C. 129 : 29 C. W. N. 127 :

A. I. R. 1925 Cal. 264.

S. 250—Procedure—Order—When must

be made.

An order under S. 250 awarding compensation

to an accused person, to be a valid order, must

be an integral part of the order of acquittal.

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—S. 423—Powers of Appellate Court.

A Sessions Judge dealing with a case under S. 423, as well as on revision, can exercise any of the powers conferred on an Appellate Court by S. 423, and he may act under the section even where the trial Court was competent to try the case. *Salihon v. Emperor*.

34 Cr. L. J. 640 (1):
143 I. C. 649 (1): I. R. 1933 Lah. 375:
A. I. R. 1933 Lah. 128 (2).

—S. 423—Powers of Appellate Court.

Accused charged with offences under Ss. 399 and 402, Penal Code. Acquittal under S. 402 and conviction under S. 399—Appeal—Appellate Court can, if necessary, set aside acquittal under S. 402 if conviction under S. 399 cannot be supported. *Lakhan Singh v. Emperor*.

35 Cr. L. J. 973:
149 I. C. 533: 11 O. W. N. 534:
6 R. O. 572: A. I. R. 1934 Oudh 200.

—S. 423—Powers of Appellate Court—
Acquittal, reversal of, in appeal.

An Appellate Court has jurisdiction to reverse a finding of acquittal upon facts upon which there was a conviction in the First Court under another provision of the law against which an appeal has been preferred. *Dhanpat Singh v. Emperor*.

18 Cr. L. J. 982:
42 I. C. 598: 1917 Pat. 297: 2 P. L. W. 188:
A. I. R. 1917 Pat. 625.

—S. 423—Powers of Appellate Court.

Advocate not arguing case on merits—Court examining evidence—Appeal held properly heard. *Kewal Ram v. Emperor*.

36 Cr. L. J. 1354:
158 I. C. 324: 15 Pat. 69: 1 B. R. 872:
16 P. L. T. 693: 8 R. P. 187:
A. I. R. 1935 Pat. 515.

—S. 423—Power of Appellate Court
to alter finding—General principle.

Under Ss. 423 and 439 of the Cr. P. C., 1898, a Court of Appeal or Revision may alter the finding of the lower convicting Court. But as a rule, it would obviously be unfair to the accused that he should be convicted of a more serious offence to which he had not pleaded in the lower Court. The general principle is that on appeal or revision an accused person cannot be convicted of an offence of which he could not have been convicted by the Court which tried him. *Emperor v. Poyin*.

4 Cr. L. J. 490:
3 L. B. R. 232.

—S. 423—Power of Appellate Court—
Appeal—Accused charged with several offences—
Conviction for one offence—Power of Appellate
Court to convict for another offence of which
accused was acquitted by lower Court—Appeal.

In an appeal from a conviction under one of several sections of the Penal Code mentioned in the charge-sheet, an Appellate Court can, under S. 423, Cr. P. C. alter the finding of the lower Court and find the appellant guilty of an offence of which he had been acquitted by that Court. *Sardara v. Emperor*.

12 Cr. L. J. 572:
12 I. C. 836: 8 A. L. J. 139.

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—S. 423—Powers of Appellate Court.

It is doubtful whether an Appellate Court can, under S. 423, Cr. P. C., pass an order which would make the position of the appellant worse. *Bir Singh v. Emperor*.

28 Cr. L. J. 575:
102 I. C. 511: 28 P. L. R. 166.

—S. 423—Powers of Appellate Court—
Appeal—Power of Appellate Court—Accused
convicted of one offence and acquitted of another.

The accused was prosecuted under S. 497 of the Penal Code. The trying Magistrate held that adultery was not proved but he found the accused guilty of insult likely to provoke a breach of peace under S. 504 of the Code. On appeal the Sessions Judge held that no offence under S. 504 had been committed but he was of opinion that the charge under S. 497 was sustainable. The Sessions Judge, however, held that he had no power to interfere with the acquittal of the accused under S. 497: Held, that the Sessions Judge had power under S. 423, Cr. P. C., to interfere in the case. If he was of opinion that accused had committed adultery, the Sessions Judge could alter the conviction to one under S. 497 of the Penal Code, as the conviction under S. 504 and the acquittal under S. 497 were based on the same evidence. *Alimuddin v. Meah Jan*.

13 Cr. L. J. 457:
15 I. C. 89: U. B. R. 1911 I 100.

—S. 423—Power of Appellate Court.

Appellate Court ordering Magistrate to pass commitment orders—Magistrate, cannot hold enquiry under Chap. XVIII. *Sahdeo Ram v. Emperor*.

36 Cr. L. J. 1013:
156 I. C. 849: 1935 A. L. J. 618:
1935 A. W. R. 777: 8 R. A. 41:
A. I. R. 1935 All. 579.

—S. 423—Powers of Appellate Court.

In order to justify interference with a judgment of acquittal on a question of fact, it is sufficient if the finding is clearly wrong on the evidence and unreasonable in the opinion of the Appellate Court. *Muzaffar v. Emperor*.

35 Cr. L. J. 626 (2):
148 I. C. 36: 6 R. L. 528:
A. I. R. 1933 Lah. 296.

—S. 423—Powers of Appellate Court.

In the case of a trial by Jury, the questions that can be gone into by the Appellate Court, lie within an extremely narrow compass, and that Court will not interfere with the unanimous verdict of a Jury. *Mohini Mohan Ghose v. Emperor*.

21 Cr. L. J. 8:
54 I. C. 56: 46 Cal. 635:
A. I. R. 1920 Cal. 271.

—S. 423—Powers of Appellate Court—
Limitation.

The power given to an Appellate Court under S. 423, Cr. P. C., is not an unlimited power, but is to be taken as giving the Appellate Court power to do only that which the lower Court could and should have done. The Appellate Court has no power either to come to a finding which was not within the competency

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appeal "in default," as such an order is not contemplated by the provisions of S. 423. *Balkaran Singh v. Emperor.*

20 Cr. L. J. 744 :
53 I. C. 152 : 6 O. L. J. 370 :
A. I. R. 1919 Oudh 323.

S. 423—Dismissal of appeal—Judgment, contents of.

In an appeal dismissed not summarily but under S. 423 after notice given under S. 422, it is incumbent under S. 424 on the Magistrate to deliver a judgment which should fulfil the conditions laid down in S. 367; in other words, the judgment must contain the point or points for determination, the decision thereon and the reasons for the decision. *Devendra Shivappa Limbenavar v. Emperor.*

16 Cr. L. J. 832 :
31 I. C. 1008 : 17 Bom. L. R. 1085 :
A. I. R. 1915 Bom. 139.

S. 423—Dismissal of appeal—Judgment, contents of.

Where an appeal is dismissed under S. 423, the Appellate Court is bound to write a judgment stating the points for determination and the reasons for its decision. *Thakor Singh v. Emperor.*

26 Cr. L. J. 1380 :
89 I. C. 816 : 1 Lah. Cas. 87 :
A. I. R. 1925 Lah. 644.

S. 423—Duty of Appellate Court—Evidence, consideration of.

The Court of a Sessions Judge is the final Court on facts, and it is incumbent on a Sessions Judge in appeal to go into the evidence and to refer to it in such a manner as to show that he has applied his mind intelligently and carefully to the consideration of the evidence. *Jiwan Raut v. Emperor.*

24 Cr. L. J. 407 :
72 I. C. 519 : 1 P. L. R. 55 Cr. :
4 P. L. T. 502.

S. 423—Duty of Appellate Court.

Great weight should be attached to opinion of trial Court. Exhaustive list of conditions justifying interference cannot be laid down. *Emperor v. Sheo Janak Pandey. (F. B.)*

35 Cr. L. J. 364 :
147 I. C. 238 : 6 R. A. 443 :
1933 A. L. J. 1573 :
A. I. R. 1934 All. 27.

S. 423—Duty of Appellate Court.

In a case of riot where a conflicting account of the occurrence is given by the prosecution and the defence and each party asserts that the opposite party was the aggressor, the Sessions Judge, in appeal, is bound to examine the evidence carefully so as to show that he is fully convinced on a consideration of the *pros* and *cons* of the case and the criticisms advanced on behalf of the defence that the account given by the prosecution is true and that the accused were the aggressors. *Jiwan Raut v. Emperor.*

24 Cr. L. J. 407 :
72 I. C. 519 : 1 P. L. R. 55 Cr. :
4 P. L. T. 502.

Cr. P. CODE (1898), S. 423**S. 423—Duty of Appellate Court.**

It is the duty of an Appellate Court in dealing with an appeal preferred to it, to consider the evidence, both oral and documentary, and to apply its mind to the case before recording a judgment therein. Where an Appellate Court fails to do this, its judgment cannot be said to be in accordance with law. *Narain Prosad Bose v. Emperor.*

21 Cr. L. J. 648 :
57 I. C. 664 : 1 P. L. T. 716 :
A. I. R. 1920 Pat. 121.

S. 423—Duty of Appellate Court—Offence of hurt—Self-defence, consideration of.

In hearing an appeal against a conviction under S. 324, Penal Code, it is the duty of the Appellate Court to come to a definite finding of its own as to how, where and by whom, the injuries were caused to the complainant. Where in such a case the accused sets up the plea of self-defence, but does not produce any evidence, the Appellate Court should consider whether by cross-examination of the prosecution witnesses matters have been elicited which might go to support that defence. *Nogendra Nath Bera v. Emperor.*

22 Cr. L. J. 414 :
61 I. C. 654.

S. 423—Duty of Appellate Court.

Under the provisions of S. 423, a Court is bound to peruse the record and decide an appeal on the merits even if the appellant does not appear. *Kuldip Singh v. Emperor.*

28 Cr. L. J. 351 :
100 I. C. 831 : 6 Pat. 16 :
8 P. L. T. 376 : A. I. R. 1927 Pat. 176.

S. 423—Duty of Appellate Court.

When, in a criminal appeal, no one appears on behalf of the appellant, the Court must peruse the record. A decision upon a perusal only of the judgment appealed against is not legal. *Abbash Ali v. Emperor.*

14 Cr. L. J. 182 :
19 I. C. 182.

Ss. 423, 438—Duty of Appellate Court—Reference to High Court.

Where an Appellate Court does not dismiss an appeal summarily, it must dispose of it in the manner provided by S. 423. It has no power to refer to the High Court for decision a question of law arising in an appeal. *Emperor v. Sulaiman.*

15 Cr. L. J. 667 :
25 I. C. 995 : 7 L. B. R. 251 :
A. I. R. 1914 L. Bur. 226.

S. 423 (2)—Duty of Appellate Court—Reception of inadmissible evidence.

Where inadmissible evidence has been received, the Court of Appeal has to consider whether the reception of inadmissible evidence influenced the minds of the Jury so seriously as to lead them to a conclusion which might have been different but for its reception, and whether it has in fact occasioned a failure of justice. *Harendra Nath v. Emperor.*

26 Cr. L. J. 307 :
84 I. C. 451 :
40 C. L. J. 313 : A. I. R. 1926 Cal. 161.

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———Ss. 423 (1), 528—*Powers of Appellate Court—Appellate Court can itself try the offender—Cognizance in such cases under S. 190 (b) and not 190 (c), S. 423 (1) (b) of the Code of Criminal Procedure ought to be read with S. 528 of the Code.*

The provisions of S. 423 (1) (b) do not preclude an Appellate Court, when it reverses the finding and sentence under appeal, from trying the offender itself, if the offense is one ordinarily triable by it. In such cases, the Appellate Court takes cognizance under S. 190 (b) and not S. 190 (c). *Emperor v. Manikka Gramani.* 6 Cr. L. J. 133 :

I. L. R. 30 Mad. 228 : 16 M. L. J. 546 :
2 M. L. T. 46.

———S. 423 (1), (d)—*Powers of Appellate Court to make any order.*

Under S. 423 (d) of the Code of Criminal Procedure an Appellate Court has power to set aside an order under S. 522, Cr. P. C., as the section authorises the Appellate Court in an appeal to make any incidental order. *Ujir Sheikh v. Syid Ali Sheikh.*

16 Cr. L. J. 607 :
30 I. C. 159 : 19 C. W. N. 990 :
A. I. R. 1916 Cal. 733.

———Ss. 423 (1) (d), 520—*Powers of Appellate Court—Trial Court failing to pass order disposing of property produced at trial—Appellate Court's power to pass such order.*

Under S. 423 (1) (d) as well as S. 520, Cr. P. C., an Appellate Court has power to pass appropriate orders for the disposal of the property produced at the trial even though the trial Magistrate has omitted to do so. *Thiraj v. Emperor.* 29 Cr. L. J. 810 :

111 I. C. 314 : 10 Lah. 187 :
A. I. R. 1928 Lah. 567.

———S. 423 (2)—*Powers of Appellate Court.*

Where the trial is by Jury, appeal is limited to questions of law and the Appellate Court is also limited by the provisions of Ss. 423 (2) and 537. *Nanhak Ali v. Emperor.*

35 Cr. L. J. 1104 :
150 I. C. 687 : 15 P. L. T. 264 :
13 Pat. 529 : 7 R. P. 12 (2) :
A. I. R. 1934 Pat. 309.

———S. 423 (2)—*Power of Appellate Court.*

Where there has neither been a misdirection by the Judge nor a misunderstanding on the part of the Jury of the law as laid down by the Judge, the Appellate Court has no power to alter or reverse the order of the Jury. The word 'reverse' in S. 423 (2) includes the setting aside of the verdict or making it null and void. Where, therefore, the Jury returns a verdict of guilty and the Judge feels some doubt about the guilt of the accused and that he has no power to refer the case to the High Court and hence agrees with the Jury, in an appeal by the accused, the Appellate Court cannot set aside the verdict and order a retrial as the effect if a *de novo* trial would be to reverse the verdict of the Jury. It can only set aside

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the conviction and send the case back to the lower Court leaving it to consider whether it would express disagreement with the verdict or not and, if so, make a reference under S. 307 to the High Court or uphold the verdict and convict the accused and pass suitable sentences. *Manjia v. Emperor.*

38 Cr. L. J. 465 :
167 I. C. 802 : 1937 A. L. J. 43 :
I. L. R. 1937 All. 419 : 9 R. A. 578 :
1936 A. W. R. 1284 : A. I. R. 1937 All. 195.

———S. 423 (b)—*Powers of Appellate Court—Accused found guilty under Ss. 363 and 498, Penal Code (Act XLV of 1860) and sentenced—No separate sentence under S. 498—On appeal Sessions Judge finding accused guilty under S. 498, and not under S. 363—Whether can award sentence under S. 498—Limits.*

The accused were tried by a Magistrate who convicted them under Ss. 363 and 498, Penal Code, and sentenced them under S. 363 to rigorous imprisonment for one year and six months each and awarded no separate sentence under S. 498. In appeal the Sessions Judge found the accused not guilty under S. 363, but guilty under S. 498. He upheld the conviction under S. 498 but felt that he had no authority to pass a proper sentence as the Magistrate had not passed any sentence under that section : *Held*, that the Sessions Judge had jurisdiction to pass appropriate sentence under S. 498 subject to the limit of one year and six months which the Magistrate had imposed. *Superintendent and Remembrancer of Legal Affairs, Bengal v. Hossein Ali.* 39 Cr. L. J. 684 (a) :

175 I. C. 799 (1) : 42 C. W. N. 1040 :
11 R. C. 38 : A. I. R. 1938 Cal. 439.

———S. 423 (b) (2)—*Powers of Appellate Court—Power to change finding of acquittal into one of conviction maintaining the sentence.*

The accused were charged under Ss. 148 and 325 of the I. P. C., and the Magistrate acquitted them under the former section but convicted them under the latter. The accused then appealed to the Sessions Judge who was of opinion that the accused should have been convicted under S. 147, I. P. C., but he could not interfere with the acquittal. The complainant preferred a revision to the High Court ; *Held*, that the Sessions Judge was wrong and that under S. 423 (b) (2) of the Cr. P. C., the Appellate Court has power to alter the finding maintaining the sentence and there is nothing to restrict the finding of conviction. *Appanna v. Pelhani Mahalakshmi.*

11 Cr. L. J. 534 (b) :
7 I. C. 861 : 1 M. W. N. 474.

———S. 423—*Procedure.*

The duty imposed upon an Appellate Court by S. 423 of the Cr. P. C. to go through the record is irrespective of whether the appellant appears or does not appear. If the appellant or his Pleader appears, the Court is bound to hear him and then dispose of the appeal. If the appellant or his Pleader does not appear,

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of 'two months' imprisonment and Rs. 50 fine or in default, one month's further imprisonment, to six weeks' imprisonment and Rs. 200 fine or in default, to further imprisonment of six weeks, is enhancement of sentence within the meaning of S. 423, Cr. P. C. and is, therefore illegal. *Kanshi Ram v. Emperor*.

27 Cr. L. J. 812 :
95 I. C. 476 : A. I. R. 1926 Lah. 543.

—S. 423—*Enhancement of sentence—Order directing payment of costs not an enhancement of sentence—Court Fees Act (VII of 1870).*

An order under S. 31 of the Court Fees Act directing the accused, on appeal against conviction, to pay the costs of the complainant is not an enhancement of the sentence. *Emperor v. Karuppana Pillai*. 3 Cr. L. J. 460 : I. L. R. 29 Mad. 188.

—S. 423—*Enhancement of sentence—Penal Code (Act XLV of 1860), S. 302—Murder appeal—Enhancement of sentence—Principles—Practice—Enhancement of sentence—Issuing notice before calling for records, propriety of.*

In a murder appeal the High Court will not enhance a sentence of transportation to one of death unless it is satisfied that the sentence of death was the only possible sentence that could have been passed by the trial Court. Though it is not illegal to issue notice for enhancement of sentence, on admitting an appeal, it is desirable to send for the records before issuing such a notice. *Gundthalayan v. Emperor*.

31 Cr. L. J. 1193 :
127 I. C. 290 : 31 L. W. 542 :
58 M. L. J. 490 : 53 Mad. 585 :
A. I. R. 1930 Mad. 446.

—S. 423—*Enhancement of sentence—Power of Appellate Court to alter the nature of the sentence, so as not to enhance it—Conviction of accused by lower Court to undergo imprisonment—Appeal—Reduction in the period of imprisonment by the Appellate Court but coupled with fine—Whether enhancement of sentence.*

Where an accused was convicted by the lower Court and sentenced to undergo a period of imprisonment, and on appeal, there was a reduction in the period of imprisonment, but a fine was also imposed, and in default, a further period of imprisonment: *Held by the Full Bench*, that when the period of imprisonment in default of payment of the fine plus the period of imprisonment, left unaltered by the Appellate Court is to any extent less than the period of the original sentence, the fact that a fine is imposed by the Appellate Court would not in law amount to an enhancement of the sentence. In a case where such an alteration of the sentence has the effect of rendering it in the circumstances of the case excessive or inappropriate, the interference in revision of a Superior Court may be called for. *Bhakhavatsalu Naidu v. Emperor*.

5 Cr. L. J. 36 :
1 M. L. T. 375 : I. L. R. 30 Mad. 103 :
16 M. L. J. 360.

—S. 423—*Enhancement of sentence—Sessions Court, power of.*

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Where there are two separate convictions under Ss. 147 and 325 of the I. P. C., with separate sentences attached, a Sessions Judge on appeal setting aside the sentence under S. 325 has no power to enhance the sentence under S. 147. *Mangal Singh v. Emperor*.

18 Cr. L. J. 372 :
38 I. C. 756 : 31 P. R. 1916 Cr. :
A. I. R. 1917 Lah. 358.

—S. 423—*Enhancement of sentence.*

When in appeal against conviction Court considers sentence should be enhanced, fresh notice to bring accused before Court is not necessary. *Khoda Bux v. Emperor*.

35 Cr. L. J. 554 :
147 I. C. 1124 : 37 C. W. N. 1122 :
61 Cal. 6 : 6 R. C. 401 :
A. I. R. 1934 Cal. 105.

—S. 423—*Enhancement of sentence.*

When the aggregate period of imprisonment which the accused may have to undergo is to any extent less than the period of the original sentence, the fact that a fine is imposed by the Appellate Court would not in law be an enhancement of the sentence. *Muhammad Hussain v. Emperor*.

32 Cr. L. J. 1217 :
134 I. C. 792 : 32 P. L. R. 165 :
12 Lah. 449 : I. R. 1931 Lah. 1000 :
A. I. R. 1931 Lah. 159 (2).

—S. 423—*Enhancement of sentence.*

When trial Court awards sentence of whipping and imprisonment for theft, Appellate Court can alter nature of sentence but without enhancement. Substitution of further sentence of imprisonment on him for whipping amounts to enhancement. *Emperor v. Ba Cho*.

36 Cr. L. J. 366 :
153 I. C. 516 : 12 Rang. 607 :
7 R. Rang. 219 : A. I. R. 1935 Rang. 64.

—S. 423—*Enhancement of sentence, what amounts to.*

It depends on the circumstances of the particular case whether the retention of the sentence awarded by the trial Court constitutes an enhancement of sentence. *Bechu Singh v. Emperor*.

31 Cr. L. J. 173 :
120 I. C. 764 : 10 P. L. T. 587 :
A. I. R. 1930 Pat. 79.

—Ss. 423, 439—*Enhancement of sentence—Acquittal under Ss. 302-149, Penal Code whether can be converted into conviction under Ss. 326-149 under combined appellate and revisional powers of High Court.*

Quaere.—Where accused charged under Ss. 302-149 and also under S. 147, I. P. C., are acquitted by the Sessions Judge of charge under Ss. 302-149 but are convicted under S. 147 and the accused prefer an appeal against the conviction and the complainant files a revision to convict the accused under Ss. 302-149 or in the alternative, to enhance the sentences, whether the High Court under its combined appellate and revisional powers can convert the acquittal under Ss. 302-149 into a conviction under Ss. 326-149 and then pass a

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Where, after a Magistrate had signed an order acquitting the accused, he, by a subsequent order, directed the complainant to pay compensation to the accused: *Held*, that as, after signing the order of acquittal, the Magistrate had become *functus officio*, the subsequent order was without jurisdiction. *Karam Bakhsh v. Muhammad Said*.

22 Cr. L. J. 527 :
62 I. C. 415.

—————S. 250—*Procedure—Order—When must be made—Compensation for frivolous complaint.*

The reasons for awarding compensation for making a frivolous complaint and the order awarding it must be contained in the order of discharge or acquittal. Where the complainant's case is not an improbable one, compensation cannot be awarded under S. 250. *Emperor v. Narpal Rai*.

3 Cr. L. J. 123 :
6 P. L. R. 629 : 57 P. R. Cr. 1905.

—————S. 250—*Procedure—Order—When must be made—Discharge of accused—Subsequent order to pay compensation, legality of.*

Under S. 250, it is only the order calling upon the complainant to show cause why he should not pay compensation which is to be contained in the order of discharge. The order for payment of compensation is necessarily a subsequent order. *Saudagar Singh v. Aror Singh*.

29 Cr. L. J. 680 :
110 I. C. 232.

—————S. 250—*Procedure—Order—When must be made.*

S. 250 makes it quite clear that the reasons for awarding compensation and the actual order so awarding must be contained in the order of discharge or acquittal, and the law contained in the section must be followed strictly. Where a Magistrate acquitted the accused and having signed and dated his order for acquittal, then recorded a separate order calling on the complainant to show cause why he should not be required to pay compensation and then having recorded his objection, ordered him to pay compensation: *Held*, that the order was illegal and should be set aside. *Imam Din v. Emperor*.

14 Cr. L. J. 48 :
18 I. C. 272 : 16 P. W. R. 1913 Cr. :
99 P. L. R. 1913.

—————S. 250—*Procedure—Compensation—Order when must be made.*

When a Magistrate after acquitting the accused persons on 27th February 1906, sent for the complainant on 8th March, 1906, and awarded them compensation under S. 250: *Held*, that the Magistrate's order was *ultra vires* and also there was no good reason justifying the order. *Emperor v. Haji Sundhi Khan*.

4 Cr. L. J. 428 :
1 P. W. R. Cr. 23.

—————S. 250—*Procedure—Order—When to be made.*

Under S. 250 it is only the order calling upon the complainant to show cause why he should not pay compensation which is to be contained in the order of discharge. The order for pay-

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ment of compensation is necessarily a subsequent order. *Achhru Mal v. Emperor*.

27 Cr. L. J. 752 :

95 I. C. 80 : 7 Lah. 121 :

27 P. L. R. 310 : A. I. R. 1926 Lah. 298.

—————S. 250—*Procedure—Order when to be passed.*

An order directing the complainant to show cause why compensation should not be ordered to be paid, must be contained in the order of discharge or acquittal. The Magistrate must act on his own initiative. Initiation of proceedings on the application of one of the accused is contrary to law. *Emperor v. Maroli*.

34 Cr. L. J. 1163 (2) :

146 I. C. 14 : 30 N. L. R. 15 :

6 R. N. 69 : A. I. R. 1933 Nag. 296.

—————S. 250—*Procedure—Penal Code (Act XLV of 1860), S. 211—Compensation, order to pay—Prosecution for false charge, whether competent—Discretion, exercise of.*

A Magistrate, while disposing of a criminal case before him, ordered the complainant to pay Rs. 100 as compensation to the accused under S. 250. Three weeks after the disposal of the case the Magistrate passed an order directing the issue of notice upon the complainant to show cause why he should not be prosecuted for an offence under S. 211, Penal Code: *Held*, that in the circumstances of the case the order calling upon the complainant to show cause why he should not be prosecuted was not proper and would not be justified in the exercise of a sound judicial discretion. *Lalji Hari v. Emperor*.

20 Cr. L. J. 226 :
49 I. C. 850 : A. I. R. 1919 Pat. 81.

—————S. 250—*Procedure—Simultaneous proceedings for compensation and prosecution—Competency of Magistrate to proceed under Ss. 250 and 476 at one and the same time.*

There is nothing in the Cr. P. C. to make it illegal for a Magistrate to proceed under both Ss. 250 and 476 of the Code at the same time. *Achar v. Pirushah*.

14 Cr. L. J. 437 :
20 I. C. 597 : 7 S. L. R. 10.

—————S. 250—*Procedure—Simultaneous order for compensation and prosecution.*

It appears open to question whether a Magistrate exercises a wise discretion in awarding compensation under S. 250, and at the same time directing a prosecution of the complainant under S. 476. *Allah Bux v. Emperor*.

18 Cr. L. J. 414 :

38 I. C. 974 : 10 S. L. R. 162 :

A. I. R. 1917 Sind 19.

—————S. 250—*Procedure—Summoning of witnesses.*

The Magistrate trying a case is bound by law to hear those witnesses whose list is sent up by the Police along with the case. As soon as the witnesses produced in support of the case have been heard, the Magistrate is then to ascertain the names of persons likely to be acquainted with the facts of the case and shall summon to give evidence before

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———Ss. 423, 436, 439—*Interference—Appeal—Acquittal—Revision—Interference by High Court—Procedure.*

As a general rule, a High Court is averse to interfere with an order of acquittal when it is moved by a private person to do so. It has, however, power to interfere in revision even when an appeal is not filed by the Local Government. But such interference should be exercised only in exceptional cases and with caution. It should be done only in cases where the alleged offence is of a serious character and the Court comes to the conclusion that there has been a miscarriage of justice, where, for instance, the Lower Court has misquoted the evidence, or where, having the evidence before it, which *prima facie* is reasonable and credible, the Lower Court gives no ground for rejecting it and does not satisfactorily review it. Where a conviction is set aside in appeal and in revision, the High Court comes to the conclusion that the order of acquittal of the lower Appellate Court cannot be maintained, the proper procedure is to set aside the order of acquittal and to direct a re-hearing of the appeal and not to order a re-trial of the entire case. *Bachha Singh v. Bachcha Kurmi.* 27 Cr. L. J. 854 :

95 I. C. 934 : 12 O. L. J. 63 :
2 O. W. N. 50 : A. I. R. 1925 Oudh 321.

———Ss. 423, 438—*Interference—Appellate Court unable to interfere under S. 423 (2), referring case to High Court—Procedure, whether proper—High Court, if can interfere with decision of trial Court, records having come before it.*

An Assistant Sessions Judge accepting the verdict of the jury convicted the accused but the Additional Sessions Judge finding himself unable to interfere under S. 423 (2), Cr. P. C., as there was no misdirection, made a reference to the High Court instead of referring the case to the Local Government for orders : *Held*, that the position was that the appeal of the accused had been dismissed. Had not the Additional Sessions Judge referred the case to the High Court, it would have been open to the accused to move the High Court in revision and ask it to interfere on the ground that the Additional Sessions Judge was wrong in holding that there was no misdirection and if the High Court had found that there was misdirection by the Assistant Sessions Judge which had been ignored by the Additional Sessions Judge and which has occasioned failure of justice, it would have interfered. The fact that it has examined the record on an incompetent reference by the Additional Sessions Judge did not alter the position. It could, therefore, interfere if a case for interference was made out. *Rameshwar Singh v. Emperor.* 38 Cr. L. J. 919 :

170 I. C. 464 : 16 Pat. 413 :
18 P. L. T. 607 : 3 B. R. 734 : 10 R. P. 128 :
A. I. R. 1937 Pat. 440.

———S. 423, 439—*Interference—Murder—Death sentence not inflicted by Sessions Judge—Revision—Interference by the High Court.*

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It is only in very rare cases that the High Court will interfere with the order of a Sessions Judge sentencing a man convicted of murder to transportation for life because the circumstances of the case appear to him not to demand the sentence of death. The High Court will interfere only in cases in which the sentence of death is the only possible sentence to be inflicted. *Mangal Narain v. Emperor.* 26 Cr. L. J. 968 :
87 I. C. 424 : 27 Bom. L. R. 355 :
49 Bom. 450 : A. I. R. 1925 Bom. 268.

———S. 423 (1)—*Interference—Jurisdiction—Acquittal—Appeal—High Court, power of, to interfere—Grounds of interference.*

In appeals against acquittals, the High Court ought not to interfere unless the trying Judge was clearly wrong and the judgment is either perverse or based on obvious error of procedure. *Public Prosecutor v. Narayana Nayudu.* 16 Cr. L. J. 529 :
29 I. C. 657 : A. I. R. 1916 Mad. 711.

———S. 423—*Jury trial—Omission to direct Jury to acquit if there is reasonable doubt—Appeal against verdict—Power of Appellate Court to decide without ordering re-trial.*

Quære.—Whether it is open to the Appellate Court in such a case to go through the evidence and decide the case without ordering a re-trial. *Jagmohan Singh v. Emperor.*

30 Cr. L. J. 1146 :
120 I. C. 114 : I. R. 1930 All. 2 :
A. I. R. 1930 All. 28.

———S. 423—*New case—Appellate Court, when can start new case against accused.*

The powers conferred by the Cr. P. C. upon a Court of Appeal are not intended to be used in such a way as to spring up a new case on the accused without giving him any notice of the charge which he has to meet. *Debi Singh v. Emperor.*

16 Cr. L. J. 599 :
30 I. C. 151 : A. I. R. 1915 All. 357.

———S. 423—*Objection—Illegal empaneling of Jury—Objection raised at late stage—Interference—Question of jurisdiction.*

An objection that the Jury were not empanelled in the manner prescribed by law will be taken notice of by the High Court, even if it is raised at a late stage, as it involves a question of jurisdiction going to the root of the trial. *Intaz Mandal v. Emperor.* 30 Cr. L. J. 484 :

115 I. C. 522 : 32 C. W. N. 117 :
I. R. 1929 Cal. 378 : A. I. R. 1929 Cal. 92.

———S. 423—*Powers of Appellate Court.*

A private prosecutor has no right to be heard, though the Court may, in its discretion, hear him and an acquittal in appeal without hearing the complainant's Vakil is not bad in law. *Behari Majhi v. Hari Majhi.*

33 Cr. L. J. 305 (1) :
136 I. C. 474 : 35 C. W. N. 976 :
54 C. L. J. 144 : I. R. 1932 Cal. 202 :
A. I. R. 1932 Cal. 61.

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———S. 423—*Re-trial—Serious mistake in charge—Failure to consider important evidence—Order for re-trial from framing of charge, propriety of—Accused, whether entitled to acquittal.*

Where a Sessions Judge, finding that the accused had been prejudiced by a defect in the framing of the charge and by the omission of the trial Court to consider an important piece of documentary evidence adduced by the accused, remanded a case under S. 423 of the Cr. P. C., for re-trial from the stage at which it became irregular, namely, the framing of the charge, and the accused contended that they ought to have been acquitted under the circumstances: *Held*, that the order for re-trial was a fair one inasmuch as the proceedings had to be taken up only from after the drawing up of the charge, and thus no opportunity was given to the prosecution to improve their case. *Sheoparsan Singh v. Emperor.*

28 Cr. L. J. 893 :
104 I. C. 909 : A. I. R. 1928 Pat. 50:

———S. 423—*Re-trial—Trial by Jury—Appeal—Verdict set aside.*

The petitioner was convicted in a trial by the Sessions Judge with a Jury on a verdict of guilty. On appeal the verdict of the Jury was set aside on the ground of irregularity and the following order was made by the High Court: "It will be open to the Crown to proceed further with the case, if it be so advised. We direct that until a fresh trial, if any, the accused be enlarged on bail to the satisfaction of the District Magistrate": *Held*, that the order of the High Court did not amount to an acquittal or discharge but to an order for re-trial, subject to the right of the Crown, if it thought fit, to withdraw the proceedings. *Beni Madhub Kundu v. Emperor.*

20 Cr. L. J. 225 :
49 I. C. 849 : 23 C. W. N. 94 :
29 C. L. J. 34 : 46 Cal. 212 :
A. I. R. 1919 Cal. 115.

———S. 423—*Re-trial, when can be ordered—Re-trial for supplying formal defects, propriety of.*

A re-trial can be ordered by an Appellate Court under S. 423, Cr. P. C., for supplying formal defects. But where the prosecution has hopelessly broken down in every respect, a re-trial cannot be ordered so as to enable the prosecutor to substantiate some new charge against the accused, or to produce evidence which might easily have been produced at the first trial. *P. M. Rathnavelu Mudaliyar v. Emperor.*

31 Cr. L. J. 422 :
122 I. C. 497 : 1930 M. W. N. 191 :
A. I. R. 1930 Mad. 189.

———S. 423—*Re-trial when to be ordered.*

Per *Sundara Aiyar, J.*—An order for re-trial would be proper where the trial was illegal, irregular or defective, e. g., (1) where evidence was improperly rejected by the lower Court: (2) where the Court comes to the conclusion that the accused, rightly acquitted of one offence, ought to have been tried for another

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offence; (3) where persons who ought not to have been tried together have been so tried. But where the prosecution by its own negligence fails to produce evidence which it is its duty to produce, there is no proper case for re-trial. *Jeremiah v. Vas.*

12 Cr. L. J. 585 :
12 I. C. 961 : 10 M. L. T. 506 :
1911 2 M. W. N. 576.

———Ss. 423, 428—*Re-trial and recording further evidence, difference between.*

When an Appellate Court passes order of remand under S. 423, Cr. P. C. it cannot restrict the evidence to be taken to that mentioned in its order, but it should order the case to be re-tried in view of the instructions contained in its order. In such a case, it is open to the accused person to adduce such additional evidence as he may desire. *Mir Sarwarjan v. Emperor.*

3 Cr. L. J. 304 :
3 C. L. J. 303.

———Ss. 423, 428—*Re-trial—Appeal, criminal—Re-trial ordered—Evidence already on record whether can be treated as evidence in second trial—Irregularity.*

Where in an appeal from a conviction for rioting and causing simple hurt, the Sessions Judge set aside the conviction and ordered a re-trial, but at the same time directed that the evidence already on the record should be treated as evidence in the case: *Held*, that the order was contrary to the provisions of Ss. 423 and 428 of the Cr. P. C. and was, therefore, illegal. *Bhaso Singh v. Emperor.*

19 Cr. L. J. 77 :
43 I. C. 109 : 1917 Pat. 87 : 3 P. L. W. 224 :
A. I. R. 1918 Pat. 582.

———Ss. 423, 428, 537—*Re-trial—Appellate Court, remand by, of case for re-trial with direction to record additional evidence and give decision after consideration of original and fresh evidence—Illegality—Prejudice to accused—High Court—Revision.*

On appeal against a conviction by a Sub-Divisional Magistrate under Ss. 147 and 148 of the Penal Code, a Sessions Judge set aside the conviction and sentence and ordered a re-trial with a direction that the Magistrate should take further evidence and should record a fresh decision on the evidence already recorded and also on the additional evidence. After remand the Magistrate recorded additional evidence, but after considering the entire evidence on the record again convicted the accused and passed the same sentence as before. On appeal against the second conviction by the Magistrate, the Sessions Judge, at the request of both parties, discarded the additional evidence but confirmed the conviction on the evidence originally recorded: *Held*, per *Chamier, C. J.* That it was not necessary for the High Court to order a re-trial by the Magistrate even if the order of the Sessions Judge was not merely irregular but illegal. Ordinarily the proper course to take would have been to set aside all the proceedings subsequent to the alleged illegal order and to require the Sessions Judge to record a fresh

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of the trial Court, or to pass a sentence which was beyond the jurisdiction given to the trial Court by S. 32, Cr. P. C. *Maung E Maung v. The King*.

41 Cr. L. J. 621 :
188 I. C. 539 : 1940 Rang. 215 :
13 R. Rang. 2 : A. I. R. 1940 Rang. 118.

—S. 423—*Powers of Appellate Court—Penal Code (Act XLV of 1860), Ss. 189, 353—Appellate Court, power of—Substitution of conviction for lessor offence—Assault—Threat of assault.*

A Court can substitute a conviction for a lesser offence in appeal from that which has been held to have been committed by the Court of first instance. Where, in case of a conviction for assault, the Appellate Court finds that there was no actual assault, but merely a threat of assault, the Appellate Court acts legally in substituting a conviction under S. 189, Penal Code, for one under S. 353, Penal Code. *Jawad Husain v. Emperor*.

28 Cr. L. J. 673 :
103 I. C. 401 : 1 Luck. Cas. 159 :
2 Luck. 503 : A. I. R. 1927 Oudh 296.

—S. 423—*Powers of Appellate Court.*

S. 423 (1) (A), does not empower an Appellate Court to interfere with an order of acquittal in the absence of an appeal or with a conviction in the absence of an appeal. *Abdul Khau v. Emperor*.

37 Cr. L. J. 707 :
162 I. C. 931 : 39 C. W. N. 677 :
62 Cal. 928 : 62 C. L. J. 217 :
8 R. C. 669.

—S. 423—*Powers of Appellate Court.*

The High Court has power in view of the provision of Ss. 423 and 561-A, Cr. P. C. to direct separate sentences passed in separate trials to run concurrently. *Nagappa v. Emperor*.

33 Cr. L. J. 77 :
134 I. C. 1239 : 33 Bom. L. R. 1163 :
I. R. 1932 Bom. 23 : A. I. R. 1931 Bom. 529 (1).

—S. 423—*Powers of Appellate Court.*

The powers conferred on the Appellate Court under S. 423 are as ample as the High Court would have on revision under S. 439, with the exception of the power to enhance the sentence. *Emperor v. Bahu Raut*.

36 Cr. L. J. 838 (2) :
155 I. C. 386 : 1935 O. W. N. 576 :
1935 M. W. N. 469 : 39 C. W. N. 626 :
41 L. W. 792 : 68 M. L. J. 653 :
37 P. L. R. 314 : 16 P. L. T. 387 :
61 C. L. J. 259 : 1935 A. L. J. 802 :
37 Bom. L. R. 557 : 62 Cal. 983 :
1935 A. W. R. 691 : 7 R. P. C. 194 :
A. I. R. 1935 P. C. 89.

—S. 423—*Powers of Appellate Court.*

There is no restriction on the powers of an Appellate Court to deal with the case of which it has complete seisin in any of the manners provided by S. 423, Cr. P. C. *Ram Parsad v. Emperor*.

26 Cr. L. J. 1090 :
88 I. C. 178 : A. I. R. 1926 Nag. 53.

—S. 423—*Power of Appellate Court, to alter finding, scope of.*

Although an Appellate Court has power

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under S. 423 of the Cr. P. C. to alter the finding of a lower Court while maintaining the sentence, it ought not to use such power if the accused would be prejudiced by the omission to prove the altered charge and if the defence might have been of a different character had the altered charge been framed in the first Court. *In re : Pullaunevara Hanumantha*.

20 Cr. L. J. 780 :
53 I. C. 620 : A. I. R. 1919 Mad. 188.

—S. 423—*Power of Appellate Court.*

Under the provisions of S. 423, the High Court in appeal is empowered to pass a new sentence within the powers of the Magistrate who tried the case. *Local Government v. Abasalli*.

36 Cr. L. J. 867 :
156 I. C. 184 : 31 N. L. R. 312 :
7 R. N. 224 : A. I. R. 1935 Nag. 139.

—S. 423—*Powers of Appellate Court.*

Whether appeal is from conviction or acquittal, Appellate Court should review entire evidence. Presumption of innocence is absolute and is not strengthened by acquittal nor weakened by conviction. *Emperor v. Nur Ahmad*.

35 Cr. L. J. 1229 :
151 I. C. 114 : 1934 A. L. J. 839 :
7 R. A. 88 : A. I. R. 1934 All. 842.

—Ss. 423, 428—*Powers of Appellate Court—Power of Appellate Court to call for further evidence—Whether can order that accused should be given chance of adducing further evidence.*

S. 423, Cr. P. C., is not exhaustive of the methods by which a Court can deal with an appeal. S. 423 deals with the disposal of an appeal and S. 428 provides powers for the Appellate Court to call for further evidence before the appeal is disposed of and Appellate Court can direct the taking of further evidence in support of the prosecution, a fortiori it is open to the Court to direct that the accused persons may be given a chance of adducing further evidence. *Sheo Ram v. Emperor*.

38 Cr. L. J. 1058 :
171 I. C. 262 : 10 R. N. 102 :
I. L. R. 1937 Nag. 541 : A. I. R. 1937 Nag. 285.

—S. 423 (a)—*Power of Appellate Court—Jury trial—Appeal—Power of Appellate Court to decide whole case without re-trial.*

If in an appeal from a case tried by a Jury the Appellate Court holds that there has been misdirection and the Court is of opinion that the verdict of the Jury is erroneous owing to that misdirection, and that it has in fact occasioned a failure of justice, there is no reason why in a proper case the Court may not assume to deal with the whole case itself under the powers and duty conferred upon it by law. But the action which the Court will be inclined to take will depend upon the circumstances of the particular case. *Government of Bengal v. Santi Ram Mondal*.

32 Cr. L. J. 10 :
127 I. C. 657 : I. R. 1930 Cal. 865 :
58 Cal. 96 : A. I. R. 1930 Cal. 370.

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The High Court is not authorized, by S. 423 of the Cr. P. C., to alter or reverse the verdict of the Jury unless it is of opinion that that verdict is erroneous owing to a misdirection by the Judge. If it comes to that opinion, then it has the power to reverse the verdict: but that power ought not to be lightly exercised. It is manifestly the intention of the Legislature that the power of interference conferred on the High Court should be exercised on occasions. *In re : Shanbhulal*.

8 Cr. L. J. 35 :

10 Bom. L. R. 565.

———S. 423—Revision—Acquittal, if can be altered into conviction in revision.

In revision, the High Court has no jurisdiction to alter an acquittal into a conviction. *Bawar Shah v. Emperor*.

37 Cr. L. J. 1039 :

164 I. C. 899 : 9 R. Pesh. 31 :

A. I. R. 1936 Pesh. 172.

———S. 423—Revision—High Court's power to make consequential order.

S. 423, els. (1) (d), gives a High Court power to make any consequential order that may be just and proper. *Nga San Tin v. Emperor*.

13 Cr. L. J. 492 (a) :

15 I. C. 492 : 5 Bur. L. T. 107 : 6 L. B. R. 49.

———S. 423—Revision—High Court, power of, to convert acquittal into conviction.

Per *Duckworth, J.*—Where the High Court in dealing with the appeal of a convict is acting both as a Court of Appeal and as a Court of Revision, it has jurisdiction to convert the acquittal of the appellant upon any charge into a conviction and to pass sentence upon him in respect of such charge. *Emperor v. Kan Thein*.

27 Cr. L. J. 1393 :

98 I. C. 705 : 5 Bur. L. J. 80 : 4 Rang. 140 :

A. I. R. 1926 Rang. 154.

———Ss. 423, 439—Revision—Appeal heard in the absence of Counsel—Revision, whether competent.

A High Court has no power, under S. 439 of the Cr. P. C., to set aside the judgment of a Court below merely upon the ground that the Counsel on behalf of the petitioner was prevented from being present in Court in time and, therefore, could not be heard. *Olayet Khan v. Emperor*.

24 Cr. L. J. 118 :

71 I. C. 246 : 1 Pat. 589 : 4 P. L. T. 91 :

A. I. R. 1922 Pat. 587.

———Ss. 423, 439—Revision—Criminal case—Power of Chief Court to convert a finding of acquittal into one of conviction—Sentence, enhancement of.

Where an accused person has been convicted of an offence but not convicted of some other offence with which he has been charged, it is within the power of Chief Court on revision to alter the conviction actually passed, into one of any offence with which the accused has been charged, and to pass upon such accused any sentence which is lawful under a conviction of the offence of which he has been convicted on revision. *Bhola v. Emperor*.

1 Cr. L. J. 942 :

5 P. L. R. 599 : 12 P. R. Cr. of 1904.

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———Ss. 423, 439—Revision—Penal Code (Act XLV of 1860), Ss. 366, 376—Rape, charge of—Appeal—Conviction for abduction, whether justified—Acquittal in respect of charge of rape—Revision—Acquittal, whether can be set aside and conviction substituted.

Accused was charged with an offence under S. 376 and was convicted. On appeal, the Sessions Judge set aside the conviction under S. 376 and proceeded to frame a charge under S. 366 of the Penal Code and called upon the accused to plead to the charge, examined him upon it and allowed him to call witnesses in defence. As a result of the trial, the accused was convicted of an offence under S. 366 of the Penal Code: *Held*, (1) that the Sessions Judge had no jurisdiction to try the accused as an Appellate Court, without any commitment having been made to it: (2) that the conviction of the accused by the Sessions Judge under S. 366 of the Penal Code was, therefore, illegal; (3) that in revision the High Court had no jurisdiction to convert the acquittal with regard to the charge under S. 376 of the Penal Code into a conviction and to convict the accused of that offence. *C. C. Sircar v. Emperor*.

26 Cr. L. J. 1119 :

88 I. C. 287 : 4 Bur. L. J. 29 : 3 Rang. 68 :

A. I. R. 1925 Rang. 230.

———Ss. 423, 439—Revision—Reference.

Under the Cr. P. C. the High Court has, in its revisional jurisdiction, the power of making any amendment, or any consequential or incidental order that may be just or proper. *Manki v. Bhagwanti*.

2 Cr. L. J. 24 :

2 A. L. J. 64 : 25 A. W. N. 19 : 27 All. 415.

———Ss. 423, 471—Revision—Omission to pass orders under S. 471—High Court, powers of, in revision.

A Trial Court's omission to pass an order under S. 471 will not preclude a High Court from passing such an order in revision. Such an order is in the nature of a consequential or an incidental order within the meaning of S. 423 (1), Cr. P. C., and does not amount to an alteration of the finding of acquittal into one of conviction. *Mahammad v. Emperor*.

23 Cr. L. J. 71 :

65 I. C. 423 : 1922 M. W. N. 10 :

30 M. L. T. 74 : 42 M. L. J. 72 :

A. I. R. 1922 Mad. 54.

———S. 423, 439 (5)—Revision—High Court—Jurisdiction—Revision—Acquittal.

The High Court may, at the instance of a private complainant, interfere with an order of acquittal. *Kangali Sardar v. Bama Charan*.

12 Cr. L. J. 609 :

12 I. C. 985 : 38 Cal. 786.

———Ss. 423 (c), 439—Revision—Order forfeiting bond—Revision—High Court—Jurisdiction to revise District Magistrate's order under S. 515.

The general power of revision vested in the High Court is not taken away by the power of revision given to the District Magistrate under S. 515 of the Cr. P. C. The High Court has under Ss. 439 and 428 (c) of the Code, power

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the Court is bound to go through the record and the judgment of the lower Court and then to decide the appeal on merits. *Shambehari Singh v. Emperor*. 20 Cr. L. J. 271 : 50 I. C. 31 : A. I. R. 1919 Pat. 54.

-----**Ss. 423 and 428—Procedure—Irregularity in consideration of an appeal by Appellate Court—Additional evidence by the Appellate Court.**

An Appellate Court should not rely upon matters which are not in evidence before the said Court. Additional evidence should not be taken without conforming to the provisions of S. 428, Cr. P. C. *In re : Chinthalapudi Kotiah*. 11 Cr. L. J. 734 :

8 I. C. 943 : 8 M. L. T. 428 : 1 M. W. N. 829.

-----**Ss. 423 (1) (b), 439 (3)—Procedure—Reference—Power of Sessions Judge in appeal—Acquittal—Procedure—Enhancement of sentence, whether a fit ground for ordering re-trial.**

Where a Sessions Judge sitting in appeal is of opinion that an accused should be acquitted, he ought not to refer the case to the High Court. It is his duty to allow the appeal and acquit the accused. Where a Sessions Judge sitting in appeal thinks that the case ought to have been tried by the Court of Sessions, he should himself set aside the conviction and order a commitment under S. 423 (1) (b) of the Code. The power of ordering a new trial merely for the purpose of enhancing the punishment is a power that ought to be very sparingly exercised. *Emperor v. Mohan Lal*.

16 Cr. L. J. 433 :

29 I. C. 65 : 13 A. L. J. 477 :

A. I. R. 1915 All. 185.

-----**Ss. 423 (1), (4), 522—Property, restoration of to person entitled thereto—Appellate Court, whether can pass order.**

An order under S. 522, Cr. P. C., directing the restoration of immovable property to the person entitled thereto, cannot be regarded as a consequential or incidental order within the purview of S. 423 (1), clause (4) of the Code. *Muhammad Din v. Emperor*.

20 Cr. L. J. 30 (a) :

48 I. C. 510 : 1 P. W. R. 1919 Cr. :

33 P. L. R. 1919 : 14 P. R. 1919 Cr.

-----**S. 423 (2)—Provisions imperative—No misdirection or misunderstanding of law—Power of High Court to reverse verdict—Procedure.**

The terms of S. 423 (2) are imperative, and in the absence of misdirection, it is not competent to the High Court to alter or reverse the verdict of the Jury. The High Court being of opinion that the verdict was against the weight of evidence directed a copy of the judgment to be sent to the Local Government for action. *Ramehariter Singh v. Emperor*.

28 Cr. L. J. 692 :

103 I. C. 548 : 8 P. L. T. 691 : 7 Pat. 15 :

A. I. R. 1927 Pat. 370.

-----**S. 423—Remand—Case heard and decided by Bench of Magistrates—Judgment signed**

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by one Magistrate—Appeal—Judgment sent back to be signed by other Magistrate—Procedure, legality of.

In a case heard and decided by a Bench of two Magistrates, the judgment was signed by only one of them. On appeal the District Magistrate sent the judgment back to be signed by the other Magistrate : *Held*, that the procedure adopted by the District Magistrate was in no way opposed to the provisions of S. 423 of the Cr. P. C. and that the order made by him was a mere incidental order which he considered just and proper. *Gopal Das v. Emperor*.

20 Cr. L. J. 214 (a) :

41 I. C. 774 : 17 A. L. J. 193 :

41 All. 217 : 1 U. P. L. R. All. 86 :

A. I. R. 1919 All. 308.

-----**S. 423 (2)—Remand—Appellate Court remanding case, whether can call for report—proper procedure.**

The Sessions Judge in disposing of an appeal against an order of conviction under S. 147, Penal Code, sent the case back to the Trying Magistrate with a direction that he should examine all the accused persons afresh under S. 342 of the Cr. P. C. and after the examination of the defence witnesses, if any, re-submit the record to him (the Session Judge) for decision of the appeal on the merits. This having been done, the Sessions Judge dismissed the appeal affirming the order of the Magistrate. The accused, thereupon, applied to the High Court in revision. *Held* : (1) that the procedure followed by the Sessions Judge was erroneous; (2) that he should have set aside the conviction and sentence and remanded the case to the Trial Magistrate for him to deal with the case on the merits after compliance with the provisions of S. 342 of the Cr. P. C. *Abdus Samad v. Emperor*.

26 Cr. L. J. 313 :

84 I. C. 457 : 40 C. L. J. 319 :

A. I. R. 1925 Cal. 172.

-----**Ss. 423 (d), 517—Restoration of property—Order for restoration of property—Powers of Appellate Court—Revision.**

It is competent to a Court in the exercise of appellate or revisional powers to cancel or modify an order passed by a lower Court under S. 517 of the Code of Criminal Procedure and even to extend such order to property which it did not previously include. *Emperor v. Gopi Nath*.

4 Cr. L. J. 370 :

26 A. W. N. 256 : 3 A. L. J. 770.

-----**S. 423—Re-trial—Acquittal—Selling aside conviction—Re-trial—Subordinate Court's discretion.**

An order passed by an Appellate Court on a consideration of a point of law only and without recording any finding on the merits of the case to the effect. "The conviction and sentence are set aside. As regards the expediency of a re-trial, I leave the matter to the learned District Magistrate," does not amount to an order of acquittal, but simply quashes the proceedings and gives a discretion to the Magistrate to order re-trial or discharge the accused.

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arises as regards any misdirection affecting the Jury's verdict. *Fitzmaurice v. Emperor*.

27 Cr. L. J. 793 :
95 I. C. 393 : A. I. R. 1926 Lah. 193.

———S. 423—Scope.

The general intention of the Cr.P.C. is that an acquittal should stand until appealed against by the Local Government under S. 417. The provisions of S. 423 (1) b), however, are very wide and enable a Court in disposing of an appeal from a conviction to alter the finding.

Dhanpat Singh v. Emperor. 18 Cr. L. J. 982 :
42 I. C. 598 : 1917 Pat. 297 :
2 P. L. W. 188 : A. I. R. 1917 Pat. 625.

———Ss. 423, 417, 418—Scope—Appeal against acquittal—Powers of High Court—Interference, when justified.

Where after consideration of the prosecution evidence, the trial Magistrate finds that the case against the accused is doubtful and acquits him, there is no jurisdiction for upsetting his decision in an appeal before the High Court. When the High Court is hearing a case as an appeal against an order of acquittal, certain points have to be kept in view. It cannot interfere unless it is satisfied that the view of the Trial Magistrate is wrong and contrary to the weight of evidence. The fact that it might have taken a different view if it had heard the case in the first instance, is no ground for interference in appeal. *Emperor v. Sheo Sook Singh*. 40 Cr. L. J. 772 :
183 I. C. 405 : 12 R. A. 128 :
1939 A. W. R. 306 : A. I. R. 1939 All. 457.

———Ss. 423, 435 and 439—Scope—Evidence Act (I of 1872), S. 30—Statement of accused after conviction—Revision—Criminal cases—Interlocutory order.

Ss. 423, 435 and 439 of the Cr. P. C. invest the High Court with power to be exercised when the Court thinks fit to correct errors in procedure committed by Subordinate Criminal Courts before the final order of acquittal or conviction is passed by such Subordinate Courts. At a joint trial of three accused persons, two were discharged and the third convicted. The conviction was upheld on appeal. The order of discharge was set aside, and further inquiry was directed to be made as regards the persons discharged. In the course of further inquiry, the Magistrate declined to record statement of the other accused who was convicted previously and tendered by the prosecution as their witness, the Magistrate being of opinion that his evidence would be inadmissible. On revision, the Chief Court set aside Magistrate's order on the ground that the evidence was not inadmissible and the postponement of the rectification of the error of the Magistrate may possibly lead to a considerable waste of a time or to a miscarriage of justice. *Crown v. Sobha Ram*.

1 Cr. L. J. 514 :
5 P. L. R. 257 : 8 P. R. Cr. 1904.

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———Ss. 423, 439—Scope—High Court, if can make order for compensation even if when cause had been shown—High Court were of opinion that order for compensation should be made.

The High Court cannot under S. 439 read with S. 423 (1) (d) make an order for compensation even if upon the judgment and even if cause had been shown, High Court were of opinion that an order of compensation should be made. An order directing compensation to be paid is not a consequential or incidental order within the meaning of S. 423 (1) (d), nor can it be said that in revision the High Court makes an order consequential to an order of a Magistrate calling upon a complainant to show cause why he should not pay compensation if it order compensation to be paid. *Emperor v. Muhammad Alam*.

41 Cr. L. J. 53 :
184 I. C. 595 : 1940 Kar. 119 :
12 R. S. 123 : A. I. R. 1939 Sind 321.

———S. 423 (b)—Scope—Order for disposal of suspected property—Control of superior Courts over such order.

'Quære,' whether S. 423 (d) of the said Code overlaps S. 520. In any case, an Appellate Court acting under S. 423 (d) could only deal with such an order simultaneously with the appeal pending before it and not by a separate proceeding initiated subsequent to the disposal of the appeal. The exercise of jurisdiction over such an order by any one Court acting under S. 423 (d) or S. 520, exhausts the control provided by those sections, and further revision can only be obtained under Chap. XXXII of the Code. *Emperor v. Hussain Shah*.

1 Cr. L. J. 764 :
17 C. P. L. R. 17.

———Ss. 423, 526—Scope.

Additional Judicial Commissioner trying accused with Jury—Appeal to Judicial Commissioner—Appeal heard by Judicial Commissioner and Additional Judicial Commissioner—Difference of opinion—Case referred to another Additional Judicial Commissioner—Conviction set aside—Case transferred under S. 526, Cr. P. C., to Sessions Judge, not having power to try with Jury: Held, order must be taken to be under S. 423 (b) : Held, also, that order transferring to Sessions Judge not having power to try with aid of Jury was not good. *Hari v. Emperor*.

36 Cr. L. J. 978 ;
156 I. C. 3 : 59 Bom. 496 :
1935 O. W. N. 744 : 39 C. W. N. 929 :
1935 M. W. N. 689 : 16 P. L. T. 573 :
37 P. L. R. 7212 : 69 M. L. J. 128 :
42 L. W. 162 : 37 Bom. L. R. 634 :
62 C. L. J. 1 : 59 Bom. 496 :
1935 A. L. J. 1154 : 7 R. P. C. 223 (P. C.) :
1935 A. W. R. 808 :
A. I. R. 1935 (P. C.) 122.

———S. 423 (1) (b)—Scope—Conviction on several charges—Conviction on some charges set aside in appeal—Reduction of sentence, whether compulsory.

Where a person is convicted on several

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It is not illegal for an Appellate Court quashing proceedings to leave it to the Subordinate Court to re-try the accused at its discretion. *Emperor v. Miajan*.

27 Cr. L. J. 733 :
95 I. C. 61 : 53 Cal. 192 :
A. I. R. 1926 Cal. 585.

—S. 423—Re-trial.

After reversing conviction and sentence, re-trial cannot be ordered without formulating charge. *Dara Lakshmi Narasimham v. Garine Satyanarayana*.

32 Cr. L. J. 749 :
131 I. C. 454 : 1930 M. W. N. 1215 (2) :
I. R. 1931 Mad. 518 : A. I. R. 1931 Mad. 227.

—S. 423—Re-trial.

Appellate Court cannot order re-trial when prosecution has hopelessly broken down. *Dara Lakshmi Narasimham v. Garine Satyanarayana*.

32 Cr. L. J. 749 (a) :
131 I. C. 454 : 1930 M. W. N. 1215 (2) :
I. R. 1931 Mad. 518 : A. I. R. 1931 Mad. 227.

—S. 423—Re-trial—Appellate Court—Re-trial, order for, when justifiable.

An order for re-trial is not justifiable if there is no evidence on the record to warrant a conviction for the offence charged. *Ram Prasad v. Emperor*.

26 Cr. L. J. 1090 :
88 I. C. 178 : A. I. R. 1926 Nag. 53.

—S. 423—Re-trial.

Assistant Sessions Judge convicting accused of one charge but acquitting on another in accordance with Jury's opinion—On appeal, Sessions Judge setting aside conviction and ordering re-trial on all charges—Order held illegal. *Nitya Gopal v. Emperor*.

36 Cr. L. J. 553 :
154 I. C. 609 : 7 R. C. 503 :
38 C. W. N. 1128 :
A. I. R. 1935 Cal. 120.

—S. 423—Re-trial—Criminal appeal—Question of misjoinder of trial first heard and decided—Order expressing opinion that there was misjoinder and trial was bad—Subsequent order directing re-trial, competency of.

Where Sessions Judge, in an appeal, heard arguments on the question whether there was misjoinder of charges, and holding that there was such misjoinder, signed an order which concluded as follows: 'I must, therefore, set aside the conviction and sentences in all the five trials', and after hearing further arguments announced on the next day, a detailed order setting aside the convictions and sentences and ordering re-trial of the accused, and it was contended before the High Court that as the Sessions Judge had signed an order setting aside the conviction and sentence, he had become *functus officio* and was not consequently competent to pass an order on the next day directing re-trial: Held, that though the procedure adopted was rather an unusual one, the first order was not a final order but merely an expression of his opinion and there was no

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illegality of procedure and the second order was not invalid. *Sikandar Lal Puri v. Emperor*.
31 Cr. L. J. 975 :
126 I. C. 69 : A. I. R. 1929 Lah. 692.

—S. 423—Re-trial—New trial when properly ordered—Want of jurisdiction—Misjoinder—Superficial enquiry.

The power of ordering a re-trial under S. 423 of the Cr. P. C., should be exercised with discretion. A re-trial may properly be ordered where the original trial is void for want of jurisdiction or for misjoinder or when the enquiry has been obviously superficial and material witnesses have not been examined. A re-trial should not be ordered with the object of enabling the prosecution to fill up deficiencies in the evidence of the prosecution. *Hamdu Meah v. Emperor*.

11 Cr. L. J. 684 :
8 I. C. 594 : 3 Bur. L. T. 9.

—S. 423—Re-trial—Power of Appellate Court to order on an appeal from conviction.

An accused person was convicted by a Magistrate of the first class under S. 420 of the I. P. C., and sentenced to undergo rigorous imprisonment for two years. He appealed to the Court of Session against this conviction and sentence, and the Sessions Judge, being of opinion that, if the conviction was right, the sentence was inadequate, reversed the conviction and sentence without deciding the question whether the conviction was right or wrong, and ordered the appellant to be re-tried by the District Magistrate. The District Magistrate thereupon tried the accused and sentenced him to undergo rigorous imprisonment for five years. On appeal to the High Court by the accused against this fresh conviction and sentence: Held, that the order of the Court of Session, directing the new trial, was within the scope of the power conferred upon it by S. 423 aforesaid. *Emperor v. Sheikh Rasul*.

1 Cr. L. J. 751 :
17 C. P. L. R. 97.

—S. 423—Re-trial—Power of Appellate Court to order re-trial on an appeal from a conviction.

There is nothing in the terms of S. 423 (1) (b) of the Cr. P. C., 1898, limiting the power of an Appellate Court, on an appeal from a conviction, to order a re-trial of the appellant. *Emperor v. Sheikh Rasul*.

1 Cr. L. J. 751 :
17 C. P. L. R. 97.

—S. 423—Re-trial.

S. 423 of the Cr. P. C., empowers an Appellate Court to reverse *inter alia* the finding and to order the accused to be re-tried by a Court of competent jurisdiction or to be committed for trial. It does not empower an Appellate Court to try the accused person itself. *C. C. Sirear v. Emperor*.

26 Cr. L. J. 119 :
88 I. C. 287 : 4 Bur. L. J. 29 : 3 Rang. 68 :
A. I. R. 1925 Rang. 230.

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in S. 307 (3) for clearly the High Court is entitled to take into consideration not merely the opinions of the majority but also those of the minority: and where the Jury, as a whole, or any individual Jury man, has chosen to give a reason or to indicate the grounds on which the conclusion is based, then the High Court is bound to consider those opinions as well. *Dattatraya Sadashiv Karve v. Emperor*. (F. B.)

41 Cr. L. J. 289 :
186 I. C. 402 : I. L. R. 1940 Nag. 394 :
12 R. N. 204 : A. I. R. 1940 Nag. 17.

S. 423—Verdict of Jury.

Where a Jury, on a proper direction, thinks fit to act on the evidence of an approver, the High Court has no right to interfere with the verdict. *Chitlya Ranjan Das v. Emperor*.

34 Cr. L. J. 841 :
144 I. C. 879 : 37 C. W. N. 290 :
6 R. C. 56 : A. I. R. 1933 Cal. 509.

Ss. 423, 439—Verdict of Jury—Jury trial—Appeal by accused—Power of Appellate Court to go into the facts—Application by Crown to enhance sentence.

Under S. 423, Cr. P. C., where in the case of a conviction by a Jury, the Appellate Court is not authorised to alter or reverse the verdict of the Jury unless it is of opinion that such verdict is erroneous owing to a misdirection by the Judge or to a misunderstanding on the part of the Jury of the law as laid down by him and the Appellate Court cannot, accordingly, go into the facts of the case except to see whether there has been any misdirection by the Judge. The Appellate Court is not entitled in such a case to go into the facts and reverse the findings of the Jury even though a Criminal Revision Case has been filed by the Crown for enhancement of sentence calling upon the High Court to exercise its powers of revision under S. 439, Cr. P. C. *Rathanasabapathy Goundan v. Public Prosecutor*.

37 Cr. L. J. 909 :
164 I. C. 243 : 1936 M. W. N. 459 :
44 L. W. 155 : 71 M. L. J. 231 : 59 Mad. 904 :
9 R. M. 99 : A. I. R. 1936 Mad. 516.

S. 423 (2)—Verdict of Jury.

Before the High Court interferes with the verdict of a Jury, it should be satisfied not only that the Judge has misdirected the Jury, but also that his misdirection caused them to come to a conclusion which was in fact wrong. *Saraj Kumar v. Emperor*.

33 Cr. L. J. 854 :
139 I. C. 873 : 55 C. L. J. 439 :
59 Cal. 1361 : I. R. 1932 Cal. 667 :
A. I. R. 1932 Cal. 474.

S. 423 (2)—Verdict of Jury.

Charge to Jury—Judge explaining general principles of law as to corroboration but not directly applying to state of evidence—Direction is not proper. *Chitlya Ranjan Das v. Emperor*.

34 Cr. L. J. 841 :
144 I. C. 879 : 37 C. W. N. 290 :
6 R. C. 56 : A. I. R. 1933 Cal. 509.

S. 423 (2)—Verdict of Jury—Sessions trial—Prosecution witnesses not present—Adjournment, refusal to grant—Discretion of Court—Jury directed to record verdict of "not

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guilty" — *Misdirection* — *Appeal* — *Verdict, whether can be set aside.*

On the date fixed for trial of a Sessions case, no witnesses for the prosecution were present and the hearing was adjourned to the next day. Again there were no witnesses present and the Judge refused to grant any further adjournment and called upon the accused to plead and empanelled a Jury. He then directed the Public Prosecutor to open the case, and the latter did so under protest and informed the Court that he had no witnesses present to support the case for the prosecution. Thereupon, the Judge directed the Jury to return a verdict of "not guilty" and after that verdict had been returned, acquitted the accused. On appeal: *Held*, (1) that the Judge had exercised his discretion unwisely both on the first and second day and that he should have ascertained the cause of the absence of the prosecution witnesses and should have granted a reasonable adjournment in order to enable them to be re-summoned: (2) that in the circumstances of the case, it was a misdirection for the Judge to tell the Jury that there was no evidence for the prosecution and direct them to return a verdict of "not guilty;" (3) that the verdict of the Jury and the order acquitting the accused must, therefore, be set aside under Sub-s. (2) of S. 423 of the Cr. P. C., and the accused must be re-tried. *Superintendent and Remembrancer of Legal Affairs, Bengal v. Sader Saik*. 27 Cr. L. J. 125 : 91 I. C. 701 : 30 C. W. N. 190 : A. I. R. 1926 Cal. 584.

Ss. 423 (2), 307—Verdict of Jury—Whole case is opened up when reference is made.

Per *Stone, C. J.* and *Grille, J.*—The whole case is opened up when a reference is made so as to enable the High Court to reach independent conclusions of its own on the evidence. The submission makes the transition stage. Per *Bosc, J.*—The High Court must decide, in the first instance, whether the verdict is perverse or not, and the whole case is opened up to the extent that it is necessary to enable it to reach such a conclusion, but it cannot reach its own decision on the facts unless and until it comes to the conclusion that the verdict was perverse or that it otherwise militates against the provisions of S. 423 (2). *Dattatraya Sadashiv Karve v. Emperor*. (F. B.)

41 Cr. L. J. 289 :
186 I. C. 402 : I. L. R. 1940 Nag. 394 :
12 R. N. 204 : A. I. R. 1940 Nag. 17.

Ss. 423 (2), 439—Verdict of Jury—Revision—Powers of High Court.

A Court of Revision under the Cr. P. C., cannot alter or reverse the verdict of a Jury, until it is of opinion that such verdict is erroneous, owing to a misdirection by the Judge or to a misunderstanding on the part of the Jury of the law as laid down by him. *Abdul Majid Khan v. Emperor*.

30 Cr. L. J. 622 :
116 I. C. 297 : I. R. 1929 All. 553 :
A. I. R. 1929 All. 364.

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judgment on the evidence originally recorded or send the case to another Sessions Judge for that purpose, but as both sides had asked the Sessions Judge to disregard entirely all the additional evidence and the Sessions Judge had already recorded his findings on the original evidence only, it was unnecessary to return the case to the Sessions Judge in order that he might record a fresh judgment: *Per Jwala Prasad, J.*—The first order of the Sessions Judge, in appeal, setting aside the convictions and sentences, ordering a re-trial of the accused, and, directing the Magistrate to take additional evidence but at the same time requiring him to record a fresh decision on evidence already on the record of the case and upon the additional evidence which he was directed to take, was wholly illegal; but as the accused had not been prejudiced in any way by such order, a re-trial was, under the circumstances of the case, not necessary. *Gajanand Thakur v. Emperor.*

17 Cr. L. J. 332 :
35 I. C. 508 : 1 P. L. J. 99 :
A. I. R. 1916 Pat. 219.

—Ss. 423, 439—*Re-trial—Discharge of accused—High Court, power of, to order commitment for trial.*

The High Court has jurisdiction under Ss. 423 and 439, Cr. P. C., to set aside an order of discharge and to direct that a person improperly discharged to be committed for trial. *Public Prosecutor v. Ponnusami Nayak.*

30 Cr. L. J. 184 :
113 I. C. 546 : 1928 M. W. N. 312 :
28 L. W. 651 : 55 M. L. J. 674 :
I. R. 1929 Mad. 146 : 52 Mad. 156 :
A. I. R. 1928 Mad. 1267.

—S. 423, 526—*Re-trial—No direction as to who should re-try—Discretion of Magistrate to order trial by another Magistrate—Change of Magistrate, desirability of—Transfer, grounds for.*

If an order for re-trial is made by the High Court and it is not stated in the order whether the re-trial is to be held by the same Magistrate or by some other Magistrate, it should not be presumed that it was the intention of the High Court to direct that the re-trial should be held by the same Magistrate. Under such circumstances, the matter is left entirely in the discretion of the Magistrate who has to appoint the Court by which the case is to be tried. *Bali Ram Kakkar v. Sitaram Kakkar.*

27 Cr. L. J. 1188 :
97 I. C. 948 : 30 C. W. N. 1002 :
A. I. R. 1926 Cal. 1173.

—S. 423 (a)—*Re-trial of appeal, power of High Court to direct.*

The fact that a Sessions Judge obviously failed to apply his mind to the determination of the questions before him, and declined to adjudicate therein himself, because the Police did not attempt to adjudicate as to the guilt or innocence of persons implicated, is an indication of a complete misconception of the respective duties of the Courts and the Police and the High Court will, in such a case, under the wide powers conferred upon it by S. 423 (a) of the Cr. P. C., direct a lower Appellate Court

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to re-try an appeal which was before it for determination. *Emperor v. Chanda Singh.*

13 Cr. L. J. 737 :
17 I. C. 49 : 7 P. L. R. 1913 :
43 P. W. R. 1912 Cr. : 2 P. R. 1913 Cr.

—S. 423 (1) (a)—*Re-trial—Acquittal Appeal—Appellate Court, power of, to convict without re-trial.*

When a person is tried by a Judge and a Jury and acquitted and there is an appeal against his acquittal, the Appellate Court is not bound to order a re-trial but may find him guilty on the evidence before the Court and pass a sentence on him. *Emperor v. Saran.*

28 Cr. L. J. 66 :
99 I. C. 98 : A. I. R. 1927 Sind 104.

—S. 423 (1) (b) (1)—*Re-trial—Reversal of conviction of murder—Power to order re-trial for attempt to murder and causing grievous hurt.*

Where the conviction of a person for murder is set aside by the High Court under S. 423 (1) (b) (1), the High Court has power to order his re-trial on the same facts for attempting to murder an unknown person and by such act causing hurt to that person and thereby committing an offence under para. II of S. 307, Penal Code. *Azam Ali v. Emperor.*

31 Cr. L. J. 230 :
121 I. C. 248 : A. I. R. 1929 All. 710.

—S. 423, Cl. (b)—*Re-trial—Appeal—Evidence omitted by lower Court—Re-trial, whether should be ordered—Procedure.*

Where the only defect in the procedure of the Court of first instance is that certain evidence has not been brought upon the record which ought to have been there, it is quite unnecessary to do anything more than to have that evidence taken and brought upon the record : it is unnecessary to worry all the witnesses a second time and to waste public time in having them re-examined. *Ishwar Prasad v. Emperor.*

19 Cr. L. J. 485 :
45 I. C. 149 : 16 A. L. J. 325 :
A. I. R. 1918 All. 133.

—S. 423 (2)—*Re-trial.*

Where the facts have to be determined and the evidence is of such a character as to render it difficult to pronounce any opinion on its character without hearing the witnesses, a new trial will be ordered. *Ramchandra v. Emperor.*

35 Cr. L. J. 747 :
148 I. C. 553 : 35 Bom. L. R. 174 : 6 R. B. 307 :
A. I. R. 1933 Bom. 153.

—S. 423—*Reversal of finding.*

Appeal by convict—Finding and sentence reversed—Reversal of finding and sentence is final—Appeal dismissed—Orders under S. 423 can be passed on appeal by Government. *Mohammadi Gul Rohilla v. Emperor.*

33 Cr. L. J. 849 :
140 I. C. 49 : 28 N. L. R. 233 :
I. R. 1932 Nag. 118 : A. I. R. 1932 Nag. 121.

—S. 423—*Reversal of finding—Charge to Jury—Misdirection in the charge—Heads of charge.*

Cr. P. CODE (1898), S. 426.

—S. 426—Applicability.

“Convicted person” applies to person against whom order under S. 107 has been made. *Natwaroo Rai v. Emperor*.

33 Cr. L. J. 731 (2) :
139 I. C. 141 : 1932 A. L. J. 624 :
54 All. 861 : I. R. 1932 All. 523 :
A. I. R. 1932 All. 680.

—S. 426—Bail.

Order of imprisonment under S. 120—Release on bail by Appellate Court—Period of bail, should be excluded from period of imprisonment. *Daisu v. Emperor*.

36 Cr. L. J. 177 :
152 I. C. 785 : 4 A. W. R. 76 :
7 R. A. 392 : A. I. R. 1934 All. 845.

—S. 426—Bail.

The period during which the person bound over is released on bail by an order of Appellate Court should be excluded from the term prescribed under the order of the Magistrate who bound him over. *Emperor v. Masuria*.

37 Cr. L. J. 155 :
159 I. C. 804 (2) : 1935 A. L. J. 1337 :
1935 A. W. R. 1401 : 8 R. A. 518 :
A. I. R. 1936 All. 107.

—Ss. 426, 497—Bail—Bail application rejected by Sessions Judge—Powers of High Court to grant—Respectability of accused and sufficiency of security, whether ground for granting bail.

The High Court has power to grant bail under S. 426 (2) of the Cr. P. C., after an application for the same made after a conviction by a Magistrate has been rejected by the Sessions Judge. But the Court will only interfere with the discretion exercised by the Sessions Judge in refusing bail if that discretion was manifestly wrong or if in fact no discretion has been exercised. The principle which should guide the High Court in dealing with such an application, is whether there are reasonable grounds for believing that the applicant has committed the offence in question. Although the High Court has unfettered powers to grant bail, yet in exercising these powers the High Court ought to have regard to the limitations imposed on lower Courts in this connection. The mere previous respectability of a man is *per se* no sufficient reason for granting bail after he has been convicted of a criminal offence. The question of grant of bail is not only to be dealt with from the point of view of there being likelihood or not of the accused person absconding. *Shaikh Karim v. Emperor*.

27 Cr. L. J. 319 :
92 I. C. 703 : A. I. R. 1926 Nag. 279.

—S. 426—Scope.

Cl. 3 of S. 426 does not lay down that the period during which a person is released shall be excluded from the term. What it lays down is that this period will be excluded in computing the term, which means that

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this period will be left out in making calculation.

158 I. C. 908 : 1935 A. L. J. 995 :
1935 A. W. R. 967 : 8 R. A. 346 :
A. I. R. 1935 All. 873.

—S. 426—Sentence—Order of detention, whether sentence—Reformatory Schools Act (VIII of 1897), Ss. 8, 10—Sessions Judge, whether can suspend operation of order.

An order of detention passed by a District Magistrate under S. 10 of the Reformatory Schools Act (VIII of 1897) is not a “sentence” within the meaning of S. 426 of the Code of Criminal Procedure, nor is it a punishment enumerated in S. 53 of the Indian Penal Code. A Sessions Judge, therefore, has no power to suspend its operation under S. 426 of the Code of Criminal Procedure. *Emperor v. Krishna Pandaram*.

16 Cr. L. J. 134 :
27 I. C. 198 : A. I. R. 1915 Mad. 1067.

—S. 426—Suspension.

Although the Sessions Judge has power under S. 498 to admit a person bound over under S. 118 to bail, it does not empower him to pass an order under S. 426, suspending execution of that order. *Emperor v. Masuria*.

37 Cr. L. J. 155 :
159 I. C. 804 (2) : 1935 A. L. J. 1337 :
1935 A. W. R. 1401 : 8 R. A. 518 :
A. I. R. 1936 All. 107.

—S. 426—Suspension—Suspension of sentence, when to be granted.

In the absence of very special cause, no order for a suspension of sentence should be passed, as the result of such an order is that if the appeal fails finally, the convicted person only serves the original period of his sentence less the period of suspension. *Shaikh Karim v. Emperor*. 27 Cr. L. J. 319 :
92 I. C. 703 : A. I. R. 1926 Nag. 279.

—S. 427 (1)—Appeal—Appellant not heard—Decision whether legal—Appellate judgment, necessary ingredients of.

The provisions of S. 427 (1), Cr. P. C., are mandatory and the dismissal of a criminal appeal is not legal if the appellant or his Pleader is not given a reasonable opportunity of being heard in support of his appeal. The judgment of a Criminal Appellate Court must show on the face of it, that the Court had applied its mind to the consideration of the evidence on the record and the grounds raised by the accused in the Court below in his memorandum of appeal. *Chandrasekhar v. Rajaram*.

30 Cr. L. J. 791 :
117 I. C. 279 : I. R. 1929 Nag. 231 :
A. I. R. 1929 Nag. 450.

—S. 427—Power of Sessions Judge—Order of acquittal.

Held, that a Sessions Judge was not competent to set aside an order of acquittal passed by a Magistrate, although such order might have been passed without any charge

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to revise an order passed by a District Magistrate under S. 515 or by any Magistrate under S. 514 of the Code. *Emperor v. Karam Bahadin*. 13 Cr. L. J. 31 : 13 I. C. 223 : 5 S. L. R. 179.

———Ss. 423 (d), 439—Revision—Leave to compound an offence.

S. 423, cl. (d), Cr. P. C., being expressly mentioned in S. 439 of the Code, a High Court can, in revision, if it sees fit, give leave for the composition of an offence under S. 325, I. P. C. *Ram Piyari v. Emperor*. 11 Cr. L. J. 203 : 5 I. C. 696 : 7 A. L. J. 103.

———S. 423—Right to reply—Right of accused to reply.

An accused has no right of reply under S. 423, Cr. P. C., but the privilege of replying should never be refused by an Appellate Court. *Bahra v. Emperor*. 25 Cr. L. J. 1173 : 82 I. C. 37 : A. I. R. 1925 Oudh 50.

———S. 423—Right to reply—Right of appellant's Counsel to reply—Practice.

The Counsel for the appellant in a criminal appeal has no right to reply to the arguments addressed on behalf of the opposite party, but permission to do so is a privilege which should not ordinarily be refused by the Court. *Prag v. Emperor*. 25 Cr. L. J. 1169 : 82 I. C. 33 : 11 O. L. J. 693 : 1 O. W. N. 473 : A. I. R. 1925 Oudh 65.

———S. 423—'Right of reply' to Public Prosecutor.

There is nothing in S. 423, Cr. P. C., to preclude an appellant or his pleader from replying to the arguments of the Public Prosecutor in an appeal, and as a matter of principle, such right of reply should be conceded to him. *Buta Singh v. Emperor*. 18 Cr. L. J. 3 : 38 I. C. 825 : 21 P. R. 1917 Cr. : A. I. R. 1916 Lah. 74.

———S. 423—Right to reply.

Under S. 423, the practice of the Court is that if the parties are to be heard at all, they must be heard in each other's presence, and if the respondent is heard, the appellant should have a right to reply. *Ahad Bux v. Kalu*. 33 Cr. L. J. 775 (1) : 189 I. C. 436 (1) : 36 C. W. N. 699 : I. R. 1932 Cal. 621 : A. I. R. 1942 Cal. 856.

———S. 423—Scope—Acquittal on charge—No appeal by Local Government—Appeal by accused against conviction on other charges—Finding on which acquittal is based, whether can be interfered with.

If the Local Government has filed no appeal from the acquittal of an accused on a particular charge, it is not open by the High Court in an appeal by the accused from his

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conviction on another charge to take an independent view of the evidence and come to a finding contrary to the one arrived by the lower Court in acquitting the accused. *Kisan Das v. Emperor*. 30 Cr. L. J. 944 : 118 I. C. 473 : I. R. 1929 Nag. 265 : A. I. R. 1929 Nag. 325.

———S. 423—Scope—Acquittal—Power of Appellate Court.

The powers of an Appellate Court are defined in S. 423, Cr. P. C., and in that section a clear distinction is drawn between the power which may be exercised in an appeal from an order of acquittal and in an appeal from a conviction. *Darbari Mal v. Emperor*. 12 Cr. L. J. 575 : 12 I. C. 839 : 8 A. L. J. 1129.

———S. 423—Scope—Alteration in charge.

It is not competent to an Appellate Court to alter a charge under S. 376 of the Penal Code to one under S. 346 of the Code, inasmuch as the charge under the latter section involves different elements and different questions of fact from a charge under S. 376. *C. C. Sircar v. Emperor*. 26 Cr. L. J. 1119 : 88 I. C. 287 : 4 Bur. L. J. 29 : 3 Rang. 68 : A. I. R. 1925 Rang. 230.

———S. 423—Scope—Consequential or incidental orders, meaning of.

Per Tek Chand, J.—Orders for disposal of property produced before a Criminal Court in the course of the trial are clearly "consequential or incidental orders" within the meaning of S. 423 (1) (d), Cr. P. C. *Thiraj v. Emperor*. 29 Cr. L. J. 810 : 111 I. C. 314 : 10 Lah. 187 : A. I. R. 1928 Lah. 567.

———S. 423—Scope.

Section 423 of Cr. P. C. must be read with S. 418, and where facts are in issue, the absolute finality of the verdict of a Jury on a question of fact must be given effect to. S. 423 applies to the case of a trial by Jury only in so far as to empower an Appellate Court to alter or reverse a verdict in the sense of preventing a conviction taking effect as the result of a misdirection. But an Appellate Court cannot substitute its own verdict for that of the Jury. *Ikrāmuddin v. Emperor*. 18 Cr. L. J. 491 : 39 I. C. 331 : 15 A. L. J. 205 : 39 All. 348 : A. I. R. 1917 All. 173.

———S. 423—Scope.

S. 423 (2) of the Cr. P. C. only applies where it becomes necessary to consider whether the verdict of a Jury was erroneous owing to a misdirection by the Judge. It does not narrow down the scope of S. 418 of the Code which allows an appeal in a Jury trial on a question of law. Where there has been no trial in fact, owing to the fact that the trial which was held was illegal, the trial must be set aside for that reason only and no question

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having been framed or evidence for defence taken. *Sayid Khan v. Emperor*.

1 Cr. L. J. 700 :
1 A. L. J. 415.

—————S. 428.

—————Additional evidence.
—————Applicability.
—————Construction.
—————Cross-examination.
—————Grounds.
—————High Court.
—————Powers of lower Appellate Court.
—————Procedure.
—————Recording of reasons.
—————Relevance.
—————Remand.
—————Scope.

—————S. 428.

See also (i) Appeal.

(ii) Cr. P. C., 1898, Ss. 256, 342,
423, 510.

(iii) Criminal trial.

—————S. 428—Additional evidence, admission of, by Appellate Court.

S. 428, Cr. P. C., does not preclude an Appellate Court from admitting additional evidence in order to ascertain the value of statements made by a defence witness, or limit the application of the section to the reception of merely formal evidence. *Subramania Iyer v. Emperor*. 30 Cr. L. J. 133 : 113 I. C. 325 : 1928 M. W. N. 777 : 55 M. L. J. 676 : 28 L. W. 785 : I. R. 1929 Mad. 111 : A. I. R. 1928 Mad. 1174.

—————S. 428—Additional evidence—Appeal—Additional evidence—Power of Appellate Court to substitute another offence and call for additional evidence.

S. 428, Cr. P. C., merely enables an Appellate Court, if it thinks it necessary to call for additional evidence, which will explain or clear up or perhaps supplement within limitations the evidence for the prosecution in support of a charge which has resulted in a conviction and which conviction is the subject of an appeal. It does not enable the Appellate Court to substitute an offence in respect of which there has not been a conviction and then say that additional evidence must be called which may support such an offence. *Konda Reddi v. Mangala Babanna*. 32 Cr. L. J. 109 : 128 I. C. 159 : 59 M. L. J. 458 : 32 L. W. 534 : 1930 M. W. N. 1209 : 54 Mad. 63 : I. R. 1931 Mad. 15 : A. I. R. 1930 Mad. 854.

—————S. 428—Additional evidence—Appeal.

It is open to an Appellate Court under S. 428 of the Cr. P. C. to admit a document as additional evidence to cure a formal defect. *Cholancheri Ayammad v. Emperor*.

24 Cr. L. J. 403 :
72 I. C. 515 : 44 M. L. J. 557 :
17 L. W. 615 : 1923 M. W. N. 290 :
32 M. L. T. 300 : A. I. R. 1923 Mad. 600.

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—————S. 428—Additional evidence—Evidence Act, 1872, S. 157—Sessions trial—Appeal—Appellate Court, whether can direct transfer of deposition made before Committing Magistrate.

Under S. 428 of the Cr. P. C. an Appellate Court can, after recording its reasons, call for additional evidence by directing the Sessions Judge to bring upon his record the statements of witnesses as given in the Court of the Committing Magistrate under S. 288 of the Code, after giving notice to the accused. *Nagina v. Emperor*. 27 Cr. L. J. 813 : 95 I. C. 477 : 19 A. L. J. 947.

—————S. 428—Additional evidence—Further evidence, recording of, by Appellate Court—Practice and procedure—Co-accused, whether competent witness.

An Appellate Court is justified under S. 428, Cr. P. C. to allow prosecution to produce further evidence if it finds that certain evidence is necessary to enable it to give a correct finding. All that is necessary is that Appellate Court when directing the taking of further evidence should record its reasons. But the Section does not authorise the examination of a co-accused as a witness even though that co-accused may not have appealed. *Dulla v. Emperor*.

27 Cr. L. J. 463 :
93 I. C. 255 : 6 Lah. 148 :
27 P. L. R. 327 : A. I. R. 1926 Lah. 309.

—————S. 428—Additional evidence.

It is only when the Court of Session is sitting to hear an appeal from a judgment of a Magistrate that it has got power under S. 428 to record additional evidence itself or direct it to be taken by a Magistrate. *Hori Lal v. Emperor*.

36 Cr. L. J. 844 :
155 I. C. 753 : 1935 O. W. N. 592 :
7 R. O. 617 : A. I. R. 1935 Oudh 402.

—————S. 428—Additional evidence.

Per *Sadasiva Aiyar, J.*—The power of an Appellate Court to take additional evidence under S. 428 should be exercised against an accused person only in very exceptional cases. *Varadarajulu Naidu v. Emperor*.

20 Cr. L. J. 455 :
51 I. C. 343 : 37 M. L. J. 81 :
1919 M. W. N. 669 : 42 Mad. 885 :
A. I. R. 1920 Mad. 928.

—————S. 428—Additional evidence.

S. 428, Cr. P. C., allows additional evidence to be admitted in appeals against acquittals as well as in appeals against convictions. *In re : Sinnu Goundan*. 15 Cr. L. J. 236 : 23 I. C. 188 : 26 M. L. J. 160 : 1914 M. W. N. 273 : A. I. R. 1914 Mad. 628.

—————S. 428—Additional evidence.

The Sessions Judge is not justified by the provisions of S. 428 in recording additional evidence while deciding an appeal against the judgment of the Assistant Sessions Judge who tried the case with the aid of Assessors. Such evidence is not legally admissible and the accused cannot legally be convicted upon that evidence. *Hori Lal v. Emperor*.

36 Cr. L. J. 844 :
155 I. C. 753 : 1935 O. W. N. 592 :
7 R. O. 617 : A. I. R. 1935 Oudh 402.

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charges by the trial Court but his conviction on some of the charges is set aside in appeal, there need not necessarily be a reduction of sentence. *Bechu Singh v. Emperor*.

31 Cr. L. J. 173 :
120 I. C. 764 : 10 P. L. T. 587 :
A. I. R. 1930 Pat. 79.

—S. 423 (b)—Scope.

If the Appellate Court has power under S. 423 (b) to grant sanction to a compromise, then Cl. (5) of S. 345 would be unnecessary. *Naqi Ahmad v. Emperor*.

14 Cr. L. J. 46 :
18 I. C. 270 : 11 A. L. J. 13.

—Ss. 423 (b), 528—Scope—"Order him to be re-tried by Court subordinate"—Jurisdiction of Appellate Court to try the case itself.

The words "order him to be re-tried by a Court subordinate to such Appellate Court" in S. 423-B are not words of limitation, and do not exclude the Appellate Court from itself trying the offender, if the offence is one within the ordinary jurisdiction of the appellate Magistrate. *The Public Prosecutor v. Manikka Gramani*.

5 Cr. L. J. 104 :
16 M. L. J. 546 : 30 Mad. 228 :
2 M. L. T. 46.

—S. 423, Cl. (d) and S. 522—Scope—Appellate Court, power of, to set aside order of lower Court putting complainant in possession of land—Indian Penal Code, S. 447.

The accused was convicted of an offence under S. 447 of the I. P. C. and sentenced to pay a fine of Rs. 51. An order was also passed at the same time under S. 522 of the Cr. P. C. for putting the complainant in possession of the land in dispute and for removing certain fencings which had been erected by the accused. The Sessions Judge quashed the conviction and sentence and set aside the order under S. 522 of the Cr. P. C. : *Held*, that under S. 423, Cl. (d) of the Cr. P. C., the Sessions Judge had power to set aside the order under S. 522 of the Cr. P. C. *Sarabdevan Singh v. Emperor*.

1 Cr. L. J. 697 :
7 O. C. 208.

—S. 423—Scope of.

An order for composition is in no sense a consequential or incidental order within the meaning of S. 423 (d), Cr. P. C. When a special provision, obviously exhaustive in its scope, has been made for a special topic, as in S. 345, Cr. P. C., the scope thereof cannot be indirectly enlarged by reference to a general provision, such as that contained in S. 423 (d). *Akshoy Singh v. Ramseear-Bagdi*.

17 Cr. L. J. 339 :
35 I. C. 515 : 20 C. W. N. 1071 :
43 Cal. 1143 : A. I. R. 1917 Cal. 705.

—S. 423—Scope of.

S. 423 (1) (d) deals with the order to be passed after the appeal has been heard and does not apply to a release on bail pending the decision of the appeal. *Darsu v. Emperor*.

36 Cr. L. J. 177 :
152 I. C. 785 : 7 R. A. 392 :
A. I. R. 1934 All. 845.

—S. 423—Sentence, enhancement of.**Cr. P. CODE (1898), S. 423**

Where the High Court after dismissing the appeal of a convict proceeds to deal with the case as a Court of Revision, it has power to enhance the sentence passed upon the convict by the Trial Court but it has no power to convert his acquittal on any charge into a conviction. *Emperor v. Kan Thein*.

27 Cr. L. J. 1393 :
98 I. C. 705 : 5 Bur. L. J. 80 :
4 Rang. 140 : A. I. R. 1926 Rang. 154.

—S. 423—Summary dismissal—Appeal, disposal of—Appellate Court, duty of, to write judgment.

Where a criminal appeal is once admitted, it cannot be disposed of summarily without considering the whole evidence in the case and writing out a judgment under S. 423 of the Cr. P. C. If Counsel for the appellant does not appear, it is the duty of the Appellate Court to go through the record and write out a proper judgment according to law. *Nawa Lal Rai v. Emperor*.

24 Cr. L. J. 453 :
72 I. C. 613 : 4 P. L. T. 552 :
A. I. R. 1923 Pat. 368.

—Ss. 423, 537—Summary dismissal—Judgment—Summary dismissal of appeal—Omission to record reasons, effect of.

No reasons need be recorded in support of the summary dismissal of an appeal. *Kalachand Ghose v. Tatu (Tahir) Shaik*.

31 Cr. L. J. 474 :
123 I. C. 243 : 50 C. L. J. 285 :
A. I. R. 1929 Cal. 773.

—S. 423—Verdict of Jury—Appeal—Interference with verdict of Jury.

The High Court will interfere with the verdict of a Jury only when the verdict is obviously perverse or manifestly wrong or unreasonable. *Ram Dayal v. Emperor*.

30 Cr. L. J. 789 :
117 I. C. 277 : I. R. 1929 Nag. 229 :
A. I. R. 1929 Nag. 113.

—S. 423—Verdict of Jury—Murder appeal—Verdict of Jury—Interference.

A Court of Appeal would not be justified in disturbing the finding of a Judge or of a Jury on a simple issue of fact unless the verdict arrived at seems to be opposed to the entire weight of evidence. *Emperor v. Dinabandhu Ooriya*.

31 Cr. L. J. 737 :
124 I. C. 818 : A. I. R. 1930 Cal. 199.

—S. 423—Verdict of Jury.

S. 439 (6) does not operate to reduce effect of S. 423 (2). Counsel for accused is not entitled to go behind verdict of Jury and argue on the evidence. *Khoda Bux v. Emperor*.

35 Cr. L. J. 554 :
147 I. C. 1124 : 37 C. W. N. 1122 :
61 Cal. 6 : 6 R. C. 401 :
A. I. R. 1934 Cal. 105.

—S. 423—Verdict of Jury.

The word "verdict" is not confined to the ultimate conclusion of guilty or not guilty but may embrace other things as well. The sense in which it is used in S. 423 (2) relates to the final decision of the majority and it does not embrace the opinion of the minority. But the word "opinions" cannot possibly be used in that sense.

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accused's Pleader, that at the most, in waiving formal proof of an essential fact and relying on the admission of the Pleader the Court committed only a mere irregularity which did not prejudice the accused, and that the conviction was not, consequently, illegal. *Bansilal Gangaram Vani v. Emperor*.

29 Cr. L. J. 990 :

112 I. C. 110 : 30 Bom. L. R. 646 :
52 Bom. 686 : A. I. R. 1928 Bom. 241.

—S. 428—High Court.

High Court can allow additional evidence if it is necessary. *Bal Kishun Das v. Emperor*.

36 Cr. L. J. 1048 (2) :

156 I. C. 1001 : 14 Pat. 455 :

16 P. L. T. 154 :

1 B. R. 676 : 8 R. P. 53 :

A. I. R. 1935 Pat. 208.

—S. 428—Powers of lower Appellate Court.

The lower Appellate Court has no power to order a re-trial with the condition that the evidence already on record should be taken into consideration. *Patram v. Emperor*.

36 Cr. L. J. 740 (2) :

155 I. C. 258 : 7 R. N. 173 :

31 N. L. R. 246 :

A. I. R. 1935 Nag. 125 (2).

—S. 423—Procedure.

Non-examination of accused after examination of witnesses—District Magistrate setting aside conviction—Order giving liberty to hear other evidence to 'complete the inquiry'—Order held improper. *Mohammad Din v. Emperor*.

35 Cr. L. J. 1166.

150 I. C. 973 : 7 R. L. 39 :

A. I. R. 1934 Lah. 316.

—S. 428—Procedure.

Where a Sessions Judge directed re-trial of a case on the ground that some available witnesses had not been examined by the trying Magistrate : Held, that if the Sessions Judge thought the evidence of these witnesses necessary, he should have proceeded under Cl. (1) of S. 428 of the Cr. P. C. *Emperor v. Luchman Singh*.

1 Cr. L. J. 797 :

I. L. R. 31 Cal. 710.

—Ss. 428, 423, 342—Procedure—Appeal—Appellate Court finding documents were not proved and examination under S. 342 was not satisfactory—Proper procedure—Setting aside conviction and sending case back for further evidence but not for complete trial—Illegality.

Where in an appeal in a criminal case, the Appellate Court finds that some documents which had been marked as exhibits had not been proved according to law, and that the examination of the accused under Ss. 342, Cr. P. C., had not been satisfactory and that the accused should be examined afresh, there are two courses open to the Judge. He can either proceed under S. 428, Cr. P. C., that is to say, keep the appeal pending on his own file while directing additional evidence to be taken by a Magistrate and duly certified to the Appellate Court which would then dispose of

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the appeal under S. 428, Cl. (2). In ordering additional evidence to be taken, it would be quite proper to direct a further examination, of the accused at the same time. Or he can under S. 423 of the Code, set aside the conviction and order the accused to be re-tried by a Court of competent jurisdiction. Such a re-trial, if ordered, would be a *de novo* trial. But an order setting aside the conviction and sending the case back for further evidence and not for complete trial is illegal. *Sri Krishna Prasad Sinha v. Emperor*.

37 Cr. L. J. 906 :

164 I. C. 184 (1) : 17 P. L. T. 444 :

2 B. R. 715 : 9 R. P. 91 :

A. I. R. 1936 Pat. 438.

—Ss. 428, 537—Recording of reasons—Illegality—No record of reasons for remanding case—Call for findings instead of for evidence—Curative effect of S. 537—Practice.

An irregularity committed by a Magistrate in omitting to state his reasons for ordering fresh evidence under S. 428, Cr. P. C., is cured by S. 537. S. 428 empowers a Magistrate to only call for evidence and not for a finding. Where he calls for a finding instead of merely calling for evidence, his order should be set aside and he should be directed to restore the case to his file and dispose of it according to law. *Emperor v. Karanam Benu*.

12 Cr. L. J. 240 (b) :

10 I. C. 290 : 9 M. L. T. 406.

—S. 428—Re-hearing.

When once a Sessions Judge has formed an opinion as to the guilt of the accused upon the additional evidence recorded by him, it is desirable that a re-hearing of the appeal is not made before the same Judge. An application for transfer to another Court, should, in the circumstances, be granted. *Hori Lal v. Emperor*.

36 Cr. L. J. 844 :

155 I. C. 753 : 1935 O. W. N. 592 :

7 R. O. 617 : A. I. R. 1935 Oudh 402.

—S. 428—Remand by Appellate Court for additional evidence and finding, whether legal.

S. 428 of the Cr. P. C. does not empower an Appellate Magistrate to call for a fresh finding from a Subordinate Magistrate, nor can he act upon such finding if submitted by the Sub-Magistrate. *Muthukaruppan Servai v. Vellayya Kudumban*.

16 Cr. L. J. 79 :

26 I. C. 671 : 1914 M. W. N. 778 :

A. I. R. 1915 Mad. 756.

—S. 428—Scope—Prosecution having failed once should not be given opportunity to try case all over again.

The object of S. 428, Cr. P. C., is not for the purposes of enabling the prosecution to produce evidence which could easily have been produced at the first trial. It is not to enable the prosecution having failed once, to have an opportunity of trying the case all over again. *In re : Pujari Hanumanthappa*.

38 Cr. L. J. 257 :

166 I. C. 623 (2) : 1936 M. W. N. 1149 (2) :

44 L. W. 884 : 1937 1 M. L. J. 75 :

9 R. M. 385 (2) : A. I. R. 1937 Mad. 181.

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—S. 424.

See also (i) Appeal.

(ii) Cr. P. C., 1898, Ss. 366, 367.

(iii) Criminal trial.

—S. 424—Appellate Judgment—Non-compliance with the provisions.

Where the Judgment does not set forth the points for determination, the decision thereon and the reasons for these decisions, it does not comply with the provisions of S. 367 read with S. 424. *Kali Charan Som v. Priya Nath Das*.

39 Cr. L. J. 791 (b) :

176 I. C. 677 : 11 R. C. 150 :

A. I. R. 1938 Cal. 522.

—S. 424—Contents—Appeal—Dismissal—Judgment.

A District Magistrate disposed of an appeal with the following judgment: "No one appears. I see no reason to interfere. I dismiss the appeal": Held, that the judgment was not in conformity with the law, inasmuch as it did not disclose whether or not the Magistrate had examined the evidence as it was clearly his duty to do. *Ram Bharose v. Emperor*.

17 Cr. L. J. 353 :

35 I. C. 647 : 14 A. L. J. 327 :

A. I. R. 1916 All. 43.

—S. 424—Contents—Appeal, criminal—Judgment, contents of—Possession, determination of factum of—Court, duty of.

The judgment of a Court of Criminal Appeal must show on its face that the Court has considered the facts and evidence in reasonable detail. A person in possession of land has a right to protect his possession by show and use of reasonable force against trespassers and wrong-doers. Where the factum of possession is the determining element in a case, a Magistrate must find which of the parties was in peaceable possession on the date of the offence and was trying to protect such possession, and which party was trying to acquire possession by use of force. *In re : Veerappa Naik*.

18 Cr. L. J. 752 :

40 I. C. 752 : A. I. R. 1918 Mad. 814.

—S. 424—Contents—Judgment—What it should contain.

S. 424, read with S. 367, Cr. P. C., requires a judgment in appeal to state the points for determination, the decision thereon and the reasons for the decision. *Nga Po Han v. Emperor*.

14 Cr. L. J. 570 :

21 I. C. 170 : U. B. R. 1913 I. 169.

—Ss. 424, 367—Contents—Appellate Court, criminal—Judgment, contents of.

The judgment of a Criminal Appellate Court must show that the Court has fully considered the evidence on both sides and the pleas raised in appeal and that its conclusions are well supported by reasons. *Beni v. Emperor*.

18 Cr. L. J. 689 :

40 I. C. 689 : 4 O. L. J. 80 :

A. I. R. 1917 Oudh 323.

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—Ss. 424, 367—Duty of Appellate Court.

It would be well for District Magistrates who hear appeals in criminal cases to bear in mind that they are also subordinate to higher Courts and it is their duty to satisfy the higher Courts by their judgments that they have applied their minds to the case before them. and in recording a finding of conviction upon the evidence produced before them, have arrived at a correct conclusion. In order to discharge this duty, it is necessary for them to see that their judgments fulfil the requirements laid down by the law. Merely saying that all the points arising in the case have been considered by the Court below and have been rightly decided, does not show that the Appellate Court has applied its mind to the points arising in the case and has arrived at its own independent judgment in respect of them as it is required by the law to do. *Bansidhar v. Emperor*.

41 Cr. L. J. 220 :

185 I. C. 682 : 1939 A. L. J. 671 :

I. L. R. 1939 All. 865 : 12 R. A. 366 :

A. I. R. 1940 All. 18.

—S. 424—Omission to initial.

Judgment delivered in open Court and taken down by judgment-writer—Omission to initial due to Judge's death—Defect held not serious. *Pragmadho Singh v. Emperor*.

34 Cr. L. J. 703 :

144 I. C. 149 : 1933 A. L. J. 13 :

55 All. 132 : I. R. 1933 All. 396 (1) :

A. I. R. 1933 All. 40.

—S. 424—Procedure—Judgment of Appellate Court, rules to be observed in writing.

S. 424 of the Cr. P. C. requires that a judgment, whether it be under S. 421 or under S. 423, should be written by an Appellate Court in accordance with the rules laid down in Chap. XVI, including S. 367 of the Code, for the recording of a judgment. When the order of an Appellate Court is liable to revision by the High Court, the former Court should give some reason for dismissing an appeal to show that the points raised in the appeal were properly considered by it. *Talabar v. Emperor*.

18 Cr. L. J. 750 :

40 I. C. 750 : 2 P. L. W. 49 :

A. I. R. 1917 Pat. 336.

—S. 424—Procedure—Rioting—Omission to consider case of each accused separately, effect of.

In a case of rioting where the Magistrate has failed to consider the question whether the evidence regarding each individual accused is sufficient to show that he participated in the rioting, the conviction is bad and liable to be set aside. *In re : Bapu Naidu*.

16 Cr. L. J. 735 :

31 I. C. 175 : 2 L. W. 958 :

A. I. R. 1916 Mad. 732.

—S. 426.

See also Cr. P. C., 1898, S. 299 (a).

Cr. P. CODE (1898), S. 430

Cr. P. C., is not competent to make a reference to a Full Bench. *Ishan Chandra Samanta v. Hriday Krishna Bose.* 26 Cr. L. J. 915 : 86 I. C. 979 : 29 C. W. N. 475 : 41 C. L. J. 357 : A. I. R. 1925 Cal. 1010.

-----Ss. 429, 539-A—Rules of Judicial Commissioner's Court of Sind—Transfer application supported by affidavit—False statement in affidavit, liability for—Affidavit sworn before Honorary Magistrate, validity of—Practice and procedure.

A person swearing an affidavit in support of an application under S. 429 as required by S. 539-A of the Cr. P. C. and the rules of the Court of the Judicial Commissioner of Sind, renders himself liable to prosecution for false statements made therein. Under the rules of the Court of the Judicial Commissioner of Sind, an affidavit sworn before an Honorary Magistrate is an affidavit sworn before a proper person under the provisions of S. 539 of the Cr. P. C. *Emperor v. Kundan.*

28 Cr. L. J. 168 : 99 I. C. 600 : A. I. R. 1927 Sind 128.

-----S. 429—Scope.

The case laid before a third Judge under S. 429 is the complete case in so far as the two Judges who first heard the appeal have differed as regards particular appellants but not the case of the other appellants as to whom they did not differ. *Ahmad Sher v. Emperor.* 32 Cr. L. J. 868 : 132 I. C. 381 : I. R. 1931 Lah. 573 : A. I. R. 1931 Lah. 513.

-----S. 430.

See also Cr. P. C., 1898, Ss. 369, 417.

-----S. 430—Applicability of principle.

Even though S. 430 does not apply to judgments in revision applications, the principle of finality of judgments there laid down must apply to judgments in revision applications also. *Emperor v. Inderchand Bachraj Marwadi.* 36 Cr. L. J. 351 : 153 I. C. 525 : 36 Bom. L. R. 954 : 7 R. B. 246 : A. I. R. 1934 Bom. 471.

-----S. 430—Exceptions.

Exception referred to in S. 430 covers power of enhancement. *Emperor v. Abdul Qayum.* 34 Cr. L. J. 1205 : 146 I. C. 157 : 1933 A. L. J. 957 : 55 All. 715 : 6 R. A. 268 (2) : A. I. R. 1933 All. 485.

-----Ss. 430, 439—Procedure.

Per *Madgavkar, J.*—It is not desirable to lay down any hard and fast rule as to when a Court should issue notice of enhancement of sentence. *Emperor v. Jorabhai Kianbhai.* 27 Cr. L. J. 1173 : 97 I. C. 805 : 28 Bom. L. R. 1051 : 50 Bom. 783 : A. I. R. 1926 Bom. 555.

-----Ss. 430, 439—Scope.

An application for enhancement of sentence can be heard even after the delivery of the judgment in an appeal preferred by the

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accused against his conviction. *Emperor v. Jorabhai Kianbhai.* 27 Cr. L. J. 1173 : 97 I. C. 805 : 28 Bom. L. R. 1051 : 50 Bom. 783 : A. I. R. 1926 Bom. 555.

-----S. 430—Scope.

Where an appeal has been presented and dismissed, either after hearing or summarily, it is not open to the accused in showing cause why his sentence should not be enhanced, to go again into the merits. *Koya Partab v. Emperor.* 32 Cr. L. J. 242 : 129 I. C. 159 (2) : 32 Bom. L. R. 1286 : 54 Bom. 822 : I. R. 1931 Bom. 143 : A. I. R. 1930 Bom. 593 (2).

-----S. 431—Applicability—Revision—Abatement of—Application for revision against order for compensation under S. 250—Death of petitioner—Abatement of petition for revision.

A petition for the revision of an order directing the petitioner to pay compensation under S. 250 does not abate on the death of the petitioner. *Prem Singh v. Bhola.*

9 Cr. L. J. 103 : 24 P. R. Cr. 1908.

-----S. 431—Applicability—Revision—Abatement of—Revision—Death of applicant, effect of—Abatement of revision.

The principle contained in S. 431 is applicable also to cases on the revision side, so that on the death of an applicant the revision would abate except in so far as it relates to a sentence of fine. *Daulat Ram v. Emperor.*

20 Cr. L. J. 214 (b) : 49 I. C. 774 : 8 P. R. 1919 Cr. : 95 P. L. R. 1918 : 10 P. W. R. 1919 Cr. : A. I. R. 1919 Lah. 347.

-----S. 431—Revision—Application for—Abatement of—Proceedings under S. 145—Revision—Death of applicant—Application, whether abates.

An application under S. 435 for the revision of an order passed under S. 145 abates upon the death of the applicant, the right to carry on the proceedings conferred by Sub-s. (7) of S. 145 being confined to proceedings before a Magistrate. *Krishen Deo Singh v. Hari Singh.* 20 Cr. L. J. 720 : 52 I. C. 800 : 23 P. R. 1919 Cr. : A. I. R. 1919 Lah. 236.

-----S. 432.

See also (i) Burma Gambling Act, 1899, S. 8.

(ii) Cr. P. C., S. 215.

(iii) High Court.

-----S. 432—Appeal by accused—Notice—Necessity of.

Words 'alter the finding' include a finding of acquittal—Appeal by accused—Court should issue notice to accused or his Advocate before altering finding. *Hanuman v. Emperor.*

34 Cr. L. J. 177 : 141 I. C. 622 : 36 C. W. N. 1152 : 60 Cal. 179 : I. R. 1933 Cal. 148 : A. I. R. 1932 Cal. 723.

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himself only such of them as he thinks necessary. He is not bound by law to accept a list of witnesses which the Police or any one else may choose to produce from time to time. Where the Magistrate is of opinion that the expenses for summoning witnesses should be charged from parties, he should realize them before issuing the summons. *Gobind Sahai v. Emperor*. 15 Cr. L. J. 363 : 23 I. C. 731 : 12 A. L. J. 262 : A. I. R. 1914 All. 430.

S. 250—Procedure.

The procedure enjoined by S. 250 is imperative, and an omission to comply with the same is an illegality, and not a mere irregularity. An order of compensation passed without complying with the procedure must, therefore, be set aside. *Emperor v. Jetho*.

10 Cr. L. J. 229 :
2 S. L. R. 14.

S. 250—Procedure—Vexatious proceedings—Order for compensation after adjournment of case, legality of.

Under S. 250 as amended, if the complainant is present in Court, he is bound to show cause immediately and cannot insist upon a grant of an adjournment for the purpose. If, however, an adjournment is granted or if the complainant is not present and a summons is issued to him, the Court can pass an order at the adjourned hearing after recording and considering the cause, if any, shown by the complainant or informant. *In re : Vali Mahomed*.

30 Cr. L. J. 1112 :
119 I. C. 774 : 31 Bom. L. R. 591 :
I. R. 1929 Bom. 550 :
A. I. R. 1929 Bom. 287.

S. 250—Procedure—Witnesses of complainant not examined—Order directing payment of compensation, legality of.

Though compensation under S. 250 can be awarded in exceptional cases before all the evidence for the complainant has been recorded when there are witnesses present whom the complainant wishes to produce, the Magistrate should examine them before passing an order awarding compensation. *Dewa Singh v. Emperor*.

24 Cr. L. J. 251 :
71 I. C. 795 : A. I. R. 1923 Lah. 194.

S. 250 (1)—Procedure—Order to show cause signed immediately after judgment, discharging or acquitting.

When the order to show cause under S. 250 (1) is, though not a part of the judgment, signed immediately after the judgment so as to be practically simultaneous with the order of acquittal or discharge, the provisions of the section are sufficiently complied with. *Mangal Chand Marwari v. Makhan Goala*.

31 Cr. L. J. 875 :
125 I. C. 573 : 9 Pat. 100 :
11 P. L. T. 691 : A. I. R. 1930 Pat. 292.

S. 250—Record of reasons, necessity of—Compensation, order for—Reasons.

A Magistrate should give reasons for awarding compensation under S. 250. Where a Magistrate's judgment did not contain any

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statement of the facts of the case, nor any criticism of the incidents involved in it, and nor any reasons why the case was considered to be vexatious, the High Court set aside the order awarding compensation to the accused. *Amjad Ali v. Ashraf Ali*.

3 Cr. L. J. 390 :
10 C. W. N. 544.

Ss. 250, 262—Record of reasons, necessity of—Summary trial—Order for compensation—Recording of reasons, necessity of—Omission—Mere irregularity.

Even in summary trials under Chap. XXII of the Cr. P. C., where the Magistrate or Bench acts under S. 250, the requisites of that section as to recording of reasons must be carried out. An omission to record reasons is, however, a mere irregularity which is curable under S. 537, Cr. P. C. *Palani Goundan v. Krishnappa Goundan*.

32 Cr. L. J. 207 :
129 I. C. 37 : 59 M. L. J. 319 :
32 L. W. 283 : I. R. 1931 Mad. 181 :
1930 M. W. N. 1047 :
A. I. R. 1930 Mad. 929.

S. 250—Record of reasons—Necessity of—Merely saying that case is false, not enough.

It is the duty of the Magistrate ordering compensation to be paid to the accused under S. 250 to record his reasons for passing such an order. Merely to say that the case is false or that the explanation is not satisfactory, does not give the revisional Court sufficient grounds for finding whether there are good grounds for the order of compensation or not. An order for compensation passed without recording reasons for passing it, is illegal owing to non-compliance with the provisions of S. 250 and should be set aside in revision. *Bhagwandin v. Jagdal*.

39 Cr. L. J. 378 :
173 I. C. 643 : 1938 O. W. N. 288 :
10 R. O. 229 : 1938 O. L. R. 132 :
A. I. R. 1938 Oudh 99.

S. 250—Record of reasons—Necessity of—No opinion expressed that case was false and frivolous or vexatious—No record of reasons—Compensation order, legality of.

Where there is no opinion expressed by the order of discharge or acquittal that the case was false and either frivolous or vexatious, and there is no record of reasons such as is required by Sub-s. (2), of S. 250, before the order directing that compensation be paid by the complainant to the accused, the order that compensation be paid is bad and should be set aside. *Chidambaram v. Chand Ali*.

38 Cr. L. J. 999 :
171 I. C. 62 : 10 R. Rang. 126 :
A. I. R. 1937 Rang. 301.

S. 250—Record of reasons—Necessity of.

S. 250 requires before an order for compensation could be made by a Magistrate, not only that he should be satisfied that the accusation was either frivolous or vexatious but that the Magistrate, directing compensation to be paid, should record his reasons for making such a direction. *Thadiappan v. Veeraperumal*.

26 Cr. L. J. 1501 :
90 I. C. 157 : 21 L. W. 646 :
A. I. R. 1925 Mad. 1139.

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- Superior Court, meaning of.
- Superior Criminal Court, meaning of.
- Interference—Discretion of.
- Interference, grounds for.
- Interpretation of.
- Letters Patent (Cal.), Cl. 36.
- Miscellaneous.
- Order.
- Power of Additional Sessions Judge.
- Power of District Magistrate.
- Power of High Court.
- Power of Judicial Commissioner.
- Power of Sessions Judge.
- Record of case on revenue Courts.
- Reference, when competent.
- Revision.
- Scope.
- "Situatē," meaning of.
- Third party application—Nature of.
- Third party application—Validity of.

—S. 435.

- See also (i) Bombay District Municipal Act, 1901, S. 86.
- (ii) Bombay District Police Act, 1890, S. 39-A.
- (iii) Burma Courts Act, 1922, S. 27.
- (iv) Calcutta Municipal Act, 1899, S. 449.
- (v) Cantonment Code, S. 22.
- (vi) Cr. P. C. 1898, Ss. 4 (1) (m), 4 (1) (r), 4 (m), 6, 144, 145, 195, 203, 253, 257, 345, 408, 411, 422, 423, 436, 439, 476, 514, 561-A.
- (vii) Emergency Powers Ordinance, 1932, Ss. 39, 51, 61.
- (viii) High Court.
- (ix) Punjab Act, 1903, S. 27.
- (x) Railways Act 1890, S. 68.
- (xi) U. P. Municipalities Act, 1916.

—Ss. 435, 439—Acquittal—Revision by private complainant—Interference.

Per Young, C. J. and Blacker, J.—It is open to the High Court to set aside an order of acquittal at the instance of any party other than Government coming to the High Court in appeal under S. 417, and a private complainant has *locus standi* in such proceedings. No distinction can be made between a petition for revision by a private complainant and a case reported by a Sessions Judge or a District Magistrate. Interference by High Court is not limited to cases, where there has been an error of law or apparent injustice resulting in misappreciation or misapprehension of a legal principle except that the High Court cannot convert a finding of acquittal into one of conviction. *Sham Lal v. Chaman Lal*.

40 Cr. L. J. 942 :

184 I. C. 358 : 41 P. L. R. 1 and 37 :
12 R. L. 212 : A. I. R. 1939 Lah. 406.

—Ss. 435, 439—Acquittal—Revision—Power of High Court.

Ordinarily a High Court has jurisdiction to interfere on revision with an order of acquittal, but it should exercise this jurisdiction

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sparingly and only where it is urgently demanded in the interests of justice. The power of a Court to stop a case if it thinks it a waste of time to go on with it is undoubted and, therefore, where in a Sessions case two of the important witnesses for the prosecution were disbelieved by the Judge and the Assessors and the prosecution was stopped, there was no such patent miscarriage of justice as to call for interference by the High Court. It is very doubtful if a private party should, as a matter of right, be allowed to move the High Court in such cases. *In re : Natesa Padayachi*. 16 Cr. L. J. 558 : 29 I. C. 830 : 17 M. L. T. 457 : 28 M. L. J. 690 : 1915 M. W. N. 411 : A. I. R. 1916 Mad. 1106.

—S. 435—Applicability.

Sessions Judge, if suspects irregularity, should call for records irrespective of source of his information. *Roshan Lal v. Emperor*.

32 Cr. L. J. 653 :

131 I. C. 108 : 32 P. L. R. 130 (2) :

12 Lah. 471 : I. R. 1931 Lah. 380 :

A. I. R. 1931 Lah. 107.

—S. 435—Applicability.

The provisions of S. 435 (4) apply to all cases in which either a District Magistrate or a Sessions Judge has taken action, or has refused to take action, under Ss. 435, 436, 437, or 438. The words "further application" in S. 435 (4) mean any other application in respect of the order in question of the inferior Criminal Court. *Emperor v. Waryam*.

14 Cr. L. J. 134 :

18 I. C. 886 : 10 P. R. 1912 Cr. :

117 P. L. R. 1913.

—S. 435—Applicability.

The Sessions Judge has no authority to revise the order of a District Magistrate passed under the provisions of S. 528. *Mohammad Isahacq v. Emperor*.

37 Cr. L. J. 220 :

160 I. C. 85 : 8 Rang. 333 :

A. I. R. 1935 Rang. 446.

—S. 435—Calling for records—Whether judicial proceeding—*"Judicial Proceeding,"*—*"Calling for records under S. 435, not a Judicial Proceeding"*—*Lapse of time*.

Calling up for the records of a case from a Subordinate Magistrate under S. 435 will not constitute it a "Judicial Proceeding" within the meaning of S. 476. Where a District Magistrate called for the records of a case from a Sub-Magistrate in which the Sub-Magistrate had refused to accord sanction for perjury against a witness under S. 195, Cr. P. C. and passed orders under S. 476, Cr. P. C., committing the witness for trial before the nearest Magistrate; *Held*, that the District Magistrate had no jurisdiction to proceed under S. 476. Immediate action is contemplated by S. 476, Cr. P. C., and procedure taken under it after the lapse of several months is illegal. *In re : Subbaraya Vathiar*.

3 Cr. L. J. 118 :

15 M. L. J. 489 : 2 Weir. 601.

Cr. P. CODE (1898), S. 428**—S. 428—Additional evidence.**

Under S. 428, an Appellate Court dealing with an Appeal may direct additional evidence to be taken or itself record such evidence.

Moni Mohun Mondal v. Iswar Chunder Mukerjee.

6 Cr. L. J. 357 :

6 C. L. J. 251.

—S. 428—Additional evidence, when may be taken by Appellate Court.

An Appellate Court has jurisdiction, under S. 428, to take additional evidence or direct additional evidence to be taken to supply a formal defect, but the power has to be exercised with great care and only when the Court is satisfied that the case is one of formal proof only. *Varadrajulu Naidu v. Emperor.*

20 Cr. L. J. 455 :

51 I. C. 343 : 37 M. L. J. 81 :

1919 M. W. N. 669 : 42 Mad. 885 :

A. I. R. 1920 Mad. 928.

—S. 428—Additional evidence, when to be recorded.

Per *Sundara Aiyar, J.*—S. 428, Cr. P. C., does not apply where the prosecution having ample opportunities given to produce evidence has failed to do so. It applies to cases where, the evidence being already on the record, the Appellate Court considers it to be unsatisfactory, or where the evidence on record leaves the Court in such a state of doubt that to enable it to decide the case, it considers it necessary to have further evidence. Per *Phillips and Benson, JJ.*—The necessity for taking additional evidence under S. 428, Cr. P. C., must be determined on the particular facts of each case. Where a lower Court is found to have been mistaken in considering certain evidence to be sufficient on a certain point, the Appellate Court may direct additional evidence to be taken. *Jeremeah v. Vas.*

12 Cr. L. J. 585 :

12 I. C. 961 : 10 M. L. T. 506 :

1911 2 M. W. N. 576.

—Ss. 428, 476-B—Additional evidence—Appellate Court, jurisdiction of, to take additional evidence—S. 428, applicability of, to proceedings under S. 476.

An Appellate Court acting under S. 476-B, Cr. P. C., has no jurisdiction to take additional evidence inasmuch as S. 428, Cr. P. C., which empowers the Court to take additional evidence has no application to such a proceeding. *Sami Vannia Nainar v. Periaswami.*

29 Cr. L. J. 445 :

108 I. C. 638 : 1928 M. W. N. 73 :

27 L. W. 265 : 55 M. L. J. 218 :

51 Mad. 603 : A. I. R. 1928 Mad. 391.

—Ss. 428, 540—Additional evidence—Power of Appellate Court to take additional evidence.

The powers of a Criminal Appellate Court, under S. 428 of the Cr. P. C., are not analogous to those conferred on a Civil Appellate Court under S. 508 of the C. P. C., (Act XIV of 1882). A Court of Criminal Appeal can take additional evidence at any

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time, only it must record its reasons for so doing. *In re : Bhami Luxuman Shanbaga.*

11 Cr. L. J. 571 :

8 I. C. 145.

—S. 428—Applicability—Further evidence—Powers of Appellate Court.

The provisions of S. 428, Cr. P. C., empowering the Appellate Court to take or call for further evidence, do not apply to appeals under S. 195, Cr. P. C. *In re : Krishna Reddy.*

11 Cr. L. J. 280 (b) :

5 I. C. 881 : 7 M. L. T. 128 :

20 M. L. J. 102.

—S. 428—Construction.

The word "necessary" in S. 428, Cr. P. C., does not import that it should be impossible to pronounce judgment without additional evidence. *In re : Narayana Minori.*

25 Cr. L. J. 401 :

77 I. C. 481 : A. I. R. 1925 Mad. 106.

—S. 428—Cross-examination—Prosecution witnesses not cross-examined after charge—In appeal, accused wishing to bring such evidence before Court—Jurisdiction of Appellate Court to direct Magistrate to cross-examine witnesses and to decide appeal on receipt of such evidence.

Where the prosecution witnesses not having been recalled after charge, have not been cross-examined and the accused is convicted, and if in an appeal by the accused he wishes that such evidence should be brought before the Court, the Appellate Court has jurisdiction under S. 428, Cr. P. C., to direct the Magistrate that the witnesses should be cross-examined and their evidence submitted to him and then to dispose of the case on receipt of such further evidence. *Munshi v. Muzaffar.*

40 Cr. L. J. 47 :

178 I. C. 422 : 11 R. C. 358 :

43 C. W. N. 85 :

I. L. R. 1939 1 Cal. 205 :

A. I. R. 1938 Cal. 781.

—Ss. 428, 537—Grounds—Further evidence in appeal—Appellate Court acting upon admission of Pleader—Mere irregularity—Admission of Pleader in criminal cases—Evidence Act (I of 1872), S. 58.

In a case under S. 43 (1) (a) of the Bombay Abkari Act, the question whether the report of an Excise Analyst which was admitted in evidence in the trial Court without any objection, was really admissible or not was raised in appeal. When the Appellate Court proposed to have the Analyst examined under S. 428, Cr. P. C., the accused's Pleader stated that he did not want to challenge the correctness of the certificate and that he was prepared to admit that the bottle sent to the Analyst contained cocaine. The Pleader further stated that it was unnecessary to examine the Analyst and that the case may be decided on the merits. Upon this the Sessions Judge found that the bottle contained cocaine and convicted the accused. In revision: *Held*, that the Sessions Judge was justified in acting upon the admission of the

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with the High Court and unless either of those persons have been moved in the first instance, the High Court will decline to entertain such an application. *Chinai v. Emperor*.

29 Cr. L. J. 618 :

109 I. C. 810 : A. I. R. 1929 Nag. 13.

—S. 435 (4)—Concurrent jurisdiction—Revision application presented to Sessions Judge—Action by District Magistrate suo motu during pendency of application, whether valid.

The entertainment of an application under S. 435 by a Sessions Judge prevents the District Magistrate from dealing with the matter suo motu. In such a case, the latter's action would not invalidate an order passed by the Sessions Judge. *Po Gyi v. Emperor*.

17 Cr. L. J. 497 :

36 I. C. 465 : 8 L. B. R. 361 :

A. I. R. 1914 L. Bur. 260.

—S. 435 — Fresh application—Whether barred—Revision—Records called for by Sessions Judge on his own motion and returned without interference—Subsequent application by complainant to re-open the case—Duty of Sessions Judge.

A Sessions Judge, who himself calls for the records of a case in which the accused has been discharged and returns the same with the remark that in his opinion there is no cause for interference, is not precluded but on the other hand is bound to entertain an application for re-opening the case, presented by the complainant. He cannot reject such application on the ground of his previous non-interference on his own motion. *Mg Tun Myaing v. Nga Kauk San*.

16 Cr. L. J. 711 :

30 I. C. 999 : 8 Bur. L. T. 243 :

A. I. R. 1915 L. Bur. 7.

—S. 435—Inferior Court—Meaning of.

A District Magistrate exercising original or appellate jurisdiction is inferior to the Sessions Judge, within the meaning of S. 435 and the latter has, therefore, jurisdiction to call for the record of a case decided by the District Magistrate on appeal and make a reference to the High Court. *Darbari Lal v. Emperor*.

26 Cr. L. J. 1282 :

89 I. C. 146 : 23 A. L. J. 894 :

A. I. R. 1925 All. 591.

—S. 435—Inferior Court—Meaning of—Additional District Magistrate, whether subordinate to District Magistrate—Order directing further enquiry into case disposed of by Additional District Magistrate, legality of.

An Additional District Magistrate, as such, is not subordinate to the District Magistrate in Burma nor is his Court inferior to that of the District Magistrate within the meaning of S. 435. Where, therefore, a District Magistrate purporting to act under S. 435 called for a case in which the Additional District Magistrate had discharged the accused and ordered further inquiry before another Magistrate: Held, that the District Magistrate was not legally competent to make such an order. *Emperor v. Nawab Ali*.

20 Cr. L. J. 494 :

51 I. C. 478 : 12 Bur. L. T. 56 :

A. I. R. 1919 L. Bur. 43.

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—S. 435—Inferior Court—Meaning of—District Magistrate as Court of Appeal, whether inferior to Sessions Judge.

A District Magistrate sitting as a Court of Appeal is an inferior Criminal Court to the Sessions Court for the purposes of S. 435. *Kallu v. Emperor*.

23 Cr. L. J. 577 :

68 I. C. 609 : 3 Lah. 23 :

A. I. R. 1922 Lah. 85.

—S. 435—Inferior Court—Meaning of.

District Magistrate cannot recommend revision of order of Sessions Judge passed on appeal. *Emperor v. Baijnath Prasad*.

34 Cr. L. J. 947 (2) :

145 I. C. 393 : 6 R. P. 171 :

14 P. L. T. 364 :

A. I. R. 1933 Pat. 305.

—S. 435—Inferior Court—Meaning of—First Class Magistrate, whether subordinate to District Magistrate.

A First Class Magistrate is subordinate to a District Magistrate for purposes of S. 435. Consequently a District Magistrate can set aside an order of discharge passed by a First Class Magistrate and order further enquiry. *Indar Singh v. Emperor*.

30 Cr. L. J. 490 :

115 I. C. 539 : I. R. 1929 Lah. 411 :

30 P. L. R. 448.

—S. 435—Inferior Court—Meaning of.

Magistrate ordering execution of extradition warrant is not acting in a judicial capacity. It being an executive act, High Court has no jurisdiction to interfere on the revision side. *Sandal Singh v. District Magistrate and Superintendent, Dehra Dun*.

35 Cr. L. J. 1296 :

151 I. C. 279 : 56 All. 409 :

1934 A. L. J. 556 :

4 A. W. R. 1526 :

7 R. A. 128 (2) : A. I. R. 1934 All. 148.

—S. 435—Inferior Court—Meaning of.

S. 435 applies exclusively to proceedings of an inferior Criminal Court. District Magistrate being inferior Court to Sessions Judge's, the former has no jurisdiction to examine records of case decided by Sessions Court and to make reference to High Court. *Emperor v. Patrakhan*.

33 Cr. L. J. 474 :

137 I. C. 525 : I. R. 1932 All. 327 :

A. I. R. 1932 All. 124.

—S. 435—Inferior Court—Meaning of.

The term "inferior Criminal Court" in S. 435 does not include a Civil Court exercising its power under S. 476 of the Code. *Babulal v. Emperor*.

21 Cr. L. J. 270 :

55 I. C. 286 : 16 N. L. R. 23 :

A. I. R. 1920 Nag. 146.

—S. 435—Inferior Criminal Court—Meaning of.

A proceeding under S. 476 may possibly be considered to be one of a quasi-criminal nature. But a Civil or Revenue Court making an inquiry under that section, preliminary to a prosecution, does not become a Criminal Court

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—S. 428—Scope—Word 'necessary', meaning of—Section if confined to prosecution evidence or absence of evidence on formal point—Re-trial or taking fresh evidence.

S. 428, Cr. P. C., which enables an Appellate Court to call for additional evidence is not rendered inapplicable merely because it is not the Court but, the accused that considers such evidence to be necessary. Neither is the section confined in its operation to cases of absence of evidence on some formal point such as a sanction, nor only to evidence for the prosecution. Where all the necessary evidence is not before the Appellate Court, whether the proper course in any particular case is to order a re-trial or merely direct further evidence to be taken under S. 428, Cr. P. C., is a matter of discretion of the Court, apart from what the accused or the prosecution may desire. Where the evidence not taken by the First Court on accused's behalf is so extensive or so directly bearing on the main issues in the case, the Appellate Court may order a re-trial: but where such evidence on a broad view of the case is comparatively unimportant or would have been of no assistance to the defence, the Court would merely direct additional evidence to be taken. Where the accused strongly protests against additional evidence to be taken, he cannot be allowed merely to use the irregularity in procedure of the First Court in not taking all the evidence, in order to obtain a re-trial of the case. *In re; Narayana Menon*.

25 Cr. L. J. 401 :
77 I. C. 481 : A. I. R. 1925 Mad. 106.

—Ss. 428, 439—Scope—Appeal—Additional evidence, when can be admitted—Power of Court, scope of—Admission of additional evidence—Revision—Interference by High Court, when justified.

The scope of S. 428 of the Cr. P. C. is *prima facie* not limited by any consideration save that the Appellate Court should be of opinion that additional evidence is necessary and should record its reasons for such opinion. The object of the section is just as much the prevention of the escape of a guilty person through some carelessness or ignorant procedure of the prosecutor or the Magistrate, as the vindication of the innocent of a person wrongfully accused where the same carelessness or ignorance has omitted to bring on the record circumstances essential to the elucidation of truth. In India the onus is placed on the Court not merely to listen to the evidence but to inquire to the utmost into the truth of the matter and secure justice. Accordingly if any restriction is to be placed upon the power conferred on an Appellate Court by S. 428 of the Cr. P. C., it cannot be that negligence or inadvertence on the part of the prosecution is to be allowed to effect a miscarriage of justice; on the contrary, the section is directed to the attainment of justice even at a late stage in the proceedings, by the introduction of further materials which the Court judges to be essential to a just decision of the case. The powers given by

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S. 428 of the Cr. P. C. to a Criminal Court are not less than are given to a Civil Court in the matter of admission of evidence at the appellate stage and Courts ought not to circumscribe them where the Legislature has not seen fit to do so. Even where it might itself in the exercise of its discretion as an Appellate Court have declined to admit additional evidence, the Court of revision will by no means always interfere with an order of the Appellate Court admitting additional evidence. To justify interference in revision in such a case the Court must be satisfied that the Appellate Court committed an error of law which has prejudiced the accused on the merits. *Akhtar Hussain v. Emperor*.

26 Cr. L. J. 1117 :
88 I. C. 595 : 6 P. L. T. 431 :
A. I. R. 1925 Pat. 526.

—S. 429.

See also Penal Code, 1860, Ss. 302, 379.

—S. 429—Difference of opinion between Judges of Division Bench—Reference to third Judge—Duty of Judge.

In a prosecution for adulteration of *ghce* the accused, having been convicted, moved the High Court in revision. The Judges of the Criminal Revisional Bench were of opinion that the facts as they stood were not sufficient to justify a conviction, but while one of them was for acquittal, the other was for a re-trial. The matter being referred to a third Judge: *Held*, that as the case was of great public importance, a re-trial ought to take place *de novo* and the procedure laid down in S. 428, Cr. P. C., should not be adopted even if the section were applicable to the case. *Grande Venkata Ratnam v. Corporation of Calcutta*.

19 Cr. L. J. 753 :
46 I. C. 593 : 22 C. W. N. 745 :
28 C. L. J. 32 : A. I. R. 1919 Cal. 862.

—S. 429—Difference of opinion between Judges of Division Bench—Reference to third Judge—Duty of Judge to whom case referred.

Where on a difference of opinion between the two Judges of a Criminal Revisional Bench of the High Court, the case is referred to a third Judge, the third Judge will not differ upon a point on which both the referring Judges are agreed, unless there are strong grounds for doing so. *Grande Venkata Ratnam v. Corporation of Calcutta*.

19 Cr. L. J. 753 :
46 I. C. 593 : 22 C. W. N. 745 :
28 C. L. J. 32 : A. I. R. 1919 Cal. 862.

—S. 429—Reference, legality of.

Per Crump, J.—A reference under S. 429, Cr. P. C., where the point of difference does not necessarily involve conflicting decisions as to the disposal of the whole case is likely to lead to inconvenient results. *Sejmal Punamchand v. Emperor*.

28 Cr. L. J. 373 :
100 I. C. 981 : 29 Bom. L. R. 170 :
51 Bom. 310 : A. I. R. 1927 Bom. 177.

—S. 429—Reference to Full Bench.

Per Buckland, J.—A third Judge to whom a case is referred under S. 429 of the

Cr. P. CODE (1898), S. 250

—S. 250—Record of reasons—Nature of.

The reasons must go to show, why it is that the Magistrate considers the accusation against the accused to be frivolous or vexatious and why, in his opinion, it is a fit case, in which an order for compensation should be made. *Thadiappan v. Veeraperumal*.

26 Cr. L. J. 1501 :
90 I. C. 157 : 21 L. W. 646 :
A. I. R. 1925 Mad. 1139.

—S. 250—Record of reasons—Reasons, nature of.

The reasons which have to be recorded by the Magistrate passing an order under S. 250, are why he directs compensation to be paid and not why he regards the complaint as false and frivolous or vexatious. It is beyond his power to discover why the complaint made is a false one. *Ma Sin v. Maung Maung Lay*.

37 Cr. L. J. 773 :
163 I. C. 163 : 8 R. Rang. 613 :
14 Rang. 378 : A. I. R. 1936 Rang. 230.

—S. 250—Record of reasons—Nature of.

"That no case is made out against any of the accused, that some of the accused were added vexatiously, that the complainant has shown no cause why he should not be ordered to pay compensation and that, therefore, he is directed to pay compensation," is not a proper compliance with the provisions of S. 250, Cr. P. C. *Thadiappan v. Veeraperumal*.

26 Cr. L. J. 1501 :
90 I. C. 157 : 21 L. W. 646 :
A. I. R. 1925 Mad. 1139.

—S. 250—Record of reasons—Necessity of.

Under S. 250, before ordering any person to pay compensation, the Magistrate must call upon him forthwith to show cause why he should not pay compensation and the Magistrate shall record and consider any cause which the complainant or informant may show. Where the Magistrate does not record any statement made by the complainant as showing cause against his being ordered to pay compensation, but in his order he states the points that he raised, that is not sufficient. The Magistrate must record the words used by the complainant when showing cause unless of course complainant chooses to put his reasons into writing. If this is done, and the writing is filed, it would obviously be unnecessary for the Magistrate to record it again, and filing the written submission would, in effect, be reording the cause shown. Unless this is done, the order of compensation is bad. *The King v. Maung Thoun Shwe*.

39 Cr. L. J. 642 :
175 I. C. 639 : 11 R. Rang. 9 :
A. I. R. 1938 Rang. 161.

—S. 250—Record of reasons—Necessity of.

Even in summary trials, where the Magistrate or Bench acts under S. 250, the requisites of that section as to recording of

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reasons must be carried out. *Palani Goundan v. Krishnappa Goundan*.

32 Cr. L. J. 207 :
129 I. C. 37 : 59 M. L. J. 319 :
32 L. W. 283 : I. R. 1931 Mad. 181 :
1930 M. W. N. 1047 :
A. I. R. 1930 Mad. 329.

—S. 250—Record of reasons—Necessity of—Failure to comply, effect of.

The direction contained in proviso (a) to S. 250 are mandatory and the failure by a Magistrate to record and consider each and every objection urged by a complainant vitiates the proceedings. *Deonarain Mahto v. Chhatoo Raul*.

23 Cr. L. J. 261 :
66 I. C. 325 : 3 P. L. T. 203 :
A. I. R. 1922 Pat. 157.

—S. 250 (a)—Record of reasons—Necessity of.

Magistrate trying a case summarily is bound to record under the Proviso to S. 250, any objection which the complainant or informant may urge, and that the omission to comply with the proviso in this respect is not covered by S. 537; or by S. XV of the Schedule to the Criminal Justice Regulation. *Emperor v. Nga Pwe*.

5 Cr. L. J. 298 :
U. B. R. Cr. 1906 Cr. P. C. 51 :
13 Bur. L. R. 161.

—S. 250 (2)—Record of reasons—Necessity of.

Before making order for compensation under S. 250, it is the duty of the Magistrate to state his reasons for requiring the complainant to pay the compensation. *Krishna Datt v. Brahma Datt*.

38 Cr. L. J. 191 :
166 I. C. 341 : 1937 O. L. R. 15 :
9 R. O. 306 : 1937 O. W. N. 98 :
A. I. R. 1937 Oudh 269.

—S. 250—Restitution—Compensation to accused—Restitution on cancellation of order.

When compensation awarded to an accused under S. 250, has been paid by the complainant and the order awarding it has been subsequently set aside, the compensation may be recovered under S. 547. *Emperor v. Hira Nand*.

1 Cr. L. J. 32 :
5 P. L. R. 5 : 29 P. R. Cr. of 1903.

—S. 250—Revision—Compensation by Divisional First Class Magistrate—Powers of revision by District Magistrate—Jurisdiction—Revision by District Magistrate of an order of discharge—Procedure.

The District Magistrate has no power to revise the order of a Subordinate First Class Magistrate awarding compensation under S. 250. Where a District Magistrate is asked to revise the order of a Divisional Magistrate, discharging an accused person and at the same time directing the complainant to pay compensation to the accused under S. 250, the proper course for the District Magistrate to adopt is either to decline to interfere, or if he thinks interference necessary, to refer the matter to the High Court, which can deal both with the order of discharge and with the order for payment

Cr. P. CODE (1898), S. 432**—S. 432—Reference.**

The power of reference conferred upon the Presidency Magistrate by S. 432 of the Code is confined to questions of law which the Magistrate requires to decide in order to perform his duty in disposing of the case before him and the Magistrate ought not to refer to the High Court questions of law unless they are matters upon which he has a duty to make up his mind. *Emperor v. Girish Chunder*.

31 Cr. L. J. 506 :
123 I. C. 433 : 34 C. W. N. 13 :
50 C. L. J. 408 : 57 Cal. 1042 :
A. I. R. 1929 Cal. 756.

—S. 432—Interference by High Court—Reference by District Magistrate—Opinion solicited.

Except in cases where there is a reference under S. 432 a High Court cannot and will not express an opinion upon any question unless it is brought before it in the ordinary way by application for revision. *Crown v. Bakuli*.

9 Cr. L. J. 248 :
1 S. L. R. 4.

—S. 432 — Reference — Nature of—Making of reference in form which involves giving decision on law divorced from facts is undesirable—Desirable course is to use second part of S. 432.

Although the Presidency Magistrates have, under S. 432, the power to refer for the opinion of the High Court any question of law which arises at the hearing of any case pending before them, it may be undesirable to make the reference in the form which involves giving a decision on law, divorced to some extent from the facts. The more desirable course is for the Magistrate to use the second part of S. 432. By adopting this course, duplicity of hearing in both Courts would probably be avoided and all the facts would be before the High Court once for all. *Emperor v. Himendra Prosad Ghosh*. (S. B.)

40 Cr. L. J. 782 :
183 I. C. 349 : 69 C. L. J. 599 :
43 C. W. N. 950 : 12 R. C. 153 :
I. L. R. 1939 2 Cal. 411 :
A. I. R. 1939 Cal. 529.

—S. 432—Reference—Reference by Chief Presidency Magistrate—Summoning accused under one section—Evidence disclosing offence under another section—Charge, whether can be amended—Test—Magistrate, competency of.

On examining the complainant, the Chief Presidency Magistrate summoned the accused under Ss. 120-B, 193, 182 and 211, Penal Code, and after hearing the prosecution evidence framed charges under Ss. 193 and 120-B, Penal Code. It was contended on behalf of the accused that in the absence of the sanction of the Local Government, the Magistrate could not take cognizance of the offence under S. 120-B. The Magistrate then proposed to draw up a fresh charge under S. 193 read with S. 109, Penal Code, and referred the question of law as to whether he could do so to the High Court. *Birao Sardar v. Ariff*.

26 Cr. L. J. 302 :
84 I. C. 446 : A. I. R. 1925 Cal. 579.

Cr. P. CODE (1898), S. 435**—S. 432—Reference under Calcutta Municipal Act—Applicability of—Reference by Municipal Magistrate of Calcutta under Calcutta Municipal Act (III B. C. of 1899), Ss. 3 (32), 343, 442, applicability of—"Owner of land," meaning of—Chairman's duty—Service of notices on owner and occupier.**

The term "owner of land" as defined in S. 3, Sub-s. (32), Calcutta Municipal Act, includes the landlord. The duty of removing a building which comes within the terms of S. 343 after notice has been served, falls clearly, amongst others, on the landlord. Under S. 343, Calcutta Municipal Act, the person who is the owner of the land, having had a notice served upon him, is liable to comply with the terms thereof. S. 442, Calcutta Municipal Act, does not, in any manner, abridge the power that is conferred by S. 343. S. 442, Calcutta Municipal Act, provides that if the Chairman considers a building to be in so dangerous a state as to render immediate steps necessary for the safety of the public, he is to take those steps and then to serve notices on the owner and occupier. This section contemplates a case of much greater urgency than S. 343 does, and in no way limits the powers of the Chairman under the latter section. *Corporation of Calcutta v. Mammoth Nath Set*.

16 Cr. L. J. 317 :
28 I. C. 653 : 19 C. W. N. 391 : 21 C. L. J. 497 :
A. I. R. 1915 Cal. 728.

—S. 432—Reference—Who can make—Reference to High Court—District Magistrate, whether competent to make reference—High Court's revisional powers.

A District Magistrate has no power under S. 432 to refer a case to the High Court as that section only applies to Presidency Magistrates, and though the Court has jurisdiction under S. 439 to exercise its powers of revision, whatever the source of its knowledge, a High Court would not, as a rule, exercise those powers in a case where the Magistrate making the report, has jurisdiction to dispose of the matter himself. *Emperor v. Rahimindino*.

28 Cr. L. J. 978 :
105 I. C. 802 : A. I. R. 1928 Sind 69.

—S. 433.

See also Cr. P. C., 1898, S. 403.

—S. 434.

See also Cr. P. C., 1898, Ss. 299 (a), 403.

—S. 434—Interference by High Court.

Where the view of an offence taken by the Sessions Judge though most favourable to the accused, is not clearly wrong, the High Court will not interfere with it in revision. *Natha v. Emperor*.

29 Cr. L. J. 366 :
108 I. C. 265 : A. I. R. 1928 Lah. 546.

—S. 435.**—Acquittal.****—Applicability.****—Calling for records—Whether judicial proceeding.****—Concurrent jurisdiction.****—Fresh application—Whether barred.**

Cr. P. CODE (1898), S. 435

prosecution does not justify the framing of a charge. *Modi Shah v. Crown.*

1 Cr. L. J. 698 :
5 P. L. R. 285.

—S. 435—*Interference—Grounds for—Order by Magistrate relating to disposal of property on acquittal of accused—Sessions Judge, power of, to set aside order.*

A Sessions Judge has no power to pass any orders setting aside an order passed by a Magistrate under S. 517 when no appeal against the conviction or sentence is pending before the Sessions Judge. *Maung Mra Tun v. Mra Kra Zoe Pru.*

29 Cr. L. J. 958 :
111 I. C. 878 : 6 Rang. 259 :
A. I. R. 1928 Rang. 240.

—S. 435—*Interference—Grounds for—Penal Code (Act XLV of 1860), S. 182—Complaint of theft compromised—Prosecution under S. 182, Penal Code, propriety of.*

Where a complaint of theft brought by a person against his brother was compromised and thereafter the complainant was prosecuted under S. 182, Penal Code: *Held*, quashing the proceeding under S. 435 that this was not a case in which any action ought to have been taken or any proceedings instituted. *Chaitan Lal v. Emperor.*

19 Cr. L. J. 730 :
46 I. C. 410 : 16 A. L. J. 734 :
A. I. R. 1918 All. 100.

—S. 435—*Interference—Grounds for—Penal Code (Act XLV of 1860), S. 406—Criminal breach of trust—Article given to accused under written agreement—Competency of criminal Courts to decide, whether agreement was real or nominal.*

Where a person is accused of criminal breach of trust in respect of articles delivered under a written instrument, which expressly recites that they were returned to him after money received, it is not open to a Magistrate to launch into an enquiry whether the instrument represents a real transaction between the parties or a mere *benami* arrangement constituting the accused a trustee in respect of those articles. *In re : Gokavarapu Perayya.*

18 Cr. L. J. 34 :
34 I. C. 866 : 4 L. W. 198 :
1916 M. W. N. 158 :

—S. 435—*Interference—Grounds for—Proceedings under—Person convicted not contesting, propriety of conviction.*

Under the very extensive powers contained in S. 435; the High Court can call for and examine the record of proceedings if the necessity for so doing has been brought to its notice in any manner, and it is satisfied that there are *a priori* grounds for apprehending a miscarriage of justice, but it should be loath to interfere in case of a person convicted in a criminal case, if that person is an adult of ordinary intelligence when that person himself

Cr. P. CODE (1898), S. 435

in no way contests the propriety of his conviction. *Narain Prasad v. Emperor.*

24 Cr. L. J. 115 :
71 I. C. 243 : 20 A. L. J. 909 : 45 All. 128 :
A. I. R. 1923 All. 85.

—S. 435—*Interference—Grounds for.*

Proceedings under S. 145 are not within jurisdiction unless the procedure prescribed therein is strictly adhered to. Where it appears that a party to the dispute has had no opportunity of appearing and putting in his written statement, the proceedings will be set aside. *Madho Prasad v. Jagganai.*

20 Cr. L. J. 775 :
53 I. C. 615 : A. I. R. 1918 Nag. 44.

—S. 435—*Interference—Grounds for—Proceedings under S. 145—Revision—High Court, power of interference of, when can be exercised—Jurisdiction—Procedure—Party not given opportunity to appear, effect of.*

Ordinarily orders passed under S. 145 will not be interfered with under S. 435 but where an order purporting to be under the former section exceeds the powers given by it, the High Court will interfere, especially where there has been material irregularity which has prejudiced a party to the proceedings. *Madho Prasad v. Jagganai.*

20 Cr. L. J. 775 :
53 I. C. 615 : A. I. R. 1918 Nag. 44.

—S. 435—*Interference—Grounds for—Prosecution evidence same against several accused—Acquittal of some accused—District Magistrate, order of, directing trial of other accused, propriety of—Revision—High Court, power of interference of.*

A complaint having been lodged against eight persons, the Magistrate tried five of them, the other three having absconded. At a later stage, however, they surrendered but they were not put on their trial. Having considered all the evidence for the prosecution, the Magistrate came to the conclusion that the complainant had failed to establish the charge against the accused, and after acquitting the five accused on their trial, he asked for orders from the District Magistrate as to whether the prosecution should be continued against the other three. The District Magistrate though of the opinion that the evidence against them being the same as that produced against the other accused, the prosecution could not succeed, nevertheless ordered the continuance of proceedings against them directing the transfer of the case to another Magistrate for trial: *Held*, that the High Court was competent to interfere in the matter under S. 435 and that having regard to the judgment of the trial Magistrate and to the observations of the District Magistrate, the prosecution of the applicants should not be proceeded with as no useful object could be served thereby. *Jai Narain Lal v. Emperor.*

19 Cr. L. J. 727 :
46 I. C. 407 : 16 A. L. J. 458 :
A. I. R. 1918 All. 106.

—S. 435—*Interference—Grounds for—Revision against acquittal—Appellate Court, duty of—Evidence, discussion of—Criminal trespass—Civil dispute.*

It is not a good reason for an Appellate Court

Cr. P. CODE (1898), S. 435

—S. 435—Concurrent Jurisdiction—
Application for revision—Practice.

It is not the practice of the High Court to entertain an application for revision, under S. 439, against an order of a Sub-Divisional Magistrate, unless the applicant has first moved the Sessions Judge under S. 435 to make a reference to the High Court under S. 438 of the Code. *Rash Behari Saha v. Phani Bhushan Haldar.*

22 Cr. L. J. 650 :
63 I. C. 410 : 48 Cal. 534 :
A. I. R. 1921 Cal. 76.

—S. 435—Concurrent jurisdiction—
*Application to the District Magistrate under—
Subsequent application to the Sessions Judge—
If entertainable.*

After an application had been made to the District Magistrate under S. 435, no further application under the same section could be entertained by the Sessions Judge even though the Sessions Judge was not applied to, to revise the order passed by the District Magistrate in revision, but only to call for the record and refer the District Magistrate's order to the High Court. *Karparasundram Pillai v. Emperor.*

5 Cr. L. J. 132 :
2 M. L. T. 24 : 17 M. L. J. 153.

—S. 435 — Concurrent jurisdiction —
Grounds for.

The High Court will not entertain an application for revision in circumstances where the District Magistrate and Sessions Judge have concurrent revisional jurisdiction with the High Court, unless some special grounds are shown. *Krishnadatta v. Badri.*

33 Cr. L. J. 195 :
135 I. C. 701 : 8 O. W. N. 1027 :
I. R. 1932 Oudh 61 : A. I. R. 1931 Oudh 418.

—S. 435—Concurrent jurisdiction—High
Court — Practice — Application for revision—
Concurrent jurisdiction of District Court or
Magistrate—Application should first be made to
lower Court for reference.

The High Court will not entertain an application for revision in criminal cases where the District Court or Magistrate has concurrent revisional jurisdiction with the High Court, though the jurisdiction is not final, save on some special ground shown, unless a previous application shall have been made to the lower Court. *In re ; Bhuyan Abdus Sobhan Khan.*

10 Cr. L. J. 190 :
2 I. C. 846 : 36 Cal. 643 :
13 C. W. N. 753.

—S. 435—Concurrent jurisdiction—High
Court when to be moved—Concurrent revisional
jurisdiction of District Magistrate or Sessions
Court with High Court—Remedy in lower Courts
to be exhausted before revisional application to
be made in High Court—Magistrate acting only
on evidence of Sub-Registrar as to admission of
receipt of consideration—Allowability of.

In cases where the District Magistrate or the Sessions Court has concurrent revisional jurisdiction with the High Court, an application for revision will not be entertained in the High

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Court until the petitioner has exhausted his remedy in the lower Courts. As to the merits, the Magistrate should not have acted merely on the evidence of the Sub-Registrar as to the admission of the receipt of the consideration, but should have charged the accused and examined the witnesses for the defence, if any. *Moung Po Tha v. Tun Aung Gyaw.*

1 Cr. L. J. 1075 :
10 Bur. L. R. 346.

—S. 435—Concurrent jurisdiction—Nature
of—Complaint dismissed by District Magistrate
under S. 203, Criminal Procedure Code—No
revision to Sessions Court—Revision to High
Court direct, if competent.

It is not an inflexible rule that no revision lies to the High Court unless the party has first applied to the Sessions Court. The jurisdiction conferred by the Cr. P. C. on the High Court is wide and it ought not to be fettered by any hard and fast rule. *Basavana Gowd v. Krishna Rao Naidu.*

16 Cr. L. J. 794 :
31 I. C. 650 : 2 L. W. 1126 :
A. I. R. 1916 Mad. 713.

—S. 435—Concurrent jurisdiction—Pro-
cedure—Ground for, departure from.

The mere fact that the case is one in which the Sessions Judge has no power to pass final orders but will have to refer the case to the High Court for such orders, should he see cause to do so, does not furnish any sufficient reason for departing from this rule of practice. *Bajirao v. Dadibhai.*

27 Cr. L. J. 71 :
91 I. C. 217 : A. I. R. 1926 Nag. 285.

—S. 435—Concurrent jurisdiction—Revi-
sion petitions—Sessions Court—High Court—
Exceptions.

Unless special grounds exist which justify an immediate resort to the High Court, all revision applications should ordinarily be made to the Sessions Judge who has under Ss. 435 to 438 jurisdiction concurrent with the High Court to entertain them. *Bajirao v. Dadibhai.*

27 Cr. L. J. 71 :
91 I. C. 217 : A. I. R. 1926 Nag. 285.

—S. 435—Concurrent jurisdiction—Revi-
sion competent to lower Court—High Court, whe-
ther should entertain application.

Where an application can be made in revision to a lower Court, the High Court should not under ordinary circumstances, entertain an application in revision, unless an application has already been made to the lower Court. *Sat. Narain Singh v. Emperor.*

24 Cr. L. J. 275 :
71 I. C. 995 : 25 O. C. 37 :
9 O. L. J. 280 : A. I. R. 1922 Oudh 147.

—S. 435—Concurrent jurisdiction—Revi-
sion—Concurrent Jurisdiction of High Court with
Sessions Judge or District Magistrate—Duty of
aggrieved party to move such authorities first.

An application for revision against a conviction and sentence of fine for an offence under S. 506, Penal Code, can be entertained by the District Magistrate or Sessions Judge, who have concurrent jurisdiction in this matter

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—S. 435—Interference—Grounds for.

Where an accused was discharged by a Second Class Magistrate who tried the case but the District Magistrate set aside the order of discharge and directed further inquiry into the case by the First Class Divisional Magistrate of the place, on the ground that the Sub-Magistrate misappreciated the evidence and arrived at a wrong conclusion on the facts: *Held*, that the order of the District Magistrate was illegal and ought to be set aside. *Lakshminarasappa v. Mekala Venkatappa*.

7 Cr. L. J. 267 :
3 M. L. T. 230 : 18 M. L. J. 57 :
31 Mad. 133.

—Ss. 435, 195 (1) (b), 476—Interference—Grounds for—Sanction to prosecute—High Court—Revision.

Where an order to prosecute coming within the words "on the complaint of such Court" in S. 195 (1) (b) is passed under Ss. 195 (1) (b) and 476, the High Court cannot interfere in revision any more than it could with an order under S. 476 alone, unless indeed the jurisdiction of the Court has been exceeded. *In re : Jivabhai Khushal*.

2 Cr. L. J. 54 :
7 Bom. L. R. 84.

—Ss. 435, 439, 440—Interference—Grounds for—Question of fact—Revision—Parties, whether entitled to be heard.

A Magistrate trying a case is entitled to his opinion on facts and his order is not liable to be set aside in revision merely because he has not acted according to a superior Court with "fair-mindedness and breadth of vision." *Hafiz Khan v. Emperor*.

26 Cr. L. J. 527 :
85 I. C. 367 :

1 O. W. N. 878 : A. I. R. 1925 Oudh 558.

—S. 435 (3)—Interference—Grounds for—High Court's power to revise an order under S. 144, Cr. P. C., having regard to the provisions of S. 455 (3).

Held, that though having regard to the provisions of S. 435 (3), it is not open to the High Court to consider on revision the propriety of orders within the scope of S. 144, it is open to it to reverse an order which, being altogether outside the scope of the section, a Magistrate has no jurisdiction to make. *Isab Mondal v. Emperor*.

1 Cr. L. J. 248 :
8 C. W. N. 373.

—Ss. 435, 439—Interpretation of.

Ss. 435 and 439 of the Cr. P. C. must be read together, and if a case is outside Ss. 435, S. 439 cannot apply to it. *Moiram Bewah v. Mrijan Sardar*.

21 Cr. L. J. 25 :
54 I. C. 169 : 24 C. W. N. 97 :
31 C. L. J. 183 : 47 Cal. 438 :
A. I. R. 1920 Cal. 417.

—Ss. 435, 439—Letters Patent (Cal.), Cl. 36—Difference of opinion between Judges—Opinion of Senior Judge to prevail.

Even if the provisions of S. 36 of the Letters

Cr. P. CODE (1898), S. 435.

Patent do not apply to a case not coming before the High Court in its original or appellate jurisdiction, in the absence of any provisions to the contrary, in the case of a difference of opinion between the Judges, the decision of the Senior Judge should prevail in accordance with the principle laid down in S. 36 of the Letters Patent. *Moiram Bewah v. Mrijan Sardar*.

21 Cr. L. J. 25 :
54 I. C. 169 : 24 C. W. N. 97 :
31 C. L. J. 183 : 47 Cal. 438 :
A. I. R. 1920 Cal. 417.

—S. 435—Miscellaneous.

When a considered order has been made on a complaint by a Magistrate, it is not open to the District Magistrate to order a further inquiry into the complaint. A second application on the same facts should not be entertained. *Chunnu Sonar v. Kripa Sankar Misra*.

34 Cr. L. J. 923 :
145 I. C. 280 : 6 R. P. 150.

—S. 435 (1)—Miscellaneous—Interpretation of provisions—Finding, sentence or order in S. 435 (1) are three separate matters.

The words "finding, sentence or order" in S. 435 (1), are three separate matters and are separated by the disjunctive conjunction "or" —"finding or sentence or order." *Sat Narain Lal v. Emperor*.

41 Cr. L. J. 876 :
190 I. C. 225 : 1940 A. L. J. 462 :
I. L. R. 1940 All. 539 : 13 R. A. 188 :
A. I. R. 1940 All. 426.

—Ss. 435, 144—Order under S. 144—Revision, when competent.

S. 435 (3) expressly excludes the exercise of revisional powers in matters referred to in S. 144 thereof; the High Court has merely to satisfy itself that the facts found fall within that section so as to give jurisdiction to the Magistrate. *In re : Cowasjee Jehangir Ready-money*.

22 Cr. L. J. 521 :
62 I. C. 409 : 22 Bom. L. R. 157.

—Ss. 435, 439—Order prohibiting Mukhtyars from practising—If revisable.

An order prohibiting *Mukhtyars* from practising can be revised by the High Court under Ss. 435 and 439. *In re : Rajirao Abaji Kulkarni*.

29 Cr. L. J. 226 :
107 I. C. 56 : 29 Bom. L. R. 1587 :
A. I. R. 1928 Bom. 33.

—S. 435—Power of Additional Sessions Judge—Discharge, order of—Additional Sessions Judge, power of, to set aside order and direct further inquiry.

An Additional Sessions Judge has jurisdiction to examine the records of a case transferred to him by the Sessions Judge in which the accused has been discharged, and to set aside the order of discharge and direct further inquiry. *Nazar Husain v. Emperor*.

21 Cr. L. J. 293 :
55 I. C. 341 : A. I. R. 1920 All. 55.

—S. 435—Power of District Magistrate—Powers of District Magistrate to revise orders of discharge passed by Subordinate Magistrates

Cr. P. CODE (1898), S. 435

by virtue of such inquiry. *Thakar Dass v. Emperor*.

15 Cr. L. J. 217 :
22 I. C. 1001 : 17 O. C. 25 :
A. I. R. 1914 Oudh 225.

—S. 435—Interference—Discretion of.

Discretion ought only to be exercised in order to prevent substantial injustice, or, where there is involved a point of law of general importance which may govern other cases. *Emperor v. Shrirang Jayaba Vichare*.

34 Cr. L. J. 142 :
141 I. C. 339 : 56 Bom. 554 :
34 Bom. L. R. 1444 :
I. R. 1933 Bom. 77 (1) :
A. I. R. 1932 Bom. 637.

—S. 435—Interference—Grounds for.

A and B brought a complaint against C for dishonestly inducing them to hand over to him two valuable securities, for which they had not received full consideration. Subsequently C brought a suit on the securities against A and B and obtained a decree on the merits. The Criminal Court, however, framed a charge of cheating against C : *Held*, that the Magistrate ought to have exercised a wise discretion by staying, of his own motion, proceedings in his Court pending the decision of the Civil Court, and should have accepted that decision as finally settling the disputes between the parties. *Emperor v. Bishen Das*.

12 Cr. L. J. 50 :
8 I. C. 1161 : 33 P. R. 1910 Cr.

—S. 435—Interference—Grounds for.

A District Magistrate ordered further inquiry in a case where the accused were discharged under S. 253, without giving notice to the accused : *Held*, that the order of the District Magistrate was irregular, though not illegal. *Dasari Venkata v. Reddy Sanjeevi*.

15 Cr. L. J. 619 (a) :
25 I. C. 627 : 16 M. L. T. 285 :
A. I. R. 1915 Mad. 337.

—S. 435—Interference—Grounds for.

A High Court should not interfere with an order of acquittal where the question is as to the appreciation of evidence or where there is no patent error or defect in the order of acquittal which has resulted in grave injustice. *Vellayanambalam v. Solai Servai*.

16 Cr. L. J. 600 :
30 I. C. 152 : 28 M. L. J. 692 :
1915 M. W. N. 540 : A. I. R. 1916 Mad. 931.

—S. 435—Interference—Grounds for—Accused charged for rash driving—Conviction for offence under R. 60 of Motor Vehicles Rules—Irregularity—Revision—Interference.

A motor-driver was prosecuted for rash driving under S. 279, Penal Code, and was fined under R. 60, Motor Vehicles Rules, for not stopping when the accident occurred. The District Magistrate submitted the proceedings with a recommendation that the accused be retried on the ground that the trial was irregular and that he should have been convicted under

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S. 279, Penal Code : *Held*, that although the trial was irregular and the accused might possibly have been convicted under S. 279, Penal Code, since there was a conviction and a substantial punishment, the High Court would not interfere in revision. *Bishan Singh v. Ismail*.

28 Cr. L. J. 757 :
103 I. C. 837 : 6 Bur. L. J. 81 :
A. I. R. 1927 Rang. 240.

—S. 435—Interference—Grounds for—Acquittal—Revision—Interference by High Court.

High Courts do not, as a rule, interfere in revision with orders of acquittal which can be appealed against by the Local Government. The fact that a Magistrate has passed an order of acquittal in spite of evidence which would have justified a conviction, is not a good ground for directing a re-trial on a reference by the District Magistrate. *Emperor v. Chandika Singh*.

27 Cr. L. J. 823 :
95 I. C. 599 : 24 O. C. 4.

—S. 435—Interference—Grounds for—Complaint by father for delivery of daughter from wrongful confinement of person to custody of her mother—Order accordingly passed—Subsequent discovery that girl was married—Proceedings against father under S. 215—No sentence passed—Special Magistrate handing over girl to husband—Order set aside by District Magistrate—Order held without jurisdiction.

Upon a complaint by the father for delivery of his daughter who was in wrongful confinement of certain person to the custody of her mother, the Court passed the orders accordingly. It, however, transpired that the girl was already married and proceedings under S. 215 were started against the father. No sentence was passed, production of the girl was ordered and she was handed over to her husband. The order was set aside by the District Magistrate in revision and it was ordered that the girl should remain in her mother's custody : *Held*, that under S. 435 it was open to the complainant, to make an application in revision against the order of the Special Magistrate before the District Magistrate. If, however, the District Magistrate decided, upon a consideration of the application and examination of the record, that the order of the Special Magistrate was unjust, then he could only act under S. 438. Under this section all that the District Magistrate can do is to refer the matter to the High Court with his recommendation. The District Magistrate's powers under S. 438, refer to sentences imposed against the applicant before him. The District Magistrate, however, can only act under S. 552, where there is a complaint before him on oath of the abduction or unlawful detention of a woman or of a female under the age of 16 years. Hence, in the absence of these requisites, the order of the Magistrate was without jurisdiction. *Moti v. Beni*.

38 Cr. L. J. 301 :
166 I. C. 847 : 1936 A. L. J. 1097 :
9 R. A. 455 : 1936 A. W. R. 920 :
A. I. R. 1936 All. 852.

Cr. P. CODE (1897), S. 435

an accused with an offence, although no appeal lies in respect of the order. Very wide powers of revision are conferred on High Courts under S. 439 and it is with particular reference to non-appealable orders that High Courts are empowered to act as Courts of Revision. The High Court can, with reference to any particular order (whether appealable or not) exercise all or any of the powers which, under S. 423, an Appellate Court could exercise if that order happened to be one open to appeal. It was not intended by the Legislature that High Court's powers of revision were to be limited merely to orders from which an appeal would lie. *Emperor v. Bishen Das*.

12 Cr. L. J. 50 :

8 I. C. 1161 : 33 P. R. 1910 Cr.

—S. 435—Power of High Court, whether limited.

In a criminal revision the High Court will not look into the evidence at all, unless the applicant in revision can make out that a special occasion has arisen which requires the Court to look into the evidence. Such an occasion may be made out either from the way in which the trial has been conducted in the First Court or in the Court of First Appeal; or upon a perusal of the judgment of either Court on its face; or from the omission of the lower Court to consider some outstanding circumstance in the case from erroneous statements in the judgment. Where an occasion for enquiring into the evidence has been made out, it is the duty of the High Court to examine the entire facts of the case. After such an examination the Court will not interfere as lightly as it would if it was a matter of appeal and not revision. The distinction may be a fine one but it is a distinction, the distinction being that in disposing of a criminal appeal the Court will interfere unless it is affirmatively satisfied as to the guilt of the appellant, while in revision the Court will not interfere unless the conscience of the Court is aroused to such an extent as to compel the Court to expressly say that the applicant ought not to have been convicted on the evidence. The High Court is not debarred in revision from entering into a discussion of, and looking into, the evidence and the facts in order to find out if there has been a miscarriage of justice and from interfering with the finding of lower Courts on facts, if the ends of justice so require, S. 439 read with S. 435 clearly gives power to the High Court to go into the facts and set aside the finding, sentence, or order of any Court if it is incorrect on merits, the new provisions having expressly widened the power of the High Court. *Ram Kishun Misser v. Emperor*. 18 Cr. L. J. 915 :

42 I. C. 147 : 2 P. L. W. 289 :

A. I. R. 1917 Pat. 662.

—Ss. 435, 439—Power of High Court—Revision, interference in—Presidency Magistrate—Discharge order.**Cr. P. CODE (1898), S. 435**

The High Court has power under Ss. 435 and 439 to order further enquiry in a case in which a Presidency Magistrate has discharged an accused person. *Protab Singh v. Khan Mahomed*.

10 Cr. L. J. 385 :

3 I. C. 861 : 13 C. W. N. 1221.

—S. 435—Power of Judicial Commissioner.

If a finding of a Sessions Judge for culpable homicide has been altered by the Appellate Court to one for murder, it is open to the Judicial Commissioner's Court sitting as a Court of Revision to pass a legal sentence for the offence of murder. *Local Government v. Doma Kunbi*.

27 Cr. L. J. 339 :

92 I. C. 851 : A. I. R. 1926 Nag. 323.

—S. 435—Power of Judicial Commissioner.

It is not open to the Judicial Commissioner's Court under S. 439 to alter or interfere with a conviction which has been arrived at by a Judge of the Court as Ss. 435 to 439 clearly contemplate interference only with the finding, sentences or orders of any inferior Court. Where, however, a Judge of the Judicial Commissioner's Court hearing an appeal against a conviction, alters the conviction to one for a graver offence, but does not himself enhance the sentence, but suggests an action in that behalf by the Local Government, his judgment is not final from that point of view and the Judicial Commissioner's Court does not become *functus officio* and is competent to hear application on behalf of the Local Government for enhancement of the sentence. *Local Government v. Doma Kunbi*. 27 Cr. L. J. 339 :

92 I. C. 851 : A. I. R. 1926 Nag. 323.

—S. 435—Power of Judicial Commissioner.

The proper construction to be put on S. 439 (4), is that it refers to cases where there has been a complete acquittal and not to cases where there has been only an alteration of findings by the Appellate Court, the conviction by the Sessions Court being kept intact. It is open to a Judge of the Judicial Commissioner's Court, who hears an appeal against a conviction and who comes to the conclusion that a graver offence has been committed, not only to alter the conviction but to proceed on the revisional side to issue notice to the accused to show cause why the sentence should not be enhanced, and, if no sufficient cause is shown, to enhance the sentence accordingly. *Local Government v. Doma Kunbi*. 27 Cr. L. J. 339 :

92 I. C. 851 : A. I. R. 1926 Nag. 323.

—S. 435—Power of Sessions Judge—Case instituted under S. 476—Sessions Judge, power to revise order of Magistrate—Private person, motion by, effect of.

A Sessions Judge can revise an order of discharge passed by a Magistrate in a case instituted under S. 476 even though he is moved by a private person to do so. There is no rule that a Sessions Judge cannot interfere with an order of discharge passed by a

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—S. 435—*Interference—Grounds for—Criminal proceedings—Long delay in disposal—Quashing of proceedings.*

The mere fact that the proceedings in a criminal case have been pending for a very long time, is no ground for quashing them where the delay is not due to the complainant. *Mohan v. Khan Mohammad.*

28 Cr. L. J. 164 (a) :

99 I. C. 596 : 8 L. L. J. 518 :

27 P. L. R. 705 : A. I. R. 1927 Lah. 66.

—S. 435—*Interference—Grounds for—Finding of fact—Revision—Interference.*

Where there is evidence of whatsoever character on which a particular finding of fact may be based, the High Court is precluded under the terms of S. 435 from interfering with that finding. *Shanker Singh v. Emperor.*

30 Cr. L. J. 756 :

117 I. C. 346 : 1929 A. L. J. 775 :

*I. R. 1929 All. 698 : A. I. R. 1929 All. 587.

—S. 435—*Interference—Grounds for.*

High Court can interfere in cases of erroneous finding by Magistrates. *Raj Nandan Missir v. Chhedi Thakur.*

34 Cr. L. J. 259 :

142 I. C. 157 : 13 P. L. T. 178 :

I. R. 1933 Pat. 117 : A. I. R. 1932 Pat. 185.

—S. 435—*Interference—Grounds for—High Court—Revision—Findings of fact, how far conclusive.*

The High Court acting in revision, under S. 435 is bound to accept the finding of the lower Court unless there is any error of law or procedure vitiating that finding or unless there are any special circumstances apparent on the record to show that in arriving at its conclusion of fact the lower Court has misapprehended the evidence. *Emperor v. Narayan Shivram Barve.*

7 Cr. L. J. 24 :

9 Bom. L. R. 1385 : 3 M. L. T. 54.

—S. 435—*Interference—Grounds for—High Court—Revision—Powers to interfere on questions of fact—Practice—Penal Code (Act XLV of 1860), S. 170—Personating a public servant—Dishonest intention.*

It is the practice of the High Court not to interfere in revision with a finding of fact unless there are special reasons. Accordingly in cases in which the law allows no appeal, the High Court as a Court of Revision does not, except on the ground of an error of law, or where the question is one of evidence, on exceptional grounds, exercise the power of an Appellate Court. But where such exceptional grounds exist, the Court will exercise its discretion under S. 439 and reverse the conviction and sentence. There is nothing in the Statute Law which precludes the High Court from interfering in the exercise of its revisional powers, with conviction and sentences whether the ground of that interference be what is commonly called a question of fact or whether it be a question of law. The *cursus curiæ*, drawing a distinction between grounds of the former and the grounds of the latter sort rests rather upon a principle of convenience than of law. The true rule is

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that the High Court will not interfere in the exercise of revisional powers unless it is satisfied that it is necessary to do so to prevent an otherwise irreparable injustice. *Emperor v. Umakant.*

6 Cr. L. J. 70 :

9 Bom. L. R. 706.

—S. 435—*Interference—Grounds for.*

If a sentence has been passed or confirmed by a Court which could not legally try, or should not have properly tried the case, the High Court has a discretion to interfere in revision. In other words, the High Court has power to control the propriety as well as the legality of a finding, sentence or order of any inferior Court. *Faiz Muhammad v. Emperor.*

14 Cr. L. J. 385 :

20 I. C. 200 : 9 N. L. R. 81.

—S. 435—*Interference—Grounds for.*

Interference of High Court in pending cases—Alleged offence not committed within jurisdiction of Court where complaint is filed—High Court will interfere. *Saleh Sumar v. Emperor.*

34 Cr. L. J. 364 :

142 I. C. 590 : I. R. 1933 Sind 104 :

A. I. R. 1933 Sind 88.

—S. 435—*Interference—Grounds for—Irregularities in proceedings—Jurisdiction of Magistrate—Criminal Procedure Code, S. 145, Clauses (1) and (3).*

In a criminal case it was contended that the Magistrate divested himself of jurisdiction by not having in his order made under S. 145 (1) stated the grounds for his belief that there was likely to be a breach of the peace, and by not having under Cl. (3) of that section served a copy on the applicant. Held, that the matters referred to were mere irregularities in the proceedings and did not in the least affect the question of jurisdiction. *Bidya Dhar v. Jagdish Pershad.*

1 Cr. L. J. 1055 :

7 O. C. 334.

—S. 435—*Interference—Grounds for.*

It is not intended by Sub-s. (1) of S. 435 that a Sessions Judge should usurp the jurisdiction conferred by law upon Magistrates and that he should interfere with an order of a Magistrate which may fairly be deemed a proper order, merely because the Sessions Judge does take a different view upon the evidence from that of the trying Magistrate, the view of the trying Magistrate being a reasonable view in all the circumstances of the case. *Azizuddin R. Faruqui v. Emperor.*

40 Cr. L. J. 454 :

180 I. C. 581 : 11 R. S. 180 : 1939 Kar. 370 :

A. I. R. 1939 Sind 71.

—S. 435—*Interference—Grounds for—Judgment—Contents of—Revision—Criminal cases—Power of Chief Court to expunge passage from judgment.*

It is improper on the part of a Magistrate to record an opinion of the guilt of a person who is discharged when the evidence for the

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—S. 435—*Revision of order under S. 144, whether lies.*

An order passed by a Magistrate under S. 144 is merely administrative and is not liable to be revised by the High Court under S. 435. (See amendment in 1923) *Vedaappan Servai v. Perianan Servai*. 30 Cr. L. J. 119 :

113 I. C. 279 : 28 L. W. 506 :

1928 M. W. N. 779 : 55 M. L. J. 621 :

I. R. 1929 Mad. 94 : 52 Mad. 69 :

A. I. R. 1928 Mad. 1108.

—S. 435—*Revision.*

Order by Magistrate refusing copy of record of search by Police under S. 165 is open to revision.

29 Cr. L. J. 663 :

110 I. C. 215 :

26 A. L. J. 703 :

A. I. R. 1928 All. 402.

—S. 435—*Revision—Rule issued at instance of complainant—Complainant's Vakil, whether can be heard.*

On a complaint, certain persons were convicted of an offence under S. 147, I. P. C. The Sessions Judge on appeal set aside the conviction and the sentence. The complainant then applied to the High Court and obtained a Rule for setting aside the decision of the Sessions Judge, and in support of the Rule, desired to appear by a Vakil of his own : Held, that in pursuance of the powers conferred upon the High Court by S. 435, Cr. P. C., and in the exercise of the Court's discretion, it had the power to say that it would hear the Vakil on behalf of the complainant. *Bejoy Krishna Mukerjee v. Satish Chandra Mitra*. 21 Cr. L. J. 682 :

57 I. C. 922 : A. I. R. 1920 Cal. 571.

—S. 435—*Revision—When competent—Administrative circular of a District Magistrate—Prohibiting, uncertificated pleaders from practising in the Criminal Courts of the District—Procedure for aggrieved party.*

A circular by a District Magistrate prohibiting uncertificated pleaders from practising in the Criminal Courts in his District is not open to revision by the High Court. The proper course for the pleader, who has been refused appearance in a particular case by a Magistrate in pursuance of such circular, is to apply for the revision of the illegal or improper order of the Magistrate refusing to allow him to appear. *Chinnasawmy Iyer v. Emperor*.

11 Cr. L. J. 69 :

4 I. C. 876 : 19 M. L. J. 566.

—S. 435—*Revision—When competent—Executive order passed by District Magistrate—No revision lies—Order held executive one.*

An executive order passed by a District Magistrate is not revisable under S. 435 : Held, that the order passed by the District Magistrate was purely an executive order for controlling the procession in village which he could pass as a District Magistrate. The order did not show that any conditions or formalities which are required under

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S. 144 were observed and, therefore, no revision lay. *Mohammad Ahmad Khan v. Emperor*.

41 Cr. L. J. 781 :

189 I. C. 666 : 1940 O. W. N. 652 :

1940 O. L. R. 490 : 13 R. O. 104 :

A. I. R. 1940 Oudh 416.

—S. 435—*Revision—When competent—Order of Civil Court refusing to complain for prosecution for perjury, whether subject to revision.*

Under S. 435 the Chief Court has no jurisdiction to revise an order of a Civil Court refusing to make a complaint for the prosecution of a person for perjury under the provisions of Ch. XXXV, Cr. P. C. *Nawab Ali v. Madhuri Saran*.

28 Cr. L. J. 16 :

99 I. C. 48 : 3 O. W. N. 905 :

A. I. R. 1927 Oudh 14.

—S. 435—*Revision—When competent—Revision—Executive order—Order of District Magistrate dismissing headman.*

Held, that an order passed by a District Magistrate under the rules framed by Government under S. 45 (3) is an executive order and not subject to the revisional powers of the High Court. *In re : Damma*.

5 Cr. L. J. 476 :

27 A. W. N. 168 : 29 All. 563.

—S. 435—*Revision—When competent—Revision—Powers of District Magistrate.*

Ordinarily no revision lies in respect of proceeding under Chapter XII of the Code of Criminal Procedure except where the order is wholly *ultra vires* and without jurisdiction.

Hira Lal v. Emperor. 25 Cr. L. J. 440 :

77 I. C. 728 : 11 O. L. J. 59 :

A. I. R. 1924 Oudh 331.

—S. 435—*Revision—When competent.*

Where District Magistrate entertains and decides appeal under powers under S. 160, U. P. Municipalities Act, revision to High Court is not competent. *Municipal Board, Benares v. Ram Sahai Gupta*.

34 Cr. L. J. 1105 :

145 I. C. 959 : 1933 A. L. J. 469 :

6 R. A. 212 : A. I. R. 1933 All. 284.

—Ss. 435, 439—*Revision—Proceedings under S. 176—Whether lies.*

Proceedings under S. 176 are judicial proceedings and are subject to the revisional powers of the High Court under Ss. 435 and 439 apart from its inherent powers recognised by S. 561-A, of the Code. *In re : Laxminarayan Timman-na Karki*.

29 Cr. L. J. 1063 :

112 I. C. 567 : 30 Bom L. R. 1050 :

A. I. R. 1928 Bom 390.

—Ss. 435, 439, 423 (c)—*Revision—Irregular orders—High Court's powers.*

S. 435 (3) of the Cr. P. C. does not preclude a High Court from calling for the entire record of a case in which an irregular proceeding is embodied, for the purpose of examining the said irregular proceeding and satisfying itself as to the correctness and legality of any sentence or order therein recorded, and under S. 439 (1) read with S. 423 (c) of the Code, a

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to set aside a conviction for criminal trespass and acquit the accused without discussing the evidence or coming to any conclusion thereon, on the mere ground that the case is of a civil nature especially where the first Court has tried out the matter and has come to the conclusion that the accused is guilty of the offence charged. *Harai Chandra Nama v. Osmanali*.

19 Cr. L. J. 321 (b) :
44 I. C. 337 ; 27 C. L. J. 226 :
A. I. R. 1919 Cal. 928.

————S. 435—*Interference—Grounds for—Revision against acquittal by private party, whether competent.*

Though the High Court has power to interfere on revision with an order of acquittal at the instance of a private party, that power is only exercised when the order has resulted in grave injustice. *Bughta Simhadri Naidu v. Bhava Sitharama Patrudu*.

17 Cr. L. J. 1 :
32 I. C. 129 : 2 L. W. 1244 :
A. I. R. 1916 Mad. 1048.

————S. 435—*Interference—Grounds for—Revision—Further enquiry—Mere wrong view of facts no ground for further inquiry—Substantial justice.*

The fact that the view of the facts taken by the trial Court is questionable, is no ground for directing a fresh inquiry to be made under S. 435. Though the judgment of the trial Court be open to criticisms, a Court acting under S. 435 should see whether the judgment on the whole is fair and sensible or not. *Jagannath v. Emperor*.

28 Cr. L. J. 342 :
100 I. C. 822.

————S. 435—*Interference—Grounds for—Revision—High Court, power of—Perjury—Order to witness to show cause against prosecution for perjury, whether can be set aside.*

A High Court can interfere in its revisional jurisdiction with an order of a Magistrate calling upon witness to show cause why his prosecution under S. 193, Penal Code should not be directed. A deponent qualified his statement in his cross-examination by an admission that the deponent was not quite sure, and was only speaking to the best of his recollection and belief. He was called upon to show cause why he should not be prosecuted for perjury. The deponent had not been asked whether he was prepared to swear to the fact as true : Held, setting aside the order of the Magistrate, that no good purpose would be served by further continuance of the proceedings initiated by the order complained of, inasmuch as materials for a successful prosecution for perjury were lacking. *Shadha, T. N. v. Emperor*.

18 Cr. L. J. 46 :
36 I. C. 878 : 14 A. L. J. 851 :
A. I. R. 1917 All. 371.

————S. 435—*Interference—Grounds for—Revision—Interference with question of fact.*

S. 435 permits interference on the ground not merely of illegality but also on the ground of the impropriety of a finding. *Ashrafi Lal v. Emperor*.

28 Cr. L. J. 967 :
105 I. C. 679 : 25 A. L. J. 975 :
A. I. R. 1927 All. 647.

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————S. 435—*Interference—Grounds for—Revision—Pending case—Interference by Court.*

It is inadvisable for a High Court to interfere in revision in a pending case unless there is some manifest and patent injustice apparent on the face of the proceedings calling for prompt redress. *Krishna Rao v. Emperor*.

24 Cr. L. J. 591 :
73 I. C. 335 : 6 N. L. J. 119 :
A. I. R. 1924 Nag. 47.

————S. 435—*Interference—Grounds for.*

The duty of supervising the subordinate Courts is laid upon the High Court, and for that purpose, statements of cases decided by them are periodically submitted to it. The High Court is not only authorised, but bound to see that justice is properly administered, and it is its duty to interfere in a case which comes to its notice, in which it is of opinion that a miscarriage of justice has occurred. It is only cases in which there has been an acquittal after a complete trial that the High Court will not interfere, as a general rule, unless on appeal by the Local Government. In other cases, the High Court acts constantly on its own initiative as well as on the motion of parties of the Sessions Court and of the District Magistrate. It is in the interests of the right administration of justice that it should do so. *Emperor v. Kyaw Zan Hla*.

1 Cr. L. J. 997 :
10 Bur. L. R. 263.

————S. 435—*Interference—Grounds for.*

The mere fact that a High Court, if it were sitting as a Court of Appeal, would have come to a different conclusion on facts, is no ground for exercising revisional jurisdiction in a petition against orders of acquittal. An omission to serve notice of appeal on the District Magistrate is an irregularity but the proceedings are not *ab initio* void. *Vellayanambalam v. Solai Servai*.

16 Cr. L. J. 600 :
30 I. C. 152 : 28 M. L. J. 692 :
1915 M. W. N. 540 : A. I. R. 1916 Mad. 931.

————S. 435—*Interference—Grounds for.*

The practice of the Allahabad High Court is to refuse to entertain an application in revision when the applicant has not gone in revision either to the Sessions Judge or to the District Magistrate. *Mohammad Hashim v. Notified Area, Moghal Sarai*.

34 Cr. L. J. 1048 :
145 I. C. 726 : 1933 A. L. J. 119 :
55 All. 261 : 6 R. A. 152 :
A. I. R. 1933 All. 283.

————S. 435—*Interference—Grounds for.*

Though it is the practice of High Court to refuse to entertain application when lower Courts have not been approached, High Court is not bound to refuse revision in every case merely because it was not presented to lower Court. *R. N. Basu v. Emperor*.

34 Cr. L. J. 1053 :
145 I. C. 736 : 1933 A. L. J. 1112 :
55 All. 857 : 6 R. A. 156 :
A. I. R. 1933 All. 612.

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order of discharge passed by Presidency Magistrate.

Per *Benson and Sundara Aiyar, JJ.*—The High Court has power under Ss. 435 and 439 to set aside an order of discharge passed by a Presidency Magistrate under S. 209. *National Bank of India, Ltd. v. Kothandarama Chetty.*

14 Cr. L. J. 529 :
21 I. C. 129 : 14 M. L. T. 200 :
1913 M. W. N. 728.

S. 435 (4)—Scope.

Application to District Magistrate—Refusal to go into merits—Fresh application to Sessions Judge is competent. *In re : Appachi Goundan.*

32 Cr. L. J. 1278 :
134 I. C. 990 (b) : 34 L. W. 44 :
1931 M. W. N. 771 : 61 M. L. J. 12 :
54 Mad. 842 : I. R. 1931 Mad. 878 (2) :
A. I. R. 1931 Mad. 772 (2).

S. 435—"Situatē," meaning of.

The word "situate" means fixed or located, and when applied to a Court, refers to the place where the Court ordinarily sits. The word "situate" in S. 435, Cr. P. C., refers to the headquarters of the Magistrate trying the case. *Amba Podayal v. Emperor.*

4 Cr. L. J. 443 :
16 M. L. J. 444 : 1 M. L. T. 402.

S. 435—Third party application—Nature of.

An application filed by a third party who is a total stranger to the criminal proceedings and has no *locus standi* to invoke the jurisdiction of the Court is merely a miscellaneous application filed for the sole purpose of bringing the facts to the knowledge of the Court, and in such proceeding, his Counsel should not expect to be heard. *Shailabala Devi v. Emperor.* (F. B.)

34 Cr. L. J. 1115 :
145 I. C. 977 : 1933 A. L. J. 1059 :
6 R. A. 216 : A. I. R. 1933 All. 678.

S. 435—Third party application—Validity of.

Third party applications in revision are quite legitimate things and they should be accepted as legitimate. *Shailabala Devi v. Emperor.* (F. B.)

34 Cr. L. J. 1115 :
145 I. C. 977 : 1933 A. L. J. 1059 :
6 R. A. 216 : A. I. R. 1933 All. 678.

S. 436.

- Acquittal.
- Contents of order.
- Discretion of District Magistrate.
- Further inquiry.
- Interference—Grounds for.
- Interference—Nature of.
- Interference—Propriety of.
- Irregularity.
- Jurisdiction.
- Miscellaneous.
- Nature of order.
- Non-compliance.
- Notice.
- Opportunity to show cause—Necessity of.
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- Power of discretion.
- Power of High Court.
- Proceedings on further inquiry.
- Proceedings under S. 133, whether covered.
- Quashing proceedings.
- Reference—Procedure.
- Scope.

S. 436.

See also Cr. P. C., 1898, Ss. 4 (1) (k), 107, 119, 145, 190 (1), 195, 202, 203, 204, 209, 215, 236, 253, 350, 436, 437, 494.

S. 436—Acquittal.

Discharge amounting to acquittal—Further inquiry should not generally be ordered. *Diwan Singh v. Emperor.*

34 Cr. L. J. 735 :
144 I. C. 331 : 34 P. L. R. 719 :
I. R. 1933 Lah. 446 : A. I. R. 1933 Lah. 561.

S. 436—Acquittal.

Where it is not possible to say that the view taken by the trying Magistrate is palpably, unreasonable, or by any means perverse, and the Magistrate has not overlooked or ignored any evidence, the fact that the Court of Revision is inclined to take a different view of the evidence from that of the trying Magistrate, is not a sufficient ground justifying interference with an order of acquittal. *Ramanand v. Emperor.*

33 Cr. L. J. 383 :
137 I. C. 71 : 9 O. W. N. 134 :
I. R. 1932 Oudh 196 :
A. I. R. 1932 Oudh 114.

S. 436—Contents of order.

Disregard of proviso is an illegality—Sessions Judge reversing order discharging accused should give reasons for directing further enquiry. *Bhagwan Das v. Chander Bhan.*

35 Cr. L. J. 418 :
147 I. C. 335 : 1934 A. L. J. 69 :
6 R. A. 521 : A. I. R. 1934 All. 51.

S. 436—Discretion of District Magistrate.

There is nothing to prevent a District Magistrate when moved to act under S. 436 from taking cognizance, in his discretion, of the complaint under S. 190 (1). *Ramji Gujrati v. Emperor.*

32 Cr. L. J. 548 :
130 I. C. 529 : 12 P. L. T. 729 :
I. R. 1931 Pat. 177 : A. I. R. 1931 Pat. 50.

S. 436—Further inquiry.

A District Magistrate deciding to set aside an order of discharge in the exercise of his revisional jurisdiction under S. 436 or 437 should ordinarily confine the exercise of his powers of interference to those powers which are expressly specified in those sections and should not take upon himself the duty of trying the accused persons and convicting them as a Magistrate exercising original jurisdiction, though such a course would not, in any way, be illegal. *Danaji v. Emperor.*

27 Cr. L. J. 728 :
95 I. C. 56 : A. I. R. 1926 Nag. 374.

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—*Appreciation of evidence—Power to order further enquiry.*

District Magistrates are empowered to order further enquiry in cases wherein Subordinate Magistrates have discharged the accused for want of a *prima facie* case on the ground that the Subordinate Magistrates have not correctly appreciated the evidence. *Gopalakrishna Aiyar v. Emperor.*

10 Cr. L. J. 218 :
3 I. C. 28.

—S. 435—Powers of District Magistrate
—Powers of District Magistrate under S. 435.

Where the matter is properly before the Additional District Magistrate under S. 435, he has the power to go into the merits of the case to satisfy himself as to the correctness and legality or propriety of the order passed by the Magistrate. If he does so, and he is of opinion that the Magistrate had misconceived the evidence recorded by him, he would certainly be right in even ordering the Magistrate to issue process against the person against whom the Magistrate had dismissed the complaint. *Haroon v. Gajadhar Sukhdeo Marwadi.*

41 Cr. L. J. 312 :
186 I. C. 459 : 1940 N. L. J. 43 :
12 R. N. 228 : A. I. R. 1940 Nag. 128.

—S. 435—Power of District Magistrate.

Under S. 435 of the Code, a District Magistrate is empowered either to reject the application in revision or to take action under S. 438. His power under the latter section is limited to report for orders to the High Court the result of an examination of the proceedings made under S. 435 of the Code. He cannot set aside the order of the Magistrate himself. *Hira Lal v. Emperor.*

25 Cr. L. J. 440 :
77 I. C. 728 : 11 O. L. J. 59 :
A. I. R. 1924 Oudh 331.

—S. 435—Power of High Court.

A High Court has jurisdiction to interfere at any stage of the proceedings if it considers that, in the interests of justice, it should do so. Before an offence under S. 189, Penal Code, can be made out, it must be shown that there was a threat of injury to a public servant for the purpose of inducing him to do any act or forbear or delay to do any act connected with the exercise of his public functions. The mere fact that the accused abused the process-server will not constitute an offence under S. 189, Penal Code, nor will it constitute an offence under S. 504, Penal Code, without an intention to cause a breach of the peace or knowledge that a breach of the peace is likely to result. Service of summons is complete when it is tendered to the witness and his refusal to sign the original makes no difference. The fact of a *sub poena* being entrusted to a process-server does not give him a general right of entry into any house without obtaining the permission of the

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owner or person in charge. *In re: Kuppusami Aiyar.*

16 Cr. L. J. 477 :
29 I. C. 709 : 28 M. L. J. 505 :
2 L. W. 463 : 17 M. L. T. 398 :
1915 M. W. N. 365 : A. I. R. 1916 Mad. 408.

—S. 435—Power of High Court.

It is competent for the High Court to interfere under S. 439, with a sanction for prosecution granted by any Court—Civil, Revenue and Criminal—either under S. 195 or S. 476. *Bishan Singh v. Amritsaria.*

7 Cr. L. J. 281 :
3 P. W. R. Cr. 13 : 5 P. R. Cr. 68 :
103 P. L. R. 1908.

—S. 435—Power of High Court—Proceedings instituted before Magistrate—Some witnesses examined—Discontinuance of proceedings—Powers of High Court.

A High Court is not competent under S. 435 to order the discontinuance of proceedings instituted in a Magistrate's Court where no finding, sentence or order has been passed by the Magistrate and his proceedings are not irregular, on the mere ground that the offence with which the accused is charged is not a criminal offence. *Sheo Saran v. Jitendra Nath Daw.*

28 Cr. L. J. 814 :
104 I. C. 254 : 1 Luck. Cas. 271.

—S. 435—Power of High Court—Revisional power of High Court, when may be exercised.

The powers of a High Court under Ss. 435 and 439 are wide and it can proceed *suo motu* and interfere with any order if it considers just and proper by calling for and examining the record of any proceedings and it can interfere with an order which is improper even though it is not illegal. *Saji v. Bhimi.*

31 Cr. L. J. 284 :
121 I. C. 651 : 26 N. L. R. 50 :
A. I. R. 1930 Nag. 61.

—S. 435—Power of High Court—Limitation on—Expression of opinion, in revision on points beyond those provided within S. 435.

It is of considerable doubt as to whether it is within the province of the High Court when acting under S. 435 to canvass, and express opinions upon all topics, however interesting may be the points of law or practice involved in them, which have arisen in the course of the proceedings before the inferior Criminal Court. On revision its inquiry is limited to "the correctness, legality or propriety of any finding, sentence or order recorded or passed" and to "the irregularity of any proceedings of such inferior Court." *The King v. Maung Thounng Shwe.*

39 Cr. L. J. 642 :
175 I. C. 639 : 11 R. Rang. 9 :
A. I. R. 1938 Rang. 161.

—S. 435—Power of High Court, whether limited.

A High Court can, as a Court of Revision, in exercise of the powers conferred upon it by the Code of Criminal Procedure, interfere with the order of a Magistrate charging

Cr. P. CODE (1898), S. 436**—S. 436—Further inquiry.**

A District Magistrate may, under S. 436, order a further enquiry in the case of persons who have been discharged under S. 494 of the Code. *Kanhaiya Lal v. Baijnath*.

34 Cr. L. J. 519 :
143 I. C. 77 : 29 N. L. R. 201 :

I. R. 1933 Nag. 149 : A. I. R. 1933 Nag. 78.

—S. 436—Further inquiry—Accused discharged by trial Court—Revisional Court ordering further enquiry on taking into consideration conduct of accused—Order, if can be interfered with.

Where the trial Court does not disbelieve the evidence in a case for possession of contraband opium and discharges the accused, and in revision, taking into consideration the conduct of the accused in running away saying that the search party would not find anything in the hut, orders further enquiry, this order will not be interfered with. *Maung Su v. Emperor*.

38 Cr. L. J. 709 :
169 I. C. 63 : 9 R. Rang. 386 :
A. I. R. 1937 Rang. 120.

—S. 436—Further inquiry.

Before ordering further enquiry, it is necessary that the Magistrate should not be satisfied with the 'correctness, legality or propriety of any finding, sentence or order', and it is then his duty to exercise the discretion he possesses under S. 436 and to order that further enquiry be made into the complaint that had been dismissed. *Maung Su v. Emperor*.

38 Cr. L. J. 709 :
169 I. C. 63 : 9 R. Rang. 386 :
A. I. R. 1937 Rang. 120.

—S. 436—Further inquiry—Discharged co-accused examined as prosecution witness—Fresh inquiry after examination, legality of.

To order a fresh inquiry against a discharged co-accused after examining and cross-examining him as a prosecution witness and thus gathering from his own mouth the evidence against him, is contrary to the traditions of justice in criminal Courts. *Casatullah Mian v. Emperor*.

25 Cr. L. J. 311 (b) :
76 I. C. 1031 : A. I. R. 1925 Cal. 104.

—S. 436—Further inquiry—Discharge of accused—Further inquiry, when to be directed—Revision.

A District Magistrate or a Sessions Judge has power to order a further inquiry under S. 436 even when the Magistrate has recorded all the evidence for the prosecution. Where a Sessions Judge after going carefully through the evidence comes to the conclusion that the finding of the Magistrate is either perverse or manifestly at variance with the evidence which he had recorded, and makes an order for further inquiry under S. 436, the order directing a further inquiry is not illegal, improper and incorrect and cannot be interfered with in revision. *Karkley v. Jagannath Parshad*.

26 Cr. L. J. 959 :
87 I. C. 111 : 11 O. L. J. 611 :
1 O. W. N. 302 :
A. I. R. 1925 Oudh 180:

Cr. P. CODE (1898), S. 436

—S. 436—Further inquiry—District Magistrate's power to direct further enquiry.

Where the Magistrate has not dealt with the evidence, it is certainly open to the District Magistrate to direct a further enquiry. *Bhagwanrao v. Emperor*.

37 Cr. L. J. 858 :
163 I. C. 702 : 18 N. L. J. 289 :
9 R. N. 14.

—S. 436—Further inquiry—Further enquiry after discharge, when to be ordered.

The rule of law is firmly established that generally speaking, further enquiry after discharge is improper unless the order of discharge is manifestly perverse or foolish or is based upon a record of evidence which is obviously incomplete. Where the prosecution produced seven witnesses and closed their case and the Magistrate having considered the evidence discharged the accused: *Held*, that a further enquiry could not be ordered on the mere ground that the prosecution did not choose to produce a particular piece of evidence. *Atma Singh v. Emperor*.

28 Cr. L. J. 860 :
104 I. C. 636 : 28 P. L. R. 593 :
A. I. R. 1928 Lah. 42.

—S. 436—Further inquiry—Further inquiry, when to be ordered.

Where the whole evidence has been heard by a Magistrate hearing the case and has been disbelieved, a revising authority would not lightly interfere with the order of the Magistrate. The provisions of S. 436 of the Cr. P. C., are meant to apply to cases where there have been some misinterpretation of the law or principle of law, or there has otherwise been miscarriage of justice. The mere fact that on the evidence a revising authority comes to a different conclusion from that arrived at by the Court that heard the evidence, does not justify an order for further inquiry. *Zabar Singh v. Ram Sarup*.

26 Cr. L. J. 582 :
85 I. C. 726 : A. I. R. 1925 All. 477.

—S. 436—Further inquiry—Meaning of.

Further inquiry ordered—Question of dismissing complaint should again be taken up. *Emperor v. Maung Ba Thon*.

32 Cr. L. J. 950 :
132 I. C. 822 : 9 Rang. 239 :
I. R. 1931 Rang. 214 :
A. I. R. 1931 Rang. 225.

—S. 436—Further inquiry—Meaning of.

When an order of discharge is set aside and further enquiry ordered under S. 436, the enquiry re-commences where it was left off at the time when the improper order of discharge was passed. Further enquiry, does not mean merely an examination of witnesses, but a further consideration of the evidence and the Magistrate is, therefore, justified when ordered to make further enquiry upon perusing

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Magistrate unless the order is manifestly foolish and perverse. *Pearcy Lal v. Sagar Mal.*

27 Cr. L. J. 1130 :

97 I. C. 650 : 25 A. L. J. 42 :

A. I. R. 1927 All. 38.

—Ss. 435, 437—*Power of Sessions Judge—Misappreciation of evidence by a Magistrate—Power of Sessions Judge to order further enquiry.*

Reading Ss. 435 and 437 together, it is clear that the Sessions Judge may direct further enquiry into the case of a person discharged by a Magistrate on the ground of misappreciation of evidence if, in his opinion, such misappreciation has led to the passing of an incorrect or improper order of discharge. *Venkata Subha Reddi v. Ayyallu Reddi.* 10 Cr. L. J. 299 : 3 I. C. 488 : 32 Mad. 214 : 5 M. L. T. 356.

—S. 435—*Records of Case of Revenue Court.*

High Court acting as a Criminal Court has no power to call for a record except under the provisions of S. 435, and under that section, it can call for the record only of an inferior Criminal Court. A High Court, as a Criminal Court cannot send for the record of a Civil Court, or of a Revenue Court. *Thakar Dass v. Emperor.*

15 Cr. L. J. 217 :

22 I. C. 1001 : 17 O. C. 25 :

A. I. R. 1914 Oudh 225.

—S. 435—*Reference—When competent—Reference to High Court—District Magistrate, whether can question decision of Sessions Judge.*

It is no part of the business of District Magistrate to criticise the judicial decisions of Sessions Judges, and Ss. 435, 437, 438, do not authorise the former to make references to the High Court questioning the correctness of the latter's decisions. *Emperor v. John Francis Lobo.*

17 Cr. L. J. 529 :

36 I. C. 577 : 18 Bom. L. R. 796 :

A. I. R. 1916 Bom. 158.

—S. 435—*Revision.*

A District Registrar is not an inferior Criminal Court within the meaning of S. 435, Cr. P. C. Consequently High Court has no power, under S. 435, Cr. P. C. to interfere with an order passed by a District Registrar granting sanction for the prosecution of a person for an offence. *In re : Ardeshir Kavasji Karanjavalla.*

13 Cr. L. J. 845 :

17 I. C. 717 : 14 Bom. L. R. 870.

—S. 435—*Revision—Application for—Whether subsequent stage of original case—Revision application, whether subsequent stage of same case—Complainant, European British subject—Right to make claim under S. 454—Jurisdiction.*

An application for revision is an independent matter giving a right to apply to a superior Court independently of any proceedings necessarily subsequent or consequent upon the hearing of the original case, and is not a subsequent stage of the same case within the meaning of S. 454. *Harris v. Pcal.*

21 Cr. L. J. 767 :

58 I. C. 351 : 17 A. L. J. 896 :

[A. I. R. 1920 All. 356.]

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—S. 435—*Revision before appeal—Validity of—District Magistrate, power of revision, exercise of.*

District Magistrate should not place difficulties in the way of persons entitled to appeal by calling for proceedings and taking action upon them within the period allowed for appeal. *Lakanaw v. Emperor.* 18 Cr. L. J. 355 :

38 I. C. 739 : U. B. R. 1916 II 124 :

10 Bur. L. T. 167 : A. I. R. 1917 U. Bur. 2.

—S. 435—*Revision—Limitation for—Criminal Revision—Limitation—Limitation Act (IX of 1908), Sch. I. Art. 181, applicability of—Rule of practice.*

Article 181 of Sch. I, Limitation Act, does not apply to an application made to the High Court for revision of an order of a Criminal Court of inferior jurisdiction. Though there is no statutory time limit for entertaining such applications, the High Court should not, as a matter of practice, admit applications for revision unless it is satisfied that they are made within a reasonable time, and the reasonable time would be the time granted by Statute for admitting appeals. When an application for revision has been made after the expiry of the period allowed for an appeal, the Court should ask the applicant to give reasons for the delay, and if those reasons are not sufficient, to dismiss the application. *Shah Naim Ata v. Emperor.* 31 Cr. L. J. 1012 :

126 I. C. 395 : 7 O. W. N. 663 :

A. I. R. 1930 Oudh 401.

—S. 435—*Revision of, proceedings under Ch. XII, whether lies, Indian High Courts Act, 1861 (Statutes 24 and 25 Vic. Chapter CIV), Ss. 9, 16, 26.*

Where proceedings taken by a Magistrate under Chapter XII of the Cr. P. C. are proceedings under that Chapter in intention, in name and in fact, the High Court's interference with them in revision is excluded by S. 435 (3) of the Code. (This sub-section has since been repealed in 1923). *Maharaj Tewari v. Harcharan Rai.* 1 Cr. L. J. 339 :

I. L. R. 26 All. 144 : 1903 A. W. N. 212.

—S. 435—*Revision of cancelled order under S. 144—Revision after cancellation of order under S. 144, maintainability of—Provisions of S. 144 (4), if bar to such application.*

It frequently happens that the High Court is called upon under S. 435, to revise an order of conviction after the sentence passed by the convicting Court has expired. It is open to this Court, if it thinks that an order under S. 144 ought never to have been made, to set it aside, although before that action can be taken, the order may have ceased to be in operation. Where a part of the order had been rescinded by the Magistrate before there was time to make any application to him the fact that the petitioner did not avail himself of the remedy under S. 144 (4) is no ground for refusal to interfere in revision by the High Court. *In re : Ardeshir Phirozshah Murzban.* 41 Cr. L. J. 319

186 I. C. 477 : 41 Bom. L. R. 1253

12 R. B. 352 : A. I. R. 1940 Bom. 4.

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order of the District Magistrate was without jurisdiction, as primarily the case against him was under S. 408 which was not triable exclusively by the Court of Sessions; *Held*, that the District Magistrate was competent to commit the accused as in this case the charge of falsification of accounts was one of the substantial things against the accused: that the District Magistrate could add a charge under S. 408 if it was so intimately connected with the charge under S. 477-A as to form part of the same transaction *Gendral Chimanbhai v. Emperor*.

15 Cr. L. J. 262 :
23 I. C. 500 : 16 Bom L. R. 80 :
A. I. R. 1914 Bom. 4.

—S. 436—Interference—Grounds for.

In what cases further inquiry after discharge should be ordered, stated. *Diwan Singh v. Emperor*.

34 Cr. L. J. 735 :
144 I. C. 331 : 34 P. L. R. 719 :
I. R. 1933 Lah. 446 : A. I. R. 1933 Lah. 561.

—S. 436—Interference—Grounds for—
Offence minor, cognizance of, by Court—Graver offence disclosed, charge for, not pressed by prosecution—Commitment to Sessions on graver charge, legality of.

Where a Magistrate takes cognizance of a minor offence against an accused, and a graver offence triable by the Sessions Court is disclosed in evidence but the prosecution does not press for the framing of a charge in respect of such offence, a commitment to the Sessions Court in respect of the graver offence is illegal. *Sessions Judge, Coimbalore*. 19 Cr. L. J. 945 :
47 I. C. 669 : 1918 M. W. N. 486 :
24 M. L. T. 82 : 35 M. L. J. 667 : 41 Mad. 982 :
A. I. R. 1919 Mad. 847.

—S. 436—Interference—Grounds for—
Sessions Judge's power to order commitment—Revisional powers of High Court—Practice.

Where a Sessions Judge acting under S. 436, orders the commitment of a person discharged, it is open to the High Court to consider whether the Sessions Judge has or has not exercised a proper judicial discretion under S. 436 in setting aside the Magistrate's order of discharge, and for this purpose the High Court may consider the facts as well as the questions of law involved in the case. But the High Court will only interfere with the Sessions Judge's order where it is manifest that the Sessions Judge's order was improper; as for instance, where there was no evidence to prove the offence charged or where it is clear that the Court would not act on the evidence. *In re : Muthiah Pillai*.

5 Cr. L. J. 100 :
16 M. L. J. 529 : I. L. R. 30 Mad. 224.

—S. 436—Interference—Grounds for.

Where a Magistrate deliberately frames a charge on a minor section instead of on the major section on which the case starts, his action is equivalent to a discharge with regard to the major offence. The Sessions Court, therefore, has power to interfere under S. 436. *Ganga Datta v. Emperor*.

37 Cr. L. J. 715 (b) :
162 I. C. 925 : 8 R. N. 292 :
I. L. R. 1936 Nag. 54 : A. I. R. 1936 Nag. 87.

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—S. 436—Interference—Nature of—
Discretion of Sessions Judge—Power of High Court to interfere.

A High Court should be slow to interfere with the exercise of the very wide discretion with which Sessions Judges have been invested under the provisions of S. 436. *Mangat Rai v. Emperor*.

16 Cr. L. J. 139 :
27 I. C. 203 : 13 A. L. J. 111 :
A. I. R. 1915 All. 86.

—S. 436—Interference—Propriety of—
Order of lower Court irregular—No likelihood to failure of justice—Interference by Judicial Commissioner's Court, propriety of.

The Court of the Judicial Commissioner will not interfere with an order of the lower Court, even if irregular, when no actual or possible failure of justice occurs. *Jethanand Murijmal v. Shivram*.

38 Cr. L. J. 596 :
168 I. C. 777 : 9 R. S. 239 :
A. I. R. 1937 Sind 86.

—Ss. 436, 537—Irregularity—Order for further inquiry into complaint—Magistrate summoning accused instead of making further inquiry—Mere irregularity—Trial, not vitiated.

Where a further enquiry into a complaint was ordered in revision under S. 436, but the Magistrate, instead of holding a further enquiry, summoned the accused and proceeded with the trial: *Held*, that the procedure was not illegal but only irregular, and the trial could not be set aside if there had been no failure of justice. *Janakdhari Singh v. Emperor*.

31 Cr. L. J. 146 :
120 I. C. 632 : 8 Pat. 537 : 10 P. L. T. 725 :
A. I. R. 1929 Pat. 469.

—S. 436—Jurisdiction.

Per Dhavle, J.—The omission of a Magistrate to make a further inquiry as directed under S. 436 does not deprive him of the jurisdiction that he has, quite apart from any order of a revisional Court directing a further inquiry, to summon an accused person. *Hema Singh v. Emperor*.

31 Cr. L. J. 961 :
126 I. C. 146 : 9 Pat. 155 ;
A. I. R. 1929 Pat. 644.

—S. 436—Jurisdiction.

S. 436, Cr. P. C. gives the District Magistrate jurisdiction if he considers that the case is triable exclusively by the Court of Sessions. That may mean either (1) a case where the District Magistrate considers that the facts constitute an offence which is triable only by the Court of Sessions, or it might mean or (2) a case in which the District Magistrate considers that the sentence which the Special Power Magistrate could pass might not be sufficient, and, that it was a case which should be tried by a Court of Session. *Tambi v. Emperor*.

19 Cr. L. J. 801 (b) :
46 I. C. 817 : 9 L. B. R. 208 :
A. I. R. 1919 L. Bur. 146.

—S. 436—Miscellaneous—Direction by Sessions Judge to Magistrate to commit accused to Sessions.

A direction by a Court of Session to a Magistrate to commit an accused person to the

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High Court has jurisdiction to set aside an irregular order. *Mahadai v. Beni Prasad*.

21 Cr. L. J. 242 :
55 I. C. 194 : 18 A. L. J. 171 :
42 All. 214 : A. I. R. 1920 All. 225.

———S. 435 (3)—*Revision of proceedings under S. 146, competency of.*

An order which merely purports to be under S. 146, Cr. P. C. but exceeds the powers given thereby, is one which a High Court is not precluded by S. 435 from interfering in revision. (Proceedings under Ch. XII are now open to revision as sub-section 435 (3) has since been repealed in 1923.) *In re; Sangnbasawa kom Bassappa*.

2 Cr. L. J. 28 :
7 Bom. L. R. 18.

———S. 435 (3)—*Revision of proceedings under Ch. XII, whether lies—High Courts Act (24 & 25 Vict. c. 104), S. 15—Proceedings under Ch. XII of Criminal Procedure Code—High Court, powers of, revision of.*

By S. 435, cl. (3), proceedings under Ch. XII of the Code are not proceedings within the meaning of that section, and a High Court has, therefore, no power either under that section or under S. 15, Indian High Courts Act, 1861, to send for them in revision. (This sub-section has since been repealed in 1923.) *Mutsaddi Lal v. Tarif*.

18 Cr. L. J. 418 :
38 I. C. 978 :
A. I. R. 1917 All. 396.

———S. 435 (3)—*Revision of proceedings under Ch. XII, whether lies—Jurisdiction of High Court to revise proceedings under Ch. XII, Criminal Procedure Code.*

A High Court not appointed by Royal Charter is barred by Sub-s. (3) of S. 435 from interfering on revision in proceedings taken under Ch. XII of the Code. (This sub-section has been repealed in 1923.) *Raj Chundbo v. Po Scin*.

1 Cr. L. J. 737 :
2 L. B. R. 239 : 10 Bur. L. R. 300.

———S. 435 (3)—*Revision of proceedings under Ch. XII, whether lies—Proceeding under—Finding as to breach of the peace, whether essential—Revision.*

Where the notice issued by a Magistrate purporting to act under S. 145, shows that he was satisfied that there was a serious dispute between the parties, the proceeding is one contemplated by S. 145, even though there is no finding in it about any likelihood of a breach of the peace. Under S. 435, cl. (3) a High Court is precluded from interfering in revision in a matter under S. 145 of the Code. (Sub-s. 435 (3) has since been repealed in 1923.) *Babu Singh v. Angnu Kewat*.

23 Cr. L. J. 303 (a) :
66 I. C. 527 : A. I. R. 1922 All. 31.

———S. 435—*Scope.*

Every Court holding a proceeding under a power conferred on it by the Court of Criminal Procedure in India, exercises a criminal jurisdiction, either ordinary or special, and, irrespective of its appellation

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and ordinary business, is a "Criminal Court" in respect of such proceeding, within the meaning of that term in S. 435 of the Cr. P. C., 1898. *Shankar Rao v. Shaik Daud*.

8 Cr. L. J. 351 :
4 N. L. R. 140.

———S. 435—*Scope—High Court's power to revise order passed by a Magistrate investigating a claim of a third party to the attachment of the property of an absconding offender.*

With regard to the amended definition of the term "Judicial proceedings" in S. 4 (m) the order passed by a Magistrate in the investigation of a claim by a third party to the property of an absconding offender attached under S. 88 is open to revision by the High Court under Ss. 435—439. *Ilam Din v. Emperor*.

8 Cr. L. J. 260 :
2 P. W. R. 81 Cr. : 9 P. R. 1908 Cr.

———S. 435—*Scope.*

'Made' in Sub-s. 4 of S. 435 means 'entertained and decided'. *In re : Appachi Goundan*.

32 Cr. L. J. 1278 :
134 I. C. 990 (b) : 34 L. W. 44 :
1931 M. W. N. 771 : 61 M. L. J. 12 :
54 Mad. 842 : I. R. 1931 Mad. 878 (2) :
A. I. R. 1931 Mad. 772 (2).

———S. 435—*Scope.*

Order declining to stay proceedings is an order within S. 435. *Louis Phillip Dias v. Mahadev Barik Raut*.

35 Cr. L. J. 311 :
147 I. C. 230 : 35 Bom. L. R. 1054 :
58 Bom. 49 : 6 R. B. 177 :
A. I. R. 1933 Bom. 485.

———S. 435—*Scope.*

Powers of revision which the Court has under S. 435 are discretionary. *Namat Sha v. Hamman Buksha*.

33 Cr. L. J. 31 (2) :
134 I. C. 1057 : 35 C. W. N. 1112 :
55 C. L. J. 34 : 59 Cal. 478 : I. R. 1932 Cal. 17 :
A. I. R. 1931 Cal. 626.

———S. 435—*Scope—Re-trial of accused after conviction—Inapplicability of sections.*

Ss. 435 and 437 do not empower a Court in an appeal from a conviction to order a re-trial of the appellant. *Hamdu Meah v. Emperor*.

11 Cr. L. J. 684 :
8 I. C. 594 : 3 Bur. L. T. 9.

———Ss. 435, 439—*Scope—Revision—High Court, interference by.*

The powers conferred by Ss. 435 and 439 of the Cr. P. C. upon the High Court are extremely wide. The only fetters upon the power of the High Court under these two sections are that no order shall be made to the prejudice of an accused person unless he has had an opportunity of being heard and that nothing shall be deemed to authorise the High Court to convert a finding of acquittal into one of conviction. *Manng Htin Gyaw v. Maung Po Scin*.

28 Cr. L. J. 219 :
99 I. C. 1019 : 4 Rang. 471 :
A. I. R. 1927 Rang. 74.

———Ss. 435, 439—*Scope—Revision—High Court's power to interfere in revision and set aside*

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of all the evidence produced by the complainant. *Faiz Muhammad v. Emperor.*

26 Cr. L. J. 1328 :
89 I. C. 272 : 7 L. L. J. 216 :
A. I. R. 1925 Lah. 395.

———S. 436—Order of discharge—Further inquiry, when to be directed—Revision—Interference by High Court.

Ordinarily an order of discharge should be set aside only if it is perverse or foolish or is based upon a record of evidence which is obviously incomplete. Where a Sessions Judge sets aside an order of discharge as being perverse after considering the whole of the evidence on the record and directs further inquiry into the matter, the High Court will not interfere with such order in revision. *Zahur Ahmad v. Niadar Mal.*

28 Cr. L. J. 238 :
99 I. C. 1038 : 9 L. L. J. 144.

———S. 436—Order of discharge.

It is the duty of a Revisional Authority to record its reasons for setting aside an order of discharge and to show that the order of discharge is improper, and such revisional jurisdiction cannot be said to have been properly exercised without assigning solid and sufficient reasons for doing so inasmuch as the High Court cannot, in the absence of such reasons, exercise supervision over the proceedings of Magistrates and Judges and also because it is fair to the person whose liberty is going to be affected by such order, that he should have notice of the grounds on what the further inquiry is going to be made. *Danaji v. Emperor.*

27 Cr. L. J. 728 :
95 I. C. 56 : A. I. R. 1926 Nag. 374.

———S. 436—Order of discharge.

Order of discharge by a Magistrate after hearing all the prosecution evidence, should not be set aside unless it is perverse or manifestly unreasonable and inconsistent with the evidence before the Court. *Durgadas Radhakisan v. Emperor.*

35 Cr. L. J. 644 :
148 I. C. 271 : 35 Bom. L. R. 1181 :
6 R. B. 286 : A. I. R. 1934 Bom. 48.

———S. 436—Order of discharge.

Order of discharge can be set aside though no additional evidence is to be produced. *Diwan Singh v. Emperor.*

34 Cr. L. J. 735 :
144 I. C. 331 : 34 P. L. R. 719 :
I. R. 1933 Lah. 446 :
A. I. R. 1933 Lah. 561.

———S. 436—Order of discharge—Interference in revision by District Magistrate—Grounds.

An order of discharge can be set aside by the District Magistrate only if there is an irregularity or illegality in the proceedings. *Bageshwar v. Emperor.*

31 Cr. L. J. 417 :
122 I. C. 434 : A. I. R. 1930 Nag. 108.

———S. 436—Order of discharge—Review—High Court, if can set aside in review order of discharge passed under S. 494.

The High Court has jurisdiction in review to interfere with an order of discharge passed upon an application made by the Public Prosecutor under the provision of S. 494.

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Under the very terms of Ss. 436 and 437, the High Court has power to order a further enquiry in a case in which an accused person has been discharged. *Devendra Kumar Roy v. Bakht Chaudhury.* (S. B.)

40 Cr. L. J. 349 :
180 I. C. 384 : 43 C. W. N. 301 :
11 R. C. 676 : I. L. R. 1939 1 Cal. 407 :
A. I. R. 1939 Cal. 220.

———S. 436—Order of discharge—Revision by District Magistrate—Committal to Court of Session on grounds of expediency—Illegality.

A District Magistrate, acting under S. 436 set aside an order of discharge of a Police Officer on a charge of extortion, on the ground that the charge related to the conduct of a Police Officer and that it was desirable that the case should be tried by the Court of Session: *Held*, that it was incumbent on the District Magistrate to record his own finding on the evidence before committing the case to the Court of Session and that the gravity of the charge was not a sufficient reason for interfering with the lower Court's order of discharge. *Srikishen Lal v. Emperor.*

17 Cr. L. J. 330 :
35 I. C. 506 : 1 P. L. J. 97 :
A. I. R. 1916 Pat. 233.

———S. 436—Order of discharge—Order of discharge, when can be set aside on ground of misappreciation of evidence—Distinction between S. 436 and S. 437, in this matter.

It is both legal and proper for a Sessions Judge or a District Magistrate to set aside an order of discharge under S. 436, on the ground of misappreciation of evidence. It is, strictly speaking, legal for a Sessions Judge or a District Magistrate to do so on the ground of misappreciation of evidence, but it is not proper to do so unless he is clearly of opinion that the misappreciation is so flagrant that in effect the order is perverse or manifestly unreasonable or foolish or *prima facie* incorrect. Where exactly to draw the line is a matter for the exercise of common-sense. In the application of these principles, there is no practical difference between S. 436 and S. 437, Cr. P. C. *Sheoprasad v. Emperor.*

39 Cr. L. J. 917 :
177 I. C. 605 (2) : 1928 N. L. J. 250 :
I. L. R. 1938 Nag. 442 : 11 R. N. 118 :
A. I. R. 1938 Nag. 394.

———S. 436—Order of discharge—Public Prosecutor withdrawing case—Discharge of accused, nature of—District Magistrate's power to order further enquiry.

S. 436 confers an independent power on the District Magistrate to direct any subordinate Magistrate to make further enquiry into any complaint which has been dismissed, or into the case of any person accused of an offence who has been discharged. An order of discharge passed on withdrawal of a case before charge is framed does not amount to an acquittal. A person discharged by a Magistrate on a consideration of the evidence tendered against him and a person discharged at the instance of the

CR. P. CODE (1898), S. 250

of compensation. *Dandayadapant v. Thirumalai*.
10 Cr. L. J. 569;
4 I. C. 399.

S. 250—Revision—Compensation by
First Class Magistrate—Sessions Judge, revision
by.

The Sessions Judge has no power to interfere

in revision with an order of compensation passed
by a First Class Magistrate, under the provisions of S. 250. *In re: Piliambur Dwarika Das*.
3 Cr. L. J. 88;
7 Bom. L. R. 908.

S. 250—Revision—Revision from order
of City Magistrate.

The High Court at Allahabad has jurisdiction

to entertain an application for revision
of an order of the City Magistrate of Lucknow
in a case in which the complainant is a
European British subject, irrespective of
whether he has made a claim to be dealt
with as such, against whom an order under

S. 250 has been made. *Harris v. Peel*.

58 I. C. 351; 17 A. L. J. 896;
A. I. R. 1920 All. 356.

S. 250—Scope—Compensation in warrant cases.

An order for compensation under S. 250
can be passed not only in summons cases
but also in warrant cases. *Paghambar v. Emperor*.
28 Cr. L. J. 450;
A. I. R. 1927 Oudh 175.

S. 250—Scope—Compensation—Order to
prosecute under S. 476—Complaint, what is.

In execution of a decree, a warrant of

attachment was issued and the bailiff reported
to the Court that he had been obstructed
in levying attachment by one Ishram. The
decree-holder also applied for sanction to
prosecute Ishram. On inquiry, the Court did
not issue a sanction but made an order under

S. 476, Cr. P. C. for Ishram's prosecution and
sent the papers to a Magistrate. The Magistrate
acquitted Ishram and ordered the
decree-holder under S. 250, Cr. P. C. to pay
Rs. 30 in compensation; *Held*, (1) that the

words of S. 250 limited it to a case instituted
either by complaint, or by the information
given to a Police Officer, or to a Magistrate;
(2) that the order could not be supported
under S. 250, as the accusation against Ishram
was not made upon the complaint or information
of any person within the meaning of

S. 250, but upon the order made by the
Court under S. 476. 'Complaint' as defined
in Cl. (h) of S. 4 of the Cr. P. C. cannot
include deposition made to a Magistrate in
the course of a trial. *In re: Kishandas Harichand*.

14 Cr. L. J. 1;
18 I. C. 145; 14 Bom. L. R. 1166.

S. 250—Scope—Institution of case originally upon information given to Police.

Where a case was instituted upon a Police
report, but originally upon information given
to a Police Officer: *Held*, that the case falls
within S. 250 and that the person upon whose

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information the case was originally instituted
may be dealt with under that section. *Jogdandi Pershad Singh v. Mahadeo Kandoo*.
11 Cr. L. J. 201;
5 I. C. 693; 14 C. W. N. 326.

S. 250—'Vexatious' case, meaning of—
Acquittal—Compensation.

An accusation cannot be said to be vexatious
unless the main intention of the complainant
is to cause annoyance to the person accused
and not merely to further the ends of justice.
Where a report regarding the conduct of the
accused, a Municipal Supervisor, was made
by the Municipal Engineer, on which the
President set a more or less informal inquiry
on foot through the Police, and the report
of the Police showed that the Supervisor had
been guilty of falsification of accounts but
the accused was acquitted on trial, it cannot
be said under the circumstances that the
object in instituting the proceedings was primarily to annoy the accused. *Municipal Committee, Simla v. Munkand Singh*.
27 Cr. L. J. 607;
94 I. C. 271; A. I. R. 1926 Lah. 365.

S. 250—Vexatious charge—Compensation.

The expression 'vexatious charge' in S. 250
is sufficiently wide to include a false charge,
and compensation may be awarded to an
accused when the accusation against him was
deliberately false. *Bhindsri v. Emperor*.
1 Cr. L. J. 433;
1 A. L. J. 234; 24 A. W. N. 116;
I. L. R. 26 All. 512.

S. 250—Vexatious charge—Falsity of
charge, whether must be established.

In order to justify an order for payment
of compensation to the accused person under
S. 250, there must be a finding that the
charge against the accused is false, besides
being frivolous or vexatious. A vexatious
charge may be partly true and the idea
conveyed by the word is that the object
of the person making the accusation should
be primarily to harass the accused
person. *Bhan v. Syed Chand*.
26 Cr. L. J. 1033;
87 I. C. 921; A. I. R. 1926 Nag. 31.

S. 250—Vexatious complaint—Evidence
not produced—Compensation.

A person who files a complaint against another person, gets a warrant issued for his
arrest, puts him to the inconvenience of
attending the Court, compels him to execute
a bond for his attendance and then having
attained his object of harassing him, calmly
says that the case might be filed as he does
not wish to produce evidence, has no right
to complain if the Magistrate holding that
his complaint was vexatious, makes an order
for compensation against him under S. 250. A
man cannot be allowed to make use of the
Court for the purpose of annoying some one
against whom he has a grudge. *Channan Singh v. Emperor*.
23 Cr. L. J. 1 (b);
64 I. C. 369; 18 P. L. R. 1922.

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—S. 436—Quashing Proceedings.

Proceedings in Trying Magistrate's Court cannot be quashed by Sessions Judge. *Sultan v. Ma Hla Khin*. 34 Cr. L. J. 1083 :

145 I. C. 720 : 6 R. Rang 57 :
A. I. R. 1933 Rang. 214.

—S. 436—Reference—Procedure.

A reference to the High Court under S. 438, Cr. P. C. should contain a brief abstract of the case and the grounds of the reference. *In re: Kesava Panda*. 9 Cr. L. J. 502 :
2 I. C. 159.

—S. 436—Scope.

An order of a Magistrate declining to proceed with the case for want of jurisdiction is not an order that could be revised by the Sessions Judge. *K. S. Subramania Ayyar v. Swamikannu Chetty*. 34 Cr. L. J. 800 :

144 I. C. 519 : 37 L. W. 547 :
1933 M. W. N. 217 : I. R. 1933 Mad. 424.
A. I. R. 1933 Mad. 413.

—S. 436—Scope—Discharge—Commitment by District Magistrate—Case not "triable exclusively by the Court of Session"—Jurisdiction.

A case does not come within the purview of S. 436 merely because in the opinion of the District Magistrate the offence alleged to have been committed could not be adequately punished by a Magistrate. *Emperor v. Debi Prasad*. 8 Cr. L. J. 47 :
28 A. W. N. 189.

—S. 436—Scope.

Further inquiry should not be ordered merely in the interest of justice. *Dewan Singh v. Emperor*. 34 Cr. L. J. 735 :

144 I. C. 331 : 34 P. L. R. 719 :
I. R. 1933 Lah. 446 : A. I. R. 1933 Lah 561.

—S. 436—Scope.

High Court may entertain applications when the Sessions Judge has jurisdiction to entertain them. *Emperor v. Abdulla Khan*. 33 Cr. L. J. 298 :

136 I. C. 513 : 25 S. L. R. 395 :
I. R. 1932 Sind 33 : A. I. R. 1932 Sind 28.

—S. 436—Scope.

Magistrate should carefully exercise his powers of preliminary investigation and inquiry. *Emperor v. Maung Ba Thou*. (F. B.) 32 Cr. L. J. 950 :

132 I. C. 822 : 9 Rang. 239 :
I. R. 1931 Rang. 214 : A. I. R. 1931 Rang. 225.

—S. 436—Scope.

No direction can be given to Magistrate as to manner in which he should conduct inquiry. *Emperor v. Maung Ba Thou*. (F. B.) 32 Cr. L. J. 950 :

132 I. C. 822 : 9 Rang. 239 :
I. R. 1931 Rang. 214 :
A. I. R. 1931 Rang. 225.

—S. 436—Scope.

Person discharged should be given opportunity to show cause before order is passed. *Chhajju v. Behari*. 35 Cr. L. J. 404 (1) :

147 I. C. 299 (1) : 35 P. L. R. 149 :
6 R. L. 384 : A. I. R. 1933 Lah. 1018 (2).

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—S. 436—Scope.

Section does not empower Sessions Judge to direct Magistrate to frame a charge. *Ibrahim v. Guran Ditta Mal*. 33 Cr. L. J. 341 :
136 I. C. 705 : 33 P. L. R. 267 :
13 Lah. 599 : I. R. 1932 Lah. 241 :
A. I. R. 1932 Lah. 362.

—S. 436—Scope.

S. 436 does not apply to trials but relates to proceedings preliminary to trial. *Emperor v. Maung Ba Thou*. (F. B.) 32 Cr. L. J. 950 :
132 I. C. 822 : 9 Rang. 239 :
I. R. 1931 Rang. 214 :
A. I. R. 1931 Rang. 225.

—S. 436—Scope.

S. 436 does not limit the grounds on which further enquiry is to be ordered. *Nazir Ahmad v. Emperor*. 36 Cr. L. J. 202 :
152 I. C. 884 : 7 R. A. 412 :
4 A. W. R. 37 : A. I. R. 1934 All. 944.

—S. 436—Scope.

S. 436 must be read with S. 435, and the limitation within which jurisdiction in revision is to be exercised, are indicated by the words of Sub-s. (1), itself. It is true these words are wide but they again are limited in their application by the fact that jurisdiction exercised in revision is an extraordinary jurisdiction and that that jurisdiction is to be exercised only in exceptional cases and sparingly. *Azizaddin R. Faruqi v. Emperor*. 40 Cr. L. J. 454 :

180 I. C. 581 : 11 R. S. 180 :
1939 Kar. 370 : A. I. R. 1939 Sind 71.

—S. 436—Scope.

The amendment to S. 436 is confined to the case of discharge only and does not apply to the dismissal of a complaint under Ss. 203 or 204. *Dhondu Bapu Gujar v. Emperor*. 28 Cr. L. J. 575 :

102 I. C. 511 : 29 Bom. L. R. 713 :
A. I. R. 1927 Bom. 436.

—S. 436—Scope.

The words "triable exclusively by the Court of Session" in S. 436, Cr. P. C. refer to cases which are only triable by the Court of Session under Seh. II and S. 30 which gives the Local Government power to invest a Magistrate with special powers is not intended to curtail the jurisdiction given to the District Magistrate under S. 436. *Tambi v. Emperor*. 19 Cr. L. J. 801 (b) :

46 I. C. 817 : 9 L. B. R. 208 :
A. I. R. 1919 L. Bur. 146.

—S. 436—Scope.

Under S. 436, the District Magistrate can only order enquiry into a case which had been dismissed under S. 202, but he cannot compel the Magistrate to issue process and make an enquiry for the purpose of framing a charge. *Haroon v. Gajadhar Sukhdeo Marwadi*. 41 Cr. L. J. 312 :

186 I. C. 459 : 1940 N. L. J. 43 :
12 R. N. 228 : A. I. R. 1940 Nag. 128.

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the evidence already on record in framing the charge. *In re : Komma Hari Chandra Reddy*.

39 Cr. L. J. 828 :
176 I. C. 879 (2) : 48 L. W. 136 :
1938 M. W. N. 587 :
1938 2 M. L. J. 222 : 11 R. M. 189 :
A. I. R. 1938 Mad. 742.

—S. 436—Further inquiry—Nature of.

'Further enquiry' which may be directed under S. 436 is not confined to a further enquiry under S. 202. *Ramji Gujrati v. Emperor*.

32 Cr. L. J. 548 :
130 I. C. 529 : 12 P. L. T. 729 :
I. R. 1931 Pat. 177 :
A. I. R. 1931 Pat. 50.

—S. 436—Further inquiry—Nature of.

Further inquiry under S. 436 means an inquiry of the same nature as was previously held under S. 202. *Ramchandra v. Satyabhama*.

29 Cr. L. J. 372 :
108 I. C. 328 : 9 P. L. T. 459.

—S. 436—Further inquiry—Order directing further inquiry—Revision—Interference—Contents of such order.

An order directing further inquiry cannot be set aside in revision unless it is manifestly perverse or foolish. An order directing further enquiry need not set forth at length the reasons for the finding and for passing the order, inasmuch as a detailed order may cause prejudice to the accused in subsequent proceedings. *Shamira v. Emperor*.

30 Cr. L. J. 490 :
115 I. C. 540 : 30 P. L. R. 449 :
I. R. 1929 Lah. 412 :
A. I. R. 1929 Lah. 28.

—S. 436—Further inquiry—Order for fresh enquiry, when proper.

When a charge has been fully investigated and the accused has been discharged by a Magistrate, the order of discharge should not be lightly interfered with. The mere fact that the District Magistrate comes to a different conclusion as to the value of the statements of the prosecution witnesses is not sufficient for ordering a fresh enquiry. *Ishan Singh v. Emperor*.

I. R. 1932 Lah. 631.

—S. 436—Further inquiry.

Sessions Judge cannot direct further enquiry by a particular Magistrate subordinate to District Magistrate. *Ramaswami Tevar v. M. Subban*.

32 Cr. L. J. 226 :
129 I. C. 79 : 32 L. W. 782 :
1930 M. W. N. 911 :
I. R. 1931 Mad. 223 :
A. I. R. 1930 Mad. 983.

—S. 436—Further inquiry.

The first part of S. 436 is to the effect that the High Court or the Sessions Judge may direct the District Magistrate to make further inquiry either by himself or by any of the Magistrates subordinate to him. If the High Court or the Sessions Judge can direct a

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District Magistrate by himself to make an inquiry, *a fortiori*, can the High Court or the Sessions Judge direct that any particular Magistrate subordinate to the District Magistrate should make the further inquiry. Where, therefore, an order is made by a Magistrate discharging an accused, the Sessions Judge can direct the same Magistrate, while setting aside the discharge order, to complete the inquiry. *Jethanand Murijsal v. Shivram*.

38 Cr. L. J. 596 :
168 I. C. 777 : 9 R. S. 239 :
A. I. R. 1937 Sind 86.

—S. 436—Further inquiry.

The order of a Magistrate quashing the proceedings amounts to an order of discharge and it is open to the Sessions Judge, if he is of that opinion, to order further inquiry into the complaint without referring to High Court. *Ram Singh v. S. A. Rizwi*.

36 Cr. L. J. 650 :
155 I. C. 126 : 15 P. L. T. 775 :
14 Pat. 299 : 7 R. P. 552 :
A. I. R. 1935 Pat. 52.

—S. 436—Further inquiry—Validity of.

Before further inquiry under S. 436 can be directed in the case of a person who has been discharged, he should be given an opportunity of showing cause why such direction should not be made. *Emperor v. Ghulam Shoro*.

34 Cr. L. J. 1157 :
146 I. C. 35 : 6 R. S. 56 :
A. I. R. 1933 Sind 299.

—S. 436—Further inquiry—Validity of.

Order of discharge by trying Magistrate—Order not *prima facie* incorrect—Evidence not alleged to be overlooked—Further inquiry, should not be directed. *Eltzad Husain v. Amjad Husain*.

33 Cr. L. J. 571 :
138 I. C. 142 : 9 O. W. N. 412 :
I. R. 1932 Oudh 296.

—S. 436—Further inquiry, when can be ordered.

A further inquiry can be ordered only on the ground that the judgment of the trial Magistrate is perverse and foolish. *Gul Mohamad v. Habibullah Karim Ullah*.

40 Cr. L. J. 674 :
182 I. C. 522 : 12 R. Pesh. 1 :
A. I. R. 1939 Pesh. 16.

—S. 436—Interference—Grounds for.

Burden lies on prosecution to show why further inquiry should be ordered. *Diwan Singh v. Emperor*.

34 Cr. L. J. 735 :
144 I. C. 331 : 34 P. L. R. 719 :
I. R. 1933 Lah. 446 :
A. I. R. 1933 Lah. 561.

—S. 436—Interference—Grounds for—Commitment, power to order District Magistrate.

Where a Magistrate of the first class, after holding an inquiry into offences under S. 408 and 477-A, Penal Code, discharged the accused and the District Magistrate, acting under S. 436, committed the accused to the Court of Sessions on the same charges and the accused applied to the High Court contending that the

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purely discretionary. R. 3, Ch. XV of the Court Rules, which requires that revision applications are not to be admitted unless presented within sixty days of the decision under objection, indicates that the Court will refuse to interfere in the case of a belated application. The object of the rule is to prevent stale applications being made and to obviate the hardship that would ensue to accused persons if the finality of a criminal order were left in doubt for a long time. *Tindoomal v. Sadhuram*.

13 Cr. L. J. 531 :
15 I. C. 803 : 5 S. L. R. 265.

—S. 437—Commitment—Nature of.

Where an accused is discharged of an offence exclusively triable by a Court of Sessions, a Sessions Judge can commit him on a charge not exclusively triable by a Sessions Court if it is intimately connected with a charge exclusively triable by the Sessions Court and forms part of the same transaction; but he has no power to commit for such an offence where it is of a totally different category of offences. Where an accused is discharged of an offence under S. 436, Penal Code, he may be committed by the Sessions Judge for trial for an offence under S. 427, but not for under S. 380. *Bijoy Gopal Ghosh v. Iswar Chandra Kumar*.

27 Cr. L. J. 1139 :
97 I. C. 659 : 53 Cal. 645 :
A. I. R. 1926 Cal. 1090.

—S. 437—Commitment—Power of Revision by District Magistrates—Misappreciation of evidence—Power of committal.

The District Magistrate have the powers, in revising orders of discharge of accused persons by Subordinate Courts, to go into evidence and commit the accused for trial. *Vonlidi Chinna Subbi Reddy v. Somudu*.

9 Cr. L. J. 366 :
1 I. C. 686.

—S. 437—Commitment—Validity of.

Action under S. 437 or S. 439, for ordering commitment should rarely be taken in the midst of a trial, and certainly only when the failure of a Court to commit is shown on the face of proceedings to be improper. *Bilodar v. Emperor*.

27 Cr. L. J. 417 :
93 I. C. 145 : 3 O. W. N. 201 :
13 O. L. J. 240 : A. I. R. 1926 Oudh 194.

—S. 437—Concurrent Jurisdiction.

The power conferred by S. 437 to order further inquiry into the case of an accused person who has been discharged, is exercised by the Sessions Judge and District Magistrate concurrently with the Chief Court, and the Chief Court will not ordinarily admit applications for the exercise of that power, except in cases where what is sought is not really further enquiry but a re-consideration of the evidence on the record, unless the applicant has, in the first instance, moved the Sessions Judge or District Magistrate. *U Thaung v. Po Aung*.

1 Cr. L. J. 1025 :
2 Bur. L. R. 306.

—S. 437—Concurrent jurisdiction.**Cr. P. CODE (1898), S. 437**

Where the Magistrate of the District dismissed a complaint under the provisions of S. 203, the High Court declined to entertain an application by the complainant asking for further inquiry under S. 437 when no application for that object had been made to the Sessions Judge. *Gulley v. Bakar Hussain*.

3 Cr. L. J. 53 :
25 A. W. N. 279 : I. L. R. 28 All. 268.

—S. 437—Discharge by District Magistrate empowered under S. 30—Further inquiry ordered by Sessions Judge—Validity of.

The police sent up the accused for trial under S. 366, Penal Code, to the District Magistrate who ordered a Magistrate of the first class to hold a local enquiry and to submit a report. The Magistrate made an enquiry and submitted a return adverse to the accused. The District Magistrate, however, without examining the complainant or taking any evidence for the prosecution held the charge false upon the police papers and the record of the local enquiry and discharged the accused under S. 253. The Sessions Judge on application under S. 437 set aside the order of discharge and directed the District Magistrate to make further inquiry into the case. On revision in the Chief Court it was contended on behalf of the accused that the District Magistrate having acted under S. 30 as a Court of co-ordinate jurisdiction with the Sessions Judge the latter Court had no jurisdiction to revise the order of the discharge and that the order of discharge was a proper one : *Held*, overruling the contentions, that the Sessions Judge was competent to revise the order of the District Magistrate under S. 437 and that the order passed by the Sessions Judge was right. *Jaloo v. Emperor*.

1 Cr. L. J. 1063 :
15 P. R. 1904 Cr. : 5 P. L. R. 461.

—S. 437—Discharge of accused—Meaning of.

Several persons assaulted another causing fatal injuries. The Police sent them up for trial under Ss. 147 and 304, Penal Code, but the Magistrate framed charges under Ss. 147 and 325 of the Code. The Sessions Judge, on being moved by a relation of the deceased, directed under S. 437, Cr. P. C., that the accused should be committed for trial under S. 304, Penal Code. On revision : *Held*, that the accused had not been "discharged" within S. 437, Cr. P. C., and the Sessions Judge had no authority to order commitment under that section. *Bilodar v. Emperor*.

27 Cr. L. J. 417 :
93 I. C. 145 : 13 O. L. J. 240 :
3 O. W. N. 201 :
A. I. R. 1926 Oudh 194.

—S. 437—Discharge of accused—Nature of.

The discharge of a person under S. 119 is a discharge as contemplated by S. 437. *In re : Baba Yeshwant Desai*.

12 Cr. L. J. 430 :
11 I. C. 614 : 35 Bom. 401 :
13 Bom. L. R. 505.

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Sessions for an offence under S. 471, Penal Code, is beyond its powers under S. 436, Cr. P. C., as the offence is not exclusively triable by the Sessions Court. *In re : Nalluri Chenchiah.*

20 Cr. L. J. 379 :
50 I. C. 987 : 36 M. L. T. 296 : 9 L. W. 349 :
1919 M. W. N. 183 : 25 M. L. J. 356 :
42 Mad. 561.

—S. 436—Miscellaneous.

Filing of referred charge-sheet—Order to file fresh charge-sheet—Succeeding Magistrate accepting referred charge-sheet again—Order to treat case as of civil nature—Sessions Court cannot revise order. *Venkata Suba Rao v. Anjanayulu.*

33 Cr. L. J. 785 :
139 I. C. 500 : 1932 M. W. N. 548 :
36 L. W. 788 : 63 M. L. J. 679 :

I. R. 1932 Mad. 733 : A. I. R. 1932 Mad. 673.

—S. 436—Nature of order—Dismissal of complaint—Revision—Proper order in revision—Further enquiry.

The only order which the Sessions Judge can pass in revision under S. 436, if he holds that the Magistrate was unjustified in dismissing the complaint under S. 203 of the Code is to direct the Magistrate to make further enquiry into the complaint. He cannot legally compel the Magistrate to summon the accused when in his judgment there is no sufficient ground for proceeding against the accused. *Inayat Husain v. Emperor.*

30 Cr. L. J. 631 :
116 I. C. 494 : I. R. 1929 All. 590 :
A. I. R. 1928 All. 684.

—S. 436—Non-compliance—Effect of.

Where a trial is held in pursuance of an order in revision in exercise of power conferred by S. 436, without first complying with the requirement of the proviso thereto, it is bad in law. But as the section is only directory, a conviction on such trial need not be set aside if non-compliance has not resulted in miscarriage of justice. *Emperor v. Nga Kyauing Baung.*

35 Cr. L. J. 1408 :
151 I. C. 722 : 7 R. Rang. 116 :
A. I. R. 1934 Rang. 181.

—S. 436—Notice—Complaint, dismissal of—Further inquiry, order directing—Notice to accused, whether necessary.

An order under S. 436 for further enquiry into a complaint dismissed under S. 203 is not bad for want of notice to the accused. An accused person is said to be discharged when the case against him is thrown out under Ss. 209, 223, 259 or when the Advocate-General enters a *nolle prosequi* under S. 333 of the Cr. P. C. The expression "person who has been discharged" in S. 436 refers to "a person who has been discharged" under Ss. 209, 253 or 259. A person against whom no process has been issued under S. 203 is not a discharged person and therefore, no notice is necessary to him when the District Magistrate or the Sessions Court or the High Court directs further enquiry into a complaint dismissed under S. 203 or Sub-s. (3) of S. 204. *Appa Rao Mudaliar v. Janakiammal.*

28 Cr. L. J. 129 :
99 I. C. 337 : 24 L. W. 613 :
51 M. L. J. 605 : 49 Mad. 918 :
A. I. R. 1927 Mad. 19.

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—S. 436—Opportunity to show cause—Necessity of offence not triable exclusively by Court of Session—District Magistrate directing Sub-Divisional Magistrate to commit to Sessions—Legality—Opportunity to show cause, necessity of.

A District Magistrate has no power under S. 436 to direct a Sub-Divisional Magistrate to commit the accused for trial to the Sessions in a case where the offence with which the accused is charged is not one triable exclusively by the Court of Session. A District Magistrate acting under S. 436 should give the accused opportunity to show cause why the commitment should not be made. An opportunity given to show cause before the Assistant Magistrate is not a compliance with the law. *Thammanna v. Emperor.*

2 Cr. L. J. 774 :
15 M. L. J. 373.

—S. 436—Order of discharge.

Accused charged under major offence—Case starting on that charge—Accused later on charged of minor offence—It amounts to discharge under major offence—Sessions Court, cannot interfere under S. 436. *Ganga Datta v. Emperor.*

37 Cr. L. J. 715 (2) :
162 I. C. 925 : 8 R. N. 292 :
I. L. R. 1936 Nag. 54 :
A. I. R. 1936 Nag. 87.

—S. 436—Order of discharge.

Accused discharged—Review of discharge order refused—Another complaint on same facts before same Magistrate—Application for transfer cannot be granted to avoid discharge by one and conviction by another on same charge—Proper procedure is to apply under S. 436 to Sessions Judge or District Magistrate to set aside discharge order and for further enquiry. *Phonsia v. Emperor.*

36 Cr. L. J. 128 (2) :
152 I. C. 619 : 7 R. A. 364 :
A. I. R. 1935 All. 59.

—S. 436—Order of discharge.

An order for further enquiry cannot be made against a person who has been discharged unless the order is perverse. *Daulat Ram v. Emperor.*

34 Cr. L. J. 190 :
141 I. C. 263 : 34 P. L. R. 148 :
I. R. 1933 Lah. 105 (1) :
A. I. R. 1933 Lah. 166.

—S. 436—Order of discharge.

Discharge of accused charged with forgery—Sessions Judge moved under Ss. 436 and 437—Judge should order further enquiry, if necessary or dismiss application—Pendency of suit by accused in Civil Court in the matter is irrelevant. *Subramayam v. Veeraraghavulu.*

33 Cr. L. J. 362 :
136 I. C. 780 : 1931 M. W. N. 1191 :
35 L. W. 267 : I. R. 1932 Mad. 316 :
A. I. R. 1932 Mad. 216.

—S. 436—Order of discharge—Further inquiry, when can be directed.

Further inquiry should not be ordered in a case where an order of discharge has been passed after a full inquiry and after the recording

Cr. P. CODE (1898), S. 252**—S. 251.**

See also (i) Cr. P. C., 1898, S. 190.

(ii) Penal Code, 1860, S. 153-A.

—S. 251—Character of accused—Warrant case—Accused adducing evidence of good character—Prosecution, right of—Rebuttal of.

In a warrant case tried under Chap. XXI, when the accused leads evidence of good character by way of defence, the prosecution cannot, as a matter of right, claim to lead rebutting evidence though, if the Magistrate in his discretion thinks such evidence essential to the just decision of the case, he may summon it. *Ramasami Mudaliar v. Ramalinga Udayar*. 31 Cr. L. J. 1198 :

127 I. C. 304 : 1930 M. W. N. 96 :
32 L. W. 215 : A. I. R. 1930 Mad. 448.

—S. 252.

See also (i) Cr. P. C., 1898, Ss. 33, 202, 203.

—S. 252—"Hearing the complainant" meaning of—Omission to examine complainant on oath.

The expression "hearing the complainant" in S. 252 does not involve his examination on oath and a trial under Ordinance III of 1921 without such examination of complainant is not irregular. *Puthen Veetil Kunhi Kadir v. Emperor*. 23 Cr. L. J. 203 :

65 I. C. 859 : 1922 M. W. N. 71 :
15 L. W. 311 : 30 M. L. T. 135 :
52 M. L. J. 108 : A. I. R. 1922 Mad. 126.

—S. 252—Compelling Magistrate to summon particular witness.

When the Magistrate trying the case is of opinion that it is unnecessary to summon a certain prosecution witness, the Sessions Judge should not compel him, except for most cogent and exceptional reasons, to summon that witness. *Inayat Husain v. Emperor*. 30 Cr. L. J. 631 :

116 I. C. 494 : I. R. 1929 All. 590 :
A. I. R. 1928 All. 684.

—S. 252—Compromise by complainant—Effect of.

S. 252 contemplates that once action has been taken against an accused in a cognisable warrant case, the case will normally proceed. It is nowhere contemplated that a desire on the part of the complainant to refrain from further pursuing the case shall justify the arrest of further proceedings. *Maung Thu Daw v. U Po Nyun*. 28 Cr. L. J. 649 :

103 I. C. 105 : 5 Rang. 136 :
A. I. R. 1927 Rang. 174.

—S. 252—Cross-examination—Right of accused.

A Magistrate should grant an accused an adjournment of the case in order to enable him to secure the services of Counsel for the purpose of cross-examining the prosecution witnesses. *Sher Singh v. Emperor*. 17 Cr. L. J. 278 :

34 I. C. 998 : 14 P. W. R. 1916 Cr :
A. I. R. 1916 Lah. 445.

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—S. 252—Cross-examination—Rights of accused.

Accused has absolute right to cross-examine prosecution witnesses before charge—Proceedings are judicial proceedings governed by Evidence Act, S. 138. (Per Kisch, J. *Contra*)—Accused has no such absolute right—Proceedings are in nature of enquiry only. *Mohamed Husain v. Fakahullah Beg*.

34 Cr. L. J. 58 ;
140 I. C. 689 : 9 O. W. N. 782 :
8 Luck. 135 : I. R. 1933 Oudh 10 :
A. I. R. 1932 Oudh 298.

—S. 252—Evidence—Evidence of witness not re-cross-examined, use of.

The evidence of a witness not re-called by the prosecution when required by the accused after the charge for further cross-examination, cannot be used to support the charge. *Manna v. Emperor*. 12 Cr. L. J. 35 :

9 I. C. 232 : 3 P. W. R. 1911 Cr.

—S. 252—Evidence—Determination of question of particular evidence being necessary test.

In deciding whether a particular evidence is necessary, the Magistrate must look at the prosecution case broadly, decide what are the broad allegations of facts on which the complaint is founded and then determine whether the evidence is not necessary to assist in the establishment of that case. A useful test will be whether, if the accused were acquitted in the case, it would be open to the complainant to put in a fresh complaint on the facts put forward. *K. C. Menon v. Krishna Nayyar*. 27 Cr. L. J. 1123 :

97 I. C. 643 : 24 L. W. 304 :
51 M. L. J. 328 : 1926 M. W. N. 730 :
49 Mad. 978 : A. I. R. 1926 Mad. 989.

—S. 252—Evidence—List of witnesses—Magistrate's duty to select.

When a complainant files a list of witnesses to be summoned for proving his case, the Magistrate should see which of the persons desired to be summoned are necessary witnesses. Witnesses should not needlessly be subjected to the inconvenience of attending the Court. *Sital Singh v. Dalganjan Singh*. 14 Cr. L. J. 682 :

21 I. C. 1002 : 12 A. L. J. 15.

—S. 252 (2)—Evidence—Magistrate's duty to summon witnesses at Government's expenses.

Under S. 252 (2), the Magistrate has to summon at the expense of the Government such of the complainant's witnesses to give evidence before himself as he thinks necessary. He cannot refuse to summon such witnesses merely because the very case being cognizable one, was investigated by the Police and no challan was sent up against the accused unless he considers any of the witnesses to be unnecessary. *Ghulam Mohiyy-ud-Din v. Sardara*. 39 Cr. L. J. 674 :

175 I. C. 555 : 40 P. L. R. 650 :
10 R. L. 746 : A. I. R. 1938 Lah. 444.

—S. 252—Evidence—Magistrate, if obliged to summon all witnesses.

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Public Prosecutor under S. 494 are on the same footing. *Hata v. Emperor*.

30 Cr. L. J. 233 :

114 I. C. 50 : 30 P. L. R. 58 :

I. R. 1929 Lah. 210 : A. I. R. 1929 Lah. 315.

———S. 436—Order of discharge.

The District Magistrate can exercise his power of directing further enquiry only when the order of discharge is perverse or *prima facie* incorrect. *Nathu v. Emperor*.

37 Cr. L. J. 89 :

159 I. C. 238 : 18 N. L. J. 90 :

8 R. N. 124.

———S. 436—Order of discharge.

The High Court has jurisdiction to interfere in a proceeding pending before a Magistrate in the exercise of its revisional powers and to pass an order of discharge in favour of the accused person if it considers such an order to be in the interests of justice. When a Magistrate has passed an order discharging an accused person, it is competent to the same Magistrate or to another Magistrate of co-ordinate jurisdiction to take fresh proceedings against the accused upon the same facts, although the order of discharge has not been set aside by a higher authority. Such a re-trial, however, should only be allowed under very special circumstances, and where such circumstances do not exist, it is improper to allow the accused to be re-tried on the same charge. *Gopal Das v. Emperor*.

26 Cr. L. J. 1508 :

90 I. C. 292 : 7 L. L. J. 252 :

A. I. R. 1925 Lah. 439.

———S. 436—Order of discharge—Third party's right to apply in revision.

The High Court may interfere in revision against an order of discharge of an accused person at the instance of a third party when such order has the effect of operating to the detriment of such third person. *G. V. Rahman v. Emperor*.

31 Cr. L. J. 315 :

121 I. C. 678 : 33 C. W. N. 468 :

56 Cal. 1023 : A. I. R. 1920 Cal. 319.

———S. 436—Order of discharge.

Where an accused is discharged by a Magistrate and the judgment is not foolish or perverse, the mere fact that another view may be taken of the case than that which the Magistrate took would not justify an order of re-trial. *Mubarak Jan v. Rahatjan*.

32 Cr. L. J. 302 :

129 I. C. 300 : 31 P. L. R. 729 :

I. R. 1931 Lah. 188 : A. I. R. 1930 Lah. 543.

———Ss. 436, 30—Order of discharge—Discharge—Power of District Magistrate invested with powers under S. 30 to take action under S. 436.

The words "triable exclusively by a Court of Session" in S. 436 mean an offence shown to be so triable in the eighth column of the second schedule of the Code. And a District Magistrate in non-regulation provinces invested with powers under S. 30 of the Code is competent to take action under S. 436 when he finds that an accused person has been

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improperly discharged by any inferior Court. *Arjan Singh v. Emperor*.

1 Cr. L. J. 502 :

5 P. L. R. 234.

———S. 436—Power under—Discretion.

S. 436 gives the fullest discretion to a District Magistrate or a Sessions Judge to order commitment where he considers an accused person has been improperly discharged. *Fattu v. Fattu*.

1 Cr. L. J. 519 :

1 A. L. J. 292 : I. L. R. 26 All. 564 :

24 A. W. N. 125.

———S. 436—Power of High Court.

A person aggrieved by an order passed by a District Magistrate in revision, may apply to the High Court in revision without first making an application to the Sessions Judge. Where either the Sessions Judge or the District Magistrate has had an application in revision in the same matter before them, moved by either party, the other local District Court would have no jurisdiction to hear a further application in the same matter. A District Magistrate has no jurisdiction to order a re-trial of case. He can order, if he so wishes, on proper grounds, under S. 436, a further inquiry into the complaint, but it is reserved to the High Court in S. 436, to use any of the powers conferred on a Court of Appeal, which would include the right of ordering a re-trial. *Mohammad Husain v. Nanki*.

31 Cr. L. J. 995 :

126 I. C. 253 : 1930 A. L. J. 521 :

25 All. 257 : A. I. R. 1930 All. 257.

———S. 436—Proceedings on further inquiry—Dismissal of complaint—Further enquiry, when to be ordered—Scope of further enquiry.

S. 436 which empowers the High Court, the Sessions Judge, or the District Magistrate, to direct further enquiry into a complaint dismissed under S. 203 or S. 204 does not lay down any rule that further enquiry should only be directed when it is found that the judgment is perverse or foolish, though, as a rule of prudence, the Superior Court should not lightly discard the estimate of evidence appraised by the Court which heard it and should not set aside the dismissal of a complaint simply because a different view of the evidence might be taken. An order for further enquiry directed to a Subordinate Court means that the case should be taken up again and that the question of dismissing the complaint or charging the accused, should be again considered and an appropriate order made as a result of such fresh consideration. *Radha Prasad Bhagat v. Emperor*.

28 Cr. L. J. 857 :

104 I. C. 633 : A. I. R. 1928 Pat. 12.

———S. 436—Proceeding under S. 133, whether covered.

Proceedings under S. 133 are not covered by this Section and a Sessions Judge has no power to order further inquiry. *Prithipal v. Emperor*.

26 Cr. L. J. 125 :

2 O. W. N. 549 : A. I. R. 1925 Oudh 736.

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taken *de novo* by the Magistrate who holds the further inquiry. *Ram Dial v. Emperor*.

13 Cr. L. J. 255 :
14 I. C. 707 : 9 A. L. J. 310.

———S. 437—*Further inquiry, meaning of.*
—*Revival of prosecution in revision—Further inquiry—Completion of revived proceedings.*

When a prosecution is revived by an order in revision under S. 437, the trial must be brought to conclusion by the Magistrate holding the revived inquiry in the same way as if the case had been originally instituted before him. *Emperor v. Hein Kwaing*.

6 Cr. L. J. 279 :
4 L. B. R. 42.

———S. 437—*Further inquiry, nature of.*

Where the whole of the available prosecution evidence has been recorded, an order for further enquiry means simply a second trial on the same evidence. *Dani v. Emperor*.

22 Cr. L. J. 199 (b) :
60 I. C. 5 : 3 U. P. L. R. Lah. 11 :
A. I. R. 1921 Lah. 214.

———S. 437—*Further enquiry.*

No order should be passed against an accused person without his getting an opportunity of being heard. Where a rule was issued only upon the District Magistrate to show cause why further enquiry should not be directed into a complaint against the accused, which had been dismissed under S. 203 : *Held*, that the accused were entitled to be heard. *Brij Kishore Ghose v. Gopal Rai*. 5 Cr. L. J. 112 : 11 C. W. N. 316.

———S. 437—*Further inquiry—Notice to accused—Necessity of.*

A District Magistrate is not bound in law to issue any notice on the accused before ordering a further enquiry under S. 437, but the exercise of discretion in favour of issuing a notice is considered to be the right and proper action to take. *Rambhahal v. Emperor*.

19 Cr. L. J. 399-A.
44 I. C. 751 : 4 P. L. W. 220 :
A. I. R. 1918 Pat. 461.

———S. 437—*Further inquiry—Notice to accused—Necessity of.*

Although S. 437 does not specifically mention that notice must be issued to the accused to show cause why a fresh inquiry should not be ordered, yet such notice is proper. The mere omission to issue such notice, however, would not vitiate a trial following upon an order under S. 437, unless the accused can be shown to have been prejudiced by the fact of not having been given an opportunity of being heard [in proceedings under that section. *Khawaja Hassan v. Emperor*.

24 Cr. L. J. 136 :
71 I. C. 360.

———S. 437—*Further inquiry—Notice to accused—Necessity of.*

An order under S. 437, for further inquiry, should not be passed without notice to the person accused, and then only if the order of

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discharge was manifestly perverse or occasioned a grave miscarriage of justice. But an order for further inquiry passed without such notice is not illegal. *Bahadar Ali v. Emperor*.

24 Cr. L. J. 622 :
73 I. C. 510 : A. I. R. 1923 Lah. 158.

———S. 437—*Further inquiry—Notice to accused—Necessity of.*

An order for further inquiry against an accused person who has been discharged should not be passed without first serving a notice on him to show cause why the order should not be passed. *Sagar Mal v. Emperor*.

23 Cr. L. J. 70 :
66 I. C. 422 : 22 A. L. J. 91 :
A. I. R. 1923 All. 122.

———S. 437—*Further inquiry—Notice to accused—Necessity of.*

An order for further inquiry by a Magistrate in the absence of and without any notice to the accused who was discharged by a lower Court is illegal. *Ambar Ali v. Anjab Ali*.

13 Cr. L. J. 304 :
14 I. C. 768 : 39 Cal. 238.

———S. 437—*Further inquiry—Notice to accused—Necessity of.*

An order for further inquiry ought not be made without notice to the accused. *Kanhu Naik v. Natabar Shaha*. 15 Cr. L. J. 1 (a) : 22 I. C. 145.

———S. 437—*Further inquiry—Notice to accused—Necessity of.*

As a matter of law, it is not obligatory on a District Magistrate, before making an order for further enquiry, to serve a notice on the accused person, but according to the general principle of Criminal jurisprudence, an order prejudicially affecting the accused person should not be passed without giving him an opportunity of being heard and there is no reason why that principle should not be observed in making an order under S. 437 of the Cr. P. C. *Wahed Ali v. Emperor*.

3 Cr. L. J. 191 :
3 C. L. J. 43.

———S. 437—*Further inquiry—Notice to accused—Necessity of.*

As a matter of law, it is not obligatory to serve a notice on the accused person before ordering his re-trial, under S. 437, but according to the general principle of criminal jurisprudence no order prejudicially affecting the accused person should be passed without giving him an opportunity of being heard. *Wahed Ali v. Emperor*.

3 Cr. L. J. 120 :
I. L. R. 32 Cal. 1090.

———S. 437—*Further inquiry—Notice to accused—Necessity of.*

Before a District Magistrate takes action under S. 437, he must give notice to accused. *Mata Prasad v. Emperor*. 20 Cr. L. J. 769 (a) : 53 I. C. 589 : A. I. R. 1919 All. 373.

Cr. P. CODE (1898), S. 437**—S. 436—Scope.**

Where a complaint is dismissed under S. 203, Cr. P. C., and the accused has not been summoned, the proviso to S. 436 of the Act does not come into operation and further inquiry cannot be ordered under it. *Abdullah Jan v. Toti Gul*.

36 Cr. L. J. 184 (1) :
158 I. C. 31 (1) : 8 R. Pesh. 49 (1) :
A. I. R. 1935 Pesh. 141.

—S. 436—Scope.

Where a Sub-Divisional Magistrate dismissed a complaint under S. 203 of the Cr. P. C., but the District Magistrate set aside the order of dismissal, and directed further inquiry and then the Sub-Divisional Magistrate summoned the accused stating that "the District Magistrate has set aside the order of dismissal and directed further inquiry": *Held*, that the order of the Sub-Divisional Magistrate summoning the accused without holding any further inquiry as directed by the District Magistrate was wrong. S. 436 empowers the District Magistrate to direct further inquiry and not to order the trial of the accused and a Sub-Divisional Magistrate who has been directed by the Magistrate to hold a further enquiry into a complaint dismissed by him cannot at once summon the accused without holding an inquiry and exercising his judgment under S. 203 of the Cr. P. C. that it was a fit case in which the accused should be summoned. *Sitaram Tewari v. Kausilia*.

29 Cr. L. J. 572 :
100 I. C. 508.

—S. 437.

- Accused, meaning of.
- Appeal.
- Applicability.
- Application.
- Commitment.
- Concurrent jurisdiction.
- Discharge by District Magistrate empowered under S. 30.
- Discharge of accused, meaning of.
- Discharge of accused, nature of.
- Duty of Sessions Judge.
- Evidence taking of or direction to take.
- Further inquiry.
- Interference, grounds for.
- Interpretation.
- Maintenance.
- Order of discharge.
- Order of prosecution under S. 476.
- Power of High Court.
- Reference.
- Revision.
- Revisional jurisdiction, object of.
- Scope.
- Security proceedings.
- Summoning record, necessity of.

—S. 437.

See also (i) Cr. P. C., 1898, Ss. 202, 203, 209, 221, 253, 254, 423, 428, 435, 436, 437, 439, 476.

(ii) Notice.

—S. 437—Accused—Meaning of.

The word "any accused person" includes

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persons proceeded against under Chapter VIII; it is not confined to a person against whom a complaint has been made under S. 200. *In re : Baba Yeshvant Desai*.

12 Cr. L. J. 430 :
11 I. C. 614 : 13 Bom. L. R. 505 :
35 Bom. 401.

—S. 437—Appeal — Further inquiry — Validity of—Appeal—Further inquiry, order for, whether can be made.

An order under S. 437 can be made when the record is before the Court on an appeal. *Sheo Gobind Singh v. Emperor*.

21 Cr. L. J. 660 :
57 I. C. 820 : 1 P. L. T. 293 :
A. I. R. 1920 Pat. 523.

—S. 437—Applicability.

An order under S. 437, must be passed on the examination of the record as it stands when a Sessions Judge takes it up for consideration. *In re : Bhogi Reddi Aukamma*.

34 Cr. L. J. 278 :
142 I. C. 138 : 1932 M. W. N. 1162 :
65 M. L. J. 6 : I. R. 1933 Mad. 199 :
A. I. R. 1933 Mad. 247.

—S. 437—Applicability.

S. 437 applies both to the case of an order of discharge and to an order of dismissal. *Fazarbi Bibi v. Moonsab Molla*.

21 Cr. L. J. 663 :
57 I. C. 824 : 32 C. L. J. 44 :
A. I. R. 1920 Cal. 542.

—S. 437—Applicability.

S. 437 applies to proceedings under Chapter VIII of the Code. *Kharga v. Emperor*.

15 Cr. L. J. 39 :
22 I. C. 183 : 12 A. L. J. 167 :
36 All. 147 : A. I. R. 1914 All. 158.

—S. 437—Applicability.

This section relates only to the special case for which it provides. The District Magistrate who acts under its terms, must do so on examining a record; and, when he himself makes further inquiry, he does so not in exercise of any of the powers conferred by S. 190. A complaint was dismissed by the Township Magistrate of a District. A fresh complaint on the same facts was presented to another Magistrate at the Headquarters of the District who sent it for disposal to the Township Magistrate, pointing out that the previous complaint had been dismissed under a misconception of the law. The Township Magistrate tried and convicted the accused. An appeal was made to the Court of Session, which reversed the conviction on the ground that the dismissal of the first complaint debarred the Magistrate from taking cognizance of the second: *Held*, that the Sessions Judge was wrong. *Emperor v. Nga Pyu Di*.

1 Cr. L. J. 167 :
10 Bur. L. R. 1 : 2 L. B. R. 27.

—S. 437—Application—Limitation for — Revision — Interference discretionary — Belated application not to be entertained—Sind Judicial Commissioner's Court Rules, R. 3, Ch. XV.

Interference by revision in criminal cases is

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the case can be passed under that section, but as a matter of judicial discretion, it is advisable that such notice should be given. *Rikh Nath v. Emperor*.

22 Cr. L. J. 655 :
63 I. C. 415 : 24 O. C. 142 :
A. I. R. 1921 Oudh 97.

———S. 437—Further inquiry—Notice to accused—Necessity of—Re-trial, order of—Notice to accused, absence of, effect of.

An order which is so very seriously to the prejudice of an accused person as directing his re-trial under S. 437, ought not to be made without giving him an opportunity of being heard, although the law does not specifically lay down that notice is required. *Abhram Adam Ishe v. Emperor*.

19 Cr. L. J. 101 :
43 I. C. 325 : 19 Bom. L. R. 908 :
A. I. R. 1917 Bom. 17.

———S. 437—Further inquiry—Notice to accused—Necessity of.

An order for further inquiry under S. 437, Cr. P. C., made without giving a previous notice to the accused to show cause against the application for further inquiry must be set aside. *Giridhari Marwari v. Emperor*.

8 Cr. L. J. 51 :
12 C. W. N. 822 : 8 C. L. J. 73.

———S. 437—Further inquiry—Notice to accused—Necessity of.

The Cr. P. C. does not require notice to be given to an accused person before a further inquiry is ordered under S. 437. It is a matter dependent on the circumstances of each case. It is true that S. 437, does not compel a Magistrate to issue notice, and an order passed under that section without having issued notice is not illegal. But it is a fundamental principle of the administration of English justice that no order to the prejudice of an accused person should ordinarily be made without giving him an opportunity of being heard in his defence. And the mere omission from the section of any direct and positive command to give an invariable effect to that principle was never meant to absolve a Magistrate from doing so in all ordinary cases. *In re : Mukund Bhaskarshet*.

4 Cr. L. J. 329 :
8 Bom. L. R. 694.

———S. 437—Further inquiry—Notice to accused—Necessity of.

The law does not make it obligatory upon a Session Judge or a District Magistrate acting under S. 437 to give notice to the accused. In any case, where notice is not given, it is open to the High Court, should the ends of justice require it, to direct the District Magistrate to supply that omission. *Abhram Adam Ishe v. Emperor*.

19 Cr. L. J. 101 :
43 I. C. 425 : 19 Bom. L. R. 908 :
A. I. R. 1917 Bom. 17.

———S. 437—Further inquiry—Notice to accused—Necessity of.

Though an order directing further enquiry into the discharge of an accused person

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under S. 437, passed without notice to the accused is not illegal, notice should, as a general rule, be issued. *Kallu v. Emperor*.

23 Cr. L. J. 693 :
69 I. C. 373 : 4 L. L. J. 411 :
A. I. R. 1922 Lah. 59.

———S. 437—Further inquiry—Notice to accused—Necessity of.

Though it is not obligatory on a District Magistrate to issue notice before directing a further enquiry under S. 437, such notice should ordinarily be issued before any order prejudicial to the accused is passed. *Sanwal Bheru v. Dipchand*.

9 Cr. L. J. 446 :
1 I. C. 938 : 3 S. L. R. 7.

———S. 437—Further inquiry—Notice to accused—Necessity of.

Where an accused person charged with the offence of criminal breach of trust in respect of a gold necklace was discharged by the trying Magistrate for want of sufficient proof, and the District Magistrate ordered a re-trial without issuing notice to and hearing the accused : *Held*, that the Cr. P. C., nowhere says that a notice shall not be given. The correct principle is that where the Code is silent, it is a matter of judicial discretion dependent on the circumstances of each case whether a Court should pass any order to the prejudice of a man in a criminal case without giving him a hearing : *Held also*, that in the present case the District Magistrate would have exercised his discretion more soundly if he had heard the accused before passing his order, and satisfied himself whether there were sufficient grounds for setting aside the order of discharge. *In re : Ruamani Bhogilal*.

1 Cr. L. J. 588 :
6 Bom. L. R. 479.

———S. 437—Further enquiry, order for—Notice to accused, whether necessary.

Before an order is made under S. 437, it is not necessary that notice should, in all cases, be served upon the accused. Notice is necessary only in those cases where the accused have already appeared and have been discharged. In cases where the accused have not appeared before the Magistrate and taken their trial, no such notice is necessary. *Hari Lal Choudhry v. Emperor*.

20 Cr. L. J. 385 :
53 I. C. 931 : A. I. R. 1919 Pat. 361.

———S. 437—Further inquiry—Power, whether limited.

In a case not triable only by the Court of Sessions, it would not ordinarily be the duty of a District Magistrate to refer the case to the High Court instead of making an order himself. S. 437 gives a District Magistrate authority to order a further inquiry and such authority is unfettered by any other provision of law. *Emperor v. Nga Po Yin*.

2 Cr. L. J. 826 :
11 Bur. L. R. 317.

———S. 437—Further inquiry—Record of reasons for—Necessity of.

An order for further enquiry under S. 437

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———S. 437—Duty of Sessions Judge—Discharge of accused—Committal to Sessions, order directing—Sessions Judge, duty of.

In considering whether an accused person who has been discharged by a Magistrate under S. 253 should be directed to be committed to the Court of Session, the Sessions Judge must consider whether it was open to the Magistrate to come to the conclusion to which he did come on the materials before him. That a different view can be taken on the evidence would not justify the Sessions Judge to direct a committal; he must come to the conclusion that the finding of the Magistrate is not only wrong but perverse. *Ritbhanjan Rai v. Emperor*, 26 Cr. L. J. 886 :

86 I. C. 822 : 6 P. L. T. 570 :
A. I. R. 1925 Pat. 509.

———S. 437—Evidence, taking of or direction to take—Jurisdiction.

S. 437 of the Cr. P. C. does not authorise a Sessions Judge or a District Magistrate to take evidence or to direct evidence to be taken supplementing the evidence given in lower Court. The Sessions Judge or the Magistrate is authorised to direct a further inquiry, but not to take evidence or direct evidence to be taken. *Moni Mohun Mondol v. Iswar Chunder Mukherjee*, 6 Cr. L. J. 357 :

6 C. L. J. 251.

———S. 437—Further inquiry.

A District Magistrate cannot set aside an order of discharge if there is no irregularity or impropriety in the proceedings. Further inquiry ought not to be ordered in a case in which the Courts are liable to take different views of the evidence and of the probabilities, especially where the Magistrate has disbelieved the evidence for the prosecution. *Sheocharan v. Emperor*, 26 C. L. J. 1537 :

90 I. C. 385 : 21 N. L. R. 88 :
A. I. R. 1926 Nag. 117.

———S. 437—Further inquiry, validity of.

A District Magistrate has jurisdiction, under S. 437 to order a fresh inquiry into the case of a person discharged by a subordinate Magistrate under S. 119. *In re : Baba Yeshwant Desai*, 12 Cr. L. J. 430 :

11 I. C. 614 : 13 Bom. L. R. 505 :
35 Bom. 401.

———S. 437—Further inquiry.

A District Magistrate is competent under the provisions of S. 437 to direct further inquiry, after the discharge of an accused, when the further inquiry entails only a re-hearing on the same materials, that is to say, when no further evidence is forthcoming. The District Magistrate, in making use of this power, would be exercising a sound discretion. *Emperor v. Nga Po Yin*, 2 Cr. L. J. 826 :

11 Bur. L. R. 317.

———S. 437—Further inquiry.

A District Magistrate or Sessions Judge has power, while acting under S. 437 to order further enquiry by a Magistrate other than the

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Magistrate who made the first enquiry, and the Magistrate ordered to make further enquiry may take evidence *de novo*, if necessary. *In re : Narayanswami Naidu*, 9 Cr. L. J. 192 :

1 I. C. 228 : 5 M. L. T. 233 :
19 M. L. J. 157 : 32 Mad. 220.

———S. 437—Further inquiry.

A Magistrate has jurisdiction to order a further inquiry under S. 437 upon the same materials which were before the Subordinate Magistrate who tried the case in the first instance. *Haider Khan v. Emperor*, 25 Cr. L. J. 66 :

75 I. C. 978 : A. I. R. 1925 Oudh 39.

———S. 437—Further inquiry.

A Sessions Judge or District Magistrate cannot, when in his opinion, a Magistrate is wrong in discharging an accused and a *prima facie* case is made out against the accused, himself frame charge or order the Magistrate to frame charge or try the accused. Under the second part of S. 437 the District Magistrate might make further enquiry himself and frame charge in the course of it. *In re : Narayanswami Naidu*, 9 Cr. L. J. 192 :

1 I. C. 228 : 5 M. L. T. 233 :
19 M. L. J. 157 : 32 Mad. 220.

———S. 437—Further inquiry.

An order of further inquiry under S. 437 is improper and is liable to be set aside on revision if the whole evidence on the record has been duly considered and the order of discharge is not manifestly perverse or foolish, etc. Although before directing further inquiry, notice to the accused is not absolutely necessary, yet according to the general principles of criminal jurisprudence an order to the prejudice of an accused should not ordinarily be passed without giving him an opportunity of being heard. *Sita Ram v. Emperor*, 16 Cr. L. J. 214 :

27 I. C. 838 : 4 P. W. R. 915 Cr. :
130 P. L. R. 1915 :
A. I. R. 1915 Lah. 455.

———S. 437—Further inquiry—Discharge erroneous—Compoundable offence—Damages, decree for, in Civil Court—Further inquiry in criminal case, whether should be ordered.

A person accused of a compoundable offence was erroneously discharged by a Magistrate. The complainant obtained a decree for heavy damages against him in the Civil Court in respect of his wrongful act, and also moved the High Court to set aside the order of discharge : *Held*, that in view of the fact that the accused had been sufficiently punished by the decree of the Civil Court awarding heavy damages to the complainant, it would savour of vindictiveness to press further criminal proceedings against him. *Tiruvenkatachariar v. Chockalinga Chetty*, 25 Cr. L. J. 138 :

76 I. C. 234 : 18 L. W. 167 :
A. I. R. 1924 Mad. 31.

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manifestly perverse or foolish or based upon an obviously incomplete record of evidence. The mere fact that it might hold a different view of the evidence and of the probabilities of the case, will not justify interference. *Emperor v. Jagdamba Singh*.

25 Cr. L. J. 1026 :

31 I. C. 802 : 11 O. L. J. 334 :

1 O. W. N. 245 : A. I. R. 1924 Oudh 368.

-----S. 437—Further inquiry.

The dictum of the Punjab Chief Court that further inquiry after discharge is improper unless the order of discharge was manifestly perverse or foolish does not apply to a case in which the Magistrate was acting only as a Court of Inquiry and not a trial Court. Further there is nothing in the Cr. P. C., which suggests that the District Magistrate should go further in a case of this nature than find that the order of discharge was improper. *Aulad Hussain v. Emperor*.

32 Cr. L. J. 128 (b) :

128 I. C. 285 : 7 O. W. N. 749 :

I. R. 1931 Oudh 45 : A. I. R. 1930 Oudh 415.

-----S. 437—Further inquiry—Validity of.

A Magistrate has not an absolute right to order further inquiry in any case under S. 437. If he finds no illegality, impropriety or irregularity and nothing incorrect in the proceeding of the Court below, he is not empowered to set aside an order of discharge upon other grounds, or upon no ground at all. *Prankhang v. Emperor*.

13 Cr. L. J. 764 :

17 I. C. 76 : 16 C. W. N. 1078.

-----S. 437—Further inquiry—Validity of—Accused discharged—Further inquiry when to be ordered.

Further inquiry should not be ordered unless the order of discharge is manifestly perverse or foolish or is based upon a record of evidence which is obviously incomplete. The opinion of the Court that the prosecution evidence requires more careful attention than it has received is no ground for ordering further inquiry. *Harnam Singh v. Emperor*.

27 Cr. L. J. 661 :

94 I. C. 709 : A. I. R. 1926 Lah. 130.

-----S. 437—Further inquiry—Validity of—Further inquiry, when to be ordered.

District Magistrate's powers to direct further inquiry should be exercised in exceptional cases and for good reasons. Further inquiry after discharge is improper unless the order of discharge is manifestly perverse or foolish or is based upon a record of evidence obviously incomplete. A Magistrate's disbelieving witnesses for reasons not cogent is no ground for ordering re-trial. *Mami v. Emperor*.

27 Cr. L. J. 565 :

94 I. C. 133 : 2 Lah. Cas. 234 :

27 P. L. R. 397.

-----S. 437—Further inquiry—Validity of—District Magistrate, power of, to direct re-trial by himself—Further inquiry, when to be directed.

A District Magistrate has no power, when acting under S. 437 to direct a re-trial by himself. Where no fresh evidence is forthcoming, and the circumstances and the evidence are such

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that two different Courts might take a different view of the evidence, an order of discharge should not be interfered with by directing a further inquiry. *Bindeshri Dube v. Emperor*.

22 Cr. L. J. 49 (b) :

59 I. C. 193 : 18 A. L. J. 1135 :

2 U. P. L. R. (a) 374 : A. I. R. 1921 Bom. 366.

-----S. 437—Further inquiry—Validity of—Further inquiry after discharge, legality of.

A direction for further inquiry after discharge is improper unless the order of discharge is manifestly perverse or foolish or is based on a record of evidence which is obviously incomplete. *Indraj v. Emperor*.

27 Cr. L. J. 1013 :

96 I. C. 869.

-----S. 437—Further inquiry—Validity of.

Further enquiry under S. 437 should not, as a general rule, be ordered unless the order of discharge is manifestly perverse or foolish or is based on a record of evidence obviously incomplete. *Kallu v. Emperor*.

23 Cr. L. J. 693 :

69 I. C. 373 :

4 L. L. J. 411 : A. I. R. 1922 Lah. 59.

-----S. 437—Further inquiry—Validity of.

Generally speaking, further inquiry after discharge is improper unless the order of discharge is manifestly perverse or foolish or incomplete. *Sher Singh v. Emperor*.

27 Cr. L. J. 771 :

95 I. C. 307 : 27 P. L. R. 488 :

A. I. R. 1926 Lah. 119 (c).

-----S. 437—Further inquiry—Validity of.

Generally speaking, further inquiry after discharge is improper unless the order of discharge is manifestly perverse or foolish or is based upon a record of evidence which is obviously incomplete. The trial Magistrate after recording all the evidence for the prosecution passed an order discharging the accused, but it was set aside by the District Magistrate who ordered further inquiry into the case. The accused applied to the High Court for revision of the order: Held, that the order of discharge was not manifestly perverse or foolish and the order directing further inquiry was not justifiable. *Kishan Chand v. Emperor*.

21 Cr. L. J. 571 :

57 I. C. 91 : 2 U. P. L. R. Lah. 151 :

A. I. R. 1920 Lah. 54.

-----S. 437—Further inquiry—Validity of.

In a warrant case after a charge had been framed against the accused, he was called upon to plead, and he pleaded not guilty. The Magistrate thereupon wrote a judgment and 'discharged' the accused. This order was set aside by the District Magistrate, who ordered further enquiry under S. 437: Held, that the only order which the Magistrate could have passed, after a charge had been framed against the accused and he had pleaded to the charge, was either an order of acquittal or an order of conviction and as he was not convicted, he must be deemed to have been acquitted and not 'discharged', and that being so, the District Magistrate was not competent under S. 437 to order further enquiry and the order made by

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—S. 437—*Further inquiry—Discharge of accused—District Magistrate, power of, to order further enquiry, limits of.*

A District Magistrate should not exercise his powers under S. 437 promiscuously, whenever he forms a different estimate of the witnesses, whom he has not seen, from that which was formed by the Magistrate who did see them. A District Magistrate should not order a further enquiry merely upon the strength of his own appreciation of the evidence in a case where the accused has had a perfectly fair trial reaching a lawful conclusion, and the trial Magistrate's discussion of the evidence has been apparently quite reasonable. *In re: Narainah Venkatesh*, 18 Cr. L. J. 646 :

40 I. C. 294 : 9 Bom. L. R. 850 :
A. I. R. 1917 Bom. 227.

—S. 437—*Further enquiry—Discharge of accused—Further inquiry, when to be ordered.*

Further inquiry after discharge should not be ordered unless the order of discharge is perverse or foolish or based on an incomplete record of evidence. Therefore, where a Magistrate disallows the evidence at length and gives his reasons for discharge, the order of discharge should be set aside even if it does not commend itself to the District Magistrate or Sessions Judge as the case may be. *Ghulam Nabi v. Emperor*, 28 Cr. L. J. 607 :
102 I. C. 783.

—S. 437—*Further inquiry—Discretion.*

It is purely discretionary with a Court to order further inquiry under S. 437, Cr. P. C. *Bulchand Tahilram v. Ghandoomal Ramrakhi-mal*, 16 Cr. L. J. 174 :

27 I. C. 558 : 8 S. L. R. 196 :
A. I. R. 1914 Sind 44.

—S. 437—*Further inquiry—Discharge of opinion between different Courts in judging evidence—Practice—Further inquiry.*

Where the nature of the case is such that the Courts are liable to take different views of the evidence and of the probabilities of it, no further inquiry should be directed under S. 437. *Chandan v. Kalhu*, 12 Cr. L. J. 45 :
9 I. C. 274 : 8 A. L. J. 45.

—S. 437—*Further inquiry.*

Further enquiry into the case of a discharged person should not be ordered, unless the order of discharge is manifestly perverse or foolish or is based upon a record of evidence which is obviously incomplete. Where, therefore, the Magistrate recorded the evidence of all the witnesses whom the complainant wanted to produce in support of his complaint and, after considering the evidence, being of the opinion that the story told by them was an improbable one, dismissed the complaint ; but the Sessions Judge holding that the story might be improbable but was by no means impossible, ordered a further enquiry : *Held*, that this was not a valid ground for dissenting from the conclusion of the Magistrate and for directing further enquiry. *Radhe Sham v. Emperor*, 20 Cr. L. J. 594 :

52 I. C. 208 : A. I. R. 1919 Lah. 433.

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—S. 437—*Further inquiry.*

Generally speaking further inquiry after discharge is improper unless the order of discharge is manifestly perverse or foolish or is based upon a record of evidence which is obviously incomplete. It is not sufficient for a Court of Revision to merely say that the Trial Judge has not gone fully into the case and to declare that further inquiry is necessary. Before ordering further inquiry, the Court should state in what respect the Trial Judge's conclusions are either foolish or perverse or otherwise unsatisfactory, and if the case is sent back on the ground that the decision of the Trial Court has been arrived at upon an incomplete record, this should be stated. There is no provision in the Cr. P. C., under which a notice issued to an accused can be validly served upon him through his agent. *Sawan Singh v. Emperor*, 26 Cr. L. J. 1393 :

89 I. C. 705 : 2 Lah. Cas. 59 :
A. I. R. 1926 Lah. 50.

—S. 437—*Further inquiry.*

It is not desirable that the District Magistrate should exercise the power of revision arbitrarily or harshly in such cases, but under the safeguards provided by S. 437. If further evidence is forthcoming, it may just as well be taken and considered in the same proceedings instead of waiting until further information is laid. This constitutes "further inquiry" contemplated by that section, and a necessary ingredient is that fresh evidence is forthcoming on the part of the prosecution. That another Magistrate should hear and decide the matter on the same evidence is not what is contemplated. *Manna v. Emperor*, 1 Cr. L. J. 96 :

5 P. L. R. 74 : 24 P. R. 1903 Cr.

—S. 437—*Further inquiry.*

It is not ordinarily desirable that in ordering further enquiry under S. 437, a detailed examination of the evidence and elaborate reasons should be given, but enough should be said in the way of reasons to indicate to the Court below in what manner it is thought that its order was incorrect, whether on a point of law or in misappreciation of the weight of the evidence or for want of a complete enquiry. *Nga Min Din v. Emperor*, 19 Cr. L. J. 14 :

42 I. C. 926 : 3 U. B. R. 1917 16 :
A. I. R. 1918 U. Bur. 155.

—S. 437—*Further inquiry—Meaning of.*

An order of further enquiry and not of re-trial may be passed under S. 437. An order of re-trial under the section is one calculated materially to prejudice the accused with a subordinate Court. *Khuda Bakhsh v. Emperor*, 2 Cr. L. J. 128 :

6 P. L. R. 65.

—S. 437—"Further inquiry", meaning of.

"Further inquiry" does not mean proceeding on the evidence already taken ; evidence or other evidence, if there be any, should be

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—S. 437—Further inquiry—Validity of.

Where a Magistrate discharges an accused after due consideration of the evidence, on record and where his order is not manifestly perverse or foolish or based on an incomplete record of the evidence, it is not open to the District Magistrate to set aside the order of discharge merely because he himself is of a contrary opinion. *Nasir-ud-Din v. Abdul Aziz*.

17 Cr. L. J. 161 :
33 I. C. 641 : 20 P. W. R. 1916 Cr. :
A. I. R. 1916 Lah. 299.

—S. 437—Further inquiry—Validity of.

Where in a case under S. 414, Penal Code, a Deputy Commissioner ordered as follows:—“Mistake of law. S. 414, Penal Code. The accused is released on bail”: Held, that though not in form, but in substance, the Deputy Commissioner's order was intended to be an order of discharge of the accused; and it was quite open to the Sessions Judge, upon a motion being made to him by the complainant, to make an order for further inquiry under S. 437. *Nagendra Nath Sen v. Mr. Korb*.

1 Cr. L. J. 355 :
8 C. W. N. 456.

—S. 437—Further inquiry—Validity of.

Where the judgment of a Trying Magistrate is neither perverse nor foolish and is based on evidence which is obviously complete, further inquiry should not be ordered. Further inquiry in such a case means a rehearing of the same evidence by some other Magistrate, that other Magistrate being practically constituted a Court of Appeal and this is not contemplated by S. 437. *Dost Muhammad v. Asa Ram*.

24 Cr. L. J. 474 :
72 I. C. 890 : A. I. R. 1922 Lah. 409.

—S. 437—Further inquiry—Validity of.

Where a person has been prosecuted before a competent officer, and has, after a fair trial before that officer been found not guilty and discharged, the Magistrate finding definitely that the Crown had failed to make out a case against him, it is very improper, in the absence of some positive allegation of impropriety of conduct against the trying officer, for the accused person to be placed on his trial a second time for the same offence. *Raktu Singh v. Emperor*.

24 Cr. L. J. 486 :
72 I. C. 950 : 1 P. L. R. 28 Cr.

—S. 437—Further inquiry.

Where a District Magistrate considers that a case triable only by a Court of Sessions which has been tried by a specially empowered Magistrate and has ended in a discharge, has been incompletely or imperfectly tried, he may order further inquiry by the same Magistrate or by another Magistrate or by another Magistrate equally empowered, but not by a Magistrate without special powers and, therefore, in a sense, a Court of inferior jurisdiction to the Court which ordered the discharge. But if the District

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Magistrate comes to a different conclusion upon the evidence, his proper course is to make an order of commitment under S. 436 of the Code. *Yado v. Emperor*.

17 Cr. L. J. 245 :
34 I. C. 965 : 12 N. L. R. 94 ;
A. I. R. 1916 Nag. 97.

—S. 437—Further inquiry.

Where a District Magistrate (without giving any notice) ordered further inquiry to be made in the case of a discharged accused on the ground that it was conceivable that another Magistrate might reasonably see the facts and probabilities in other mutual proportions: Held, that the foregoing did not amount to any reason at all for ordering further inquiry. Where a District Magistrate decides to take further action under S. 437, he should give notice to the accused and hear his objections, if any, before making an order for further inquiry. *Lal v. Emperor*.

12 Cr. L. J. 110 :
9 I. C. 652.

—S. 437—Further inquiry.

Where a man has been discharged after full inquiry by a competent Court, a Revisional Court will exercise proper question in allowing him an opportunity of showing cause before ordering a further inquiry or before directing a re-opening of the case, it being a principle of British Criminal Law that an order to a man's prejudice should not be made without due notice to him. Where a Court is given a discretion, it is bound to exercise it judicially and fairly. *Vaidaynath Iyer v. Emperor*.

16 Cr. L. J. 696 :
30 I. C. 744 : 8 Bur. L. T. 133 :
A. I. R. 1915 L. Bur. 132 (a).

—S. 437—Further inquiry.

Where a Trying Magistrate in his order of discharge has discussed the evidence and has given sufficient reasons for the conclusion that the prosecution evidence has failed to establish the charge against the accused, and no fresh evidence is likely to be produced on further inquiry, a superior Court should hesitate before exercising its powers under S. 437 unless there is some palpable error in the decision of the Magistrate. *Abdul Rashid v. Momtaz*.

25 Cr. L. J. 191 :
76 I. C. 431 : 38 C. L. J. 206 :
A. I. R. 1924 Cal. 229.

—S. 437—Further inquiry.

Where an accused person has been discharged, if the circumstances and the evidence are such that two different Courts might take two different views of the evidence, and the order of discharge in one which cannot be said to be either perverse or *prima facie* incorrect and there is no suggestion that any further evidence is forthcoming, no further enquiry should be directed under S. 437. *Alam v. Emperor*.

28 Cr. L. J. 601 :
102 I. C. 777 : 25 A. L. J. 703 :
49 All. 879.

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———S. 437 — *Further inquiry — Notice to accused—Necessity of.*

Before an order for further enquiry is passed to the prejudice of an accused person who has been discharged, it is proper that he should be called upon to show cause why such order should not be passed. An order directing further enquiry should not be passed where on the face of the order of discharge it does not appear that the order is perfunctory or foolish. *Nabi Bakhsh v. Emperor.*

21 Cr. L. J. 521 :
56 I. C. 777 : 1 Lah. 216 :
109 P. L. R. 1920 : 8 P. W. R. 1920 Cr. :
A. I. R. 1920 Lah. 380.

———S. 437 — *Further inquiry — Notice to accused—Necessity of.*

Before an order under S. 437 is made, it is not obligatory to give notice to the accused. *Begraj Basharam v. Emperor.*

17 Cr. L. J. 349 :
35 I. C. 525 : 10 S. L. R. 68 :
A. I. R. 1916 Sind 63.

———S. 437 — *Further inquiry — Notice to accused—Necessity of.*

Before further enquiry can be ordered under S. 437, notice must be given to the person who has been discharged. *Dharam Deo v. Emperor.*

20 Cr. L. J. 770 (a) :
53 I. C. 610 : A. I. R. 1919 All. 402.

———S. 437 — *Further inquiry — Notice to accused—Necessity of—Discharge of accused—Further inquiry, order for, without notice—Discretion—Practice.*

Nothing in S. 437 requires previous notice to any accused person who has been discharged before further inquiry into his case is ordered by a competent authority, that is to say, by the High Court, the Sessions Judge or the District Magistrate. Nevertheless as a matter of judicial discretion, it is advisable that previous notice should issue when the matter for consideration is the setting aside of an order of discharge passed in favour of an accused person who has actually been before a Court to answer the facts alleged against him. The fact of a person's being in the position of an accused with another during an inquiry which resulted in the order of discharge, should not at all prevent his being summoned as a witness in the further inquiry ordered. *Abdul Latif v. Emperor.*

19 Cr. L. J. 401 :
44 I. C. 929 : 16 A. L. J. 298 :
40 All. 416 : A. I. R. 1918 All. 111.

———S. 437 — *Further inquiry — Notice to accused—Necessity of—Discharge, order of—Further enquiry—Notice to accused, whether necessary.*

Where an accused person has once been brought before a Court of Justice under process, and is discharged by order of the Court, such order of discharge ought not to be interfered with except after notice to show cause issued to the accused. Where, therefore, after an accused person had been discharged by order of a Court, the District Magistrate, without notice to the accused, directed further in-

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quiry : *Held*, that the order could not be upheld. *Hira Lal v. Emperor.*

21 Cr. L. J. 847 :
58 I. C. 927 : A. I. R. 1920 All. 218.

———S. 437 — *Further inquiry — Notice to accused—Necessity of—Further enquiry, order directing—Notice to accused, whether necessary.*

Before directing further enquiry under S. 437, the District Magistrate ought to give notice to the person against whom he proposes to pass orders to show cause. *Phool Singh v. Emperor.*

20 Cr. L. J. 831 :
53 I. C. 831 : A. I. R. 1919 All. 396.

———S. 437 — *Further inquiry — Notice to accused—Necessity of—Power to direct further enquiry, use of.*

The power conferred by S. 437 to direct a further enquiry should be used sparingly and with great caution. Though it is not illegal to make an order directing further enquiry under S. 437, without notice to the accused, it is always desirable that notice should be given. The ordinary rule is that no order should be passed against an accused without notice to him. A question may be very clear to a Court directing further enquiry but still it ought to give an accused already discharged an opportunity to be heard. *Joy Gopal Banerjee v. Emperor.*

5 Cr. L. J. 16 :
11 C. W. N. 173.

———S. 437 — *Further inquiry—Record of reasons for—Necessity of.*

No Court can properly set aside an order of discharge without having and assigning solid and sufficient reasons for doing so. An order for further inquiry, under S. 437, without setting out grounds therefor, is bad and must be set aside. *Thirukonam Knappachari v. Emperor.*

14 Cr. L. J. 572 :
21 I. C. 172 : 1913 M. W. N. 688 :
1914 M. W. N. 46.

———S. 437—*Further enquiry—Notice [to accused—Necessity of.*

Notice to an accused person is not necessary in point of law before an order under S. 437. *Veerasinghanaswamy v. Mari Gowda.*

7 Cr. L. J. 176 :
12 M. C. Cr. 47.

———S. 437—*Further enquiry—Notice to accused—Necessity of.*

Notice to the accused person is necessary where the Court of Revision acting under S. 437, directs further inquiry to be made into any complaint which has been dismissed under S. 203 or Sub-s. 3 of S. 204 of the said Code. *Chanan Singh v. Emperor.*

1 Cr. L. J. 347 :
3 P. W. R. Cr. 25.

———S. 437—*Further inquiry—Notice to accused—Necessity of—Order of discharge—Further enquiry, order directing—Notice to accused.*

There is nothing in S. 437 which renders previous notice to the accused compulsory before an order setting aside an order of discharge and directing further enquiry into

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shown to be unjustifiable. *Aulad Hussain v. Emperor*.

32 Cr. L. J. 128 (b) :
128 I. C. 285 : 7 O. W. N. 749 :
I. R. 1931 Oudh 45 :
A. I. R. 1930 Oudh 415.

—S. 437—Interference—Grounds for.

Where the judgment of the trial Court is full of surmises and special pleadings, recommendations of the District Magistrate supported by the Sessions Judge should be accepted and re-trial ordered. *Dhum Bahadur v. Hori Lal*.

35 Cr. L. J. 1289 :
151 I. C. 350 : 7 R. A. 139 :
3 A. W. R. 564 : A. I. R. 1934 All. 714.

—S. 437—Interpretation.

A person against whom proceedings are taken under S. 110 may be considered to be in the position of an accused from the time that he appears before the Court till the conclusion of proceedings, and, if not called upon to furnish security, he may be regarded as discharged. If his evidence has been called for and taken as sufficient to justify the Magistrate in declining to take security, he must still be regarded "discharged" and not as "acquitted." *Manna v. Emperor*.

1 Cr. L. J. 96 :
5 P. L. R. 74 : 24 P. R. 1903 Cr.

—S. 437—Interpretation.

A person against whom proceedings under Chap. VIII are being taken is an "accused person" within the meaning of S. 437. *Manna v. Emperor*.

1 Cr. L. J. 96 :
5 P. L. R. 74 : 24 P. R. Cr. of 1903.

—S. 437—Interpretation—"Committing Magistrate,"—"Order him to be committed,"—Meaning of.

The words "order him to be committed" in S. 436, do not mean more than "pass an order for his committal" and enable the District Magistrate himself, to make a committal or to direct a Subordinate Magistrate to make a committal. *The Sessions Judge, Mangalore v. Malinja alias Somappa Gonda*.

7 Cr. L. J. 29 :
3 M. L. T. 25 : 31 Mad. 40.

—S. 437—Maintenance—Refusal of grant—Further inquiry—Validity of.

When an order for maintenance is refused by a Magistrate under S. 488, the District Magistrate is not empowered to make a further inquiry under S. 437. *M. Parbati v. Chotey*.

1 Cr. L. J. 864.

—S. 437—Order of discharge.

Before an order of discharge is set aside by the District Judge, he should consider if the order of the Inquiring Court was perverse or foolish, or manifestly against the weight of the evidence, or that the Magistrate had failed to record all the evidence. *Zarin v. Emperor*.

35 Cr. L. J. 1282 :
151 I. C. 143 : 7 R. Pesh. 13 :
A. I. R. 1934 Pesh. 52.

—S. 437—Order of discharge.

Charge sheet under Ss. 307 and 323, I. P. C.—

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Charge framed under S. 323—No mention about S. 307—Acquittal under S. 323—In revision under S. 437, commitment under S. 308, I.P.C., ordered—Order of discharge under S. 308 held implied and Session Judge held justified in ordering commitment under S. 308. *Sukhlal v. Emperor*.

35 Cr. L. J. 865 :
148 I. C. 999 : 1934 A. L. J. 478 :
4 A. W. R. 1544 : A. I. R. 1934 All. 141.

—S. 437—Order of discharge.

Charge which ought to have been framed, not framed : Held, it amounted to implied discharge and Sessions Court could proceed under S. 437. *Shambhooram v. Emperor*.

37 Cr. L. J. 80 :
159 I. C. 271 : 8 R. S. 79 :
A. I. R. 1935 Sind 221.

—S. 437—Order of discharge—Discharge, order of—Revision by Sessions Judge or District Magistrate—Further enquiry, when to be directed.

The power of revision granted to a Sessions Judge or District Magistrate under S. 437 to direct further enquiry in a case of discharge by a Subordinate Magistrate is not to be exercised as if the case were being heard on appeal. The Revisional Court has only to see whether the evidence is of such a character that it is possible to come to only one conclusion upon it, that the accused has been guilty and that there has been a miscarriage of justice consequent upon the one-sided or perverse view taken by the trial Magistrate. *Karuppachakkili v. Palaniswami Goundan*.

20 Cr. L. J. 817 :
53 I. C. 817 : 10 L. W. 630 :
A. I. R. 1920 Mad. 284.

—S. 437—Order of discharge—Meaning of.

Discharge in S. 437 means not only an express discharge but an implied discharge. *Shambhooram v. Emperor*.

37 Cr. L. J. 80 :
159 I. C. 271 : 8 R. S. 79 :
A. I. R. 1935 Sind 221.

—S. 437—Order of discharge—Meaning of.

The word "discharged" in S. 437 does not mean "absolutely discharged and set at liberty" but also "partially discharged" or in other words, not charged with an offence exclusively triable by the Court of Session. *Sultan Ali v. Emperor*.

36 Cr. L. J. 466 :
153 I. C. 1029 : 15 Lah. 138 :
36 P. L. R. 508 : 7 R. L. 495 :
A. I. R. 1934 Lah. 164.

—S. 437—Order of discharge.

Section covers case of discharge or any kind of charge and not merely discharge on charge for offence exclusively triable by Sessions Court. *Alopi Din v. Emperor*.

36 Cr. L. J. 1103 :
157 I. C. 205 : 1935 A. L. J. 653 :
8 R. A. 140 : 1925 A. W. R. 134 :
A. I. R. 1935 All. 366.

—S. 437—Order of discharge amounting to acquittal—Further inquiry—Validity of—Order of discharge—Acquittal—Further inquiry, order for, if competent.

A Sessions Judge has no jurisdiction to order

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should give reasons for the order; the mere opinion of a Magistrate that there should be a further enquiry in a particular case is of no value without a statement of his reasons therefor; and in the absence of such reasons, it is not possible for the High Court to exercise such supervision over the Magistrate's proceedings as is necessary. The practice of Magistrates not complying with the orders and directions of the High Court condemned. It is not ordinarily desirable that a District Magistrate in ordering a further enquiry under S. 437, should make a detailed examination of the evidence and give elaborate reasons which might prejudice the trial afterwards; but it is desirable that he should give enough in the shape of reasons to show that his order is proper. *Wahed Ali v. Emperor*.

3 Cr. L. J. 191 :
3 C. L. J. 43.

———S. 437—Further inquiry—Recording of reasons for—Necessity of.

An order of a Sessions Judge not stating proper grounds for directing further inquiry is bad in law. *Nagendra Nath Sen v. Mr. Korb*.

1 Cr. L. J. 355 :
8 C. W. N. 456.

———S. 437—Further inquiry—Record of reasons for—Necessity of.

An order of a Sessions Judge under S. 437 directing a further inquiry, without stating proper grounds for directing such further inquiry, does not comply with the provisions of law and is liable to be set aside. *Dost Muhammad v. Asa Ram*.

24 Cr. L. J. 474 :
72 I. C. 890 : A. I. R. 1922 Lah. 409.

———S. 437—Further inquiry—Record of reasons for—Necessity of.

In passing an order under S. 437, a District Magistrate should give sufficient reasons to show that the order is a proper one. *Sanwal Bheru v. Dipchand*.

9 Cr. L. J. 446 :
1 I. C. 938 : 3 S. L. R. 7.

———S. 437—Further inquiry—Record of reasons for—Necessity of.

It is fair to a person against whom an order for further enquiry is made that the reasons for directing such enquiry should be made explicit to him and that he should have notice of the ground on which the further enquiry has been directed. *Nga Min Din v. Emperor*.

19 Cr. L. J. 14 :
42 I. C. 926 : 3 U. B. R. 1917 16 :
A. I. R. 1918 U. Bur. 155.

———S. 437—Further inquiry—Record of reasons—Necessity of.

It is not ordinarily desirable that in ordering a further inquiry under S. 437, a detailed examination of the evidence should be made and elaborate reasons given, as this might prejudice the trial afterwards; but it is desirable that enough should be stated in the shape of reasons to show that the order of further inquiry is a proper one. *Wahed Ali v. Emperor*.

3 Cr. L. J. 120 ;
I. L. R. 32 Cal. 1090.

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———S. 437—Further inquiry—Record of reasons for—Necessity of.

It is the duty of a Sessions Judge, before directing a further enquiry as regards an accused person, to peruse the evidence and state what the grounds are which induce him to direct a further enquiry. *Abinash Chandra Mitra v. Emperor*.

9 Cr. L. J. 303 :
1 I. C. 415 : 13 C. W. N. 76.

———S. 437—Further inquiry—Record of reasons for—Necessity of.

It was contended that the Sessions Judge had not given reasons for his order. The words used by him were: I have translated and considered the whole of the evidence on the record, and the conclusion to which I have come is that there must be further inquiry: *Held*, that these words showed ample reasons for the order, and that it would have been improper for the Sessions Judge to comment on the evidence in detail. *Tun Win v. Emperor*.

7 Cr. L. J. 493 :
4 L. B. R. 233.

———S. 437—Further inquiry—Refusal—Validity of.

Lapse of time is not a sufficient reason for refusing to order further enquiry if an offence has really been committed. It would be encouraging accused persons to delay proceedings if lapse of time were admitted as a good reason for not proceeding further with the case, when such a course is otherwise justified. *Birjubbukan v. Anrao*.

23 Cr. L. J. 745 :
69 I. C. 633.

———S. 437—Further inquiry—Seizin of case.

Where by the order of a Sessions Judge an inquiry is made over to a District Magistrate, or to any Subordinate Magistrate to whom the District Magistrate might make over the inquiry, the seizin of the entire case vests in the District Magistrate and when he makes over the inquiry to a Subordinate Magistrate, the entire case is made over to that Magistrate, and he has complete jurisdiction to hold the inquiry and to dispose of the complaint by passing final orders thereon, either by dismissing it or by putting the accused on his trial and convicting or acquitting him. *Ram Barai Singh v. Ram Pratap Rai*.

21 Cr. L. J. 594 :
57 I. C. 162 : A. I. R. 1920 Pat. 563.

———S. 437—Further inquiry—Test of validity.

The test to be applied, before a re-trial or further enquiry is ordered in the case of an accused person discharged by a Magistrate is, will an appeal from the order of acquittal passed on the evidence on the record of the case be accepted by the Chief Court. *Ala Jiwaya v. Emperor*.

2 Cr. L. J. 116 :
6 P. L. R. 49.

———S. 437—Further inquiry.

The High Court will not, as a rule, order further inquiry after an order of discharge is made, unless the order of discharge is

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further enquiry, under S. 437 in a case in which an order of discharge amounting in effect to one of acquittal was passed. *In re : Pothuri Venkatarmayya.*

17 Cr. L. J. 95:

32 I. C. 687:

A. I. R. 1917 Mad. 899.

—————S. 437—Order of prosecution under S. 476—Further inquiry—Validity of—Further inquiry—Prosecution of complainant for subsisting offence—Notice.

An order for further inquiry is bad during the continuance of an order made under S. 476, for prosecution of the complainant for an offence under S. 211, Penal Code. *Kanhu Naik v. Natabar Shaha.*

15 Cr. L. J. 1 (a):

22 I. C. 145.

—————S. 437—Power of High Court—Commitment order—Revision—High Court, interference by.

The High Court has full jurisdiction under S. 437 to revise a commitment order made by a District Magistrate on points of law as well as of facts. *Munshi Mander v. Karu Mander.*

25 Cr. L. J. 1089:

81 I. C. 913: 6 P. L. T. 146:

A. I. R. 1925 Pat. 279.

—————S. 437—Power of High Court.

The High Court has power, under S. 437 to direct that further inquiry should be held in the case of the discharged accused and that if that inquiry ended in the framing of the charge, the said accused should be committed to the Court of Session. *Emperor v. Intiya Salabatkhani.*

13 Cr. L. J. 842:

17 I. C. 714:

14 Bom. L. R. 897.

—————S. 437—Reference—Forwarding Public Prosecutor's notes, impropriety of.

In making a reference under the Cr. P. C., a District Magistrate should not forward to the Sessions Court or the High Court notes of the Prosecuting Inspector. *Emperor v. Ram Lal.*

30 Cr. L. J. 562:

116 I. C. 25: I. R. 1929 All. 505:

1929 A. L. J. 361: 51 All. 663:

A. I. R. 1929 All. 273.

—————S. 437—Reference—Whether competent.

A Sessions Judge or District Magistrate, while acting under S. 437, is not bound to refer the case to the High Court in a case of difference of opinion due to mere appreciation of evidence between himself and the Subordinate Magistrate, but may order a re-consideration of the same evidence by the latter. *In re : Narayanswami Naidu.*

9 Cr. L. J. 192:

1 I. C. 228: 5 M. L. T. 233:

19 M. L. J. 157: 32 Mad. 220.

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—————S. 437—Revision—Discharge by Magistrate—Commitment by District Magistrate—Revision—High Court, power of.

When an order of discharge passed by a Magistrate under S. 209 is revised by the District Magistrate and a commitment to the Sessions Court is directed, the High Court, acting under S. 437 can interfere and can even go into question of fact to see if the order of the District Magistrate was correct and proper. *In re : Damappa Palai.*

15 Cr. L. J. 373:

23 I. C. 741: A. I. R. 1914 Mad. 424.

—————S. 437—Revisional jurisdiction, object of—Sanction refused by lower Courts—Revision.

Nothing in S. 195, Cr. P. C. justifies a High Court in re-considering in revision the order of a Sessions Judge passed under Cl. 6 of the section. The revisional jurisdiction of the Court can always be exercised in order to prevent a gross and palpable failure of justice. It should not be so exercised as to make one portion of the Code conflict with another or to give a right of appeal where such right is definitely excluded by the Code. Therefore, where sanction to prosecute was refused by the trying Magistrate as well as by the Sessions Judge on appeal and it was not shown that the order of the Courts below had proceeded upon clearly erroneous principles of law or were likely to result in obvious failure of justice, the High Court declined to interfere in revision. *Ahsanullah Khan v. Mansukh Ram.*

15 Cr. L. J. 598:

25 I. C. 350: 12 A. L. J. 511:

36 All. 403: A. I. R. 1914 All. 211.

—————S. 437—Scope.

A Magistrate has no authority to direct a further inquiry in respect of a person against whom no complaint had been made and no regular process issued. *Ambar Ali v. Anjab Ali.*

13 Cr. L. J. 304:

14 I. C. 768: 39 Cal. 238.

—————S. 437—Scope.

An order to the following effect is not contemplated by S. 437. "The case, therefore, is re-opened and the Police are now at liberty to re-consider the whole position." The proper course to be adopted in such a case is to direct the Magistrate to make further inquiry into the case. *Chanan v. Emperor.*

14 Cr. L. J. 596:

21 I. C. 468: 37 P. W. R. 1913 Cr:

320 P. L. R. 1913.

—————S. 437—Scope.

Certain persons were charged with offences under Ss. 342 and 357, Penal Code. These offences were not proved and the Magistrate discharged the accused. The Sessions Judge being of opinion that the real charge, an

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him, therefore, for such enquiry, was illegal.
Chhole Lal v. Emperor. 19 Cr. L. J. 596 :
 45 I. C. 500 : 16 A. L. J. 388 :
 A. I. R. 1918 All 335.

—S. 437—Further inquiry—Validity of—
 Revision—Order for further enquiry when to be
 made.

A further inquiry may be ordered only in cases
 where a Magistrate has not taken sufficient
 trouble or has come to a perverse decision. A
 Court of Revision cannot order such enquiry
 merely for the reason of disagreement with the
 conclusion arrived at by the Magistrate.
Kundan Lal v. Manohar Lal.

30 Cr. L. J. 755 :
 117 I. C. 345 : I. R. 1929 All. 69 :
 A. I. R. 1929 All. 588.

—S. 437—Further inquiry—Validity of.

The accused was placed on his trial for offences
 under Ss. 423, 467, 471, I. P. C. and S. 82,
 Indian Registration Act, on the allegation that
 he had abetted the fabrication of a forged bond,
 but was discharged. The District Magistrate
 under S. 437, Cr. P. C., directed a further in-
 quiry into the case, but before the proceeding
 under S. 437 commenced, a Civil Court had de-
 cided that the bond was a forged one: Held,
 that the case against the accused cannot pro-
 ceed as regards the charge of forgery or
 abetment of forgery without the sanction of
 the Civil Court. That with regard to the
 charges under S. 423, I. P. C., and S. 82, Indian
 Registration Act, which did not require any
 sanction, the accused should not be prosecuted
 till the Civil Court sanctioned his prosecution
 for forgery, as it was not desirable that the
 case should proceed against him piecemeal.
Giridhari Marwari v. Emperor.

8 Cr. L. J. 51 :
 12 C. W. N. 822 : 8 C. L. J. 73.

—S. 437—Further inquiry—Validity of.

The discharge of an accused person or the
 dismissal of a complaint is no bar to the
 institution of fresh proceedings otherwise
 than under S. 437. But a Magistrate en-
 tertaining a complaint in such circumstances
 is bound to exercise a proper discretion.
Mi The Kin v. Nga E Tha. 1 Cr. L. J. 867 :
 U. B. R. 1904 Cr. Pro. 19.

—S. 437—Further inquiry—Validity of.

The essential matter for consideration in
 setting aside an order of discharge and
 directing a further inquiry under S. 437,
 is the prospect of any public advantage
 from the case being re-opened. Where there
 is no such prospect, by reason of the com-
 paratively insignificant character of the
 offence, of the considerable time which has
 elapsed since its commission and of the evi-
 dence being of no special strength, an order
 directing further inquiry would be without
 jurisdiction and liable to be set aside by the
 High Court in revision. *In re : Krishna Pillai.*

23 Cr. L. J. 600 :
 68 I. C. 824 : 16 L. W. 585 :
 43 M. L. J. 555 : 31 M. L. T. 419 :
 1923 M. W. N. 56 :
 A. I. R. 1923 Mad. 134.

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—S. 437—Further inquiry—Validity of.

The mere fact that the District Magistrate
 might have taken another view of the evi-
 dence would not warrant an order under
 S. 437 which amounts to directing a re-trial
 by another Court on the same evidence.
Kallu v. Emperor. 23 Cr. L. J. 693 :
 69 I. C. 373 : 4 L. L. J. 411 :
 A. I. R. 1922 Lah. 59.

—S. 437—Further inquiry—Validity of.

The mere fact that the District Magistrate
 places a different value on the evidence
 from that placed by the Trial Court is not
 a good ground for directing further enquiry
 under S. 437. *Dani v. Emperor.*

22 Cr. L. J. 199 (b) :
 60 I. C. 5 : 3 U. P. L. R. Lah. 11 :
 A. I. R. 1921 Lah. 214.

—S. 437—Further inquiry—Validity of.

The revisional jurisdiction conferred by
 S. 437, in cases of orders of discharge, may
 be exercised on the ground of misapprehen-
 sion of evidence by the lower Court, and
 the Court of Revision is justified in ordering
 a re-consideration of the evidence already
 taken. *Begraj Basharam v. Emperor.*

17 Cr. L. J. 349 :
 35 I. C. 525 : 10 S. L. R. 68 :
 A. I. R. 1916 Sind 63.

—S. 437—Further inquiry—Validity of.

Where a Magistrate, after hearing the
 whole of the evidence for the prosecution,
 dismissing it fully and giving cogent reasons
 for disbelieving the prosecution story, dis-
 charges the accused, the District Magistrate
 should not direct a re-trial merely because
 he thinks that the order of the Magistrate
 was not in some respects correct according
 to the record. Such an order, though not
 actually illegal can only be passed in very
 rare cases. *Hira v. Emperor.*

10 Cr. L. J. 314 :
 3 I. C. 580 : 8 P. R. 1909 Cr. :
 17 P. W. R. 1909 Cr.

—S. 437—Further inquiry—Validity of.

Where a Magistrate after proper inquiry finds
 that there is no case established against an
 accused person, the mere fact that the Dis-
 trict Magistrate does not agree with that
 opinion is no reason for directing further
 inquiry under S. 437 especially where there
 is no suggestion that any further evidence is
 available, or should be taken. *Udai Raj Singh*
v. Emperor. 24 Cr. L. J. 176 :
 71 I. C. 528 : 44 All. 691 :
 A. I. R. 1922 All. 429.

—S. 437—Further inquiry—Validity of.

When a Magistrate has passed an order
 discharging an accused person, further inquiry
 should not be directed unless the order of
 discharge is manifestly perverse or foolish or is
 based upon a record of evidence which is obvi-
 ously incomplete. *Karam Chand v. Mathra Das.*

24 Cr. L. J. 369 :
 72 I. C. 369 : 7 P. W. R. 1923 Cr. :
 A. I. R. 1923 Lah. 326.

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has jurisdiction to try a case. *Alopi Din v. Emperor.* 36 Cr. L. J. 1103 :

157 I. C. 205 : 1935 A. L. J. 653 :
8 R. A. 140 ; A. I. R. 1935 All. 366.

—S. 437—Scope of.

The powers of a Court, under S. 437, Cr. P. C., are very wide and are not limited to the powers which might be exercised by a Court of Appeal. *Harun v. Abdul Satar.* 12 Cr. L. J. 184 :
9 I. C. 1007.

—S. 437—Security proceedings—Further enquiry—Validity of.

S. 437 is not applicable to proceeding under Chapter VIII of the Code. It does not authorize an order for a further enquiry to be made into a case under S. 137 in which the person proceeded against has been discharged under S. 119. The person proceeded against cannot be deemed to be an "accused person" within the meaning of S. 437 of the Code. *Muhammad Khan v. Emperor.*

2 Cr. L. J. 697 :
6 P. L. R. 469 : 42 P. R. Cr. 1905.

—S. 437—Security proceedings—Further enquiry—Validity of—Security to keep peace—Accused person—Discharge.

S. 437 is applicable to proceedings under Chapter VIII of the Code. It authorises an order for further enquiry to be made into a case under S. 107, in which the person proceeded against has been discharged under S. 119. The person proceeded against is an accused person within the meaning of S. 437 of the Code. *Gokha Singh v. Chellu.*

2 Cr. L. J. 716 :
6 P. L. R. 512 : 33 P. R. Cr. 1905.

—S. 437—Summoning records—Necessity of.

The summoning of the records must be a necessary preliminary to any action which a High Court may take under S. 437 or 439. *Thakar Dass v. Emperor.* 15 Cr. L. J. 217 :

22 I. C. 1001 : 17 O. C. 25 :
A. I. R. 1914 Oudh 225.

—S. 438.

—Acquittal.

—Commitment.

—Concurrent jurisdiction.

—Discrepant evidence.

—Duty of High Court.

—Evidence.

—Fresh reference, whether competent.

—Interference, grounds for.

—Interpretation.

—Miscellaneous.

—Powers of District Magistrate.

—Power of High Court.

—Procedure.

—Reference.

—Report of order.

—Revision.

—Scope.

—S. 438.

See also (i) Acquittal.

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(ii) Cr. P. C., 1898, Ss. 30, 107, 110, 112, 123, 133, 145, 206, 233, 247, 256, 417, 423, 435, 435 (1), 439.

(iii) Emergency Powers Ordinance, 1932, S. 56.

(iv) Penal Code, 1860, S. 423.

(v) Punjab Municipal Act, 1891, S. 128.

(vi) Revision.

—S. 438—Acquittal—Interference—Whether competent—Reference to set aside acquittal, whether competent.

The High Court should not, ordinarily entertain a reference under S. 438, the object of which is to have an order of acquittal passed by an inferior Court set aside. *Emperor v. Aehhar Singh.* 25 Cr. L. J. 931 :
81 I. C. 547 : 5 Lah. 16 :
A. I. R. 1925 Lah. 451.

—S. 438—Acquittal—Interference—Whether competent—Revision—Interference with acquittal on reference by the District Magistrate.

As the Cr. P. C. provides for an appeal against acquittal by Government, the High Court will not interfere under S. 438. The High Court has no power in revision to convert an acquittal into a conviction. *Sangili Naicken v. Emperor.* 11 Cr. L. J. 622 :
8 I. C. 293 : 1 M. W. N. 517.

—S. 438—Acquittal—Reference against order of acquittal—Interference—Reference by Session Judge—S. 417, scope of.

S. 438, Cr. P. C., is intended to cover all cases of irregularity and injustice including acquittals which come to the notice of the High Court. The High Court would not permit a manifestly erroneous acquittal induced by inadvertence to stand even where a reference to the High Court is made by the District Magistrate. A reference by a Sessions Judge in a case of acquittal does not stand on the same footing as a reference by a District Magistrate as the former has no means of communicating with the Local Government with a view to an appeal under S. 417, Cr. P. C., and must either act under S. 438, Cr. P. C., or not at all. *Wazir Kunjra v. Emperor.* 30 Cr. L. J. 673 :

116 I. C. 768 : 7 Pat. 579 :
I. R. 1929 Pat. 336 :
A. I. R. 1929 Pat. 139.

—S. 438—Acquittal—Reference by Sessions Judge.

A reference under S. 438, Cr. P. C., recommending revision of orders of acquittal stands on no higher footing than applications of private prosecutors for such revision. *Dabiruddi Naskar v. Sakat Molla.*

30 Cr. L. J. 579 :
116 I. C. 164 : 49 C. L. J. 129 :
33 C. W. N. 258 : 56 Cal. 924 :
I. R. 1929 Cal. 452 :
A. I. R. 1929 Cal. 169.

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———S. 437—*Further inquiry—Who can make.*

The Sessions Judge acting under S. 427 directed the District Magistrate by himself or by a Special Power Magistrate subordinate to him, to hold further inquiry in the case of an accused person who had been discharged by a Township Magistrate. The accused was subsequently convicted by the Senior Magistrate, and on appeal, it was contended that the Sessions Judge should not have ordered further inquiry by a Magistrate other than the Magistrate who had discharged the accused: *Held*, that the Sessions Judge's order was a legal and proper one. *Tun Win v. Emperor.*

7 Cr. L. J. 493 :
4 L. B. R. 233.

———S. 437—*Further inquiry—Withdrawal of prosecution—Discharge of accused—Conviction for a subsequent offence—Inadequacy of sentence—No ground for setting aside the order of discharge and directing further inquiry.*

The accused was discharged under S. 494, the prosecution against him being withdrawn, but was subsequently convicted on a different charge by the Sessions Judge. The District Magistrate being of opinion that the sentence was inadequate, set aside the order of discharge passed under S. 494, and further directed inquiry: *Held*, that when it was not shown that order of discharge was an improper one at the time it was passed, the District Magistrate could not set it aside and direct a fresh inquiry: *Held*, further, that the proper procedure if the sentence was inadequate, was to apply for enhancement and not to set aside the order of discharge passed in another case. *In re : Seetharamier.*

12 Cr. L. J. 440 :
11 I. C. 624 : 1911 2 M. W. N. 74.

———S. 437—*Interference—Grounds for.*

A Court of Revision will refuse to disturb an order, however illegal it may be, unless it is unjust, and however legal it may be, the Court will not hesitate to disturb it in revision if it is unjust, as it is a Court and not an academy of law. *Emperor v. Daulat Singh.*

30 Cr. L. J. 220 :
113 I. C. 911 : 11 N. L. J. 215 :
A. I. R. 1928 Nag. 343.

———S. 437—*Interference—Grounds for.*

A revising authority has jurisdiction to order a further enquiry on the same materials, but it should not order such enquiry unless there are palpable errors in the decision of the lower Court. *Sulav Chandra Das v. Emperor.*

31 Cr. L. J. 475 :
123 I. C. 246 : 50 C. L. J. 284 :
A. I. R. 1929 Cal. 755.

———S. 437—*Interference—Grounds for—Order refusing to commit accused to Sessions—Revision—Interference.*

An order refusing to commit an accused person to the Sessions will not be interfered with by the High Court in the absence of very strong reasons especially when the Sessions Judge has refused to take action

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against the order of discharge. *Mathuraprasad v. Narendra Singh.* 31 Cr. L. J. 413 :
122 I. C. 384 : A. I. R. 1930 Nag. 150.

———S. 437—*Interference—Grounds for—Revision—Finding of fact—Interference—Mere mistake of law—No injustice—Interference, whether legal.*

A Court of Revision has no right to disturb a finding of fact, even if it arrives at a different conclusion on an evaluation of the evidence. It is not the duty of the Court of Revision to correct mere mistakes in law, which have no more effect than mistakes in grammar or spelling. The power of interference in revision is to be used only for the purpose of correcting injustice not mere illegality. *Narsingdas Marwari v. Emperor.*

29 Cr. L. J. 86 :
106 I. C. 678 : A. I. R. 1928 Nag. 113.

———S. 437—*Interference—Grounds for.*

S. 437 contemplates that where a complaint has in fact been dismissed under S. 203, the revisional jurisdiction of the District Magistrate can be invoked irrespective of the consideration whether the dismissal is legal or illegal. *Sadhu Charan Ray v. Balei Swain.*

19 Cr. L. J. 874 :
47 I. C. 70 : 3 P. L. J. 336 :
A. I. R. 1918 Pat. 270.

———S. 437—*Interference—Grounds for.*

Sessions Judge can set aside order of discharge even on the ground that he disagrees with appreciation of evidence by Magistrate. *Ramchandra Babaji Gore v. Emperor.*

36 Cr. L. J. 693 :
155 I. C. 101 : 37 Bom. L. R. 16 :
59 Bom. 125 : 7 R. B. 405 :
A. I. R. 1935 Bom. 137.

———S. 437—*Interference—Grounds for.*

The High Court will not order a re-trial where a conviction on the evidence is doubtful. *In re : Ramaswami Tevan.*

23 Cr. L. J. 700 :
69 I. C. 390 : 14 L. W. 588 :
30 M. L. T. 18.

———S. 437—*Interference—Grounds for.*

Under S. 437, the Sessions Judge or the Magistrate has jurisdiction to set aside the order of a Magistrate discharging the accused under S. 209, if he is of opinion that the order is improper. It is not necessary that the order should be perverse or manifestly contrary to the evidence in the case. *Ramchandra Babaji Gore v. Emperor.*

36 Cr. L. J. 643 :
155 I. C. 101 : 37 Bom. L. R. 16 :
59 Bom. 125 : 7 R. B. 405 :
A. I. R. 1935 Bom. 137.

———S. 437—*Interference—Grounds for.*

Where a District Magistrate sets aside the order of discharge passed by a Committing Magistrate and orders a case which is exclusively triable by a Court of Session, to be committed to Sessions, the High Court will not interfere in revision unless the District Magistrate's order is in the circumstances of the case

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priety of a conviction rather than with the propriety of commitment. *Mahabir v. Emperor*.

23 Cr. L. J. 79 :

65 I. C. 431 ; 8 O. L. J. 627 :

A. I. R. 1922 Oudh 109.

————S. 438—Interference—Grounds for.

A Sessions Judge has no power to revise an order of a District Magistrate setting aside an order of a third class Magistrate refusing to sanction a prosecution under S. 211, Penal Code. The only Court to which an appeal lies from an order of a third class Magistrate is the District Magistrate, and he alone can revise his orders. *Ram Duni v. Nand Lal*.

6 Cr. L. J. 454 :

4 A. L. J. 805 : 30 All. 109 :

28 A. W. N. 28 :

3 M. L. T. 115.

————S. 438—Interference—Grounds for.

Conviction by Deputy Magistrate—Appeal to Sessions Judge—Dismissal of appeal—Reference by District Magistrate to High Court for enhancement of sentence—Interference by High Court, is not proper. *Emperor v. Sarafat Husain*.

35 Cr. L. J. 27 :

146 I. C. 354 (1) : 57 C. L. J. 211 :

6 R. C. 205 (2) :

A. I. R. 1933 Cal. 791.

————S. 438—Interference—Grounds for—
High Court's duty in revision—Conviction partly on inadmissible evidence, effect of.

Though it is not imperative for the High Court to set aside every void order which comes to its notice when the person aggrieved does not move the Court to do so, when an accused person has been prejudiced by an illegal act or order done or passed during the course of his trial, it is the duty of the High Court to interfere and remedy the illegality as far as possible. Where the conviction of an accused proceeds partially on inadmissible evidence, it is not possible to say that the accused has not been prejudiced and the conviction will be set aside. *Abdul Gaffoor v. Govind Parsad*.

30 Cr. L. J. 736 :

117 I. C. 241 : I. R. 1929 Rang. 177 :

A. I. R. 1929 Rang. 284.

————S. 438—Interference—Grounds for.

If a Court has the power to try the offence of which it has convicted the accused, it is not necessary to quash the conviction, merely because the facts disclose a more serious offence, which the Court is not competent to try, unless the accused has been prejudiced or the sentence is inadequate. *In re : Mohideen Bateha Sahib*.

14 Cr. L. J. 640 :

21 I. C. 688 : 25 M. L. J. 484.

————S. 438—Interference—Grounds for—
Offences not exclusively triable by Sessions Court—Whether commitment should be quashed.

That the offences disclosed at the preliminary enquiry are offences not exclusively triable by a Sessions Court, is no ground

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for quashing a commitment. *In re : Sessions Judge of Trichinopoly*.

11 Cr. L. J. 333 :

5 I. C. 932 : 7 M. L. T. 186.

————S. 438—Interference—Grounds for.

On a reference by a District Magistrate to the High Court under S. 438, the High Court will not interfere merely because the evidence before the lower Court has not been, according to the referring officer, properly appreciated. There must be some substantial error of law to justify the Court exercising its exceptional powers of revision under the section. *In re : P. R. M. K. Muhammad Abdul Rahiman Maracayar*.

28 Cr. L. J. 207 (a) :

99 I. C. 943 : 38 M. L. T. 15 :

A. I. R. 1927 Mad. 434.

————S. 438—Interference—Ground for—
Reference by District Magistrate upon Appellate order of Sessions Judge—High Court, if can interfere.

The powers of reference conferred on a District Magistrate by S. 438, relate only to proceedings taken by an inferior Court and the Court of the Judicial Commissioner will not interfere with an Appellate order of a Sessions Judge on a reference by the District Magistrate. The fact that the order of reference was made in ignorance of the existence of an Appellate order makes no difference, since the principles involved are similar. *Emperor v. Faqir Mohammad*.

38 Cr. L. J. 335 :

166 I. C. 881 : 9 R. Pesh. 74 :

A. I. R. 1937 Pesh. 6.

————S. 438—Interference—Grounds for—
Reference from District Magistrate involving criticism of orders of Sessions Judge—Whether will be accepted.

Ordinarily the High Court cannot accept references from District Magistrates which involve a criticism of the orders of the Sessions Court. *Emperor v. Lashkaro*.

38 Cr. L. J. 961 :

170 I. C. 676 : 10 R. S. 71 : 31 S. L. R. 409 :

A. I. R. 1937 Sind 203.

————S. 438—Interference—Grounds for—
Revision—Interference by Revision Court with commitment.

The fact that some of the persons accused of an offence were committed to the Sessions Court while others were not yet arrested, is no ground for quashing the commitment. *In re : Ramasami Sarvai*.

11 Cr. L. J. 333 (b) :

5 I. C. 933 : 7 M. L. T. 187.

————S. 438—Interference—Grounds for.

The decision of a Magistrate which is neither illegal nor perverse, cannot be interfered with in revision merely because the reasons given by the Magistrate for rejecting the prosecution evidence are open to objection. *Emperor v. Brahmadin*.

28 Cr. L. J. 946 :

105 I. C. 658 : 26 A. L. J. 76 :

A. I. R. 1927 All. 727.

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S. 252 does not make it obligatory on the Magistrate to summon all the witnesses whose names are given him by the complainant. *Musahru v. Emperor*.

41 Cr. L. J. 931 :
190 I. C. 517 : 21 P. L. T. 13 :
19 Pat. 413 : 7 B. R. 67 : 13 R. P. 230 :
A. I. R. 1940 Pat. 355.

———S. 252—Evidence—Magistrate ordering complainant to pay *batta*—Propriety of order.

Where a Magistrate trying an offence under S. 406, Penal Code, orders the complainant to pay *batta* for the witnesses, the order, in view of r. 384, Criminal Rules of Practice, is not proper. *In re : Patri Yogambamma*.

40 Cr. L. J. 566 (a) :
181 I. C. 569 : 1939 M. W. N. 118 :
48 L. W. 969 : 11 R. M. 838 :
A. I. R. 1939 Mad. 265.

———S. 252—Evidence—Material witnesses—Duty of Magistrate.

It is a matter enjoined on the Court by S. 252 that the Magistrate should ascertain from the complainant or otherwise if there are any other persons likely to be acquainted with the facts of the case and to be able to give evidence for the prosecution, and that he shall summon such of them as he thinks necessary. When this duty is enjoined on him, it is clearly a grave error on his part to refuse to summon any witnesses whom the complainant has cited even before that stage arises. *Thakur Das v. Narayan Nag*.

38 Cr. L. J. 307 :
166 I. C. 709 : 9 R. N. 144 :
I. L. R. 1936 Nag. 205 :
A. I. R. 1936 Nag. 192.

———S. 252—Evidence—Material witnesses—Duty of Magistrate.

Under S. 252, in the matter of production of evidence for the prosecution when the complainant has done all he can without the assistance of the process of the Court, it is for the Magistrate to ascertain from the complainant or otherwise the names of other persons likely or able to give evidence, and he must summon such of those as he thinks necessary, *i. e.*, those he thinks will be of value in assisting the prosecution case. He cannot arbitrarily refuse to summon such witnesses. The proper time when the Magistrate is so bound to ascertain arises when the evidence "produced" in support of the prosecution has been taken, and that ordinarily includes the cross-examination, and re-examination, if any, before the charge. *K. C. Menon v. Krishna Nayar*.

27 Cr. L. J. 1123 :
97 I. C. 643 : 24 L. W. 304 :
51 M. L. J. 328 : 1926 M. W. N. 730 :
49 Mad. 978 : A. I. R. 1926 Mad. 989.

———S. 252—Evidence—Meaning of.

Evidence includes cross-examination and re-examination. *Muhammad Rahim v. Emperor*.

36 Cr. L. J. 581 :
154 I. C. 762 : 29 S. L. R. 92 :
7 R. S. 167 : A. I. R. 1935 Sind 73.

———S. 252—Power of Magistrate—Summons issued only for offence triable as summons case—

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Magistrate, if can change mind and re-consider offences disclosed before proceeding with enquiry and proceed under S. 252, instead of S. 242.

Though the Magistrate had issued summons to the accused for an offence under S. 426, Penal Code only, he did not apply S. 242, Cr. P. C., when the accused was brought before him, but informed him then and there that on re-consideration he held that other offences also were disclosed by the complainant, and proceeded from that moment to apply S. 252, Cr. P. C.: *Held*, that a Magistrate had power to change his mind in regard to the exact offences which the complaint disclosed before he began to enquire into the case: *Held*, also, that even if it be argued that he had impliedly dismissed a complaint under other sections of the Penal Code, than S. 426, he still had power to re-entertain a complaint on the same facts without the need of any action by any superior Court. *In re : Malai*.

39 Cr. L. J. 135 :
172 I. C. 396 : 46 L. W. 319 :
1937 M. W. N. 865 : 1937 2 M. L. J. 435 :
10 R. M. 454 : A. I. R. 1937 Mad. 808.

———S. 252—Procedure—Discharge—On date of hearing Magistrate hearing parties and examining documents—Conclusion that complaint was dishonest—Magistrate discharging accused without examining complainant—Order of discharge held legal.

The petitioner made a complaint against the opposite party to the effect that he had committed an offence punishable under S. 420, Penal Code. The Magistrate examined the petitioner upon oath and then directed that a warrant should issue for the arrest of the opposite party. The opposite party duly appeared and a date was fixed for the hearing. On that day the Magistrate heard both sides and examined some documents; but he did not take the evidence of the petitioner or any of his witnesses. The Magistrate reached the conclusion that the petitioner had deliberately suppressed several facts in his petition of complaint and that the complaint was a thoroughly dishonest one. He accordingly discharged the opposite party; *Held*, that the order of discharge was legal and within jurisdiction. *Sunder Das Loghani v. Fardun Rustom*.

40 Cr. L. J. 658 :
182 I. C. 411 : 69 C. L. J. 186 :
I. L. R. 1939 1 Cal. 474 : 12 R. C. 59 :
A. I. R. 1939 Cal. 329.

———S. 252 (2)—Evidence—Duty of Magistrate.

Cl. (2) of S. 252 throws upon the Magistrate, in a warrant case the duty of seeing that all the evidence essential to the prosecution case is before the Court. It is not open to a Magistrate to acquit the accused in a warrant case on the ground that the prosecution has failed to produce a necessary witness. *Emperor v. Maiku Lal*.

26 Cr. L. J. 1266 :
88 I. C. 1042 : 2 O. W. N. 534 :
12 O. L. J. 632 : A. I. R. 1925 Oudh 667.

———S. 252—Procedure—Examination of prosecution witness after defence—Validity of trial.

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he is not guilty on a consideration of the evidence adduced by the prosecution, such finding of fact should, if at all, be set aside by the High Court under S. 439 read with S. 423. *Lakshminarasappa v. Mekala Venkatappah*.

7 Cr. L. J. 267 :

3 M. L. T. 230 : 18 M. L. J. 57 :

31 Mad. 133.

———Ss. 438, 439—*Procedure—Appeal heard by Magistrate—Revision—Reference by Sessions Judge—Procedure.*

Where an appeal from an order of a Second or Third Class Magistrate is heard by a First Class Magistrate, an application in revision against the order of the Appellate Court ought to be made to the Sessions Judge, asking him to make a reference to the High Court and should not be made direct to the High Court. *Abdul Matlab v. Nand Lal*.

25 Cr. L. J. 526 :

77 I. C. 990 : 50 Cal. 423 :

A. I. R. 1923 Cal. 674.

———S. 438—*Reference—Nature of—Illegality of Sessions Judge's order—District Magistrate's power to report to High Court.*

S. 438, Cr. P. C., does not warrant a District Magistrate in reporting to the High Court the proceedings of a Court of Session. A District Magistrate, if he considers the Sessions Judge's order illegal, should move the Public Prosecutor to bring it before the High Court. *In re : Angamnthu Vanathrian*.

13 Cr. L. J. 714 :

16 I. C. 722 : 12 M. L. T. 170 :

1912 M. W. N. 812 :

23 M. L. J. 732.

———S. 438—*Reference—Nature of—Reference to High Court—Abstract questions of law, if can be referred—Sessions Judge finding no illegality—Case, if should be referred.*

Abstract questions of law should not be referred to the High Court for decision in pending proceedings. The object of Ss. 435 and 438 is that incidents of incorrectness, illegality or impropriety should be brought to the notice of the High Court, and where the Sessions Court itself considers that there has been no illegality, etc., there is no proper ground for making a reference. *Emperor v. Prithivinath*.

39 Cr. L. J. 660 :

175 I. C. 935 : 20 N. L. J. 151 :

I. L. R. 1938 Nag. 248 : 11 R. N. 18 :

A. I. R. 1938 Nag. 56.

———S. 438—*Reference—Procedure—Court, whether includes successor-in-office—Jurisdiction—Direct reference by District Magistrate, whether competent.*

A successor in a Court is the same Court as his predecessor in that Court, and, therefore, the predecessor who has departed for another Court can no longer be held to be a presiding officer of the First Court. There should be no judicial action by an inferior Court by way of criticism of its superior Court. A High Court will not ordinarily accept a reference direct from the District Magistrate. He should submit

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it through the proper channel, i. e., the Legal Remembrancer. *Emperor v. Baldeo Prasad*.

25 Cr. L. J. 1277 :

82 I. C. 285 : 22 A. L. J. 772 :

46 All. 851 : A. I. R. 1924 All. 770.

———S. 438—*Reference—Validity of—Acquittal—District Magistrate's power to move High Court for setting aside order of acquittal.*

A District Magistrate has no power to move the High Court to set aside an order of acquittal on revision. *Hussu v. Ishar Singh*.

29 Cr. L. J. 672 :

110 I. C. 224 : A. I. R. 1928 Lah. 843.

———S. 438—*Reference—Validity of—Reference to High Court on facts, when proper.*

A case should not be reported to the High Court on the ground that the conviction is bad on the merits unless it is very clear that the conviction is wrong and that there can be no reasonable doubt of the matter. *Sudaman v. Emperor*.

28 Cr. L. J. 399 :

100 I. C. 1055 : 25 A. L. J. 379 :

49 All. 551 : A. I. R. 1927 All. 475.

———S. 438—*Reference—Validity of—Revision—Practise—Sentence reduced by Sessions Court—Application by District Magistrate asking for enhancement.*

Held, that the powers given to a District Magistrate to make a reference to the High Court relate to proceedings before an inferior Court, and do not empower him to question the propriety of a judgment or sentence passed by a superior criminal authority as the Sessions Judge. In cases where he feels it necessary to question the adequacy of sentence by a superior Court, he should not instruct but inform the Public Prosecutor who might, after receiving proper instructions from the Local Government, lay the matter before the High Court on his own initiative. Though under S. 432, Cr. P. C., the High Court can interfere on information derived from any source whatsoever, it will not, as a rule, entertain a reference from the District Magistrate under S. 438 or a revision application filed by the Public Prosecutor under instructions from the District Magistrate, which has for its object the enhancement of a sentence reduced by the Sessions Judge. *Emperor v. Shah Nawaz*.

8 Cr. L. J. 161 :

1 S. L. R. 40.

———S. 438—*Reference—When competent—District Magistrate's power to report against the decision of a Sessions Judge—Proper procedure.*

S. 438 read with S. 435 does not empower a District Magistrate to report to the High Court when he considers a decision arrived at by the Sessions Judge to be illegal or improper. The correct course is to communicate with the Government Advocate in the matter with a view to his taking action by application or motion. *Emperor v. Mahabirpuri*.

4 Cr. L. J. 422 :

2 N. L. R. 149.

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disclosed by the evidence on the record; against the accused, was of forgery and not of wrongful confinement under Ss. 342 and 357, I. P. C., set aside the order of discharge and purporting to act substantially under S. 437, Cr. P. C., directed enquiry into an offence of forgery under S. 467, Penal Code: *Held*, that the Sessions Judge had no such jurisdiction under S. 437, and his order was illegal. *Gulab Khan v. Emperor*. 10 Cr. L. J. 554; 4 I. C. 312.

S. 437—Scope.

Irregularity or illegality not revealed—Action under S. 437 cannot be taken. *Kallu v. Emperor*. 35 Cr. L. J. 1151;

150 I. C. 852 : 1934 O. L. R. 649 :

11 O. W. N. 818 : 7 R. O. 68 ;

A. I. R. 1934 Oudh 327.

S. 437—Scope.

It is competent to a District Magistrate or Sessions Judge, in the exercise of their revisional powers under S. 437, to set aside orders of discharge, of accused persons by Subordinate Magistrates, on the ground of misappreciation of evidence, and their powers under that section are not limited to defects of jurisdiction or procedure or mistakes of law. In such cases, it is competent to the District Magistrate or Sessions Judge to direct further enquiry to be made by the Subordinate Magistrate. The powers of interference of the High Court, Sessions Judge and District Magistrate are co-extensive under S. 437, Cr. P. C. *In re : Narayanaswami Naidu*. 9 Cr. L. J. 192 ;

1 I. C. 228 : 5 M. L. T. 233 ;

19 M. L. J. 157 : 32 Mad. 220.

S. 437—Scope.

Offence triable by Court of Session as well as by First Class Magistrate—Order of further inquiry, cannot be ordered by District Magistrate. *Kallu v. Emperor*. 35 Cr. L. J. 1151 :

150 I. C. 852 : 1934 O. L. R. 649 :

11 O. W. N. 818 : 7 R. O. 68 ;

A. I. R. 1934 Oudh 327.

S. 437—Scope—Re-trial ordered by Sessions Judge—District Magistrate's authority to disregard order—Accused cannot be released without further enquiry.

A conviction was set aside by the Sessions Judge on the ground of illegality and a new trial by a 1st Class Magistrate was ordered. The accused was directed to be detained in the jail as an under-trial prisoner. On reading the Sessions Judge's order, the District Magistrate wrote that the accused had undergone imprisonment which, under the circumstances, was a sufficient punishment, and that no fresh trial was, therefore, necessary : *Held*, that the District Magistrate had no authority to disregard the Sessions Judge's order directing a new trial. Neither he nor any other Magistrate had authority to release the prisoner without further inquiry. *Emperor v. Tun Lin*. 10 Cr. L. J. 77 :

2 I. C. 541 : 5 L. B. R. 49.

Cr. P. CODE (1898), S. 437

S. 437—Scope.

S. 437 is only an enabling section and does not take away by implication the jurisdiction vested in a Magistrate to hear the complaint again. Hence where a Magistrate dismisses a complaint for default under S. 203 or discharges an accused under S. 259, it is competent for that Magistrate or to his successor-in-office, or to another Magistrate of co-ordinate jurisdiction to entertain a second complaint on the same facts although the order of dismissal or discharge, as the case may be may not have been set aside by a higher Court. When entertaining a second complaint a Magistrate should, however, keep in mind the default committed in the earlier proceedings, for this default may have a bearing not only upon any subsequent default committed but also upon the merits of the complaint. *Harbai v. Raya Premji*. (F.B.) 40 Cr. L. J. 745 ;

183 I. C. 283 : 12 R. S. 44 : 1940 Kar. 74 :

A. I. R. 1939 Sind 193.

S. 437—Scope.

Ss. 435 and 437 do not empower a Court in an appeal from a conviction to order a re-trial of the appellant. *Hamdu Meah v. Emperor*. 11 Cr. L. J. 684 :

8 I. C. 594 : 3 Bur. L. T. 9.

S. 437—Scope.

S. 437 enables a Sessions Judge to direct a case to be committed to the Sessions only in respect of cases exclusively triable by the Court of Session. *Subba Naik v. Emperor*. 31 Cr. L. J. 459

122 I. C. 788 : 1929 M. W. N. 709 :

A. I. R. 1930 Mad. 103.

S. 437—Scope.

S. 437 which is an enabling section, does not, by implication, take away the jurisdiction, which is vested in the Magistrate in a case of this class to hear the complaint again. *Emperor v. Nga Pyu Di*. 1 Cr. L. J. 167 :

10 Bur. L. R. 1 : 2 L. B. R. 27.

S. 437—Scope.

The discharge of an accused or the dismissal of a complaint does not bar the institution of fresh proceedings otherwise than under the provisions of S. 437. *Emperor v. Nga Pyu Di*. 1 Cr. L. J. 167 :

10 Bur. L. R. 1 : 2 L. B. R. 27.

S. 437—Scope.

When a Subordinate Magistrate of the first class, invested with powers under S. 30, makes an order of discharge in a case which, under Schedule II of the Code read with S. 28 or 29 thereof, is triable exclusively by the Court of Sessions, such order is open to revision by the District Magistrate under Ss. 436 and 437. *Yado v. Emperor*. 17 Cr. L. J. 245 :

34 I. C. 965 : 12 N. L. R. 94 :
A. I. R. 1916 Nag. 97.

S. 437—Scope and object.

The section is mainly intended to meet a case where a Magistrate wrongly considers he

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—S. 438—Report—Procedure.

Order recommending setting aside of conviction—Court becomes *functus officio* and cannot, by separate order, reject revision application. *Rameshwar Dutt Singh v. Sharath Singh*.

35 Cr. L. J. 417 (2) :
147 I. C. 516 : 11 O. W. N. 75 :
6 R. O. 273 : A. I. R. 1934 Oudh 85.

—S. 438—Report—Validity of.

A District Magistrate has no power to make a reference to the High Court questioning the propriety of the judgment of a Sessions Judge. *Emperor v. Ishar Singh*.

27 Cr. L. J. 430 :
93 I. C. 158 : 2 Lah. Cas. 187 :
A. I. R. 1927 Lah. 85.

—S. 438—Report—Validity of.

A District Magistrate is not competent to refer to a High Court, under S. 438 a point of law actually arising in a case pending before him. *In re : Palani Gownden*.

15 Cr. L. J. 472 :
24 I. C. 352 : A. I. R. 1914 Mad. 100.

—S. 438—Report—Validity of.

A prosecution Inspector submitted to the District Magistrate a representation through the Superintendent of Police expressing his view that a case should be re-tried and containing the grounds for such re-trial. The District Magistrate forwarded to the High Court the record of the case together with the grounds of appeal made out by the Police, the Sub-Divisional Magistrate's explanation and a copy of his note with a recommendation under S. 438 that the accused be ordered to be bound over : *Held*, that the Cr. P. C. does not contemplate that a representation made by the Police to a District Magistrate in the form of a letter should be taken into consideration by the High Court as embodying the grounds for setting aside an order passed by a Criminal Court and that the District Magistrate acted quite erroneously in treating this representation as a part of a judicial proceeding and forwarding it to the High Court. *Emperor v. Brahmadin*.

28 Cr. L. J. 946 :
105 I. C. 658 : 26 A. L. J. 76 :
A. I. R. 1927 All. 727.

—S. 438—Report—Validity of.

A reference can only be made to the High Court if after accepting loyally the finding of facts arrived at by the trial Magistrate, some question of law arises which necessitates interference with the order passed by the trial Court. When no question of law is involved, the reference is to be rejected. *Emperor v. Mr. B. A. Peters*.

36 Cr. L. J. 842 (1) :
155 I. C. 724 : 11 O. W. N. 717 :
7 R. O. 616 (2) : A. I. R. 1934 Oudh 276.

—S. 438—Report—Validity of.

A reference to the High Court in a criminal matter can only be made in respect of an error on a point of law. *Emperor v. Asimullah*.

26 Cr. L. J. 651 :
85 I. C. 939 : A. I. R. 1925 Cal. 1068.

—S. 433—Report—Validity of.

A Sessions Judge is not justified to refer a

Cr. P. CODE (1898), S. 438

case for enhancement of sentence unless he has heard the appeal and come to a determination as to whether or not the conviction of the appellant is justified. Only if he is satisfied as to the propriety of the conviction, he should make a reference under S. 438. *Emperor v. Intizar Ali Khan*.

10 Cr. L. J. 27 :
2 I. C. 475 (1) : 6 A. L. J. 421.

—S. 438—Report—Validity of.

Appeal by one accused—Transfer of case to Additional Sessions Judge—Accepting of appeal and reference to Chief Court in respect of another accused in the same case—Reference is not competent. *Emperor v. Zama Shah*.

35 Cr. L. J. 396 (1) :
147 I. C. 382 : 11 O. W. N. 66 :
6 R. O. 260 : A. I. R. 1934 Oudh 86.

—S. 438—Report—Validity of.

As a general rule of practice, the High Court will not entertain a reference from a District Magistrate which has for its object the enhancement of a sentence which has been reduced by the Sessions Judge. *Emperor v. Jamna Bai*.

2 Cr. L. J. 515 :
25 A. W. N. 198 : 2 A. L. J. 589 :
I. L. R. 28 All. 91.

—S. 438—Report—Validity of.

District Magistrate cannot make reference for enhancement of sentence passed by Sessions Judge. *Emperor v. Maung Myat*.

32 Cr. L. J. 1125 :
134 I. C. 220 : 9 Rang. 352 :
I. R. 1931 Rang. 284 :
A. I. R. 1931 Rang. 251.

—S. 438—Report—Validity of—Power of District Magistrate to make reference to High Court in case tried by Sessions Judge.

It is very much doubtful whether a District Magistrate is entitled, as a matter of law, to make a reference to the High Court for enhancement of sentence in a case tried by a Sessions Judge. Even if he is so entitled, the procedure is extremely inconvenient. *Emperor v. Ganga*.

15 Cr. L. J. 407 :
23 I. C. 1007 : 12 A. L. J. 519 :
36 All. 378 : A. I. R. 1914 All. 156.

—S. 438—Report—Validity of—Reference by District Magistrate against order of Sessions Judge, whether competent.

A District Magistrate is not competent to make a reference to the High Court under S. 438, recommending that a sentence passed by a Sessions Judge should be enhanced. *Emperor v. Wasawi*.

25 Cr. L. J. 928 :
81 I. C. 544 : 5 Lah. 11 :
A. I. R. 1924 Lah. 437.

—S. 438—Report—Validity of—Reference to High Court asking that part of an order be quashed, whether regular.

A reference under S. 438, against an order passed under S. 145 asking the High Court to confirm a part of the order and to quash the rest is not in form and cannot be

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—S. 438—*Acquittal—Reference by Sessions Judge—Appeal by Government, absence of—Interference by High Court.*

It is not in accordance with the practice of the Allahabad High Court to interfere with an acquittal on a reference by a Sessions Judge where the Government can appeal under S. 417 of the Cr. P. C. and has not done so. *Qalandar Singh v. Muhammad Raza Khan.*

26 Cr. L. J. 127 :
83 I. C. 687 : A. I. R. 1924 All. 624.

—S. 438—*Acquittal—Report—Validity of—Acquittal—Revision by complainant—Reference by Sessions Judge for re-trial to High Court—Delay, effect of.*

Eleven persons were tried by a Magistrate of the First Class for an offence under S. 147 read with S. 347, Penal Code, and were acquitted on the 14th of December 1916. No appeal was preferred by the Government, but the complainant filed a revision in the Court of the Sessions Judge who, observing that the Magistrate had not said in what respect he considered the prosecution story to be exaggerated held that the case was one which should be re-tried, and by his order of reference to the High Court, dated 4th January 1918, recommended that the case should be re-tried: *Held*, that as the Government did not appeal, it was inadvisable to open up the matter again having regard to the long lapse of time between the order of acquittal and the order of reference. *Ram Sambhari Tewari v. Rajman Naik.*

19 Cr. L. J. 607 :
45 I. C. 511 : 16 A. L. J. 373 :
A. I. R. 1918 All. 233.

—S. 438—*Acquittal—Revision, whether lies.*

The High Court has jurisdiction to interfere with an acquittal by way of revision in a proper case; either upon the application of a private individual or on a reference to it under S. 438, Cr. P. C. *Hrish Kesh Mandal v. Abad Haut Mandal.*

18 Cr. L. J. 309 :
38 I. C. 421 : 21 C. W. N. 250 :
44 Cal. 703 : A. I. R. 1917 Cal. 159.

—Ss. 438, 439—*Acquittal—Grounds for interference—Reference by Sessions Judge—Jurisdiction of High Court to entertain reference—Interference—Principles.*

The High Court has jurisdiction to entertain a reference made by a Sessions Judge under S. 438, Cr. P. C., to set aside an order of acquittal, though such jurisdiction will be exercised most sparingly and only in exceptional cases, where there has been a grave and flagrant miscarriage of justice, or a denial of the right of a fair trial. The High Court can entertain such a reference even where the Local Government has not been moved to prefer an appeal under S. 417, or having been moved, has declined to prefer such appeal. *Nathu Mal v. Abdul Haq.*

31 Cr. L. J. 584 :
123 I. C. 841 : 12 L. L. J. 5 :
A. I. R. 1930 Lah. 159.

—S. 438—*Commitment—Validity of.*

Where a Sessions Judge is of opinion that a

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Magistrate empowered under S. 30, has in fact tried a case which he is not competent to try, he should send the case to the High Court for an order that the accused be committed for trial to the Court of Session. *Emperor v. Shamira.*

27 Cr. L. J. 846 :
95 I. C. 766 : A. I. R. 1926 Lah. 576.

—S. 438—*Concurrent jurisdiction.*

Under S. 438 the Sessions Judge and the District Magistrate have concurrent jurisdiction. Consequently, it is open to the District Magistrate to directly refer to the High Court. *Emperor v. Yakub Brohi.*

36 Cr. L. J. 27 :
152 I. C. 339 : 7 R. S. 84 :
A. I. R. 1934 Sind 154.

—S. 438, 439—*Discrepant evidence—Benefit of doubt given to the accused.*

Where the evidence was discrepant and the case against the accused doubtful, the Chief Court, on the revision side, gave him the benefit of doubt and set aside the conviction. *Ram Chand v. Emperor.*

4 Cr. L. J. 495 :
1 P. W. R. Cr. 30.

—S. 438—*Duty of High Court—Reference to High Court—Admission before Sessions Judge, effect of.*

Where in a proceedings before a Sessions Judge admissions of facts are made by either party, such admissions ought to be accepted by the High Court for the purposes of the reference. *Shaikh Garib Haji v. Muchiram Sahu.*

27 Cr. L. J. 133 :
91 I. C. 805 : 30 C. W. N. 359 :
A. I. R. 1925 Cal. 1020.

—S. 438—*Evidence.*

The Court should not resort to the powers conferred by Ss. 438 and 439 and direct additional evidence to be taken for the purpose of filling up a gap in the prosecution case when the necessary evidence was easily available to the prosecutor at the hearing and ought to have been then produced. *In re : United Motor Finance Co.*

37 Cr. L. J. 99 :
154 I. C. 432 : 68 M. L. J. 336 :
1935 M. W. N. 183 :
41 L. W. 434 : 8 R. M. 498 :
A. I. R. 1935 Mad. 325.

—S. 437—*Fresh Reference, whether competent—Reference by Sessions Judge—Reference on subsequent facts after previous refusal to refer, legality of.*

The fact that a Sessions Judge has once refused to make a reference to the High Court does not take away his jurisdiction to make a reference on subsequent facts which come to his knowledge. *Emperor v. Sitaram Narayan Ghogle.*

28 Cr. L. J. 896 :
104 I. C. 912 : 29 Bom. L. R. 480 :
A. I. R. 1927 Bom. 360.

—S. 438—*Interference, grounds for.*

A commitment can only be quashed on a question of law. The question whether the evidence already on the record is sufficient to establish the charge is not such a question. It is a question connected more with the pro-

Cr. P. CODE (1898), S. 252

Examining a prosecution witness after whole of the defence evidence has been recorded, is against law and vitiates the trial. *Karam Chand v. Emperor*.

29 Cr. L. J. 844 :
111 I. C. 396 : 29 P. L. R. 613 :
A. I. R. 1928 Lah. 953.

————S. 252—*Procedure—Failure to examine complainant on appearance of accused—Irregularity.*

Where on the day when the accused appears in answer to the summons which had been issued, the complainant appears and he has no witnesses present with him, and the Court neglects to examine the complainant on that day, he fails to comply with the provisions of the first part of S. 252, but that would not vitiate the trial. There is then no evidence produced in support of the prosecution, and the next part of S. 252 then comes into play. *Rahmat Ali v. Muhammad Murad*.

39 Cr. L. J. 62 :
172 I. C. 113 : 10 R. N. 161 :
A. I. R. 1938 Nag. 103.

————S. 252—*Procedure—Trial of warrant case, effect of.*

Where a Magistrate in trying a warrant case does not adopt the course prescribed by S. 252, but convicts the accused on his own admission without taking evidence and without framing a formal charge, such procedure is not a mere irregularity and the conviction will be set aside. *Emperor v. Chinnapayan*.

4 Cr. L. J. 231 :
I. L. R. 29 Mad. 372.

————S. 252—*Process-fees — Non-cognizable warrant cases—Process-fees for witnesses.*

In the case of non-cognizable warrant cases, neither the complainant nor the accused can be compelled to pay process-fees for the production of witnesses, although the complainant must, under S. 264 in the ordinary course of events, pay process-fees for the summoning of the accused. The expenses as to process-fees for production of witnesses in non-cognizable warrant cases must fall on the Magistrate's budget. *Emperor v. Mg San Nyein*.

27 Cr. L. J. 415 :
93 I. C. 79 : 4 Bur. L. J. 187 :
A. I. R. 1926 Rang. 13.

————S. 252—*Process fees—Non-cognizable warrant cases—Process fees—Party, whether bound to pay.*

In a non-cognizable warrant case the Court is not bound to summon witnesses for the prosecution or the defence under the provisions of Ss. 252 and 257, if the party at whose instance or in whose interest the process is used does not pay process fees as required by Rr. 17 and 18, Process Fees Rules, made under the Burma Process Fees Act, 1910. *Emperor v. Tha Shwe*.

27 Cr. L. J. 1396 :
98 I. C. 708 : 4 Rang. 146 :
5 Bur. L. J. 90 : A. I. R. 1926 Rang. 164.

————S. 252—*Scope and applicability—Procedure.*

The first part of S. 252 refers only to such evidence as is offered on the day when the

Cr. P. CODE (1898), S. 253

accused appears or is brought before the Court; it refers only to the initial production of the accused and it does not refer to every appearance of the accused. That would be opposed to the plain sense of the section, the object of which is that such evidence as is ready and appears against the accused shall be taken directly he appears in Court. If the case is initiated on a *challan*, the accused is produced, and the prosecution witnesses on the day fixed, the prosecution witnesses who have been bound over to appear by the Police are then examined. If it is necessary to adjourn the case, such witnesses still come under the category of "such evidence as may be produced in support of the prosecution", as they were produced on the date of hearing; but where the case is initiated on a complaint, the phrase "such evidence as may be produced in support of the prosecution" refers only to such witnesses as the complainant may bring with him and who have not been summoned by the Court. *Rahat Ali v. Muhammad Murad*.

39 Cr. L. J. 62 :
172 I. C. 113 : 10 R. N. 161 :
A. I. R. 1938 Nag. 103.

————S. 252—*Scope and applicability.*

What the second part of S. 252 authorizes is what is done in every complaint case under another name, the filing of a list of witnesses whom the complainant desires shall be summoned. It follows, then, that after the first stage contemplated in the first part of S. 252 has passed, the hearing of any unsummoned witnesses after that date is a matter within the Court's discretion. The fact that the Magistrate summonses all the witnesses without making a selection or enquiring from the complainant broadly on the points in respect of which they were to depose does not alter the fact that the acceptance of the list filed by the complainant in its entirety is a compliance with the second part of the section. It is only where a list is unduly long and appears to have been filed vexatiously that the magistracy avail themselves of the power, which the law provides, to scrutinize the list to prevent undue harassment of the accused and an unwarranted prolongation of the trial. *Rahat Ali v. Muhammad Murad*.

39 Cr. L. J. 62 :
172 I. C. 113 : 10 R. N. 161 :
A. I. R. 1938 Nag. 103.

————S. 253.

Sec. also (i) Cr. P. C., 1898, Ss. 110, 190, 203, 209, 221, 233, 252, 437.

(ii) U. P. Excise Act, 1910, S. 60, (a), (b).

(iii) Penal Code, 1860, S. 143.

————S. 253—*Discharge, effect of—Further inquiry.*

Where an accused is discharged by a Magistrate under S. 253, the District Magistrate has jurisdiction to hold a further inquiry himself or to direct a further inquiry by a Subordinate Magistrate. *Purbhu Lal v. Janki*.

18 Cr. L. J. 706 :
40 I. C. 354 : A. I. R. 1917 All. 150.

Cr. P. CODE (1898), S. 438

—S. 438—Interference—Grounds for.

The High Court will not interfere where the Magistrate or other officer is acting in an executive and not in a judicial capacity. It is only when an order has been made, and for non-compliance of that order some penalty has been exacted that the High Court will interfere. The High Court could not interfere under S. 438 as the order of the District Magistrate was not a judicial order and secondly, because the order was not enforceable and no penalty had been exacted under it. *Bejoy Krishna Deb v. Shyam Narain Singh*.

41 Cr. L. J. 442 :
187 I. C. 310 : I. L. R. 1939 2 Cal. 532 :
12 R. C. 575 : A. I. R. 1940 Cal. 30.

—S. 438—Interference—Grounds for.

The petitioners presented a petition to a Sub-Divisional Magistrate complaining against certain persons, the servants of a factory, and prayed for proceedings against these persons under Ss. 144 and 107. The Sub-Divisional Magistrate asked the Manager of the factory to report. On receipt of report, the petitioners were called upon to show cause why they should not be prosecuted under S. 182, Penal Code : *Held*, that this order was bad in law, for the Manager being an interested party ought not to have been asked to make a report in the judicial proceedings ; that an order, under S. 476, directing that action should be taken against the petitioners under S. 182, Penal Code, was also bad in law ; that sufficient inquiry had not been made into the complaint made by the petitioners and the local inquiry was desirable ; that in such cases the accused petitioners should be examined if they choose to give evidence. *Emperor v. Rabbi Raut*.

16 Cr. L. J. 320 :
28 I. C. 656 : 19 C. W. N. 127 :
A. I. R. 1915 Cal. 733.

—S. 438—Interference—Grounds for.

Where the trial Court's judgment is perverse on the question of sentence, the High Court ought to interfere. *Emperor v. Sardara*.

33 Cr. L. J. 500 :
137 I. C. 716 : 33 P. L. R. 215 :
I. R. 1932 Lah. 346 : A. I. R. 1932 Lah. 258.

—S. 438—Interference—Grounds for.

Where the District Magistrate referred a case to the High Court under S. 438 for setting aside the order of acquittal passed by the trying Magistrate on the grounds that the trying Magistrate, had taken a grossly biased and distorted view of the case and his judgment showed that "he did not honestly and impartially apply his mind to the actual evidence before him" : *Held*, that the High Court ought not to interfere in revision unless it satisfied itself that the opinion of the District Magistrate was a correct one : and as it could not do so without practically hearing the case as an appeal, it ought not to interfere unless the case was brought before it under the provisions of S. 417. *Hrishi Kesh Mandal v. Abadhaut Mandal*.

18 Cr. L. J. 309 :
38 I. C. 421 : 21 C. W. N. 250 :
44 Cal. 703 : A. I. R. 1917 Cal. 159.

Cr. P. CODE (1898), S. 438

—Ss. 438, 562—Interference—Grounds for—Stamp Act (II of 1899), S. 62—Offence under Stamp Act—Absence of dishonest intention—Order warning accused, legality of—Acquittal—First offenders.

In a case under S. 62 Stamp Act, the Magistrate found that there was no dishonest intention on the part of the accused but passed an order warning the accused not to do so in future : *Held*, that the order of the Magistrate was not one passed under S. 562, Cr. P. C., inasmuch as the provisions of the section do not apply to offences under the Stamp Act ; that the order could not be treated as one of acquittal inasmuch as the accused were warned, that as there was no dishonest intention the accused ought to have been acquitted. *Emperor v. Ishwar Dayal Pandey*.

28 Cr. L. J. 166 :
99 I. C. 598 : 25 A. L. J. 401 :
A. I. R. 1927 All. 238.

—S. 438—Interpretation.

The word "proceeding" used in S. 438 must be a proceeding as referred to in S. 435, that is to say, a proceeding before any inferior Criminal Court. *Bejoy Krishna Deb v. Shyam Narain Singh*.

41 Cr. L. J. 442 :
187 I. C. 310 : 12 R. C. 575 :
I. L. R. 1939 2 Cal. 532 :
A. I. R. 1940 Cal. 30.

—S. 438—Miscellaneous.

A reference made under S. 438 is to be decided on the basis of the position as it was on the date when the proceedings began. *The Muzaffarpur Municipality v. Tara Prasad*.

41 Cr. L. J. 217 :
185 I. C. 630 : 6 B. R. 226 :
12 R. P. 433 : A. I. R. 1940 Pat. 313.

—S. 438—Miscellaneous—Criminal appeal—Memo of appearance filed by Pleader—Vakalat—Criminal Rules of Practice, R. 141.

Where an appeal in a criminal case after being entertained by a proper Court is transferred to a Sub-Divisional Magistrate for disposal and a memorandum of appearance is filed by Pleader for the conduct of the appeal, the Magistrate is not entitled to insist on the filing of a Vakalat. *In re : Manikonda Lingayya*.

25 Cr. L. J. 73 :
75 I. C. 985 : 45 M. L. J. 683 :
18 L. W. 960 : 1924 M. W. N. 51 :
33 M. L. T. 224 : A. I. R. 1924 Mad. 192.

—S. 438—Powers of District Magistrate—Reference by District Magistrate, whether competent.

A District Magistrate has no power to refer an order passed by a Sessions Judge to the High Court for the purpose of having it quashed or modified ; and a fortiori he has no power to call upon the Sessions Judge to forward the reference to the High Court. *Emperor v. Allah Mahr*.

28 Cr. L. J. 281 :
100 I. C. 361 : 25 A. L. J. 191 :
49 All. 443 : A. I. R. 1927 All. 279.

—S. 438—Power of High Court.

Where a Court competent to decide whether an accused person is guilty or not, holds that

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- Question of fact.
- Question of Law.
- Question of sentence.
- Question of severity of sentence.
- Refusal to plead
- Re-trial.
- Revision.
- Revisional interference.
- Revisional Jurisdiction.
- Revisional powers of High Court.
- Right of accused.
- Right of accused to show cause against conviction.
- Scope.
- Scope of.
- Sentence.
- Stay of Criminal Proceedings by High Court in revision.
- Wrong procedure.

———S. 439.

See also (i) Acquittal.

- (ii) Appellate Court.
- (iii) Bengal Alluvial Lands Act, 1920.
- (iv) Cantonment Code, S. 22.
- (v) Copyright Act, 1847, Ss. 14, 18.
- (vi) Cr. P. C. 1898, Ss. 4 (1) (k), (m), 4 (m), 4 (1) r. 32, 87, 107, 109 (c), 110, 146, 154, 182, 195, 202, 203, 209, 222 (2), 233, 235, 239, 247, 253, 257, 345, 345 (2), 369, 379, 417, 423, 426, 428, 435, 436, 439, 440, 476, 476 (b), 497, 514, 520, 523.
- (vii) Criminal trial.
- (viii) Emergency Powers Ordinance 1932, Ss. 4, 39, 61.
- (ix) Explosives Act, 1884, S. 7, Rr. 3, 35.
- (x) Extradition Act, 1903, Ss. 2 (a), 7.
- (xi) Penal Code, 1860, Ss. 147, 186, 206, 209, 225-B, 411, 417, 430, 439.
- (xii) Punjab Act, 1903, S. 27.
- (xiii) Punjab Municipal Act, 1911, Ss. 81, 128.
- (xiv) Revision.
- (xv) U. P. Naik Girls' Protection Act, 1929, S. 4.

———S. 439 — Acquittal — Application by private person to set aside acquittal—High Court, interference by.

No hard and fast rule should be laid down that applications made to the High Court by complainants for setting aside acquittals of persons who have been charged with the commission of offences are to be discouraged, as that would result in the High Court abdicating its functions and, in the present conditions of India, in denial of justice. Every such application should be considered on its own facts. The practice of the High Court has always been to discourage such applications when presented on behalf of private parties and this practice

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should not be departed from. *Wazuddi v. Rahimuddi*. 18 Cr. L. J. 849 ; 41 I. C. 817 : A. I. R. 1918 Cal. 701.

———S. 439—Acquittal.

Acquittal by District Magistrate giving good and irrefutable reasons—Appeal dismissed by Sessions Judge—Interference by High Court in revision is not proper. *Hanuman Prasad v. Mathura Prasad*. 35 Cr. L. J. 118 : 146 I. C. 577 : 10 O. W. N. 903 : 6 R. O. 145 (2) : A. I. R. 1933 Oudh 421.

———S. 439—Acquittal.

Acquittal — Interference by High Court — Conditions—Practice in Oudh stated. *Mcndhai Lal v. Beni Madho*. 35 Cr. L. J. 416 : 146 I. C. 523 (1) : 10 O. W. N. 999 : 6 R. O. 270.

———S. 439—Acquittal — Acquittal is not generally revised.

When no prejudice is caused, High Court will be very reluctant to interfere with the acquittal of persons who have undergone a trial in a Court of competent jurisdiction or with the order of such a competent Court under S. 250. *Debi Parsad v. Emperor*. A. I. R. 1924 All. 674.

———S. 439—Acquittal—Acquittal on erroneous view of law—Revision—Interference.

Where on a prosecution for infringement of copy-right under S. 7 of Act III of 1914, the Court acquitted the accused holding that on account of non-payment of registration charges under S. 18 of Act XX of 1847 which was in force at the time of the first issue of the book, there was no copyright in the book: *Held*, that since the Court had proceeded on a wrong view of the law, and the matter was of great importance to the petitioner in his position as author of the book, the order of acquittal must be set aside. *Venkatrao v. Padmanabha Raju*. 28 Cr. L. J. 957 : 105 I. C. 669 : 53 M. L. J. 529 : 26 L. W. 489 : 1927 M. W. N. 772 : 39 M. L. T. 328 : 51 Mad. 180 : A. I. R. 1927 Mad. 981.

———S. 439—Acquittal—Acquittal, setting aside of—Revision—Mistake of law as to accused's right to property.

The accused, having cut and removed paddy from a land of which possession had been delivered to the complainant in execution of a decree in a title suit, was prosecuted for theft, but was acquitted by the Magistrate on the ground that he had grown the paddy prior to the delivery of possession: *Held*, (1) that the case had not been properly tried and, therefore, the order of acquittal could not stand; (2) that the case should be re-tried but that the accused should not be convicted of theft if it was proved that though he may have made a mistake as to his rights under the law, he was acting in the exercise of a bona fide claim of right. *Udai Narain Gain v. Ramanath Mida*. 18 Cr. L. J. 732 : 40 I. C. 732 : A. I. R. 1918 Cal. 668.

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—S. 438—*Reference—When competent—Remarks by Sessions Judge in his judgment—High Court's power to expunge—District Magistrate, whether can refer.*

A Sessions Judge is not a Court inferior to the District Magistrate and the latter is, therefore, not empowered by law to make a reference under the provisions of S. 438 to the High Court taking exception to certain remarks made by a Sessions Judge in the course of his judgment and asking the same to be expunged therefrom. *Emperor v. Khudabux.*

27 Cr. L. J. 1253 :

98 I. C. 101 : A. I. R. 1927 Sind 45.

—S. 438—*Reference—When competent—Scope—Appeal dealt with by Sessions Judge—District Magistrate whether can refer case to High Court for enhancement of sentence passed by Sessions Judge—Proper course to be followed in such case stated.*

Ss. 435 and 438 empower a District Magistrate to refer the case to the High Court after examining the record of any proceedings before any inferior Criminal Court. Where, however, the appeal has already been dealt with by the Sessions Judge, the District Magistrate is not entitled to refer the case to the High Court under Ss. 435 and 438, for enhancing the sentence passed by the Sessions Judge. The proper course for him is to instruct the law officers of the Crown to file a petition of revision asking for the enhancement of the sentences awarded to the accused with the sanction or under the instructions of the Provincial Government. *Emperor v. Raja Ram.*

40 Cr. L. J. 879 :

41 P. L. R. 825 : 184 I. C. 204 : 12 R. L. 180 (1) :
A. I. R. 1939 Lah. 323.

—S. 438—*Reference—When competent—Sessions Judge, order of—District Magistrate, power of, to make reference to High Court.*

S. 435 does not authorise a District Magistrate to make a reference to the High Court questioning the propriety of an order passed by a Sessions Judge. His proper course when he considers that action is necessary to such a case is to move the Government to file an application in revision. *Daulat Singh v. Emperor.*

27 Cr. L. J. 327 :

92 I. C. 743 : 24 A. L. J. 224.

—S. 438—*Reference—When competent.*

The District Magistrate when he has come to the conclusion that *prima facie*, the prosecution evidence is reliable, ought to the case to the High Court for orders under S. 438, instead of setting it aside himself. *Lakshminarasappa v. Mekala Venkatappoh.*

7 Cr. L. J. 267 :

3 M. L. T. 230 : 18 M. L. J. 57 :

31 Mad. 133.

—S. 438—*Report—Cross-cases—Procedure.*

A District Magistrate has no jurisdiction to make an order giving directions to a Magistrate as to the order and manner of trial of

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cross-cases. If he is of opinion that such an order is necessary in the interests of justice, his proper course is to make a reference to the High Court under the provisions of S. 438. There is no foundation for the view that a Police case is to have precedence over a cross-complaint case, because it is a Police case. The two cases should ordinarily be tried simultaneously and contemporaneously, but should be dealt with wholly separately from each other: each on its own merits and upon the facts and circumstances appearing therein. *Bahatar v. Nobadoli.*

26 Cr. L. J. 65 :

83 I. C. 625 : 28 C. W. N. 487 :
A. I. R. 1924 Cal. 634.

—S. 438—*Report—Duty of Court.*

In making a reference under S. 438, referring Courts must always bear in mind the limits which the High Court has in practice put upon its own discretion. *Phakir Mandal v. Madar Mandal.*

32 Cr. L. J. 1237 :

134 I. C. 915 : 58 Cal. 1081 :
35 C. W. N. 374 : I. R. 1931 Cal. 915 :
A. I. R. 1931 Cal. 619.

—S. 438—*Report—Duty of Court.*

It is not the rule of the Court to interfere with decisions on facts upon evidence except for special reasons and the referring Courts should state in what particular portion of the order an error on a point of law exists. *Phakir Mandal v. Madar Mandal.*

32 Cr. L. J. 1237 :

134 I. C. 915 : 35 C. W. N. 374 :
58 Cal. 1081 : I. R. 1931 Cal. 915 :
A. I. R. 1931 Cal. 619.

—S. 438—*Report—Power of.*

A reference under S. 438 of the Cr. P. C., should always be made in the form prescribed for such reference by r. 139 of Chap. I of the General Rules and Circular Orders of the Calcutta High Court Criminal Appellate Side. *Kutiswar Mondal v. Jitindra Nath Sen.*

26 Cr. L. J. 1055 :

87 I. C. 975 : 30 C. W. N. 646 :
A. I. R. 1926 Cal. 316.

—S. 438—*Report—Particulars of.*

The record of reference must show that the explanation from the Magistrate concerned was called for as that would show the propriety of the procedure followed by him, specially in cases where the Public Prosecutor is not instructed to support the order in revision. *Ramchandrar Lal v. Emperor.*

35 Cr. L. J. 1020 :

149 I. C. 839 : 15 P. L. T. 288 :
6 R. P. 667 : A. I. R. 1934 Pat. 316 (1).

—S. 438—*Report—Power of High Court.*

The High Court is competent to pass a substantive period of imprisonment on reference even if the accused has served out the sentence of imprisonment actually passed on him by the Court below. *Emperor v. Shankar Narayan Gosavi.*

27 Cr. L. J. 557 :

93 I. C. 1053 : 28 Bom. L. R. 300 :
A. I. R. 1926 Bom. 256.

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revision with an acquittal, but it should exercise this jurisdiction sparingly, and only where it is urgently demanded in the interests of public justice. By a long established practice of the Bombay High Court, revisional applications against orders of acquittal are not entertained from private petitioners except on some very broad ground of the exceptional requirements of public justice. *In re : Earedoon Cowasji Parbhu.* 18 Cr. L. J. 668 : 40 I. C. 316 : 49 Bom. L. R. 354 : 41 Bom. 560 : A. I. R. 1917 Bom. 226.

—S. 439—Acquittal—Interference.

Powers of High Court under S. 439 are very wide. It can set aside acquittal when it is one wholly without jurisdiction. *Emperor v. Ram Udit.* 33 Cr. L. J. 511 : 137 I. C. 625 : 9 O. W. N. 319 : I. R. 1932 Oudh 263 : A. I. R. 1932 Oudh 251 (1).

—S. 439—Acquittal—Revision—Practice.

The law gives the power to Courts of revision to interfere even with orders of acquittal, and although interference with such orders is not usual, it may be resorted to in exceptional circumstances. *Municipal Board, Fyzabad v. Vidyadhari.* 22 Cr. L. J. 638 : 63 I. C. 334 : 24 O. C. 157 : 8 O. L. J. 646 : A. I. R. 1921 Oudh 121.

—S. 439—Acquittal — Revision against acquittal, when lies.

Where there is an appeal by a Public Prosecutor or the Crown from an acquittal, the High Court sets its face against revision. But when an aggrieved complainant moves the Government to appeal under S. 417 of the Cr. P. C. and the Government refuses, he can move the High Court in revision, but the latter will exercise its jurisdiction sparingly and only where it is urgently demanded in the interests of public justice. *Sankaralinga Mudaliar v. Narayana Mudaliar.*

23 Cr. L. J. 583 : 68 I. C. 615 : 16 L. W. 413 : 43 M. L. J. 369 : 1922 M. W. N. 579 : 31 M. L. T. 342. A. I. R. 1922 Mad. 502.

—S. 439—Acquittal—Revision against—High Court, interference by.

The High Court will not interfere with orders of acquittal in the exercise of its revisional jurisdiction, unless there are very special circumstances calling for interference. *Nur Mohammad v. Nur Mohammad.*

26 Cr. L. J. 1596 : 90 I. C. 668 : 7 L. L. J. 367 : A. I. R. 1925 Lah. 490.

—S. 439—Acquittal—Revision.

Although a High Court has jurisdiction under S. 439, Cr. P. C. to entertain an application in revision of an order of acquittal when the Crown has preferred no appeal, yet, the Court would not move in such a case unless there has been a glaring defect in the procedure or in the view of the evidence taken by the trial Court or there has been a

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flagrant miscarriage of justice. *Kamikha Pershad v. Emperor.* 28 Cr. L. J. 788 : 104 I. C. 228 : 4 O. W. N. 729 : 2 Luck. 680 : A. I. R. 1927 Oudh 345.

—S. 439—Acquittal—Revision.

As under S. 417, Cr. P. C., an appeal is permitted against an order of acquittal, the High Court does not ordinarily entertain an application for revision of such an order unless the order of acquittal has been made without jurisdiction, and if there be illegality in the proceedings. *Htanda Meah v. Anamale Chettyar.* 37 Cr. L. J. 832 : 163 I. C. 242 (2) : 9 R. Rang. 6 : A. I. R. 1936 Rang. 247.

—S. 439—Acquittal—Revision by private person—Interference.

The High Court will not ordinarily interfere on applications against acquittals by a private party in view of the fact that the Legislature has provided a special channel for appeals against acquittals being filed. *Damdoo v. Harba.*

28 Cr. L. J. 511 : 101 I. C. 895 : A. I. R. 1927 Nag. 210.

—S. 439—Acquittal — Revision — Court acquitting without calling any evidence at all.

As a general rule, the High Court will not interfere with an order of acquittal, but it will do so where such an order is passed without examining the witnesses for the prosecution, on the mere denial of the accused that he was guilty. *Emperor v. Nga San Wein.*

14 Cr. L. J. 177 : 19 I. C. 177 : U. B. R. 1912 148.

—S. 439 — Acquittal — Revision — High Court, interference by.

Although it is contrary to the practice of the High Court to interfere with a judgment of acquittal, it will do so if the Judge who tried the case has, for reasons outside the merits of the dispute, declined to decide the controversy and has dealt with matters which do not decide the complaint before him. *Bhagwan Singh v. Arjun Dutt.* 21 Cr. L. J. 564 : 57 I. C. 84 : 2 U. P. L. R. All. 182 : 18 A. L. J. 846 : A. I. R. 1920 All. 232.

—S. 439 — Acquittal — Revision — High Court, whether will interfere at instance of private party.

An order directing a re-trial of an accused is *prima facie* inappropriate in a case where there has already been a full enquiry into the facts, and no further evidence is likely to be forthcoming. Although the High Court has jurisdiction to set aside an order of acquittal at the instance of a private prosecutor, it will not do so except in exceptional cases, and applications for the purpose should be discouraged on public grounds. *Nga Po Pyaw v. Nga Po Nwe.* 18 Cr. L. J. 970 : 42 I. C. 330 : 3 U. B. R. 1917 19 : A. I. R. 1917 U. Bur. 7.

—S. 439—Acquittal—Revision.

If the Local Government do not exercise their right of asking the High Court to admit an appeal from an order of acquittal passed by a

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entertained. *Collector of Howrah v. Santak Das*.

28 Cr. L. J. 210 :
99 I. C. 1010 : 44 C. L. J. 593 :
A. I. R. 1927 Cal. 261.

—S. 438—Report—Validity of—Reference to High Court, when to be made.

A Sessions Judge should not make a reference to the High Court merely to obtain a ruling on a question of law where he does not really dissent from the actual decision arrived at. *Emperor v. Madho Singh*.

26 Cr. L. J. 865 :
86 I. C. 801 : 23 A. L. J. 189 :
47 All. 409 : A. I. R. 1925 All. 318.

—S. 438—Report—Validity of.

Sessions Judge should not make reference upon his own view of the evidence. The view of the trying Magistrate must be accepted, and if question of law arises necessitating reversal, reference can be made. *Bhola Prasad v. Ram Dulary*.

35 Cr. L. J. 951 :
149 I. C. 364 : 11 O. W. N. 719 :
6 R. O. 554 : A. I. R. 1934 Oudh 280.

—S. 438—Report—Validity of.

The High Court will not, as a general rule, entertain a reference direct under S. 438. *Rasul Khan v. Zarin Khan*. 32 Cr. L. J. 1128 :
134 I. C. 208 : 32 P. L. R. 789 :
I. R. 1931 Lah. 912 : A. I. R. 1931 Lah. 533.

—S. 438—Report Validity of.

The Sessions Judge should not make any reference to the High Court or submit any application for revision of any order contrary to the findings of facts arrived at by the trial Court. *Dulare v. Sudaria*.

36 Cr. L. J. 838 (1) :
155 I. C. 726 (1) : 11 O. W. N. 718 :
7 R. O. 616 (1) : A. I. R. 1934 Oudh 278.

—S. 438—Report—Validity of.

Though it is unusual for a Judge to make a reference regarding the legality of his own order, there is nothing in S. 438 to preclude him from doing so. *Emperor v. Radha Raman Mitra*.

32 Cr. L. J. 364 :
129 I. C. 260 : 1930 A. L. J. 1076 :
I. R. 1931 All. 132 : A. I. R. 1930 All. 817.

—S. 438—Report—Validity of.

Under S. 438 Sessions Judge, etc., can report result of examination of record for order of High Court—Such reports ought not to be made on matters of fact—Sessions Court should not order further inquiry except under exceptional circumstances. *Emperor v. Maung Ba Thon*. (F. B.)

32 Cr. L. J. 950 :
132 I. C. 822 : 9 Rang. 239 :
I. R. 1931 Rang. 214 :
A. I. R. 1931 Rang. 225.

—S. 438—Report—Validity of.

Under S. 438, the Sessions Judge need only report the result of his examination "if he thinks fit," but he must exercise a judicial discretion and, if in his opinion, a material irregularity or illegality has

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occurred, he should report the matter. *Roshan Lal v. Emperor*.

32 Cr. L. J. 653 :
131 I. C. 108 : 32 P. L. R. 130 (2) :
I. R. 1931 Lah. 380 : 12 Lah. 471 :
A. I. R. 1931 Lah. 107.

—S. 438—Report—Validity of.

Under the Cr. P. C. no subordinate Court can sit in revision upon its own record and decide whether upon a certain view of the facts its proceedings should be treated as null. If it thinks that a mistake has been committed, the matter must be referred to the High Court. *Ekambara Mudali v. Alamelammal*.

32 Cr. L. J. 429 :
129 I. C. 628 : 1930 M. W. N. 409 :
32 L. W. 152 : 59 M. L. J. 708 :
53 Mad. 870 : I. R. 1931 Mad. 292 :
A. I. R. 1930 Mad. 1001.

—S. 438—Report—Validity of.

When a District Magistrate finds that a sentence passed by a Magistrate of the First Class and confirmed on appeal by the Sessions Judge is inadequate, it is only open to bring the fact to the notice of the Local Government or to instruct the Government Pleader to move the High Court in the matter. It is not competent to him in such a case to report the case for orders of the High Court under S. 438. *Emperor v. Krishnaji Shamrao*.

1 Cr. L. J. 1115 :
6 Bom. L. R. 1099.

—S. 438—Report—Validity of.

When appeal is pending, reference under S. 438 is not proper—Judge should decide appeal, and if he is unable to do some substantial justice, he can report case on Revision Side with recommendations. *Mir Ghawas v. Emperor*.

37 Cr. L. J. 470 :
161 I. C. 320 : 8 R. Pesh. 170 :
A. I. R. 1936 Pesh. 81.

—S. 438—Report—Validity of.

Where a Subordinate Magistrate has declined to take proceedings under S. 145, it is open to the District Magistrate to take such proceedings himself on the same materials. It is not necessary for him to refer the matter to the High Court. It is also immaterial that he takes such proceedings when the only application before him is an application for transfer of proceedings taken by Subordinate Magistrate under S. 107. *Benoy Chandra Bose v. Kala Chand Bhumali*.

27 Cr. L. J. 1083 :
97 I. C. 59 : 43 C. L. J. 586 :
A. I. R. 1926 Cal. 1049.

—S. 438—Report of order—Nature of.

S. 438 (1) does not authorize the Sessions Judge or Magistrate to refer his own order with a recommendation that it be altered. *Ramasis Thakor v. Emperor*.

35 Cr. L. J. 22 (2) :
146 I. C. 370 : 14 P. L. T. 759 :
6 R. P. 255 : A. I. R. 1933 Pat. 697.

—Ss. 438, 439—Revision.

The High Court should freely exercise the power to revise any order passed under the

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acquittal when no appeal has been preferred by the Local Government. *Emperor v. Jarnali*.

26 Cr. L. J. 686 :
86 I. C. 62 : 26 P. L. R. 35 :
A. I. R. 1925 Lah. 464.

—S. 439—Acquittal.

The High Court is not precluded from interfering with an order of acquittal, at the instance of a private prosecutor. The High Court can interfere if circumstances justify it. *Municipal Committee, Bilaspur v. Emperor*.

36 Cr. L. J. 1336 :
157 I. C. 781 : 31 N. L. R. 261 :
8 R. N. 64.

—S. 439—Acquittal.

The High Court may set aside a finding of acquittal if that finding is based on an erroneous view of the law and if the findings of fact would justify a conviction. If a correct view of the law is taken, that should not prevent interference by High Court. *Sitaram v. Tilokchand*.

34 Cr. L. J. 145 :
141 I. C. 273 : 28 N. L. R. 298 :
I. R. 1933 Nag 55 : A. I. R. 1933 Nag 36.

—S. 439—Acquittal.

The High Court will not, except perhaps in very special circumstances, interfere on an application by a private person with an order of acquittal. *Banke Lal v. Maiku*.

35 Cr. L. J. 121 :
146 I. C. 638 : 10 O. W. N. 1037 :
6 R. O. 150 (2) : A. I. R. 1933 Oudh 430.

—S. 439—Acquittal.

Where an order of acquittal passed by a Magistrate proceeds on a misconception of law on the material points involved in the case, the High Court will set aside the order of acquittal in revision and order a re-trial. *Bala Prasad v. Muzammil Hussain*.

35 Cr. L. J. 998 :
149 I. C. 612 : 1934 A. L. J. 541 :
6 R. A. 930 : A. I. R. 1934 All 190.

—S. 439—Acquittal.

Where several persons are convicted, and in an appeal preferred by one of them, they are found not guilty, High Court under S. 439, can make an order acquitting the other accused also. It is not necessary to issue a rule regarding the other accused. *Rajanikanta Barman v. Emperor*.

32 Cr. L. J. 1003 :
133 I. C. 183 : 58 Cal. 902 : 35 C. W. N. 347 :
I. R. 1931 Cal. 647 : A. I. R. 1931 Cal. 618.

—S. 439—Acquittal.

Where the view taken by the trying Magistrate is palpably unreasonable or by any means perverse, the mere fact that the Court of Revision inclined to take a different view of the evidence from that of the trying Magistrate does not justify it, under S. 439, to interfere with an order of acquittal. *Mathura Prasad v. Chakra Dhar*.

35 Cr. L. J. 1236 :
150 I. C. 951 : 1934 O. L. R. 659 :
11 O. W. N. 810 : 7 R. O. 81.

—S. 439—'Acquittal', meaning of—Charge under S. 302—Conviction under S. 304—Revision

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—High Court's power to alter conviction to one under S. 302.

For purposes of S. 439, Cr. P. C., acquittal means a complete acquittal, and discharge on all the allegations and facts charged and not an acquittal on one charge and a conviction on another. Therefore, where an accused is charged under S. 302, Penal Code, but is convicted under S. 304, Penal Code, the High Court is competent in revision to alter the conviction from one under S. 304 to one under S. 302, Penal Code. *Fazal Khan v. Emperor*.

28 Cr. L. J. 508 :
101 I. C. 892 : 8 Lah. 136 :
A. I. R. 1927 Lah. 369:

—S. 439—Acquittal—Whether revision lies—Interference.

In private prosecution where the Crown does not think it proper to move against the order of acquittal, the High Court should not ordinarily interfere; but it does so only when it is satisfied that there has been an error of law committed by the acquitting Court or where there has been a gross miscarriage of justice or in public interest. *Basirula v. Asadulla*.

30 Cr. L. J. 1013 :
119 I. C. 130 : 33 C. W. N. 576 :
I. R. 1929 Cal. 738 : A. I. R. 1929 Cal. 639.

—Ss. 439, 417—Acquittal, revision against—Procedure.

The proper method of setting aside an acquittal is to move the District Magistrate to move the Local Government to appeal under S. 417, Cr. P. C. If the Magistrate in the proper exercise of his discretion or even merely because he is really not interested in a private dispute or a private injury, refuses to do so, the private party can move the High Court in revision. Ordinarily the High Court will not interfere in revision against an order of acquittal. But it has frequently done so in suitable cases. *Harbans v. Emperor*.

26 Cr. L. J. 98 :
83 I. C. 658 : 22 A. L. J. 820 :
A. I. R. 1924 All. 778.

—Ss. 439, 417—Acquittal—Revision in cases of acquittal—High Court, interference by.

The High Court is loath to take up in revision cases of acquittal in which there has been public prosecution by a public official and which have not been brought before it on appeal by the Local Government. *Emperor v. Harak Chand Marwari*.

19 Cr. L. J. 145 :
43 I. C. 433 : 15 A. L. J. 897 : 40 All. 84 :
A. I. R. 1918 All. 174.

—Ss. 439, 438—Acquittal—Revision against—Interference.

The High Court will not, on an application in revision against an acquittal, treat the case before it as a case of appeal. It will not be prepared to interfere unless there are exceptional matters compelling it to do so; as for example, where the Magistrate does not appear to have exercised an impartial judicial mind in considering the evidence, or where he has entirely left evidence out of consideration or has relied upon evidence which is not to be found on the record. It is going too

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section for the very reason that the words are so wide. *Sunnasi Kudumban v. Sivasubramania*.

18 Cr. L. J. 612 :

39 I. C. 980 : 5 L. W. 763 : 22 M. L. T. 42 :

1917 M. W. N. 566 : 33 M. L. J. 366 :

40 Mad. 1131 : A. I. R. 1918 Mad. 538.

-----S. 438—Revision—Acquittal, interference with.

Though it is the settled practice of the High Court not to interfere in revision with acquittals where the order of acquittal involves the peace of the district it should be set aside, especially where the Magistrate has failed to exercise his discretion and has acted on an erroneous view of the law. *Jitan Dusadh v. Damoo Sahoo*.

18 Cr. L. J. 151 :

37 I. C. 519 : 1 P. L. J. 264 : 20 C. W. N. 862 :

2 P. L. W. 409 : A. I. R. 1916 Pat. 152.

-----S. 438—Scope.

Movable property in which offender has only an undivided fractional share, is not liable to attachment by seizure and subsequent sale. *Emperor v. Pramatha Bhushan Roy*.

34 Cr. L. J. 503 :

143 I. C. 97 : 37 C. W. N. 567 :

60 Cal. 932 : I. R. 1933 Cal. 334 :

A. I. R. 1933 Cal. 402.

-----S. 438—Scope.

S. 438 is not limited to the interference of the court under S. 439 but it can interfere under the wide powers which it possesses, whether under Ss. 439 or 561-A. *Louis Phillip Dias v. Mehadev Barik Raut*.

35 Cr. L. J. 311 :

147 I. C. 230 : 35 Bom. L. R. 1054 :

58 Bom. 49 : 6 R. B. 177 :

A. I. R. 1933 Bom. 485.

-----S. 439.

-----Acquittal.

-----Alien enemy—Whether can apply in revision.

-----Alteration of conviction.

-----Any proceeding, meaning of.

-----Appealable cases.

-----Applicability.

-----Application for revision.

-----Application in revision by private party to convict accused of offences of which they are acquitted.

-----Case for revision.

-----Charge, framing of.

-----Civil Court's order.

-----Competency of revision.

-----Compounding in revision.

-----Concurrent finding of fact.

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-----Power of High Court.

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-----Costs.

-----Criminal Revisional Jurisdiction.

-----Criminal Revisional Jurisdiction of High Court.

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-----Death of accused during pendency, effect of.

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-----Discretion.

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-----Effect of amendment.

-----Enhancement.

-----Enhancement of sentence.

-----'Error of law,' meaning of.

-----Evidence.

-----Executive order by Magistrate.

-----Exercise of discretion.

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-----Exercise of revisional jurisdiction.

-----Expunging of remarks.

-----Findings of facts.

-----Fresh application, whether barred.

-----Grounds for interference.

-----Grounds for interference by High Court in revision.

-----Ground for revision.

-----Grounds for setting aside conviction.

-----Ground of interference on revision.

-----Illegality.

-----Interference.

-----Interlocutory order.

-----Interpretation of.

-----Interpretation of Statutes.

-----Jurisdiction—

-----Jurisdiction to entertain.

-----Jurisdiction to interfere.

-----Limitation.

-----Limitation for revision.

-----Misappropriation of evidence.

-----Miscellaneous.

-----Notice.

-----Object of.

-----Omission of convict to appeal.

-----Omission to state facts fully in revision application.

-----Order directing prosecution.

-----Other remedy.

-----Party in contempt.

-----Pending proceedings.

-----Power of Chief Court in revision.

-----Power of Chief Court to examine record of case.

-----Power of Court.

-----Power of District Magistrate to order re-trial on revision.

-----Powers of High Court.

-----Power of revision.

-----Power of revision in cases involving appreciation of discharge.

-----Power to interfere.

-----Power to interfere with acquittal.

-----Power to interfere with charge framed during pendency of trial.

-----Power to order re-trial.

-----Power to quash conviction.

-----Power to revise order of Civil Court under S. 476.

-----Power to set aside conviction.

-----Power to set aside order of acquittal.

-----Power to set aside order of prosecution.

-----Powers under.

-----Practice.

-----Procedure.

-----Proceedings under S. 145.

-----Proceedings under S. 195 (1) (a).

-----Prohibition under.

-----Quashing proceedings.

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is charged. If convicted, his first remedy is by way of appeal and not revision. *In re : Ramiraddi*.

- 32 Cr. L. J. 779 (b) :
131 I. C. 624 : 33 L. W. 542 :
54 Mad. 251 : 60 M. L. J. 691 :
1931 M. W. N. 766 :
4 Mad. Cr. Cas. 141 :
I. R. 1931 Mad. 576 :
A. I. R. 1931 Mad. 240.

—S. 439—Appealable cases.

An application in revision would not be entertainable, if the accused has failed to avail himself of his right of appeal; but the Court can receive information or knowledge from a third party and act upon it of its own accord. *Shailabala Devi v. Emperor*. (F. B.)

- 34 Cr. L. J. 1115 :
145 I. C. 977 : 6 R. A. 216 :
1933 A. L. J. 1059 :
A. I. R. 1933 All. 678.

—S. 439—Appealable cases.

Motor Vehicles Act (VII of 1914), S. 14—Conviction under—Fine and suspension—Appeal, not filed—Revision cannot be entertained. *Garanaud Singh v. Emperor*.

- 35 Cr. L. J. 116 :
146 I. C. 545 (2) : 6 R. Rang. 103 :
A. I. R. 1933 Rang. 329.

—S. 439—Appealable cases.

S. 439 (5) only bars interference at the instance of party who could have appealed but did not appeal. *Secretary, High Court Bar Association, Lahore v. Emperor*.

- 33 Cr. L. J. 831 :
139 I. C. 696 : 33 P. L. R. 911 :
I. R. 1932 Lah. 606 :
A. I. R. 1932 Lah. 559.

—S. 439—Appealable cases.

The High Court has no jurisdiction to entertain proceedings by way of revision when the Local Government could have appealed but has not appealed. *Emperor v. Ganpat*.

- 35 Cr. L. J. 28 :
146 I. C. 332 : 6 R. N. 85 :
29 N. L. R. 365 :
A. I. R. 1933 Nag. 259.

—S. 439 (5)—Appealable cases.

Where a party aggrieved has a right of appeal which he has deliberately elected to leave unused, the High Court will, as a rule, be slow to interfere in revision either of its motion or at the instance of any unauthorised third person. *Tejmal Hassomal v. Emperor*.

- 34 Cr. L. J. 67 :
140 I. C. 697 : 26 S. L. R. 345 :
I. R. 1933 Sind 16 :
A. I. R. 1932 Sind 211.

—Ss. 439, 476—Applicability—Order of Civil Court under S. 476—S. 439 has no application—Revision lies under S. 115, Civil Procedure Code (Act V of 1908).

S. 439, Cr. P. C., only applies to the cases which come before the criminal Courts within the meaning of the Cr. P. C. A Civil Court does not cease to be a Civil Court when it is

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considering an application made to it under S. 476, and if for the purposes of that application it remains a Civil Court, it must be governed by the provisions of the Cr. P. C., and not by those of the Cr. P. C. Where therefore an order has been passed by a Civil Court under S. 476, Cr. P. C., S. 439 has no application. The High Court can only exercise the revisional powers under S. 115, Cr. P. C. *E. P. Kumaravel Nadar v. T. P. Shanmuga Nadar*. (F. B.)

- 41 Cr. L. J. 769 :
189 I. C. 630 : 51 L. W. 542 (2) ;
1940 1 M. L. J. 719 :
1940 M. W. N. 472 (2) ;
13 R. M. 329 : I. L. R. 1940 Mad. 762 :
A. I. R. 1940 Mad. 465.

—S. 439—Applicability.

The meaning of S. 439 (4) is that, where an accused person has been acquitted on all charges he is not to be convicted, but if he has been convicted at all, S. 439 (4) does not apply to him. *Gaya Barhai v. Emperor*.

- 23 Cr. L. J. 641 :
69 I. C. 81 : 9 O. L. J. 342 :
4 U. P. L. R. Oudh 81 :
A. I. R. 1922 Oudh 4.

—S. 439 (6)—Applicability.

Does not apply to a convicted person whose appeal has been heard by the High Court itself. *Ramlakhan v. Emperor*.

- 33 Cr. L. J. 155 :
135 I. C. 522 : 10 Pat. 872 :
13 P. L. T. 17 :
I. R. 1932 Pat. 42 :
A. I. R. 1932 Pat. 126.

—S. 439—Application for revision—Delay, effect of—Order of acquittal—Interference in revision—Principles.

An order of discharge or acquittal should not be set aside unless it is clearly wrong and it would be a travesty of justice to order retrial in such a case on revision after the lapse of more than a year and a half from the date of the discharge or acquittal of the accused. *Bishan Singh v. Abdul Ghafur*.

- 29 Cr. L. J. 895 :
111 I. C. 575 : A. I. R. 1928 Lah. 178.

—S. 439—Application for revision, maintainability of—Bombay City Municipalities Act (XVIII of 1925), S. 110—Notice of demand—Order passed by Sessions Judge in revision.

An application for revision at the instance of the parties does not lie against an order passed in revision by a Sessions Judge against an order passed by a First Class Magistrate on appeal against a notice of demand under S. 110 of the Bombay City Municipalities Act of 1925. *Ahmedabad City Municipality v. Vadilal Vakhichand*.

- 29 Cr. L. J. 1081 :
112 I. C. 585 : 30 Bom. L. R. 1084 :
A. I. R. 1928 Bom. 376.

—S. 439—Application for revision on criminal side—Application to High Court—Previous application to Sessions Judge, whether necessary—Appeal to District Magistrate, effect of.

The High Court will not entertain an applica-

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S. 439—*Acquittal based on findings of fact—Revision.*

Where an accused person is acquitted of a charge under S. 447, Penal Code, on the ground that at the time when he took possession of the property in dispute, the property was not in the possession of anybody, the High Court will not interfere with the acquittal in revision, inasmuch as the acquittal is based on a finding of fact. *Emperor v. Harphul.*
26 Cr. L. J. 689 : 86 I. C. 65 : 26 P. L. R. 38 : 71 L. L. J. 42 : A. I. R. 1925 Lah. 336.

S. 439—*Acquittal.*

Even in cases of acquittal, High Court interferes where there is a glaring defect in procedure of lower Court or wrong view of law is taken. *Abdul Shakur v. Palla Ram.*
32 Cr. L. J. 828 (2) : 132 I. C. 50 : 8 O. W. N. 341 : I. R. 1931 Oudh 210. A. I. R. 1931 Oudh 273.

S. 439—*Acquittal—Failure to record reasons—Revision.*

A Magistrate when giving his consent to the withdrawal of a case under S. 494, should record his reasons, but the failure to do so does not vitiate the order so as to entitle the High Court to interfere in revision with what is virtually an order of acquittal. The High Court will not ordinarily set aside an order of acquittal in revision. *Mul Singh v. Empire.*
24 Cr. L. J. 433 : 72 I. C. 593 : A. I. R. 1923 Lah. 163.

S. 439—*Acquittal—Grounds for—Conviction—Loss of record, whether ground for acquittal—Sentence, penalty—Revision, whether can be ordered.*

Petitioner was convicted under S. 323, Penal Code, and sentenced to pay a fine of Rs. 50. He moved the Sessions Judge to exercise his revisional powers and to refer the case to the High Court. It was discovered that the record of the case was lost, so that the Sessions Judge could obtain no materials upon which to make his reference. He, therefore, asked the High Court to set aside the conviction and sentence and to order a re-trial. *Held*, that the loss of the record after conviction was no ground for the acquittal of the accused and that the sentence being a petty one, no re-trial could be ordered. *Sisco Jhawan Panda v. Ram Sakhi Kaur.*
18 Cr. L. J. 737 : 40 I. C. 737 : A. I. R. 1917 Pat. 420.

S. 439—*Acquittal—Revision—High Court—Practice and procedure.*

Although the High Court does not ordinarily interfere with orders of acquittal in revision, yet it cannot be expected that it would hesitate to do so, where the acquittal is based not upon an appreciation of doubtful evidence, but upon a manifest error in law appearing on the face of the judgment. *Alimnabad Municipality v. Magan Lal.*
5 Cr. L. J. 171 : 9 Bom. L. R. 156.

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S. 439—*Acquittal—Revision.*

High Court will not entertain any application for revision against an order of acquittal made by a private individual unless there exist certain circumstances, which make it imperative in the interest of public justice for the High Court to set aside an order of acquittal which is manifestly perverse and unjust. *Manila Bakhsh v. Riaz Ahmad.*
37 Cr. L. J. 490 : 161 I. C. 828 : 1936 O. L. R. 207 : 1936 O. W. N. 381 : 8 R. O. 340.

S. 439—*Acquittal—Interference in revision.*

The High Court has jurisdiction to interfere with acquittals in revision, though this is not encouraged, and where serious injustice has been caused by an error of law, the High Court should interfere. *Emperor v. Datta Ram.*
29 Cr. L. J. 538 : 100 I. C. 362 : A. I. R. 1928 Lah. 844.

S. 439—*Acquittal—Interference—Practice.*

The Court of Revision will not ordinarily interfere with an order of acquittal. *Babu Mal v. Ghast.*
29 Cr. L. J. 34 : 106 I. C. 450 : A. I. R. 1928 Lah. 185.

S. 439—*Acquittal—Interference.*

The powers of the High Court in criminal revision are not intended for the gratification of private malice, nor are they to be used to vindicate the position of a private prosecutor where a merely technical offence has been committed, however, clearly that technical offence may have been proved. *Narayan Malharana v. Emperor.*
31 Cr. L. J. 789 : 125 I. C. 134 : 9 Pat. 113 : A. I. R. 1930 Pat. 241.

S. 439—*Acquittal—Revision—High Court, power of.*

The High Court can no doubt revise orders of acquittal, but the power of reversing acquittals is one that will only be used sparingly and when the interests of public justice demand. It is in very exceptional cases that acquittals are set aside in revision on the application of private persons. *Khem Chand v. Lahu.*
26 Cr. L. J. 511 : 85 I. C. 255 : 3 Bur. L. J. 323 : A. I. R. 1925 Rang. 193.

S. 439—*Acquittal—Petition against—Revision—High Court, power of, interference of—Jurisdiction.*

A High Court has jurisdiction to interfere on

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———S. 439—*Concurrent findings of facts—Revision—Criminal cases—Practice.*

Generally the Chief Court will not interfere on the revision side when the Original and the Appellate Courts are agreed in their finding on facts. But when it appears that the Courts have shown a great tendency to treat mere interferences and probabilities as proof, and evidence has not been properly weighed, the Chief Court will interfere in the interests of justice. *Hira Singh v. Emperor.*

1 Cr. L. J. 953 :
5 P. L. R. 428.

———S. 439—*Concurrent findings of facts—Revision—First report.*

Where, with reference to the first report at the *thana* and other circumstances, the case against an accused person is very doubtful, the benefit of the doubt should be given to the accused, and in such cases, even the concurrent findings of facts by the lower Courts are liable to be set aside on revision. *Kesar Singh v. Emperor.*

14 Cr. L. J. 320 :
19 I. C. 1008 : 5 P. W. R. 1913 Cr. :
152 P. L. R. 1913.

———S. 439 — *Concurrent jurisdiction—Revision—Discharge—Further inquiry—Remedies before Sessions Judge or District Magistrate, whether must be exhausted—Practice.*

Before applying to the High Court to revise an order of discharge by a Deputy Magistrate and to direct a further inquiry, the applicant must exhaust all his remedies before the District Magistrate or the Sessions Judge. *Gopobondhu v. Venkata Pantulu.*

25 Cr. L. J. 310 :
76 I. C. 1630 : 18 L. W. 651 :
1923 M. W. N. 837 : A. I. R. 1924 Mad. 228.

———S. 439—*Conversion of acquittal into conviction—Power of High Court.*

It is not open to a High Court to convert a finding of acquittal into one of conviction in revision. *Chhattar Singh v. Ramdayal.*

30 Cr. L. J. 552 :
116 I. C. 79 : I. R. 1929 Nag. 127.

———S. 439—*Conviction—Practice—Summary rejection of an appeal by the Sessions Judge—Revision of the Judge's order—High Court's practice where evidence found insufficient—Circumstantial evidence—Suspicion—Subsequent conduct of the accused confirming suspicion.*

On an application to the High Court to set aside an order of the Sessions Judge summarily dismissing an appeal which the applicants preferred from an order of the Magistrate convicting them of an offence under the Penal Code, the High Court finding that the evidence on which the conviction was based was insufficient, instead of remanding the appeal for a hearing on its merits set aside the conviction and sentence and acquitted and discharged the accused. One G, a servant of the complainant, deposited for safe custody a sum of money with I (one of the accused) who put it into a box, locked it and kept the key with himself. The other accused (C) used the box as a bed during the greater part of the night

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and the next morning the lock was found to have been forced and the money was missing. Neither I nor C was in continuous possession of the box from the time the money was put into it to the time that it was missed. It was found by the Magistrate that the accused set up a false story to account for the loss of the money and the evidence showed that the accused had opportunities to take away the money unnoticed. On a charge on these facts against the accused under Ss. 106 and 406/109, Penal Code, with respect to the money lost : *Held*, that these facts could not support a conviction. In a case of this kind where there is no eye-witness and where the stolen property has not been found, the possibility of any other person being a culprit must be excluded before the accused can be convicted. *Iswar Chandra Das v. Emperor.*

3 Cr. L. J. 385 :
10 C. W. N. 446.

———S. 439—*Conviction—Summonses and warrants, execution of—Court, duty of—Conviction without hearing defence witness, illegality of—Revision.*

It is the business of a Court to see that its summonses and warrants are duly executed, and if an accused insists on a Court issuing process for the attendance of his witnesses, he has done all that the law requires of him. It is not his duty to take suitable steps to have his witnesses brought into Court but it is for the Court to do it. Where, therefore, an accused is convicted without hearing his witnesses, as they fail to appear as summonses and warrants are not executed on them, the conviction is illegal and cannot be sustained. *Bissay v. Emperor.*

23 Cr. L. J. 124 :
65 I. C. 556 : 19 A. L. J. 945.

———S. 439—*Conviction liable to be set aside in revision—Complaint, non-mention of assault in—Conviction for assault, illegality of—Penal Code (Act XLV of 1860), S. 323.*

Where a complaint merely mentioned the fact of the accused having used abusive language but did not contain any mention of assault and the accused was convicted under S. 323, Penal Code : *Held*, that the conviction was bad and liable to be set aside in revision. *Mool Chand v. Emperor.*

17 Cr. L. J. 111 :
32 I. C. 847 : 1 P. W. R. 1916 Cr. :
A. I. R. 1916 Lah. 406.

———S. 439—*Conviction, setting aside of—Accused, previous convict—Sentence, adequacy of.*

The High Court will not set aside a conviction and direct a re-trial merely because after the conclusion of the case the Crown has discovered that the accused is a previous convict and the sentence passed upon him is not adequate. *Emperor v. Ram Din.*

26 Cr. L. J. 654 :
85 I. C. 942 : A. I. R. 1925 All. 292.

———S. 439 (b)—*Conviction—Right of accused—Accused's appeal summarily dismissed—Accused subsequently called upon to show cause against enhancement of sentence, whether can be*

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Sessions Judge sitting with Assessors, it is difficult to imagine any circumstances which would justify the High Court in interfering with the order in revision at the instance of the complainant. After a regular trial in the Sessions Court, it would be only in the most exceptional cases that the High Court would be justified in interfering under S. 439 with an order of acquittal, when there is no appeal by the Local Government under S. 417 of the Code. *Joita Bechar v. Prashottam Sankalchand*.

24 Cr. L. J. 734 :
73 I. C. 974 : 25 Bom. L. R. 488 :
A. I. R. 1923 Bom. 455.

S. 439—Acquittal—Revision—Interference.

As a general rule, it is expedient not to interfere on revision at the instance of a private person, with an acquittal after trial by a proper Tribunal, and applications for that purpose should be discouraged on public grounds. *Dabiruddi Naskar v. Sakat Molla*.

30 Cr. L. J. 579 :
116 I. C. 164 : 49 C. L. J. 129 :
33 C. W. N. 258 : I. R. 1929 Cal. 452 :
56 Cal. 924 : A. I. R. 1929 Cal. 169.

S. 439—Acquittal—Revision—Interference by High Court.

The High Court ought not to interfere in revision with an order of acquittal unless interference is urgently demanded in the interests of public justice. *Para Kanakan v. Amir Bi Ammal*.

26 Cr. L. J. 249 :
84 I. C. 249 : 20 L. W. 327 :
A. I. R. 1924 Mad. 837.

S. 439 — Acquittal — Revision — Local Government refusing to appeal—Jurisdiction of High Court.

In cases of acquittal of an accused, the revisional jurisdiction of a High Court should ordinarily be exercised sparingly and only where it is urgently demanded in the interests of public justice, and a High Court should not entertain an application by a complainant to revise an order of acquittal after the Local Government has declined to direct an appeal against it. *Graham & Co. v. Elsey*.

17 Cr. L. J. 91 :
32 I. C. 683 : 9 Bur. L. T. 47 :
8 L. B. R. 356 : A. I. R. 1916 L. Bur. 16.

S. 439—Acquittal—Revision—Interference.

The High Court will not interfere in revision with orders of acquittal. *Chairman, Purulia Municipality v. Bishun Sao*. 29 Cr. L. J. 1017 :
112 I. C. 345 : A. I. R. 1928 Pat. 193.

S. 439—Acquittal—Revision—Interference with—Jurisdiction.

The High Court has jurisdiction to interfere in revision even in the case of an order of acquittal but such interference will only be where serious injustice has been caused by an error of law. *In re : Mogal Beg*.

20 Cr. L. J. 49 (a) :
48 I. C. 817 : 35 M. L. J. 665 :
25 M. L. T. 22 : 42 Mad. 109 :
9 L. W. 201 : A. I. R. 1919 Mad. 653.

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S. 439—Acquittal—Revision—Practice.

A High Court has power under S. 439, Cr. P. C., to revise an order of acquittal, but in practice that power should not ordinarily be exercised because an appeal can always be instituted by the Local Government. *Tilak Ram v. Bhagga Singh*.

16 Cr. L. J. 352 :
28 I. C. 736 : 2 O. L. J. 190 :
A. I. R. 1915 Oudh 203.

S. 439—Acquittal—Revision—Practice.

A High Court has power under S. 439, Cr. P. C. to revise an order of acquittal, though not to convert a finding of acquittal into one of conviction, but as a general rule, the power is to be exercised sparingly and only in most serious cases and in the event of a grave miscarriage of justice. *Pahelwan Singh v. Sahib Singh*.

22 Cr. L. J. 597 :
62 I. C. 869 : 19 A. L. J. 382 :
A. I. R. 1921 All. 76.

S. 439—Acquittal—Revision—Re-trial, when to be ordered—Miscarriage of justice.

Where a competent Court has dismissed a case after considering the evidence and giving thorough and careful reasons, an accused party who had stood his trial, ought not to be ordered to run the risk again, unless there is clear evidence of a miscarriage of justice. *Hashmat Ali v. Emperor*.

17 Cr. L. J. 459 :
36 I. C. 139 : 14 A. L. J. 1075 :
A. I. R. 1916 All. 36.

S. 439—Acquittal—Revision.

The High Court has power on the revision side to set aside even an order of acquittal, and will do so when the order is based on a misapprehension of the law. *Fakir Chand v. Fakir*.

25 Cr. L. J. 699 :
69 I. C. 379 : A. I. R. 1924 Lah. 286 (1).

S. 439 — Acquittal — Revision, whether lies—Order of acquittal—Right of appeal—High Court, power to interfere in revision—Practice.

It is against the practice of the High Court to interfere in revision with orders of acquittal. The right of appeal in case of acquittal is vested in the Local Government and not in the District Magistrate, but it is always open to the latter to move the Local Government to file an appeal. *Emperor v. Gur Dayal*.

15 Cr. L. J. 304 :
23 I. C. 512 : 12 A. L. J. 255 :
A. I. R. 1914 All. 76.

S. 439—Acquittal—Interference.

The fact that the High Court might possibly have come to a different conclusion is no ground for exercising the revisional jurisdiction against the order of acquittal. *U. Min v. Maung Taik*.

32 Cr. L. J. 928 :
132 I. C. 545 : 8 Rang. 663 :
I. R. 1931 Rang 177 : A. I. R. 1931 Rang 94.

S. 439—Acquittal—Interference.

The High Court, as a general rule, will refuse to interfere in revision, with an order of

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permitted to challenge conviction—Summary dismissal of appeal, effect of.

When an accused person has exercised his right of appeal and failed, he cannot, notwithstanding the fact that his appeal has been summarily dismissed under S. 421 of the Cr. P. C. and not after a hearing on the merits under S. 424 of the said Code, while showing cause why his sentence should not be enhanced, show cause against his conviction as well, except in the same manner as in any other revision application, that is to say, that the conviction was based on no legal evidence or was manifestly erroneous. *Emperor v. Shidoo.*

29 Cr. L. J. 936 :
111 I. C. 856 : 22 S. L. R. 453 :
A. I. R. 1929 Sind 26.

———S. 439 (b)—*Conviction—Right of accused.*

Per *De Souza, A. J. C.*—An order summarily dismissing an appeal virtually amounts to an order confirming the findings both of fact and of law recorded by the lower Court and there is no reason to discriminate between an order summarily dismissing an appeal under S. 421 of the Cr. P. C. and an order dismissing an appeal after hearing under S. 424 of the Cr. P. C. so far as its liability to attack in revision for purposes of S. 439, cl. (b) is concerned. *Emperor v. Shidoo.*

29 Cr. L. J. 936 :
111 I. C. 856 : 22 S. L. R. 453 :
A. I. R. 1929 Sind 26.

———S. 439 (6), 423—*Conviction based on verdict of Jury—Right of accused—Notice to show cause against enhancement of sentence—Accused, cannot challenge facts—He can show cause only in accordance with law.*

The provision in S. 439 Sub-s. (6), Cr. P. C., that the accused shall be entitled to show cause against his conviction, means that he can show cause in accordance with law. He cannot claim, for example, in revision proceedings to call fresh evidence. He can only challenge his conviction in accordance with law, and where the conviction is based on the verdict of a Jury, he has no greater right of appeal than he possesses under S. 423, and cannot challenge the facts. *Emperor v. Ramji Vala.*

41 Cr. L. J. 916 :
190 I. C. 412 : 42 Bom. L. R. 475 :
I. L. R. 1940 Bom. 500 : 13 R. B. 119.
A. I. R. 1940 Bom. 279.

———S. 439—*Costs—Revision—Power of High Court to grant.*

A High Court has no power to grant costs to the successful party on a revision petition brought by a private prosecutor against an acquittal. Where a Statute gives a Court power to grant costs in specific instances and the same Statute gives the Court its whole criminal jurisdiction, it excludes any other right of granting costs. The Cr. P. C. excludes any such right except where it confers it specifically, viz., among others,

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under Ss. 148; 438, 488, 526 and 545. *Sankara Linga Mudaliar v. Narayana Mudaliar.*

23 Cr. L. J. 583 :
68 I. C. 615 : 16 L. W. 413 :
43 M. L. J. 369 : 1922 M. W. N. 579 :
31 M. L. T. 342 : A. I. R. 1922 Mad. 502.

———S. 439—*Costs, award of, in revision cases—Revision, creature of Statute.*

Per *Coultts-Trotter, J.*—Revision is not an inherent power of any Court, the whole machinery of revision is a creature of Statute and has to be found within the fourwalls of the Cr. P. C., and a Court cannot possess inherent power to supplement that purely statutory machinery by assuming the power of supplementing it by the awarding of costs. *Sankaralinga Mudaliar v. Narayana Mudaliar.*

23 Cr. L. J. 583 :
68 I. C. 615 : 16 L. W. 413 :
43 M. L. J. 369 : 1922 M. W. N. 579 :
31 M. L. T. 342 : A. I. R. 1922 Mad. 502.

———S. 439—*Criminal revisional jurisdiction.*

S. 439, Cr. P. C., empowers a Court of Revision not to exercise all the powers of an Appellate Court, but only such powers as are conferred on a Court of Appeal by Ss. 195, 423, 426, 427 and 428. The criminal revisional jurisdiction of a High Court is not included in its criminal appellate jurisdiction, although its civil revisional jurisdiction is in reality an aspect of the civil appellate jurisdiction. *Akshay Singh v. Rameswar Bagdi.*

17 Cr. L. J. 339 :
35 I. C. 515 : 20 C. W. N. 1071 :
43 Cal. 1143 : A. I. R. 1917 Cal. 705.

———Ss. 439, 476—*Criminal revisional jurisdiction of High Court—Order of a Civil Court directing the prosecution of a party to a civil suit under S. 476 of the Code.*

The High Court has no power in the exercise of its criminal revisional jurisdiction, to revise an order passed under S. 476, Cr. P. C., by a Civil Court. Per *Banerji, J.* (dissenting)—The High Court has power under S. 439 to interfere in the exercise of its criminal revisional jurisdiction, when a subordinate Court, whether Civil, Revenue or Criminal, has taken proceedings under S. 476 of that Code. *In the matter of the Petition of: Bhup Kumar.*

1 Cr. L. J. 73 :
24 A. W. N. 15 : 26 All. 249.

———Ss. 439, 476-A—*Criminal trial—Accused's right to trial by Judge with open mind—Hearing of case on appeal by Judge who made complaint under S. 476-A, whether legal—Prosecution for contradictory statements—Failure to draw up alternative charge—Order for re-trial on same charge, legality of.*

The accused made a statement before a Sessions Judge which contradicted a previous statement made by him and the Sessions Judge made a complaint to the District Magistrate under S. 476-A, Cr. P. C., in which he stated that the last statement made by the accused was false. The accused was tried by a Magistrate on this

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far to say that the High Court must accept loyally the findings of facts of the trial Court or the lower Appellate Court, as the case may be, but at the same time it is obvious that the power to interfere is one to be exercised most sparingly and only when there appears to have been a miscarriage of justice or a perverse and unreasonable decision. The High Court cannot be asked to set aside the order of acquittal and direct a re-trial merely on the ground that it would take a different view of the evidence from that which has been taken by the Magistrate who tried the case and had the witnesses before him. *Chandrika Prasad v. S. Mohammad Jafar*.

41 Cr. L. J. 891 :
190 I. C. 266 : 1940 O. W. N. 757 :
1940 O. L. R. 565 : 13 R. O. 147.

———S. 439 (4)—*Acquittal*.

High Court can interfere in revision with order of acquittal and re-trial in important cases. *Rani Khetawan v. Sheo Nandan*.

33 Cr. L. J. 885 :
140 I. C. 122 : 1932 A. L. J. 166 :
54 All. 413 : I. R. 1932 All. 613 :
A. I. R. 1932 All. 191.

———S. 439 (4)—“*Acquittal*,” meaning of—*Acquittal under one section and conviction under another—Conviction under former, whether can be ordered in revision.*

The word “acquittal” in Cl. 4 to S. 439 of the Cr. P. C., refers to a case where the trial ends in a complete acquittal and does not refer to a case where the trial ends in a conviction but the lower Court has wrongly held that the conviction should be under some section of the Code other than the section properly applicable. In such a case the High Court in revision is competent to convict the accused under the proper section, though he was acquitted of an offence under that section in the lower Court. *Emperor v. Shahu*.

27 Cr. L. J. 1121 :
97 I. C. 641 : A. I. R. 1927 Sind 16.

———S. 439 (4)—*Acquittal—No erroneous recording or shutting out of evidence—Revision—Order for re-trial on same evidence, legality of.*

Where an accused person has been acquitted and there is no erroneous recording or shutting out of evidence, the High Court has no power in revision to order a re-trial on the evidence already recorded. An order for re-trial under such circumstances would, for all practical purposes, amount to a direction to convict. *Ma Nyein v. Maung Chit Hpu*.

31 Cr. L. J. 186 :
120 I. C. 912 : 7 Rang. 538 :
A. I. R. 1929 Rang. 321..

———S. 439 (5)—*Acquittal—Revision at the instance of Local Government.*

A High Court is prohibited by S. 439 (5), Cr. P. C., from entertaining proceedings in a case of acquittal by way of revision at the instance of the Local Government as the latter can appeal from the acquittal under S. 407 of the said Code. *Emperor v. Panu Fakir*.

23 Cr. L. J. 343 :
166 I. C. 999 : 5 S. L. R. 171 :
A. I. R. 1922 Sind 22.

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———S. 439—*Alien enemy—Whether can apply in revision.*

It is competent to an alien enemy residing in British India by license of the King to complain against crimes directed against his person or property and to apply in revision to the High Court against any order of a Magistrate discharging the accused on the materials placed before him. The internment of an alien subject, after he has filed a revision petition, does not necessarily stay the hands of the High Court. Evidence as to extra-judicial confessions of his guilt by an accused person is by itself of very little importance, as such evidence is easy to adduce and difficult to rebut. *Mellor v. Mulhian Chetty*.

20 Cr. L. J. 101 :
48 I. C. 981 : 35 M. L. J. 518 :
9 L. W. 113 : A. I. R. 1919 Mad. 851.

———S. 439—*Alteration of conviction.*

Charge under S. 325, I. P. C., but conviction under minor S. 323, I. P. C.—High Court cannot alter it to S. 325, I. P. C. *Emperor v. Ebrahim*.

33 Cr. L. J. 360 :
136 I. C. 836 : I. R. 1932 Rang. 91 :
A. I. R. 1931 Rang. 321..

———S. 439 (2)—*Alteration of conviction—Appeal by accused—Conviction, alteration of, to one under graver sanction—Notice to accused, if necessary.*

When an accused person prefers an appeal against his conviction and has an opportunity of being heard personally or by a Pleader and in the Appellate Court, the Crown asks that on the evidence recorded conviction under one section should be changed into one under a graver section, the accused person cannot, as a matter of right, claim a former notice being issued to him and this being heard against it. *Bukshan v. Emperor*.

27 Cr. L. J. 1265 :
98 I. C. 113 : A. I. R. 1927 Sind 85.

———S. 439 (2) (6)—*Alteration of sentence—Alteration of sentence, issue of notice for, to accused—Right of accused to show cause against conviction.*

Where a notice under S. 439 (2), Cr. P. C., is issued to the accused to show cause why the sentence should not be altered, Sub-cl. (6) of the section becomes applicable and the accused becomes entitled to show cause against his conviction. *Emperor v. Sain Das*.

27 Cr. L. J. 593 :
94 I. C. 257 : 8 L. L. J. 180 :
27 P. L. R. 353 : A. I. R. 1926 Lah. 375.

———S. 439—“*Any proceeding*,” meaning of.

The words “any proceeding” in 439, Cr. P. C., mean a proceeding before any inferior Criminal Court situate within the local limits of the High Court’s jurisdiction. *In the matter of the Petition of Bhup Kunwar*.

1 Cr. L. J. 73 :
24 A. W. N. 15 : 26 All. 249.

———S. 439—*Appealable case.*

Accused must wait for his defence till he

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set aside every void order that comes to its notice, when the person aggrieved does not move the Court to do so. Where certain persons were convicted without being duly examined under S. 342, Cr. P. C., but it nevertheless appeared from the record that they had not been prejudiced by the omission, and they had not appealed although an appeal lay: *Held*, that though the conviction was bad it was not necessary for the High Court to set it aside. *Emperor v. Ba Pe*.

7 Cr. L. J. 422 :
4 L. B. R. 143.

—————**S. 439 (6), as amended by Act (XVIII of 1923—Effect of amendment.)**

The effect of the addition of Sub-s. (6) to S. 439, Cr. P. C., by Act XVIII of 1923, is that the High Court, when adjudicating upon an application for enhancement of sentence, is converted into a Court of Appeal against conviction and the accused is entitled to show that his conviction is unjustified. *Emperor v. Tej Raj*.

27 Cr. L. J. 380 :
92 I. C. 892 : 27 P. L. R. 112 :
A. I. R. 1927 Lah. 34.

—————**S. 439—Enhancement.**

Where there are no reasons for differentiating a brutal murder, from other murders in order to justify the passing of the minimum sentence, and the murder though not premeditated appears to be singularly brutal, a High Court will be justified in enhancing the sentence of transportation to a sentence of death. *Dwarka v. Emperor*.

28 Cr. L. J. 980 :
105 I. C. 804 : 4 C. W. N. 977.

—————**S. 439—Enhancement of sentence.**

A private complainant is entitled to apply in revision to the High Court for enhancement of a sentence passed by a Sessions Judge. *Man Singh v. Reoti*.

32 Cr. L. J. 312 :
129 I. C. 444 : 1930 A. L. J. 1324 :
I. R. 1931 All. 172 : A. I. R. 1931 All. 13.

—————**S. 439—Enhancement of sentence—Accused appearing to show cause why sentence should not be enhanced—Trial by Jury and sentence not one of death—Court, if can enter into question of fact—Sentence, if can be enhanced to death.**

An accused when appearing in answer to a Rule to show cause why the sentence passed on him should not be enhanced, is in the same position as if he were appealing from an order of conviction. When the trial has been by Jury and when the sentence is not one of death, the accused cannot ask the Court to enter into questions of fact. If the accused have been sentenced to death, the High Court can consider whether or not the Jury were right in their conclusions on the facts, but where the accused have not been condemned to death, they cannot appeal on facts and the High Court is therefore debarred from considering whether or not the facts are true. In these circumstances, it would be unjustifi-

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able and unfair to enhance the sentence passed, to one of death. *Mosseladdi v. Emperor*.

40 Cr. L. J. 877 :
184 I. C. 206 : 12 R. C. 212 (2) :
A. I. R. 1939 Cal. 497.

—————**S. 439—Enhancement of sentence.**

Although the High Court has power to interfere in revision with an inadequate sentence, it does not ordinarily interfere, merely because, it would itself have passed a heavier sentence so long as the sentence passed involves substantial punishment. *Emperor v. Bejai*.

3 Bom. L. J. 155 :
A. I. R. 1924 Rang. 373.

—————**S. 439—Enhancement of sentence—Appeal against conviction—Acquittal—Re-trial—High Court's power to alter the finding and enhance sentence.**

High Court when hearing appeal against conviction, may, as a Court of Appeal, under S. 423 (b), Cr. P. C., alter the finding as a Court of Revision under S. 439 (4), Cr. P. C. and enhance the sentence so as to make it appropriate to the altered finding. S. 403 does not apply as an appeal to High Court is not record trial. *Kambam Bali Reddy v. Emperor*.

15 Cr. L. J. 180 :
22 I. C. 756 : 37 Mad. 149 :
A. I. R. 1914 Mad. 258.

—————**S. 439—Enhancement of sentence, application for—Expiry of sentence, whether ground for refusing interference.**

In all cases where the sentence is considered by the prosecution to be inadequate, the District Magistrate or the Sessions Judge, should be moved by the Police at the earliest possible moment after the trial, and where possible, before the accused has served his sentence, although the fact that the sentence has expired before such action is taken, is in itself, no reason for refusing to interfere. *Emperor v. Prabhu Upadhaya*.

29 Cr. L. J. 261 :
107 I. C. 536 : 9 P. L. T. 831 :
A. I. R. 1928 Pat. 201.

—————**S. 439—Enhancement of sentence—Application for enhancement of sentence not supported by Government Pleader—Interference with sentence.**

As enhancement of sentence is a very serious proceeding and a High Court will not ordinarily enhance the sentence if the proposal is not supported by the Government Pleader. Where the prosecuting authorities think that a sentence ought to be deterrent, they must place the matter before the trying Judge. They should not trust exclusively to the High Court's power of correcting sentence. *Surajmal v. Ram Nath*.

28 Cr. L. J. 996 :
105 I. C. 320 : A. I. R. 1928 Nag. 58.

—————**S. 439—Enhancement of sentence—Application for sentence by private prosecutor, maintainability of—Conviction on plea of guilty—Rule issued ex parte—Court, whether bound to consider application on merits.**

An application for enhancement of sentence should not be entertained at the instance of

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tion for revision on the criminal side if no such application has previously been made to the Sessions Judge even in cases where an appeal was made to the District Magistrate. *Nathe Singh v. Emperor.*

28 Cr. L. J. 544 :
102 I. C. 352.

-----S. 439—Application for revision—Judgment of single Judge with Jury exercising original criminal jurisdiction—Power of Chief Court to revise such judgment.

No application for revision under S. 439, Cr. P. C., lies to the Chief Court in a case where the applicant has been convicted and sentenced at a trial held by a single Judge of the Chief Court with a Jury in the exercise of the Court's original Criminal Jurisdiction. *Press v. Emperor.*

9 Cr. L. J. 378 :
1 I. C. 747 : 4 P. R. Cr. 1909 :
10 P. W. R. 1909 : 41 P. L. R. 1909.

-----S. 439—Application for revision—Revision—Practice—Discretion of Court as to entertainment of applications in revision.

It is not the practice of the High Court to entertain an application for revision on the criminal side where there exists a lower Court having concurrent revisional jurisdiction, unless a similar application has first been presented to the lower Court and has been rejected. *Emperor v. Kali Charan.*

1 Cr. L. J. 914 :
24 A. W. N. 232.

-----Ss. 439, 476—Application for revision.

Sanction by Civil Court—Application for revision lies under S. 439 even when the sanction under S. 476 has been granted by Civil Court. *Lachman Singh v. Emperor.*

32 Cr. L. J. 647 :
131 I. C. 216 : 32 P. L. R. 46 :
A. I. R. 1931 Lah. 105.

-----S. 439—Application in revision by Private party to convict accused of offences of which they are acquitted and to enhance sentences in alternative, when can be entertained.

High Court is, as a rule, loath in ordinary circumstances to entertain an application in revision from a private party asking the Court to convict the accused of offences of which they have been acquitted by the Sessions Judge and to enhance a sentence passed upon them. But where there are clear indications that the accused party has been defying law and disobeying the orders, both of the Civil and of the Criminal Courts, and has been repeatedly creating trouble in the locality for many years past, such application should be entertained in revision. *Ambika Thakur v. Emperor.*

41 Cr. L. J. 191 :
185 I. C. 529 : 18 Pat. 544 :
21 P. L. T. 45 : 6 B. R. 203 :
12 R. P. 389 : A. I. R. 1939 Oudh 611.

-----S. 439—Case for revision.

Revision—Lower Courts relying on inadmis-

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sible evidence—Case for revision, is made out. *Fazal Ahmad v. Emperor.*

37 Cr. L. J. 603 :
161 I. C. 885 : 8 R. Pesh. 186 :
A. I. R. 1936 Pesh. 72.

-----S. 439—Charge, framing of—Revision by High Court.

The High Court will not interfere in revision with an order framing a charge against an accused person. *Sankaralinga Tevan v. Avudai Ammal.*

17 Cr. L. J. 394 :
35 I. C. 826 : A. I. R. 1917 Mad. 657.

-----S. 439—Civil Court's order—Revision, whether lies.

An order passed by a Civil Court, directing the prosecution of certain persons, under S. 476, cannot be revised by a High Court under S. 439. *Thakar Das v. Emperor.*

15 Cr. L. J. 217 :
22 I. C. 1001 :
17 O. C. 25 : A. I. R. 1914 Oudh 25.

-----S. 439—Competency of revision.

The Chief Court of Oudh is precluded from entertaining an application in revision against an order of the First Class Magistrate when the application has not gone in revision either to the Sessions Judge or to the District Magistrate. *Ajodhya Singh v. Emperor.*

35 Cr. L. J. 475 :
147 I. C. 797 (1) : 10 O. W. N. 733 :
6 R. O. 3.9.

-----S. 439—Competency of revision.

Discharge of accused by Sessions Judge in appeal—Order in substance and in fact, an acquittal—Revision is not competent. *Emperor v. U San Win.*

33 Cr. L. J. 763 :
139 I. C. 182 : 10 Rang. 315 :
I. R. 1932 Rang. 190 : A. I. R. 1932 Rang. 147.

-----S. 439—Compounding in revision.

An offence cannot be allowed to be compounded when the case comes before the High Court in revision. *Sankar Sangayya v. Sankar Ramayya.*

16 Cr. L. J. 750 :
31 I. C. 350 : 29 M. L. J. 521 :
18 M. L. T. 381 : A. I. R. 1916 Mad. 483.

-----S. 439—Concurrent finding of fact—High Court, when will interfere—Enmity between complainant and accused—Evidence necessary for conviction.

The High Court will not ordinarily interfere on the Revision Side in a criminal case where the two lower Courts have concurred in a finding of fact and where there is nothing illegal or erroneous in the procedure of the Magistrate. Where enmity admittedly exists between the complainant and the accused, it is necessary that there should be some independent corroboration of the statements of the complainant and his partisan. The mere fact that the accused made efforts to concoct false evidence of an alibi does not prove that he committed the offence charged. *Tabri v. Emperor.*

26 Cr. L. J. 393 :
84 I. C. 937 : 6 L. L. J. 326 :
A. I. R. 1925 Lah. 42.

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sufficient punishment and is not manifestly inadequate. *Bhola Nath v. Emperor*.

33 Cr. L. J. 365 :
136 I. C. 729 (2) : 33 P. L. R. 49 :

I. R. 1932 Lah. 265 :
A. I. R. 1932 Lah. 199.

—S. 439—Enhancement of sentence—Objection as to legality of trial, whether can be taken—Revision.

The language of Sub-s. (6) of S. 439, Cr. P. C., is very wide and it is open to an accused person who has been called upon to show cause against an enhancement of sentence to raise any point that might be urged against his conviction either to a Court of Appeal or to a Revisional Court. It is, therefore, competent to an accused person in such a case to urge that his trial was illegal owing to misjoinder of charges. *Emperor v. Manan K. Mehta*.

27 Cr. L. J. 30 :
92 I. C. 689 : 27 Bom. L. R. 1343 :
4 Bom. 892 : A. I. R. 1926 Bom. 110.

—S. 439—Enhancement of sentence.

Offence of sodomy—High Court felt itself constrained to limit itself within limits of powers which could have been exercised by trial Court and enhanced sentence to two years' rigorous imprisonment. *Emperor v. Muhammad Yousif*.

34 Cr. L. J. 618 :
143 I. C. 605 : I. R. 1933 Sind 131 :
A. I. R. 1933 Sind 87.

—S. 439—Enhancement of sentence—Petition by complainant—Sentence, if can be enhanced.

Although it is not the policy of the High Court to enhance sentences in criminal cases on a petition by a party, it is not an invariable rule. Where a petition of the complainant for the enhancement of the sentence of the accused was supported by the Crown Counsel under the instructions of the Crown, the High Court enhanced the sentence. *Ata Muhammad v. Khanun*.

39 Cr. L. J. 296 :
173 I. C. 321 : 39 P. L. R. 659 :
10 R. L. 435 : A. I. R. 1938 Lah. 116.

—S. 439—Enhancement of sentence—Power of High Court to enhance sentence.

Ordinarily the High Court should be loath to take action in the matter of enhancement when the District Authorities consider the sentence as sufficient but there are occasions when the High Court has every right to enforce its own opinion which may be a contrary opinion to that of the District Authorities. *Wazir v. Sarju Bhar*.

30 Cr. L. J. 222 :
113 I. C. 828 : I. R. 1929 All. 220 :
A. I. R. 1928 All. 417.

—S. 439—Enhancement of sentence.

Procedure to be adopted for enhancement of sentence, stated. *Ramachandra v. Emperor*.

35 Cr. L. J. 747 :
148 I. C. 553 : 6 R. B. 307 :
35 Bom. L. R. 174 :
A. I. R. 1933 Bom. 153.

—S. 439—Enhancement of sentence—Refer-

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ence by District Magistrate for enhancement, legality of—Proper procedure.

A reference for enhancement of sentence by a District Magistrate direct to the High Court is irregular and unwarranted by law. The proper course for a District Magistrate to adopt is to instruct the law officers of the Crown in the High Court to file an application for revision asking for the enhancement of sentence. *Gulab v. Emperor*.

29 Cr. L. J. 235 :
107 I. C. 285 : A. I. R. 1928 Lah. 660.

—S. 439—Enhancement of sentence—Revision.

Though it is competent to the High Court to enhance the sentence in revision, it will only do so for exceptional reasons especially when the revision petition is by a private person. Where a sentence passed is substantial even though inadequate, it will not be enhanced in revision. *Dharam Singh v. Emperor*.

29 Cr. L. J. 343 :
108 I. C. 162 : A. I. R. 1928 Lah. 507.

—S. 439—Enhancement of sentence—Revision—Alteration of charge—High Court, power of.

A High Court has, when sitting as a Revision Court, power to alter a charge from that under a minor offence to one under a more serious one and enhance the sentence. *Emperor v. Umrao*.

24 Cr. L. J. 753 :
74 I. C. 257 : 21 A. L. J. 316 :
A. I. R. 1923 All. 355.

—S. 439 Enhancement of sentence—Revision—Application by private complainant—Procedure.

A District Magistrate, a Sessions Judge, or a Government Pleader, may draw the attention of the High Court to a sentence with a view to its being enhanced, or the High Court can, of its own motions, send for the record and take action with a like object. If a private complainant considers a sentence unduly lenient, he may draw the attention of Government to the fact but it is not open to him to apply to the High Court to enhance the sentence. *Nga San Dike v. Nga Ye Dike*.

27 Cr. L. J. 818 :
95 I. C. 594 : 5 Bur. L. J. 1 :
A. I. R. 1926 Rang. 106.

—S. 439—Enhancement of sentence—Revision—High Court, interference by.

The enhancement of a sentence by the High Court, under S. 439, Cr. P. C. is a serious proceeding. The High Court should not ordinarily interfere where a substantial sentence has been passed by the trying Court and will be always slow to interfere unless the sentence passed is manifestly inadequate. *Emperor v. Pario*.

18 Cr. L. J. 708 :
40 I. C. 708 : 10 S. L. R. 207 :
A. I. R. 1917 Sind 46.

—S. 439—Enhancement of sentence—Revision—High Court, interference by.

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—S. 253—*Discharge—Record of reasons—Necessity of.*

The language of S. 253 plainly indicates that a Magistrate should give his reasons at the time he pronounces the order of discharge, and if it is the final order in the case, he is bound to give his reasons. The moment he pronounces the final order, he becomes *functus officio* and he is no longer in charge of the case. But where a number of accused is being tried before him and he discharges some of them only without giving reasons therefor in his order of discharge he must be deemed to be in seisin of the whole case till the charge against the remaining accused is disposed of by final order, and so long as he is in charge thereof, he can always give his reasons in regard to the order of discharge. *In re : Govindraj.*

39 Cr. L. J. 335 (b) :
173 I. C. 417 : 1938 M. W. N. 38 :
47 L. W. 128 : 10 R. M. 583 :
1938 1 M. L. J. 110 :
A. I. R. 1938 Mad. 396.

—S. 253—*Discharge, reversal of.*

An order of discharge should only be set aside only when it can be said either to be perverse or *prima facie* incorrect or when there is a suggestion that any further evidence may be forthcoming. *Nazir Ahmad v. Emperor.*

36 Cr. L. J. 202 :
152 I. C. 884 : 7 R. A. 412 : 4 A. W. R. 37 :
A. I. R. 1934 All. 944.

—S. 253—*Discharge, without examining complainant, legality of.*

An order discharging an accused person without examining the complainant, is illegal. *Mukunda Patre v. Purusattam Shah.*

31 Cr. L. J. 128 :
120 I. C. 458 : 51 C. L. J. 44 :
A. I. R. 1929 Cal. 479.

—S. 253—*Discharge of accused—Fresh proceedings.*

A Magistrate who has discharged an accused under S. 253 can take fresh proceedings and issue process against the person discharged in respect of the same offence without such order being set aside by a higher Court. *Emperor v. Maheshwar.*

11 Cr. L. J. 190 (b) :
4 I. C. 1113 : 5 M. L. T. 184.

—S. 253—*Discharge of accused before examining entire prosecution evidence.*

The amount of evidence which would enable a Magistrate to say that a particular charge was groundless is so entirely dependent on circumstances that no general rule or direction, except that he is required to arrive at his conclusion judicially and not capriciously, is likely to be of any use. If, acting judicially, a Magistrate has come to the conclusion on grounds to be recorded, that the charge must fail either because the allegations are false or because they disclose a dispute of a civil nature which is distorted into a criminal case or for any other reason, then there is nothing to prevent him from dis-

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charging the accused even before all the complainant's witnesses have been examined. *Kasinatha Pillai v. Shanmugham Pillai.*

31 Cr. L. J. 275 :
121 I. C. 619 : 30 L. W. 273 :
57 M. L. J. 490 :
1929 M. W. N. 575 : 52 Mad. 987 :
A. I. R. 1929 Mad. 754.

—S. 253—*Discharge of accused before examining witnesses, legality of.*

Where a complaint *prima facie* discloses an offence, a Magistrate can judicially come to the conclusion that the charge is groundless only when he has at least ascertained from the complainant the nature of the evidence his witnesses are going to give, and he cannot, therefore, refuse to examine all the witnesses cited by the complainant and discharge the accused under S. 253, Cr. P. C., without ascertaining from the complainant the nature of the evidence the remaining witnesses are expected to give. *Muhammad Sheriff v. Abdul Karim.*

28 Cr. L. J. 995 :
105 I. C. 819 : 26 L. W. 553 :
39 M. L. T. 486 :
1927 M. W. N. 845 :
53 M. L. J. 757 : 51 Mad. 185 :
A. I. R. 1928 Mad. 129.

—S. 253—*Discharge of accused before recording evidence.*

Under S. 253 a Magistrate can discharge the accused at any stage of the case before recording any evidence, or if in the course of recording evidence he is of opinion that the charge is groundless. *Fazlar Rahman v. Emperor.*

31 Cr. L. J. 1055 ;
126 I. C. 553 : A. I. R. 1930 Cal. 515.

—S. 253—*Discharge of accused—Complainant absent—Discharge of accused—Second complaint on same facts, competency of—Autrefois acquit.*

Discharge of the accused on account of the absence of the complainant and his Pleader on the appointed day of hearing does not operate as a bar to the institution of a second complaint against the accused on the same facts. The plea of *autrefois acquit* has no application to such a case. *Emperor v. Amanat Kardar.*

30 Cr. L. J. 594 :
116 I. C. 251 : 31 Bom. L. R. 146 :
I. R. 1929 All. 347 :
A. I. R. 1929 Bom. 134.

—S. 253—*Discharge of accused, validity of.*

Where the accused is summoned and evidence of the complainant is ready, it is desirable that the Court should not dismiss the complaint without taking all such evidence as may be produced in support of the prosecution. *Mst. Begam Bibi v. Ghulam Muhammad.*

7 Cr. L. J. 272 :
3 P. W. R. Cr. 5 : 9 P. L. R. 311.

—S. 253—*Discharge of accused—Order, when reversible.*

An order of discharge should only be set aside very sparingly and only when it can be

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of infliction of injuries—Injuries not accidental—Sentence of five years' rigorous imprisonment is inadequate—Sentence enhanced to 10 years. *Raja Ram v. Emperor*.

36 Cr. L. J. 454 :
154 I. C. 93 : 1935 O. W. N. 140 :
A. I. R. 1935 Oudh 239.

—S. 439—Enhancement of sentence.

S. 439 (6) operates as exception to Sub-s. (5) only—Dismissal of revision by accused—Application by Crown for enhancement of sentence—Accused cannot be re-heard on merits of conviction. *Emperor v. Inder Chand Bachraj Marwadi*.

36 Cr. L. J. 351 :
153 I. C. 525 : 36 Bom. L. R. 954 :
7 R. B. 246 : A. I. R. 1934 Bom. 471.

—S. 439—Enhancement of sentence.

Sentence—Enhancement—High Court should be slow to enhance in absence of special circumstances. *Emperor v. Ahmad Ebrahim*.

36 Cr. L. J. 527 :
154 I. C. 577 : 36 Bom. L. R. 1126 :
7 R. B. 346 : A. I. R. 1935 Bom. 37.

—S. 439—Enhancement of sentence—Sentence already served out.

Although a Court of Revision is slow to interfere where interference would involve the imprisonment of a person already discharged from jail, that circumstance alone is not an insuperable obstacle to the enhancement of the sentence when the sentence passed is manifestly inadequate. *Emperor v. Shahzad Ahmad*.

30 Cr. L. J. 240 :
114 I. C. 72 : I. R. 1929 Lah. 232 :
A. I. R. 1928 Lah. 961.

—S. 439—Enhancement of sentence.

The disposal of an appeal by the accused does not prevent the High Court from subsequently enhancing the sentence in the exercise of its revisional jurisdiction. *Ramlakhan v. Emperor*.

33 Cr. L. J. 155 :
135 I. C. 522 : 10 Pat. 872 :
13 P. L. T. 17 : I. R. 1932 Pat. 42 :
A. I. R. 1932 Pat. 126.

—S. 439—Enhancement of sentence.

The High Court can enhance a sentence under S. 439, Cr. P. C., even on the application of a private person. *M. T. Das v. E. D. Aboo*.

32 Cr. L. J. 353 :
129 I. C. 510 : 8 Rang. 578 :
I. R. 1931 Rang. 78 : A. I. R. 1931 Rang. 52.

—S. 439—Enhancement of sentence.

The High Court is slow to interfere, where interference would involve the imprisonment of persons already discharged from jail, though that circumstance is no insuperable obstacle. The Court frequently declines to interfere, in order to enhance a sentence on the mere ground that it would itself have passed a heavier sentence. *Emperor v. Das*.

36 Cr. L. J. 414 :
153 I. C. 449 : 35 P. L. R. 527 :
7 R. L. 439 : A. I. R. 1934 Lah. 613.

—S. 439—Enhancement of sentence—To show cause—Penal Code (Act XLV of 1860),**Cr. P. CODE (1898), S. 439**

S. 302—Appeal, admission of—Enhancement of sentence, notice of, when to be given—Proctice.

Where a case comes to the knowledge of the High Court by an appeal being filed against a conviction, it is not desirable, if the appeal is admitted, to issue a notice at the same time for enhancement of the sentence under S. 439 of the Cr. P. C. It is incongruous that the Court in the same breath should admit the appeal of the accused, and should issue notice calling upon him to show cause why the sentence should not be enhanced, especially where the sentence proposed to be inflicted in the notice to enhance is the sentence of death. The proper procedure is to deal first with the appeal and then to consider whether a notice to enhance should be issued. If after an appeal has been heard on its merits and dismissed, a notice to enhance the sentence is issued, the accused has still the right under Sub-s. (6) of S. 439 of the Cr. P. C. to show cause against his conviction, but any attempt to set aside the conviction would not have much chance of success. *Mangal Narain v. Emperor*.

26 Cr. L. J. 968 :
87 I. C. 424 : 27 Bom. L. R. 355 :
49 Bom. 450 : A. I. R. 1925 Bom. 268.

—S. 439—Enhancement of sentence.

Transportation would be enhanced only when death is the only sentence that could be passed. *Local Government v. Sitrya*.

34 Cr. L. J. 1168 :
146 I. C. 118 : 30 N. L. R. 9 :
6 R. N. 72 : A. I. R. 1933 Nag. 307.

—S. 439—Enhancement of sentence.

Where a sentence is substantial though inadequate and the convict has served the sentence, there should be no enhancement in revision. *Emperor v. Ram Sarup*.

32 Cr. L. J. 943 :
132 I. C. 577 (1) : 32 P. L. R. 5 :
I. R. 1931 Lah. 625 : A. I. R. 1931 Lah. 132.

—S. 439—Enhancement of sentence.

Where the accused have not been charged and convicted under S. 333, Penal Code, but only under S. 324, the High Court will not take into consideration the fact that the persons assaulted were Police Officers and enhance the sentence in revision. *Emperor v. Fauja Singh*.

32 Cr. L. J. 539 :
130 I. C. 432 : 32 P. L. R. 273 :
I. R. 1931 Lah. 304 : A. I. R. 1931 Lah. 31 (1).

—Ss. 439, 430—Enhancement of sentence—S. 439 (6), effect of—Notice to show cause why sentence should not be enhanced—Accused, if can show cause against conviction—Government not moving for enhancement—High Court, if can enhance.

The effect of the words 'notwithstanding anything contained in this section' in S. 439 (6), Cr. P. C., is to allow the accused, when notice is issued to show cause why sentence should not be enhanced, not only to show cause against enhancement but also to show cause against the conviction itself, provided that an appeal, if an appeal lies, or a revision application where no appeal lies, has

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charge and convicted. On appeal, the same Sessions Judge, without ordering the framing of an alternative charge, ordered re-trial on the same charge as he found that there was no evidence to show that the last statement was false. The accused applied for transfer of the case: *Held*, (1) that the proceedings against the accused must be quashed inasmuch as the complainant and the Appellate Court were one and the same; (2) that the accused should not be submitted to a fresh trial inasmuch as the principle of *nemo debet bis vexari* applied to the case in the spirit if not in the letter. An accused is entitled to a decision both in the trial Court and on appeal from a Judge who approaches his case with an absolutely open mind. *Sai v. Emperor*, 29 Cr. L. J. 6 : 106 I. C. 342 : 8 Lah. 496 : 28 P. L. R. 628 : A. I. R. 1927 Lah. 671.

————S. 439—Death of accused during pendency, effect of—Accused dying during pendency of revision against sentence of fine—Revision continues.

Where the accused dies pending the revision against the sentence of fine, the revision continues. 49 I. C. 774 (1), relied on. *Ram Chand v. Emperor*.

41 Cr. L. J. 729 :
189 I. C. 343 : 13 R. L. 88 :
42 P. L. R. 215 :
A. I. R. 1940 Lah 274.

————S. 439—Defective judgment.

S. 367 not strictly complied with—Magistrate hearing case and coming to independent opinion as to guilt—High Court will not interfere. *Tippanna Musheppa Karigar v. Emperor*.

33 Cr. L. J. 801 :
139 I. C. 608 : 34 Bom. L. R. 1110 :
I. R. 1932 Bom. 519 :
A. I. R. 1932 Bom. 473.

————S. 439—Defective judgment.

The High Court is not invariably bound to interfere in revision because there is an irregularity in the form of the judgment, unless there has been a failure of justice. *Tippanna Musheppa Karigar v. Emperor*.

33 Cr. L. J. 801 :
139 I. C. 608 : 34 Bom. L. R. 1110 :
I. R. 1932 Bom. 519 :
A. I. R. 1932 Bom. 473.

————S. 439—Discharge.

Charges framed—Accused discharged on complainant's withdrawal of complaint—Order of discharge though incorrect cannot be set aside by complainant in revision. *Dogar Singh v. Budh Singh*.

34 Cr. L. J. 718 :
144 I. C. 289 : 34 P. L. R. 181 and 680 :
I. R. 1933 Lah. 436 :
A. I. R. 1933 Lah. 323.

————S. 439 (5)—Discretion—Revision—High Court—Discretion.

A High Court has an unfettered discretion under S. 439 of the Cr. P. C., to pass whatever orders seem to it to be required in

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the interest of justice. *In re : Malayil Kottayil Koyassan Kutty*.

18 Cr. L. J. 329 :
38 I. C. 441 : A. I. R. 1918 Mad. 494.

————S. 439—Discretion—Practice—Order of acquittal.

Although the High Court has the power to interfere in revision with an original or appellate judgment of acquittal, it will ordinarily not do so. *Qayyum Ali v. Faiyaz Ali*.

1 Cr. L. J. 1053 :
I. L. R. 27 All. 359 :
1904 A. W. N. 278.

————S. 439—Duty of High Court—Appealable and non-appealable sentences—Appeal—Conviction set aside—Sessions Judge, duty of—Revision.

If at one and the same trial an appealable sentence is passed against one or more accused and non-appealable sentences are passed against others and the Sessions Judge, hearing the case on the merits on the appeals of those convicts who had a right of appeal, comes to the conclusion that the convictions are bad as against all the accused persons, he should consider it his duty to refer to the High Court the case of those persons against whom non-appealable sentences were passed, and the matter should then be dealt with by the High Court under S. 439, Cr. P. C. *Bhola v. Emperor*.

18 Cr. L. J. 684 :
40 I. C. 332 : 39 All. 549 :
15 A. L. J. 574 :
A. I. R. 1917 All. 372.

————S. 439—Duty of High Court—Government of India Act, 1915 (5 & 6 Geo. V, c. 101), 107—Stay of criminal enquiry before subordinate Courts pending civil suit, principles relating to.

The High Court, as a general rule, should avoid staying criminal proceedings pending the disposal of civil suits in the exercise of its powers of superintendence under S. 107 of the Government of India Act, 1915, unless there are exceptional circumstances. A stay order is in essence bad, and only justifiable on special grounds. *Gnanaisigamani Nadar v. Vedamuthu Nadar*.

28 Cr. L. J. 181 :
99 I. C. 853 : 25 L. W. 52 :
52 M. L. J. 80 :
1927 M. W. N. 54 :
38 M. L. T. 80 : A. I. R. 1927 Mad. 308.

————S. 439—Duty of High Court—Magisterial proceedings—Charge framed—Revision—High Court, whether should interfere.

In very exceptional instances alone a High Court should interfere in revision with the action of a subordinate Court in respect of any pending case and specially when such case has reached the stage when a charge has been drawn up and only the defence of the accused remains to be heard. *Manilal v. Kamberali*.

28 Cr. L. J. 644 :
103 I. C. 100 : A. I. R. 1927 Sind 231.

————S. 439—Duty of High Court in revision—Omission to examine the accused.

It is not imperative on the High Court to

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both the conviction and the sentence are open to revision. *Emperor v. Kamal.*

16 Cr. L. J. 712 :
30 I. C. 1000 : 9 S. L. R. 82 :
A. I. R. 1915 Sind 33.

—S. 439 (4)—*Enhancement of sentence—High Court, power of, in revision—Acquittal how can be converted into conviction—Murder, offence of, what is.*

When death is caused by an act which has been done with the intention of causing bodily injury and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, the offence is murder. A High Court cannot, in revision, convert a finding of acquittal into one of conviction; the only way in which this can be done is by an appeal by the Government against the acquittal but it can enhance a sentence passed under any section of the Penal Code. *Emperor v. Sheo Darshan.*

23 Cr. L. J. 202 :
65 I. C. 858 : 20 A. L. J. 190 :
44 All. 342 : A. I. R. 1922 All. 487.

—S. 439 (6)—*Enhancement of sentence—Accused's right to challenge findings of fact.*

An accused person against whom notice has been issued under S. 439, Cl. (6), Cr. P. C., for enhancement of sentence is entitled to challenge the findings of fact recorded by the Courts below. *Emperor v. Badan Singh.*

30 Cr. L. J. 933 :
118 I. C. 577 : I. R. 1929 All. 881 :
A. I. R. 1928 All. 150.

—S. 439 (6)—*Enhancement of sentence—Accused's right to show cause against conviction—Findings of fact, whether accused can challenge—Interference in revision, extent of.*

It is the practice of the Court of Judicial Commissioner in Sind in dealing with revision applications to accept findings of fact of the lower Appellate Court as correct unless such findings are based on no legal evidence or are manifestly erroneous. There is nothing in S. 439, Cl. (6), Cr. P. C., to warrant an accused person, while showing cause against his conviction in an application for enhancement of sentence, to challenge findings of fact when he has appealed and lost. *Emperor v. Lukman.*

27 Cr. L. J. 1233 :
98 I. C. 49 : A. I. R. 1927 Sind 39.

—S. 439 (6)—*Enhancement of sentence—Conviction affirmed by High Court—Revision—Accused, right of, to question conviction..*

Where a High Court has given a finding on appeal or in revision as to the guilt of an accused person and subsequently a notice is served upon that person to show cause why his sentence should not be enhanced, the right which he would have had under S. 439 (6), Cr. P. C., to re-open the question of his guilt had no such finding be given, vanishes because of the inherent incapacity of a Judge of the High

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Court to re-consider a decision given by another Judge. *Emperor v. Sher Singh.*

28 Cr. L. J. 266 :
100 I. C. 234 : 8 Lah. 521 :
28 P. L. R. 559 : A. I. R. 1927 Lah. 217.

—S. 439 (6)—*Enhancement of sentence—Revision—Revision against conviction dismissed—Right of accused to show cause against conviction—High Court's power to go into facts in revision.*

No right is given to an accused person to show cause against his conviction in proceedings for enhancement of his sentence under S. 439 (6), Cr. P. C., when he has already preferred a revision petition against his conviction to the High Court and that revision has been dismissed whether *in limine* or after notice. It is not correct to say that the law does not authorise the High Court to go into findings of fact in a criminal revision. The High Court has this power and does always go into evidence and facts in a proper case. *Emperor v. Dhanna Lal.*

30 Cr. L. J. 815 :
117 I. C. 669 : 10 Lah. 241 :
30 P. L. R. 409 : I. R. 1929 Lah. 685 :
A. I. R. 1929 Lah. 797.

—Ss. 439 (6), 562—*Enhancement of Sentence—Release under S. 562 on probation of good conduct—Order set aside and sentence in lieu thereof passed under S. 562 (3).*

Under S. 562, Cr. P. C., when an accused is released on probation of good conduct, no sentence is passed by the Court. Therefore, when, under S. 562 (3) the High Court sets aside an order and passes a sentence in lieu thereof, it cannot be said that it enhances a sentence within the meaning of S. 439 (6), Cr. P. C. An enhancement of sentence pre-supposes that there is a sentence to be enhanced. *Emperor v. Miro Ghulam Hussain.*

41 Cr. L. J. 187 :
185 I. C. 428 : 1940 Kar. 88 :
12 R. S. 168 : A. I. R. 1939 Sind 339.

—S. 439—*'Error of law', meaning of.*

The words "error of law" can only mean an error in the procedure adopted in the trial of the case and not an error about the interpretation or application of the law applicable to the case. *Ramchand v. Chautmal.*

30 Cr. L. J. 405 :
115 I. C. 169 : 11 N. L. J. 242 :
I. R. 1929 Nag. 105 : A. I. R. 1929 Nag. 87.

—S. 439—*Revision—Error of law.*

An order based on an error of law but within the jurisdiction of the Court passing it will not be interfered with in revision. *Sri Kishen v. Debi Dayal.*

26 Cr. L. J. 1619 :
90 I. C. 915 : 2 O. W. N. 823 :
A. I. R. 1925 Oudh 739.

—S. 439—*Evidence—Failure of prosecution to adduce evidence justifying conviction—Action deliberate—Whether should be given another opportunity to adduce it, by remanding case for re-trial.*

The prosecution is required and expected

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a private prosecutor unless there is manifestly a ground for interference beyond all reasonable doubt. The mere fact that a rule has been issued *ex parte* on an application for enhancement of sentence does not prevent the Court from taking into consideration matters which were not before the Court at the time when it was issued, *e.g.*, contentions urged on behalf of the accused, the attitude of the Crown and other possible contingencies, and dismissing the application without going into the merits. A rule issued at the instance of a private prosecutor to show cause why a sentence should not be enhanced should be discharged if the Crown does not appear to support it. Where a conviction is based on a plea of guilty, the sentence cannot be enhanced without a regular trial of the case in spite of the plea of guilty. *Ali Akabbar v. Kasem Ali*.

31 Cr. L. J. 209 :
121 I. C. 305 : 33 C. W. N. 605 :
50 C. L. J. 176 : A. I. R. 1929 Cal. 785.

S. 439—Enhancement of sentence.

By the amendment to the Cr. P. C. made by Act XVIII of 1923, the High Court can, in revision, set aside the order of the trial Magistrate, under S. 562, and in lieu thereof pass a sentence on the offender according to law. *Emperor v. Mohammad Khan*.

35 Cr. L. J. 613 :
148 I. C. 96 : 35 P. L. R. 83 :
14 Lah. 800 : 6 R. L. 504 :
A. I. R. 1934 Lah. 36 (2).

S. 439—Enhancement of sentence—Conviction on three counts—Setting aside of conviction in respect of two and refusal to interfere with sentence in respect of third, whether enhancement.

Where a person was charged and convicted in respect of three counts by the trial Court, and the lower Appellate Court, holding that there was no distinct charge in respect of the separate counts, set aside the conviction in respect of two and declined to interfere with the sentence in respect of the third : *Held*, that this did not amount to an enhancement of the sentence. *Kailappa Goundan v. Emperor*.

29 Cr. L. J. 847 :
111 I. C. 399 : A. I. R. 1928 Mad. 651.

S. 439—Enhancement of sentence—Criminal revision—Right of private person to apply for enhancement.

It is the part of the Crown, not of individual to ask Courts to enhance sentences passed upon criminal offenders. No revision by a private party for an enhancement of the sentence is, therefore, entertainable. *Jadunandan Brahman v. Emperor*.

28 Cr. L. J. 802 :
104 I. C. 242 : 4 O. W. N. 699 :
2 Luck. 605 : A. I. R. 1927 Oudh 321.

S. 439—Enhancement of sentence—Enhancement on private complainant's motion.

Though a Court will naturally be loath, to enhance sentence on the motion of the private complainant, it has undoubtedly power to do so in extreme cases. *Debi Singh v. Ramcharan Singh*.

30 Cr. L. J. 219 :
113 I. C. 768 : I. R. 1929 All. 192 :
A. I. R. 1928 All. 419.

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S. 439—Enhancement of sentence—Discretion of Chief Court to interfere—Sentence undergone—Revision.

In the case of a recommendation for enhancement of sentences, the Chief Court is always bound to interfere under S. 439, Cr. P. C., even when the order of the Court below is clearly wrong in law, particularly when the accused has already undergone the sentence of imprisonment or has paid the fine imposed upon him. *Emperor v. Hari Singh*.

14 Cr. L. J. 599 :
21 I. C. 471 : 29 P. W. R. 1913 Cr. :
313 P. L. R. 1913.

S. 439—Enhancement of sentence.

High Court will not ordinarily enhance the sentence on revision merely on the ground that if it were seized of the trial of the accused, it would have awarded a longer sentence of imprisonment than that awarded by the Magistrate but will interfere where the sentence awarded by the trial Court is grossly inadequate. *Emperor v. Dhana Lal*.

29 Cr. L. J. 764 :
110 I. C. 796 : A. I. R. 1928 Lah. 951.

S. 439—Enhancement of sentence—High Court, interference by.

Where a sentence passed by a Magistrate is not illegal, the mere fact that the High Court might have passed a heavier sentence is not of itself a sufficient reason to enhance the punishment inflicted in the exercise of its revisional powers. *Emperor v. Budha*.

20 Cr. L. J. 212 :
49 I. C. 772 : 7 P. R. 1919 Cr. :
48 P. L. R. 1919 :
8 P. W. R. 1919 Cr. :
A. I. R. 1919 Lah. 205.

S. 439—Enhancement of sentence—Inadequacy of sentence—Duty of High Court.

The duty of the High Court, when a case comes up for enhancement of sentence, is to see whether there is matter on the record of case showing that the sentence passed is clearly inadequate to the offence. *Emperor v. Mahadev Ganesh Mulherkar*.

26 Cr. L. J. 821 :
86 I. C. 469 : A. I. R. 1925 Nag. 321.

S. 439—Enhancement of sentence—Laches of prosecution, effect of—Penal Code (Act XLV of 1860), Ss. 380, 454.

Where a person is convicted under Ss. 380 and 454, Penal Code and subsequently it is discovered that he has been previously convicted seven times, a High Court would not enhance the sentence under S. 439, Cr. P. C., in the absence of any irregularity or impropriety in the Magistrate's proceedings. The powers of revision are not to be invoked to supply the laches of the prosecution. *Emperor v. Usman*.

17 Cr. L. J. 3 :
32 I. C. 131 : 9 S. L. R. 95 :
A. I. R. 1916 Sind. 3.

S. 439—Enhancement of sentence.

No enhancement if sentence passed involves

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said either to be perverse or *prima facie* incorrect and there is a suggestion that any further evidence might be forthcoming. *Mohammad Husain v. Nanhi*.

31 Cr. L. J. 995 :
126 I. C. 253 : 1939 A. L. J. 521 :
52 All. 257 : A. I. R. 1930 All. 257.

—S. 253—Discharge of accused—Validity of.

If the admission of the complainant under examination under S. 252 make it clear not only that the facts set forth in the accused's petition are correct but also that on the basis of those facts admitted by the complainant, no criminal offence has been disclosed, the Magistrate is at liberty to discharge the accused under S. 253 (2) without calling upon the complainant to produce the rest of his evidence. *Shiv Datta v. B. K. Sood*.

41 Cr. L. J. 354 :
186 I. C. 635 : 41 P. L. R. 702 :
12 R. L. 427 :
A. I. R. 1940 Lah. 40.

—S. 253—Discharge of accused—Validity of.

S. 253 permits a Magistrate to discharge an accused, before the prosecution has examined all their witnesses, after recording his reasons therefor. *Namana Bhima v. Surisetti Peda*.

12 Cr. L. J. 168 :
9 I. C. 940 : 2 M. W. N. 149 :
9 M. L. T. 302.

—S. 253—Discharge of accused.

When process has once been issued, the accused person can only be discharged under S. 253 or S. 259. *Jotindra Nath v. Radha Krishna*.

36 Cr. L. J. 285 :
152 I. C. 1029 : 15 P. L. T. 507 :
7 R. P. 292 :
A. I. R. 1934 Pat. 548.

—S. 253 (2)—Discharge of accused—Discharge before date of hearing—Jurisdiction.

A Magistrate has power under S. 253 (2), Cr. P. C., to discharge an accused even before the date fixed for the hearing of the case, if upon the materials then before him he is satisfied that the offence alleged could not possibly be sustained against him. *Watson v. Metcalfe*.

25 Cr. L. J. 696 :
81 I. C. 184 : A. I. R. 1925 Pat. 154.

—S. 253 (2)—Discharge of accused—Without examining complainant.

In a suitable case; the Magistrate may come to the conclusion that the charge is groundless even before he has heard the complainant under S. 252. Such a case might well be one in which the Magistrate in issuing process under S. 204 has mistakenly believed that an offence has been disclosed by the complaint and on the matter being brought to his attention when the case comes before him, has seen his error and decided that in fact, even if the allegations in the complaint are true, no criminal offence has been disclosed. In such a case the Magistrate can discharge the accused under S. 253 (2)

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without the complainant being heard at all. *Shiv Datta v. B. K. Sood*.

41 Cr. L. J. 354 :
186 I. C. 635 : 4 P. L. R. 702 :
12 R. L. 427 : A. I. R. 1940 Lah. 40.

—S. 253 (2)—Discharge of accused.

Under S. 253 (2) an accused person may be discharged, even if no witnesses are examined in accordance with the provisions of S. 252.

Kunj Behari Lal v. Emperor. 27 Cr. L. J. 541 :
93 I. C. 1037 : 24 A. L. J. 512 :
A. I. R. 1926 All. 461.

—S. 253—Dismissal of complaint—Revival—Judicial discretion.

Although a Magistrate has jurisdiction to entertain a complaint after it has once been wrongly dismissed under S. 253, the appropriate remedy for complaints wrongly dismissed is vested solely in the higher grades of Magistrates and the Sessions Judges under S. 437. *Gulu Tirith v. Chatunmal*. 11 Cr. L. J. 582 (b) :
8 I. C. 203 : 4 S. L. R. 53.

—S. 253 (2)—Dismissal of complaint without evidence—'Groundless charge', meaning of—Dispute of civil nature—Charge, whether groundless.

Under S. 253 (2) a Magistrate has a discretion to discharge the accused without taking all the evidence that the complainant may wish to produce if he thinks that the charge is groundless. But this does not mean that he can cut short the proceedings by refusing to summon any of the witnesses whom the complainant wants to examine. The mere fact that the matter is one of rendition of accounts and must be referred to the Civil Court, is obviously insufficient to justify an order of discharge under S. 253 (2) in a case of alleged breach of trust. To say that no case has been made out is not tantamount to saying the charge is groundless. Where a complaint *prima facie* discloses an offence, the Magistrate cannot hold the charge to be groundless unless he knows what is the sort of evidence that is going to be adduced to prove it; and he can only judicially come to such a conclusion when he has at least ascertained from the complainant what is the nature of the evidence his witnesses are going to give. *Mehtab v. Nathu*.

31 Cr. L. J. 481 :
123 I. C. 275 : 31 P. L. R. 204 :
A. I. R. 1930 Lah. 461.

—S. 253—Further enquiry after discharge.

It is competent to a Magistrate who has discharged an accused under S. 253, Cr. P. C., to take fresh proceedings and issue process against the person discharged in respect of the same offence without such order being set aside by a higher Court. An order of discharge is not a 'judgment'. A judgment is an order in a trial terminating in either the conviction or acquittal of the accused. The principle of *autrefois acquit* can have no application where an accused is discharged under S. 253, as there can be no trial when the accused is discharged. *Emperor v. Maheswara Kondaya*.

9 Cr. L. J. 80 :
31 Mad. 543 : 5 M. L. T. 184.

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The High Court does not exercise its exceptional revisional powers in the direction of enhancing a sentence unless the sentence is manifestly inadequate. It is not enough that if a severer sentence had been imposed by the Court of Trial, the High Court sitting as a Court of Appeal might have been prepared to maintain the sentence.

Sita Ram v. Emperor. 26 Cr. L. J. 1364 :

89 I. C. 452 : 12 O. L. J. 421 :

2 O. W. N. 550 : A. I. R. 1925 Oudh 723.

———S. 439—Enhancement of sentence—Revision—High Court, powers of, how to be exercised.

A High Court will not ordinarily exercise its power of enhancing a sentence except on the motion of the Local Government.

Gunwant Parashram v. Govind Bhai.

29 Cr. L. J. 313 :

107 I. C. 912 : A. I. R. 1928 Nag. 242.

———S. 439—Enhancement of sentence—Revision—Interference—Principles—Communal matters—Application for revision by Government.

Although the High Court has power to enhance the sentence in revision, it will not do so where the sentence has been imposed by the lower Court on a consideration of the special circumstances of the case and no question of principle is involved. Even in cases of communal disturbance, the Government should refrain from appealing to the revisional jurisdiction of the High Court for enhancement of sentence unless violence has been done to some general principle which requires immediate and authoritative interference.

Emperor v. Nasrullah. 29 Cr. L. J. 446 :

108 I. C. 567 : A. I. R. 1928 All. 287.

———S. 439—Enhancement of sentence—Revision—Private party petitioning for enhancement of sentence.

It is not usual for the High Court to enhance the sentence on the petition of a private individual especially when the person convicted has already undergone it and is out of jail. But the High Court has got the power to do so and will do so where the sentence passed is manifestly inadequate.

Khuda Bakhsh v. Feroze Din. 30 Cr. L. J. 300 :

114 I. C. 442 : I. R. 1929 Lah. 282 :

A. I. R. 1929 Lah. 531.

———S. 439—Enhancement of sentence—Revision—Private party, whether can move High Court—Procedure.

A District Magistrate or a Sessions Judge or a Government Pleader may draw the attention of the High Court to a sentence with a view to its being enhanced. The High Court may also, of its own motion, send for the record and take action with a like object. But a private person is not entitled to come to the High Court, and to ask it to enhance a sentence passed by a Subordinate Court. If he considers a sentence unduly lenient, he should draw

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the attention of the Government to the fact. *In re ; Nagji Dula.* 25 Cr. L. J. 966 :
81 I. C. 614 : 26 Bom. L. R. 182 :
48 Bom. 358 : A. I. R. 1924 Bom. 320.

———S. 439—Enhancement of sentence—Revision—Sentence not in accordance with law—High Court, power of—Sentence of imprisonment for period already undergone, legality of.

The High Court can interfere, under S. 439, Cr. P. C., to enhance a sentence, only in those cases in which a legal sentence has been passed. A sentence for a period already undergone in the lock-up is not a legal sentence. *Emperor v. Asghar Ali.*

20 Cr. L. J. 684 (a) :

52 I. C. 609 : 27 P. L. R. 1919 Cr. :

A. I. R. 1919 Lah. 29.

———S. 439—Enhancement of sentence—Revision—Sentence passed by Sessions Judge—Revision application by District Magistrate—Practice—Plea of guilty—Evidence.

A High Court will not enhance a sentence passed by a Sessions Court except on very serious grounds. A Court should not record a plea of guilty in the case of a person who is accused of murder or serious culpable homicide, without examining the accused person in order to find out whether he knows what exactly he is pleading to. In cases where death has been caused, it is, even if the accused pleads guilty, extremely desirable that at any rate sufficient evidence should be recorded by the Judge so that he may have something before him from which he can ascertain whether the plea is a genuine and bona fide plea and whether any extenuating circumstances exist. A High Court is not entirely precluded from exercising its right of revision merely because the original promotor of the petition is the District Magistrate, nor is a District Magistrate, as head of the Police, precluded from applying for revision of an inadequate sentence of a Sessions Judge, provided that : (i) he moves the Public Prosecutor to apply for revision and the sanction of Government is obtained before proceeding with, if not before filing, the application for revision : (ii) the application is not one to set aside an order of the Sessions Judge modifying in revision an order of the District Magistrate. *Emperor v. Kassim.*

26 Cr. L. J. 177 :

83 I. C. 881 : 17 S. L. R. 268 :

A. I. R. 1925 Sind 188.

———S. 439—Enhancement of sentence—Revision by accused—Single Judge, power of.

A single Judge dealing with an application for revision filed by an accused person under S. 439 of the Cr. P. C., has power to enhance the sentence passed upon the petitioner by the lower Court. *Sukhmandan Lal v. Emperor.* 28 Cr. L. J. 31 :

99 I. C. 36 : A. I. R. 1926 All. 719.

———S. 439—Enhancement of Sentence.

Powers of High Court regarding enhancement of sentence—Death ensuing within a few hours

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the lower Court on a question of fact.
Chheda Lal v. Emperor. 34 Cr. L. J. 793 :
 144 I. C. 577 : 10 O. W. N. 233 :
 I. R. 1933 Oudh 269 :
 A. I. R. 1933 Oudh 195.

———S. 439—*Finding of fact—Interference in revision.*

Although it is unusual to look into the evidence in a criminal revision and a finding of fact will not ordinarily be disturbed, where a finding is arrived at by a process which has vitiated the whole proceedings, the High Court can interfere in revision.
Ram Chand v. Emperor. 28 Cr. L. J. 91 :
 99 I. C. 123 : A. I. R. 1927 All. 147.

———S. 439—*Finding of fact.*

Ordinarily, a finding of fact cannot be interfered with, on revision under S. 439, Cr. P. C. *Bansi Lal v. Emperor.*

14 Cr. L. J. 595 :
 21 I. C. 467 : 36 P. W. R. 1913 Cr. :
 319 P. L. R. 1913.

———S. 439—*Finding of fact.*

Powers are invariably exercised in cases where it is established that the findings of fact reached by the two Courts below are based either on no evidence or on inadmissible evidence or on legally inadequate evidence or are perverse. *Diwan Singh Masfoon v. Emperor.*

36 Cr. L. J. 744 :
 155 I. C. 450 : 7 R. N. 176 :
 A. I. R. 1935 Nag. 90.

———S. 439—*Finding of fact—Revision.*

A Court of Revision will not interfere with a finding of fact when it has been arrived at on legal evidence used in a proper fashion.
Deoji v. Emperor. 27 Cr. L. J. 830 :
 95 I. C. 606 : A. I. R. 1926 Nag. 459.

———S. 439—*Finding of fact—Errors of law, when ground for interference.*

Though the jurisdiction of a Court in criminal revision to interfere with findings of fact is unquestionable, a Court will not interfere with such findings save in exceptional cases as where they are manifestly wrong and grossly and palpably unjust. With regard to questions of law also, an error, omission or irregularity is no ground for revision unless the same has caused failure of justice. *Mohammad Jan v. Emperor.*

27 Cr. L. J. 1193 :
 97 I. C. 953 : 3 O. W. N. 178 Sup. :
 A. I. R. 1926 Oudh 557.

———S. 439—*Finding of fact—Revision—Facts, whether may be gone into.*

It is the settled practice of the High Court to refuse to interfere, in the exercise of its revisional jurisdiction, in regard to finding of fact, except on very exceptional grounds, such as a misstatement of evidence by the lower Court, or the misconstruction of documents, or the placing by that Court of the onus of proof on the accused contrary to the law of evidence. *Ganesh Balwant Modak v. Emperor.*

11 Cr. L. J. 180 :
 5 I. C. 612 : 12 Bom. L. R. 21.

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———S. 439—*Finding of fact—Revision—Finding of fact of lower Appellate Court, value of—Practice.*

It is the practice of the Allahabad High Court, unless very strong grounds for an opposite course can be found, to accept the findings of facts of the lower Appellate Court and not of the Court of first instance. *Raghubar Dayal v. Emperor.*

18 Cr. L. J. 435 :
 38 I. C. 995 : A. I. R. 1917 All. 394.

———S. 439—*Finding of fact—Revision—High Court, powers of.*

Ordinarily the High Court will not, in revision, go through the evidence in order to satisfy itself about the propriety and correctness of the findings of facts arrived at by the lower Court; but in certain circumstances, it is not only open to the High Court to examine the evidence but it is its duty to do so. The High Court is not debarred from entering into a discussion of and looking into the evidence and facts in revision in order to find out if there has been a miscarriage of justice. *Daroga Singh v. Emperor.*

26 Cr. L. J. 113 :
 83 I. C. 673 : 1924 Pat. 177 :
 5 P. L. T. 538 : A. I. R. 1924 Pat. 758.

———S. 439—*Finding of fact—Revision—High Court, power of, to interfere with findings of fact.*

The High Court in Criminal Revision is not precluded from interfering with questions of fact, though it will not ordinarily do so. *Pratap Singh v. Emperor.*

31 Cr. L. J. 659 :
 124 I. C. 449 : I. R. 930 Nag. 273.

———S. 439—*Finding of fact—Revision.*

In a criminal revision the High Court will not interfere with a finding of fact arrived at by the lower Courts. *Ritha v. Emperor.*

27 Cr. L. J. 74 :
 91 I. C. 250 : 8 N. L. J. 178 :
 A. I. R. 1926 Nag. 127.

———S. 439—*Finding of fact—Revision—Interference.*

Although a High Court should not interfere in a criminal revision with findings of fact merely because after examining the evidence, the Court might be inclined to take a different view of that evidence than that taken by the Courts below, yet it can do so when the interests of justice require interference. *Thakur Das v. Emperor.*

28 Cr. L. J. 834 :
 104 I. C. 450 : A. I. R. 1928 Pat. 13.

———S. 439—*Finding of fact—Revision—Power to investigate into facts.*

The High Court can, in a criminal revision, consider how far findings of fact are justified though in practice it is unusual to do so. *Sejmal Punamchand v. Emperor.*

28 Cr. L. J. 373 :
 100 I. C. 981 : 29 B. L. R. 170 :
 51 Bom. 310 : A. I. R. 1927 Bom. 177.

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not been already dismissed. S. 439 (6) does not destroy and was not intended to destroy the finality of judgments of Appellate Courts given by S. 430, Cr. P. C. Ordinarily it is for Government to move the High Court to enhance a sentence, but if the attention of Government is not drawn to a particular matter which requires their attention, there is no reason why the High Court should not exercise powers conferred on it by law, even when conviction is by a Judge of the same Court. *Emperor v. Haji Khamoo*.

38 Cr. L. J. 114 :
165 I. C. 933 : 9 R. S. 113 :
A. I. R. 1936 Sind 233.

—S. 439 (1)—*Enhancement of sentence on application of private complainant—Principles—Rule to show cause issued—Duty of Judge by whom case is heard.*

It is a safe working rule not to interfere on petition for enhancement of sentences passed on accused persons made on behalf of private persons. But where a rule has once been issued by the High Court, it is the duty of the Judge before whom the case comes on for hearing to go into the facts and ascertain for himself whether in the circumstances of the case the sentence should be enhanced. *Pramatha Nath Basu v. Ganga Charan Chakravarty*.

30 Cr. L. J. 979 :
118 I. C. 894 : 33 C. W. N. 395 :
I. R. 1929 Cal. 702 : 56 Cal. 964 :
A. I. R. 1929 Cal. 340.

—S. 439 (b) —*Enhancement of sentence—In showing cause, if one can go behind verdict of jury.*

Though S. 409 (b), Cr. P. C., provides that a convicted person in showing cause why his sentence should not be enhanced is entitled to show cause against his conviction, the accused is not entitled to go behind the jury's verdict and show upon the evidence that the conviction was wrong. In showing cause against their conviction, the accused must proceed according to the provisions of S. 423 (2) which provides that the Court shall have no authority to alter or reverse the verdict of a jury unless the Court is of opinion that such verdict is erroneous owing to a misdirection by the Judge to the jury or to a misunderstanding on the part of the jury of the law as laid down by him. Since in an appeal the accused person cannot go behind the verdict of the jury, but can only show that there was misdirection by the Judge or a misunderstanding on the part of the jury of the law as laid down by the Judge, it cannot be said that an accused in showing cause against enhancement of sentence in a conviction in a jury trial, can go behind the same. *Alef Sheikh v. Emperor*.

37 Cr. L. J. 859 :
163 I. C. 768 : 62 Cal. 952 :
9 R. C. 84.

—S. 439 (b)—*Enhancement of sentence—Revision against conviction—Fresh notice to show cause against enhancement, if necessary.*

Where the petitions in a revision case are already before the Court represented by

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Counsel and he is in possession of all the papers upon which he may argue on the question of the enhancement of the sentence, it is not necessary nor is it required by law to serve a further notice on the petitioners, when after the perusal of the record at the hearing of the revision, the High Court considers it necessary to enhance their sentence and ask the Counsel to show cause immediately why their sentence should not be enhanced. *Alef Sheikh v. Emperor*.

37 Cr. L. J. 859 :
163 I. C. 768 : 62 Cal. 952 :
9 R. C. 84.

—S. 439(3)—*Enhancement of sentence.—High Court, power of, extent of.*

In revision the High Court can enhance a sentence and inflict any punishment for the offence which in the opinion of the Court has been committed which might have been inflicted for such offence by a Magistrate of the First Class, even although the trial Magistrate was invested only with Second or Third class powers. The accused were convicted by a Magistrate of the Second Class of an offence under S. 325, Penal Code, and sentenced to 3 months' rigorous imprisonment and a fine of Rs. 25 each. Their appeal was rejected by Sub-Divisional Magistrate, who sent the record to the District Magistrate, with a recommendation that the High Court should be moved to enhance the sentences which, in his opinion, were inadequate. The District Magistrate reported the case to the High Court: *Held*, that the Court had power to enhance the sentence to the limit of the sentence which could have been passed by a Magistrate of the First Class in spite of the fact that the trying Magistrate could only have awarded six months. *Emperor v. Jagat Singh*.

21 Cr. L. J. 557 :
56 I. C. 816 1 Lah. 453 :
A. I. R. 1920 Lah. 213.

—S. 439 (3) —*Enhancement of sentence—Practice.*

In cases of convictions by Second or Third Class Magistrate, the High Court has power to enhance the sentence beyond the power of the trying Magistrate. The power of enhancement of sentence conferred upon the High Court by S. 439, Cr. P. C., is limited only by clause (3) of that section, which clause does not regard the difference in the powers of the trying Magistrate under S. 32 of the same Code but lays down the general rule that in cases of sentences passed by Magistrates not empowered under S. 34, the limit of enhancement shall be the sentence that may be inflicted by a Presidency or a First Class Magistrate. The practice of the Court to accept the conviction as conclusive and to consider the question of enhancement of sentence on the basis of the facts found by the lower Court would not be followed when it is proposed to enhance a sentence beyond the powers of the trying Magistrate. In such cases

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invested in the Magistrates referred to in the section a very wide discretion. Therefore, although the High Court should not, as a rule, interfere with powers and discretion of the Magistrate, it may, in certain cases, send for a record to satisfy itself that the order of the Magistrate was legal and that the Magistrate had not acted in an arbitrary manner. The order calls for no interference if it is legal and made after due and careful consideration. *Gul Hasan Sahib v. Emperor*. 40 Cr. L. J. 823 : 183 I. C. 641 : 12 R. S. 67 :

1939 Kar. 751 : A. I. R. 1939 Sind 230.

—S. 439—Grounds for interference—Reference to the High Court with recommendation for quashing a conviction.

A and B were convicted by a first class Magistrate, the sentence passed upon A being appealable and the sentence passed upon B being non-appealable. On an appeal by A the conviction was set aside on the ground that the evidence for the prosecution was false and discrepant. On a petition preferred by B the proceedings were forwarded to this Court with a recommendation that B's conviction be quashed: *Held*, that the reference was wrongly made and that no grounds for interference were disclosed. *Emperor v. Wahid Ali*. 1 Cr. L. J. 533 : 17 C. P. L. R. 36.

—S. 439—Grounds for interference.

Unless Court is satisfied that there is miscarriage of justice in case of prisoner of age, educated and sane, High Court will not interfere in revision petition, brought by friend of prisoner. *Ramendra Chandra Ray v. Emperor*. 32 Cr. L. J. 844 :

132 I. C. 174 : 35 C. W. N. 716 :
58 Cal. 1303 : I. R. 1931 Cal. 558 :
A. I. R. 1931 Cal. 410.

—Ss. 439, 476—Grounds for interference—Sanction for prosecution when to be granted—Civil Court sanctioning prosecution—Revision, competency of.

An order of Civil Court sanctioning the prosecution of a decree-holder under S. 210, Penal Code, is open to revision under S. 439, Cr. P. C. In sanctioning a prosecution under S. 476, Cr. P. C., the Court has not only to consider whether there is a *prima facie* case but also whether it is expedient in the interest of justice to sanction prosecution. Failure to exercise judicial discretion properly is a good ground for interference in revision. *Hari Ram v. Emperor*. 30 Cr. L. J. 666 :

116 I. C. 711 : 11 L. L. J. 103 :
30 P. L. R. 392 : I. R. 1929 Lah. 567 :
A. I. R. 1929 Lah. 676.

—S. 439—Grounds for interference by High Court in revision.

The High Court will interfere in revision only when substantial questions arise. *Ganesh v. Emperor*. 40 Cr. L. J. 347 :

180 I. C. 230 : 1938 A. L. J. 1217 ;
11 R. A. 434 : 1939 A. W. R. 69 :
A. I. R. 1939 All. 166.

—Ss. 439, 494—Grounds for revision—

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Withdrawal of case, application for, rejection of—Discretion of Court—Revision.

Where a Sessions Judge in rejecting an application by the Public Prosecutor, under S. 494, Cr. P. C., to withdraw a case, exercises a judicial discretion in a proper way, the High Court will not interfere with his order in revision. *In re : Kaliappa Goundan*. 27 Cr. L. J. 334 :

92 I. C. 750 : 23 L. W. 101 :
A. I. R. 1926 Mad. 296.

—S. 439—Ground of interference on revision.

The misreading of the documentary evidence and the fundamental errors in principle, which vitiate the conduct and disposal of a case afford a good ground for revision by the High Court under Ss. 435 and 439, Cr. P. C. *Emperor v. Bal Gangadhar Tilak*. 1 Cr. L. J. 305 :

6 Bom. L. R. 324 :
I. L. R. 28 Bom. 479.

—S. 439—Grounds for setting aside conviction.

It is necessary, in order to get a conviction set aside, to show that it is wrong, Court will not go into the facts at all unless the conscience of the Court has been touched. *Ramasis Thakur v. Emperor*. 35 Cr. L. J. 22 (2) :

146 I. C. 370 : 6 R. P. 255 :
14 P. L. T. 759 :
A. I. R. 1933 Pat. 697.

—S. 439—Illegality—Warranting interference in revision.

Where only three Magistrates of the Bench tried the case but the judgment was signed by seven: *Held*, there was an illegality which warranted interference in revision. *Picha Kudumban v. Servaikara Thevan*. 32 Cr. L. J. 971 :

133 I. C. 4 : 1930 M. W. N. 770 :
I. R. 1931 Mad. 692 :
A. I. R. 1931 Mad. 494.

—S. 439—Interference.

No interference at third party's instance on question of sentence, when accused have not seen fit to appeal. *Ambika Charan De v. Emperor*. 34 Cr. L. J. 814 :

144 I. C. 691 (2) : 6 R. C. 8 :
A. I. R. 1933 Cal. 361.

—S. 439—Interference—Revision against acquittal.

The High Court interferes in revision with an order of acquittal only where exercise of the jurisdiction is urgently demanded in the interests of public justice. Where the dispute between the parties is essentially of a civil nature, the High Court would decline to interfere in revision with an order of acquittal. *Mohamed Mustafa Rowther v. Shanmuga Thevan*. 25 Cr. L. J. 1389 :

83 I. C. 349 : A. I. R. 1925 Mad. 375.

—S. 439—Interference—Revision—High Court, when will interfere.

Although the High Court will not, under

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to produce all the relevant and available evidence in order to bring home the charge to the accused and they cannot be allowed to produce evidence at their pleasure piece-meal. Where the prosecution has failed to adduce the necessary evidence, which would justify the conviction of the accused, it should not be allowed another opportunity to fill in the gaps which were deliberately left by them by remanding the case for re-trial. *Sochiram v. Emperor*.

39 Cr. L. J. 278 (a) :
173 I. C. 12 : 18 P. L. T. 871 :
4 B. R. 218 : 10 R. P. 389 :
A. I. R. 1938 Pat. 39.

—S. 439—Evidence.

The question whether there was legally admissible evidence against the accused is rather a question of law than one of fact, and interference is justifiable on such a point. *Nga Tun Htaing v. Emperor*. 35 Cr. L. J. 808 :
148 I. C. 876 : 6 R. Rang. 258.
A. I. R. 1934 Rang. 60.

—S. 439—Executive order by Magistrate.

Executive order passed by Magistrate cannot be reversed by High Court. *Abdul Shakur v. Mahadev Parshad*.

32 Cr. L. J. 296 :
129 I. C. 294 : 31 P. L. R. 725 :
I. R. 1931 Lah. 182 :
A. I. R. 1930 Lah. 539.

—S. 439—Exercise of discretion.

A High Court is not bound to go into evidence if it does not think fit. It is for it to decide where it should exercise its discretionary power and where not. The mere application of a party to examine the evidence in any case is not sufficient ground for doing so. There must appear, on the face of the judgment or order complained of or of the record, grave ground to induce the Court to think that the evidence ought to be examined in order to see that there has been no failure of justice. Where there is no such ground, the practice is to limit the interference in revision to matters of law. In this case the evidence ought not to be gone into in revision. The controlling power of the High Court in revision of criminal cases is a discretionary power, and it must be exercised with regard to all the circumstances of each particular case, anxious attention being given to the said circumstances, which vary greatly. This discretion ought not to be crystalized as it would become in course of time by one Judge attempting to prescribe definite rules with a view to bind other Judges in the exercise of the discretion, which the Legislature has committed to them. This discretion, like all other judicial discretion, ought, as far as practicable, to be left untrammelled and free so as to be fairly exercised according to the exigencies of each case. *Emperor v. Bankat Ram Lachi Ram*.

1 Cr. L. J. 390 :
6 Bom. L. R. 379 : I. L. R. 28 Bom. 533.

—S. 439—Exercise of discretion.

Exercise by the High Court of the revisional

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jurisdiction in criminal matters is a matter of discretion. *Emperor v. Abdulla Karim*.

41 Cr. L. J. 143 :
185 I. C. 268 : 1940 Kar. 83 :
12 R. S. 161 : A. I. R. 1939 Sind 335.

—S. 439—Exercise of discretion—Illegality more than mere irregularity—High Court can refuse to interfere if substantial justice has been done.

Even if an illegality more than an irregularity had been committed, the Court has discretion to refuse to interfere in revision if substantial justice had been done. *Giani v. Emperor*.

38 Cr. L. J. 123 :
166 I. C. 71 : 38 P. L. R. 332 :
9 R. L. 334 : A. I. R. 1936 Lah. 1015.

—S. 439—Exercise of discretion—Revision—Criminal Procedure Code, Ss. 107 and 125—Security to keep the peace—Refusal of High Court to interfere where no application had been made to the District Magistrate to cancel security bonds.

On an application in revision to set aside an order calling upon certain persons to furnish security to keep the peace, the High Court declined to consider the merits of the application when the applicants had not moved the District Magistrate under the provisions of S. 125, Cr.P.C. to cancel their security bonds. *Emperor v. Abdur Rahim*.

2 Cr. L. J. 335 :
25 A. W. N. 143.

—S. 439—Exercise of discretion—Revision—Pending case—High Court, interference by.

The High Court will not interfere in a criminal case during its pendency, unless there is some manifest and patent injustice apparent on the face of the proceedings and calling for prompt redress. *Kohanraj Vasanji Halia v. Emperor*.

21 Cr. L. J. 343 (a) :
55 I. C. 679 : A. I. R. 1920 Nag 31 (a).

—S. 439—Exercise of discretion—Revisional powers, exercise of.

Where a discretion has been exercised by a Court of competent jurisdiction which is not on the face of it arbitrary, the practice of the High Court is that as a Revisional Court, it will neither enquire into the reasons nor interfere with the exercise of the discretion. *Khami v. Emperor*.

25 Cr. L. J. 1368 :
82 I. C. 760 : A. I. R. 1925 Sind 190.

—S. 439—Exercise of Discretion.

The High Court does not take a technical view and interfere in every case, where an order has been made irregularly or even improperly. *Shiv Singh v. Jitendranath Sen*.

33 Cr. L. J. 3 :
134 I. C. 1045 :
56 C. W. N. 16 : 59 Cal. 275 :
I. R. 1932 Cal. 5 : A. I. R. 1931 Cal. 607.

—S. 439—Exercise of discretion.

The powers of the Court under the section, wide though they are, are purely discretionary and must be exercised not, as matter of course, but only to further the ends of justice. *Parsram v. Emperor*.

32 Cr. L. J. 700 :
131 I. C. 353 : 32 P. L. R. 71 :
I. R. 1931 Lah. 449 : A. I. R. 1931 Lah. 145.

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was posted for defence evidence to an unusual hour and when the case was called on for hearing, the complainant was absent but his Pleader was present and the Magistrate dismissed the case, on revision against the acquittal: *Held*, that the Magistrate would have exercised a better discretion if he had given a short adjournment and not dismissed the case in the circumstances and the High Court ought to interfere in revision to set right matters as it alone had the power to do so. *Ottavu Subbiah v. Inukotiobiah*.

27 Cr. L. J. 1391 :
98 I. C. 607 : A. I. R. 1927 Mad. 139.

—S. 439—Interference—Grounds for—Discharge of accused—Application by police for revision—Technical theft—Order for re-trial.

Where a son and his servants removed after 18 months from the possession of his deceased father's mistress, certain buffaloes which were once the real or supposed property of his father (the father having maintained them formerly and perhaps presented them to the mistress) and where, though the buffaloes were not removed peacefully, nor after notice, given, nor in her presence, the Magistrate discharged them: *Held*, (in revision) that a removal of this sort was not consistent with a *bona fide* assertion of an owner's lawful claim; that, if there was such a belief of the son, as was claimed, he should not have slept over his rights for so many months and then asserted them in such an uncompromising and high-handed manner; that it was not a behaviour, from which *bona fides* might be inferred: and that, therefore, the accused should be re-arrested and re-tried and the evidence re-recorded *de novo*. *Emperor v. Sherkhan Balochkhan*.

3 Cr. L. J. 102.

—S. 439—Interference—Grounds for—Discharge of accused—Extradition—Prima facie case—Penal Code, S. 500—Defamation.

A Magistrate in a case of defamation discharged the accused. In revision the case was remanded for further enquiry, but the accused refused to appear and went into a foreign jurisdiction. An enquiry was, therefore, ordered before a Magistrate of that jurisdiction, who reported that in his opinion, there was not sufficient ground for extradition. On this the Magistrate trying the case, again discharged the accused: *Held*, (in revision) that as the case had been sent down for further enquiry, it could not be held that there was no evidence or not sufficient evidence, that the absence of evidence, such as would warrant a conviction, alone justified an order of discharge (S. 253, Cr. P. C.), that extradition was not the same as a conviction, that the other Magistrate was not the officer appointed to try the accused for the alleged offence, that the accused could not obtain a discharge unless he returned and took his trial; that the extra-judicial opinion of any official outside Kathiawar, could not be accepted; and that the Magistrate should place the proceedings on his dormant file. *Mauilal Ajitrai v. Modi Musa Yakub*.

2 Cr. L. J. 211.

—S. 439—Interference—Grounds for—Discharge of accused before completion of case—Further

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ther enquiry ordered by District Magistrate—Interference by High Court.

S. 253 gives a Magistrate power of discharge before the entire case is complete. But if the District Magistrate on revision orders a further enquiry on the ground that the entire evidence of the complainant had not been recorded, the order of the District Magistrate cannot be said to be illegal and the High Court will not interfere with it in revision. *Hakim Singh v. Lal Singh*.

31 Cr. L. J. 239 :
121 I. C. 289 : A. I. R. 1930 Lah. 158.

—S. 439—Interference—Grounds for—Judgment of acquittal by the Sessions Judge—Jurisdiction of High Court in revision—Misappreciation of evidence.

The High Court can interfere, in the exercise of its revisional powers, with a judgment of acquittal passed by a Sessions Judge though such powers should be exercised with great caution. A judgment of acquittal can be revised by the High Court on the ground of misappreciation of evidence. *Nallammai v. Rammasami Nadan*.

11 Cr. L. J. 195 :
4 I. C. 1133 : 5 M. L. T. 258.

—S. 439—Interference—Grounds for—Revision against order of discharge—High Court, jurisdiction of—Interference, limits of alien enemy trading under license, whether competent to file complaint or move High Court in revision—Internment after filing of revision petition under Enemy Ordinance, effect of—Confession, extra-judicial, value of.

In dealing with revision petitions against orders of discharge of accused persons by Magistrate, the High Court will apply the same principles as are applicable to cases of petitions to revise orders of acquittal. In either case the High Court will not interfere where there is no clear error or defect in the proceedings of the lower Courts which has resulted in grave injustice but the question is merely one as to the appreciation of doubtful evidence. *Mellor v. Muthiah Chetty*.

20 Cr. L. J. 101 :
48 I. C. 981 : 35 M. L. J. 518 :
9 L. W. 113 : A. I. R. 1919 Mad. 851.

—S. 439—Interference—Grounds for.

Where summonses are issued on a complaint containing allegations which, if proved, would constitute an offence, the High Court will not, in revision, quash proceedings even though the matter involved is one in controversy between the parties in the Civil Courts and the prosecution is not *bona fide*. In such a case, it may be proper for the High Court to stay the criminal proceedings pending disposal of the civil proceedings. *Ramanathau Chettiar v. Sivarama Subramania Iyer*.

25 Cr. L. J. 1009 :
81 I. C. 785 : 20 L. W. 234 :
1924 M. W. N. 556 : 47 M. L. J. 373 :
47 Mad. 722 : A. I. R. 1925 Mad. 39.

—Ss. 439, 476—Interference, grounds for—Proceedings by Magistrate—Revisional power of High Court—Whether High Court can interfere no grounds other than want of jurisdiction.

The High Court, as a Court of Revision, has power, under S. 439, Cr. P. C., to interfere on

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—Ss. 439, 562—*Exercise of discretion—First offender—Release, order of—Discretion of Court—Revision—Interference by High Court.*

Where a Magistrate makes an order of release under S. 562, Cr. P. C. in a case to which the provisions of that section are applicable after taking into consideration all the relevant circumstances of the case, the High Court will not interfere with the exercise of his discretion in revision, unless a strong case is made out justifying such interference. *Emperor v. Kesho Ram.*

28 Cr. L. J. 255 :
100 I. C. 127 : A. I. R. 1927 Lah. 353.

—Ss. 439 (6), 195—*Exercise of discretion—Sanction to prosecute—Revision—Delay in applying to High Court, effect of.*

The revisional jurisdiction of the High Court is discretionary and it will not interfere in revision at the instance of applicants who do not show reasonable diligence in prosecuting their cases. *Avadh Behari Misra v. Dwarka Prasad Singh.*

18 Cr. L. J. 271 :
37 I. C. 639 : 1 P. L. J. 165 :
A. I. R. 1916 Pat. 151.

—S. 439—*Exercise of discretionary powers in favour of accused—Accused though ordered by lower Court to surrender to his bail, not doing so—Revision cannot be entertained until order of lower Court is complied with nor can his Counsel be heard.*

Where an accused does not surrender to his bail bonds in contravention of the order of the lower Court to do so and remains at large, he is in contempt of Court, and under S. 439, Cr. P. C. as long as the accused does not enter appearance in obedience to the order of the lower Court, the High Court will not be justified in exercising its discretionary powers in favour of the accused. Further, until the order of the lower Court is complied with, the Counsel representing him will not have a right of audience. *Sheo Mandal v. Emperor.*

40 Cr. L. J. 153 :
178 I. C. 1000 : 1938 A. L. J. 1022 :
I. L. R. 1938 All. 991 : 11 R. A. 344 :
1938 A. W. R. 690 : A. I. R. 1939 All. 5.

—Ss. 439, 440—*Exercise of revisional jurisdiction—Accused not desiring revision—Jurisdiction, exercise of.*

The Court of the Judicial Commissioner is competent to act in the exercise of its criminal revisional jurisdiction, even though the accused does not desire it. It is the practice of the Sind Judicial Commissioner's Court not to interfere in revision when the convicted person has failed to exercise his right of appeal. Further, it is the practice of the Court, in all cases of revision, to confine its interference as a rule to points of illegality or error in procedure and not to interfere with findings of facts unless a miscarriage of justice is shown to have resulted. *Hiranand v. Emperor.*

25 Cr. L. J. 134 :
76 I. C. 230 : 17 S. L. R. 245 :
A. I. R. 1924 Sind 129.

—S. 439—*Expunging of remarks—Two persons tried together—One person acquitted and other convicted—Appeal by convicted person*

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—*Appellate Court's right to express opinion against acquitted person.*

In disposing of the appeal of one of two co-accused, who were tried together, and one of whom was acquitted, the Appellate Court has no right to make use of expressions which amount to a finding that the acquitted accused was wrongly acquitted. Once a person is tried and acquitted of an offence by due process of law, and no appeal is referred against his acquittal, he must be deemed to be innocent of the charge upon which he was tried, and a Court superior to that which tried him has no right to express the opinion that he is in fact guilty although acquitted by the Trial Court. The High Court will not allow such expressions to remain on record. *Abdul Aziz v. Emperor.*

25 Cr. L. J. 1245 :
82 I. C. 173 : A. I. R. 1925 Lah. 129.

—S. 439—*Finding of fact.*

Concurrent finding on point of fact—Interference in revision is not proper. *Jan Mahomed v. Emperor.*

36 Cr. L. J. 1464 :
158 I. C. 498 : 8 R. S. 53 :
A. I. R. 1935 Sind 103.

—S. 439—*Finding of fact.*

Findings of fact arrived at by Courts below are not usually interfered with. *Ramphul Singh v. Emperor.*

35 Cr. L. J. 408 :
147 I. C. 266 : 35 P. L. R. 157 :
6 R. L. 375 : A. I. R. 1933 Lah. 236.

—S. 439—*Finding of fact.*

High Court is reluctant to interfere against concurrent findings of fact especially in summary trials. But where lower Courts have clearly not had before their minds contentions of parties, interference is proper. *Lalchand Pitulal v. Emperor.*

35 Cr. L. J. 270 :
147 I. C. 666 : 28 S. L. R. 122 : 6 R. S. 123 :
A. I. R. 1933 Sind 396.

—S. 439—*Finding of fact—High Court—Revision.*

It is unusual for the High Court in criminal cases to interfere in revision with a finding of fact unless it is one so manifestly erroneous that a miscarriage of justice would result from its remaining uncorrected. *Emperor v. Buransahab Hasansahab.*

1 Cr. L. J. 1111 :
6 Bom. L. R. 1096.

—S. 439—*Finding of fact—High Court's power of revision—Evidence.*

The High Court on its Revision Side does not go into evidence, but where the evidence is too weak to justify a conviction, it can interfere with the findings of fact by an inferior Court. A Court cannot convict an accused upon what it thinks witnesses ought to say or could say if they spoke the truth, but can only act upon the evidence they give. *Banwari Lal v. Emperor.*

4 Cr. L. J. 427 :
1 P. W. R. 22 Cr.

—S. 439—*Finding of fact.*

In a criminal appeal, the High Court will not interfere in revision with the findings of

Cr. P. CODE (1898), S. 439

———S. 439—*Interference—Nature of.*

Ordinarily, the High Court will not interfere with findings of facts in the exercise of its jurisdiction under S. 439 but it has jurisdiction to review even questions of facts as the words of S. 435 clearly indicate and will do so where there is a clear miscarriage of justice. *Emperor v. Surju Prasad.*

25 Cr. L. J. 1066 :
81 I. C. 890 : 11 O. L. J. 330 :
27 O. C. 290 : 1 O. W. N. 229 :
A. I. R. 1924 Cal. 366.

———S. 439—*Interference—Nature of—Proceedings before Magistrate in pending trial, setting aside of—High Court, jurisdiction of.*

Under Ss. 435, 438 and 439, the High Court has power at any stage to interfere with, quash or set aside any proceedings before a Magistrate in a pending trial. *Ramanathan Chettiar v. Sivarama Subramania Aiyar.*

25 Cr. L. J. 1009 :
81 I. C. 785 : 20 L. W. 234 :
1924 M. W. N. 556 :
47 M. L. J. 373 : 47 Mad. 722 :
A. I. R. 1925 Mad. 39.

———Ss. 439, 562—*Interference—Nature of—Accused released under S. 562—Revision—Sentence of imprisonment, whether can be passed.*

S. 429 presupposes that a sentence has been imposed. Therefore, where an accused is released on good probation under S. 562, the High Court cannot substitute a sentence of imprisonment or of whipping in revision. *Emperor v. Nurkhan.*

20 Cr. L. J. 99 :
48 I. C. 979 : A. I. R. 1918 Nag. 137.

———S. 439, Cls. (1), (5)—*Interference on its own motion by High Court—Appeal competent—Revision.*

When an appeal lies against any criminal proceedings but no appeal is brought, no proceedings by way of revision can be entertained at the instance of the party who could have appealed, having regard to S. 439 (5), Cr. P. C., and if proceedings by way of revision are instituted by such a party, the High Court cannot interfere even on its own motion under Cl. (1) of that section. *Nuran v. Emperor.*

25 Cr. L. J. 1362 :
82 I. C. 754 : A. I. R. 1925 Sind 206.

———S. 439—*Interference on facts—Revision—Reasonable doubt—Acquittal.*

The rule of the Allahabad High Court, not to interfere on facts found by the lower Appellate Court, when sitting as a Court of Revision, on the Criminal Side, is not an absolute one and the Court will interfere where it is not satisfied as to 'the propriety of the finding.' Where a High Court is not satisfied beyond a reasonable doubt of the guilt of the accused, the accused is entitled to an acquittal. *Shiam Sunder v. Emperor.*

23 Cr. L. J. 241 :
66 I. C. 177 : 20 A. L. J. 276 :
4 U. P. L. R. (All.) 185 : A. I. R. 1922 All. 122.

Cr. P. CODE (1898), S. 439

———S. 439—*Interference on merits—Order under S. 145—Interference on merits.*

The High Court does not interfere in revision with orders under S. 145, Cr. P. C. on the merits, as a rule. *Babu Ram Pandey v. Shyamdeo Narayan.*

40 Cr. L. J. 220 :
179 I. C. 548 : 5 B. R. 246 :
11 R. P. 390 : A. I. R. 1939 Pat. 187.

———S. 439—*Interference—Procedure.*

It is only as a Court of last resort, after application has been made to the District Magistrate or Sessions Judge, that the Judicial Commissioner will interfere, under S. 439, with an order of discharge. *Gunwantrao v. Shamrao.*

21 Cr. L. J. 863 :
58 I. C. 943 : A. I. R. 1920 Nag. 198.

———S. 439—*Interference with conviction of facts—Power of High Court.*

Where the grounds taken for saying that the Magistrate was wrong in convicting accused are all grounds of fact and not connected with any question of law, High Court cannot interfere in revision with conviction. *In re : Paluvadi Venkataramayya.*

41 Cr. L. J. 403 :
187 I. C. 103 : 1939 M. W. N. 1039 :
50 L. W. 614 : I. L. R. 1939 Mad. 1035 :
1939 2 M. L. J. 403 : 12 R. M. 693 :
A. I. R. 1940 Mad. 111.

———Ss. 439, 476—*Interference with direction to prosecute—Revision.*

The High Court will not in revision interfere with a direction to prosecute under S. 476, Cr. P. C., unless it is satisfied that the discretion was given on merely fanciful grounds, or on grounds so empty and so obviously wrong that the Court giving the direction could be said to have formed a serious judicial opinion. *In re : Parshotamdas M. Shah.*

24 Cr. L. J. 359 :
27 I. C. 359 : 25 Bom. L. R. 282 :
A. I. R. 1923 Bom. 201.

———S. 439—*Interference with finding of fact.*

The High Court does not ordinarily interfere in revision with findings of fact, but the question whether a criminal has been sufficiently identified, and whether his conviction on the evidence of one witness only should stand is a point more of law than of fact. *Meherali Lalji v. Emperor.*

32 Cr. L. J. 543 :
130 I. C. 378 : A. I. R. 1931 Sind 13.

———S. 439—*Interference with finding in favour of accused.*

In a criminal revision the High Court will not re-open a finding in favour of the accused at which the lower Court has arrived at on the evidence. *Gurdas Mandal v. Emperor.*

32 Cr. L. J. 122 :
128 I. C. 351 : I. R. 1931 Pat. 47 :
A. I. R. 1930 Pat. 509.

———S. 439—*Interference with order of acquittal—Power of High Court.*

The High Court has no jurisdiction to convert an order of acquittal into one of conviction on an

Cr. P. CODE (1898), S. 439**—S. 439—Finding of fact—Revision.**

The High Court, in the exercise of its powers of criminal revision under S. 439, Cr. P. C., can set aside the conviction of and sentence passed on the accused after consideration of the evidence on the record. *Jotindra Nath Baral v. Emperor*.

17 Cr. L. J. 460 :
36 I. C. 140 : A. I. R. 1917 Cal. 659.

—S. 439—Finding of fact—Revision.

Though a finding of fact is not usually interfered with in revision, yet where the finding is not based on any positive evidence but upon inferences drawn from certain circumstances arising from the evidence and all the materials on which the finding is based are set forth in the judgment of the Courts below, it is open to the accused to ask the High Court to consider if the conclusions arrived at by the Courts below are warranted by those materials. *Harakrishna Mahalab v. Emperor*.

31 Cr. L. J. 249 :
121 I. C. 321 : 11 P. L. T. 319 :
A. I. R. 1930 Pat. 209.

—S. 439—Finding of fact—Revision, whether can be interfered with.

Ordinarily findings of fact are accepted by a Revisional Court as binding upon it, but it has the power to look into the evidence for itself and see if these findings can be justified by what appears upon the record. A Revisional Court does not decide the balance of credibility between two conflicting sets of witnesses or two conflicting issues of facts but it may be compelled to dissent from a finding of fact which is either perverse or has been arrived at contrary to well-established principle of law. *Umed Singh v. Emperor*.

25 Cr. L. J. 327 :
77 I. C. 183 : 21 A. L. J. 765 :
46 All. 64 : A. I. R. 1924 All. 299.

—S. 439—Finding of fact.

The Cr. P. C. gives the High Court the power to go into evidence in revision. As a matter of practice, however, it will not interfere in revision with findings of facts, based upon appreciation of evidence, but it will interfere under special circumstances or where there is an error of law. Per *Aston, J.* (differing.)—When the question before the High Court exercising its powers of revision, is one of appreciation of evidence, the rule of practice is to refuse to disturb a finding when there is legal evidence, oral or documentary, to sustain it. *Emperor v. Bankatram Lachiram*.

1 Cr. L. J. 390 :
6 Bom. L. R. 379 : I. L. R. 28 Bom. 533.

—S. 439—Finding of fact.

The High Court in revision should not ordinarily interfere with findings of fact recorded by the Court of first appeal when there is evidence which, if believed, supports such findings. *Rabu Saleh v. Emperor*.

34 Cr. L. J. 802 :
144 I. C. 427 : I. R. 1933 Sind 189 :
A. I. R. 1933 Sind 139.

Cr. P. CODE (1898), S. 439**—S. 439—Finding of fact.**

When the view taken in a case by the lower Courts is not so contrary to law or reason as to require interference by the High Court, it is unnecessary to go into the facts of the case in revision. *Trikamji Parmanandji Bhatia v. Emperor*.

34 Cr. L. J. 1038 :
145 I. C. 550 : 6 R. N. 51 :
A. I. R. 1933 Nag. 33.

—S. 439—Finding of fact.

Where a finding has been arrived at that there did exist a general conspiracy, the finding is one which cannot be challenged before the High Court in revision. *Abdul Rahman v. Emperor*.

36 Cr. L. J. 982 :
156 I. C. 678 : 62 Cal. 749 :
8 R. C. 21 : A. I. R. 1935 Cal. 316.

—S. 439—Finding of fact.

Where the grounds set forth in an application for revision really challenge the findings of fact arrived at by the lower Appellate Court, they are not proper grounds for a criminal revision. *Narain v. Emperor*.

34 Cr. L. J. 649 (1) :
143 I. C. 835 : 10 O. W. N. 47 :
I. R. 1933 Oudh 207 :
A. I. R. 1933 Oudh 117.

—S. 439—Fresh application, whether barred.

No Court can reasonably accept the principle that once it has passed any sort of order in a criminal revision it is precluded from entertaining any further revision petition or reference in the same case, or even from proceeding *suo motu*. When a Court had refused to allow as adequate certain reasons put forward by a party for interference in revision, it cannot be said to have endorsed the correctness, legality and propriety of the finding, sentence or order in revision beyond all further possibility of question. *In re : Anif Sahib*.

26 Cr. L. J. 583 :
85 I. C. 727 : A. I. R. 1925 Mad. 993.

—S. 439—Fresh application whether barred.

Where, the High Court has once dismissed a revision petition filed by a convict against the propriety of his conviction, it still has jurisdiction to consider another application made by the complainant or the Crown to enhance the sentence passed upon the convict. *In re : Anif Sahib*.

26 Cr. L. J. 583 :
85 I. C. 727 : A. I. R. 1925 Mad. 993.

—S. 439—Grounds for interference.

High Court will interfere when accused is prosecuted without material justifying trial. *Raghunath v. Emperor*.

33 Cr. L. J. 349 :
136 I. C. 842 : 12 P. L. T. 937 :
I. R. 1932 Pat. 129 : A. I. R. 1932 Pat. 72.

—S. 439—Grounds for interference—Order under S. 144—High Court, when can interfere in revision.

S. 144, Cr. P. C. is in very wide terms, and under this section, the Legislature has

Cr. P. CODE (1898), S. 476

———S. 476—*Power of High Court to stay proceedings—Civil Procedure Code, S. 194—Forgery—Finding by Trial Court—Appeal pending in High Court—Stay of proceedings—Inherent power of Court.*

Petitioners, defendendants in a civil suit; for the recovery of money, pleaded payment and produced a receipt which was held by the Trial Court to be a forgery. The suit was decreed and the Court issued a notice to the petitioners to show cause why they should not be prosecuted for producing a forged document in evidence. Petitioners lodged an appeal to the High Court against the decree and the appeal was admitted. They then made an application under S. 151, C. P. C., to High Court to stay the proceedings pending in the Trial Court under S. 476 of the Cr. P. C.: *Held*, (1) that inasmuch as the question whether the receipt was a forged one or not had to be finally decided by the High Court, it was not proper that proceedings under S. 476, Cr. P. C. should be taken against the petitioners before the decision of the appeal: (2) that as the proceedings under S. 476 were pending in a Civil Court, the High Court had jurisdiction in the exercise of its inherent power under S. 151 of the Cr. P. C. to stay the proceedings. *Harnam Singh v. Atri.*

26 Cr. L. J. 1166 :
88 I. C. 526 : 7 L. L. J. 73 :
A. I. R. 1925 Lah. 323.

———S. 476—*Power of Magistrate—Complainant—Fresh opportunity to show cause against prosecution, whether should be given.*

Before ordering a prosecution under S. 211, Penal Code, the complainant, if his complaint is pending, should, as a rule, be given an opportunity of proving his case. But where the complaint has been dismissed by the Magistrate as groundless under S. 253, Cr. P. C. and the Magistrate has before him the report of the Police in support of his view, it is not necessary that he should again ask the complainant to prove his case which Magistrate has disbelieved even before he examines the complainant and his witnesses. *Fazlar Rahman v. Emperor.*

31 Cr. L. J. 1055 :
126 I. C. 553 : A. I. R. 1930 Cal. 515.

———S. 476—*Power of Magistrate—Magistrate passing order refusing to start proceedings for perjury under S. 476—Whether can act on subsequent application moving him to the same effect.*

A Magistrate who has passed an order refusing to start proceedings for perjury under S. 476, Cr. P. C. can act on a second application moving him to the same effect. Ordinarily, however, it would be undesirable to do so unless some fresh facts had emerged showing that the previous order was clearly wrong: *Held*, on merits the Magistrate was justified in refusing to prosecute, and interference in revision was not necessary. *Bhagwandas v. Mathura.*

37 Cr. L. J. 977 :
164 I. C. 713 (2) : 9 R. N. 26 (1) :
A. I. R. 1936 Nag. 156.

Cr. P. CODE (1898), S. 476

———S. 476—*Power of Magistrate.*

Magistrate, who after trying a case, has been transferred from the charge of the particular Court in which the case was tried to some other duty in the same district, is not competent to make an order under S. 476, Cr. P. C. in respect of a case which he tried as presiding officer of such Court. *Chuni Lal v. Harbans Rai.*

1 Cr. L. J. 596 :
1 A. L. J. 315.

———S. 476—*Powers of Magistrate—Penal Code, S. 132—False complaint of dacoity—Trial for another offence—Acquittal.*

The accused made a false report of a dacoity at a Police Station. The Police did not proceed on his complaint of dacoity but prosecuted certain persons under S. 324, I. P. C. That offence also was not brought home to them and the Police made a complaint requesting the prosecution of the accused under S. 182, I. P. C., for making a false report of dacoity and he was convicted: *Held*, that as the Magistrate had not tried any case of dacoity, the trial of the accused without a complaint by the Magistrate was not illegal. *Ganga Prasad v. Emperor.*

32 Cr. L. J. 128 (a) :
128 I. C. 284 : 7 O. W. N. 756 :
I. R. 1931 Oudh 44 : A. I. R. 1930 Oudh 414.

———S. 476, 4 (m)—*Power of Magistrate—Power of Magistrate holding enquiry to proceed under S. 476.*

Where a case was sent by one Magistrate to another for enquiry prior to the issue of process against the accused, and the latter Magistrate made the enquiry, in the course of which he examined witnesses and recorded evidence, and came to the conclusion that the case was false and, therefore, took proceedings under S. 476 and committed the complainant for trial under S. 211, I. P. C.: *Held*, that the proceedings conducted by him fell within the description of judicial proceedings, given in S. 4, cl. (m) and that he had power to take proceedings under S. 476. *Kanchan Garhi v. Ram Kishun Mundul.*

9 Cr. L. J. 295 :
1 I. C. 203 : 13 C. W. N. 122 :
36 Cal. 72.

———Ss. 476, 195—*Power of Magistrate—Person not named in sanction, whether can be proceeded against.*

S. 195, Cr. P. C., operates as a bar to the trial of certain offences and the test of the necessity for the grant of sanction is the character of the offence and not of the offender; once the bar imposed by S. 195 to the trial of the offence has been removed, the Magistrate before whom the trial takes place is not barred from issuing process against and trying persons who have not been specifically named in such a sanction under S. 195 or in an order under S. 476, Cr. P. C., as the case may be. *Ajaib Singh v. Emperor.*

18 Cr. L. J. 893 :
41 I. C. 1005 : 34 P. R. 1917 Cr. :
45 P. W. R. 1917 Cr. :
A. I. R. 1917 Lah. 267.

Cr. P. CODE (1898), S. 439

S. 439 of the Cr. P. C., ordinarily interfere with an order of acquittal, it will do so where such an order is invalid, as where it is passed in an appeal under S. 407 of the Code of the hearing of which the officer appointed by the Local Government in that behalf had no notice. *Emperor v. Shivlingappa Basappa*.

24 Cr. L. J. 700 :
73 I. C. 812 : 24 Bom. L. R. 1150 :
A. I. R. 1923 Bom. 74.

—S. 439—Interference.

The High Court as a Court of Revision should not interfere if the sentence passed involved substantial punishment, and should interfere if the sentence was manifestly inadequate. *Emperor v. Fauja Singh*.

32 Cr. L. J. 539 :
130 I. C. 432 : 32 P. L. R. 273 :
I. R. 1931 Lah. 304 :
A. I. R. 1931 Lah. 31 (1).

—S. 439—Interference by Chief Court.

When an illegal order is passed and action taken which involves matters coming within the purview of law and justice and within the scope of authority of the Courts, such authority cannot be ousted by the mere *ipse dixit* of the officer that he was not acting as a Judicial Officer but in his executive capacity, and the High Court can interfere on Revision Side. *Shiv Nath v. Emperor*.

7 Cr. L. J. 202 :
3 P. W. R. Cr. 1 : 4 P. R. Cr. 1908 :
86 P. L. R. 1908.

—S. 439—Interference by High Court in pending cases—Revision—Partnership—Dispute of civil nature between partners, criminal prosecution, discouragement of.

The High Court is extremely reluctant to interfere in a preliminary stage, with the trial of an offence before a Magistrate. But it will interfere on occasions where the circumstances clearly call for interference. It is proper that the Courts should look with much suspicion on criminal actions which are brought forward by partners of a still subsisting partnership against one another. By means of threats a prosecution may be made an extremely oppressive mechanism for compelling a partner to admit or to pay up a claim or enter into some compromise in a matter which is really one more suitable for settlement in a civil suit than a case for criminal prosecution. It is often the case that a merchant would, rather, instead of being arrested under a criminal warrant and thus receiving a shock to his credit, be willing to pay up or admit a claim which he believes to be unjust. Such proceeding may often be very excessively oppressive, and the test to be applied to such cases is whether on reading the complaint it seems quite clear that the complainant does not aver that anything has happened which can be brought under any provision of the Penal Code. *Udharam v. Emperor*.

26 Cr. L. J. 1303 :
89 I. C. 247 : A. I. R. 1925 Sind 231.

Cr. P. CODE (1898), S. 439

—S. 439—Interference by High Court—Revision—Practice of Lahore High Court—District Magistrate acting as Court of Appeal—Sessions Judge, whether should be moved first—Application to High Court.

The usual practice of the Lahore High Court is to decline to consider an application under S. 439, Cr. P. C., unless and until the petitioner satisfies the Court that the Sessions Judge or the District Magistrate has been moved in the matter unsuccessfully. But where the District Magistrate has acted as a Court of Appeal, the High Court may entertain such an application though it is desirable to move the Sessions Judge in the first instance, even in such cases. *Muhammad Ishaq v. Emperor*.

28 Cr. L. J. 815 :
104 I. C. 225 : A. I. R. 1927 Lah. 689.

—S. 439—Interference by High Court.

Where an applicant has not in any way been prejudiced by an irregularity, the High Court will not interfere in revision on the ground of that irregularity. *Madho Gir v. Rashid Ahmed*.

18 Cr. L. J. 765 :
41 I. C. 141 : 15 A. L. J. 642 :
A. I. R. 1917 All. 91.

—Ss. 439, 476—Interference by High Court—Civil Procedure Code (Act V of 1908), S. 115—Sanction to prosecute granted by Revenue Court.

The High Court has no power, either under S. 115, Civil P. C. or under S. 439, Cr. P. C., to revise an order passed by a Revenue Court under S. 476, Cr. P. C. directing the trial of a person for an offence under the Indian Penal Code. The fact that the order is described as having been passed "in a miscellaneous criminal case," does not make it one passed by a Magistrate if it is signed by the officer making it as a Revenue Officer. *Maneklal v. Emperor*.

21 Cr. L. J. 833 :
58 I. C. 913 : A. I. R. 1920 Nag. 249.

—Ss. 439, 107, 110—Interference by High Court on merits—Revision, maintainability of—Appeal—Judgment—Court—Duty of.

In questions arising under Ss. 110 and 107, Cr. P. C., the moment it is shown that there is something which the Courts below have done either in excess of their powers, or by a too summary exercise of their powers, or by not giving due effect to the evidence for the defence an application for revision should be admitted but the High Court should not interfere on the merits except in very exceptional cases. In an appeal in such a case it is not necessary for the lower Appellate Court to set out over again in detail all the points in the evidence and the reasons, provided it is clear, and the Court has shown by its judgment that it has taken the trouble to re-hear the case. *A. Gayani v. Emperor*.

17 Cr. L. J. 461 :
36 I. C. 141 : A. I. R. 1916 All. 48.

—S. 439—Interference—Grounds for—Complaint, dismissal of, for absence of complainant—Hearing taken up at unusual hour—Revision—Interference.

Where, after the prosecution evidence, a case

Cr. P. CODE (1898), S. 439

tion of the delay, the High Court can entertain the application. *Kumudnath Chaudhary v. Brejendar Nath Rao*. 35 Cr. L. J. 29 : 146 I. C. 366 : 6 R. C. 207 : A. I. R. 1933 Cal. 647 (2).

—S. 439—Misappropriation of Evidence—Revision.

In revision, it is in the discretion of a High Court to exercise of its power of going into the question of appreciation of evidence. *Sankaran Nair, J., (dissenting)*.—When there has been misappreciation of evidence, and a convicted person claims to be heard to show that the lower Courts have misappreciated that evidence, and that he has been unjustly convicted, it is not open to a Judge to say that it is within his discretion to permit or refuse him to do so or not. No doubt, the sections only say that the High Court may interfere in revision, but "may" is the only word that could be used. *In re : Village Munsif Ramaswami Goundan*. 15 Cr. L. J. 285 : 23 I. C. 493 : A. I. R. 1914 Mad. 241.

—S. 439—Miscellaneous.

Accused asking that his appeal might be taken as having been withdrawn: *Held*, appeal must be treated to have been withdrawn, but High Court could treat it as though it were a revision. *Sham Lal v. Emperor*. 32 Cr. L. J. 732 : 131 I. C. 375 : 31 P. L. R. 990 : 12 L. L. J. 312 : I. R. 1931 Lah. 471 : A. I. R. 1931 Lah. 97.

—S. 439—Miscellaneous.

Accused not claiming to be tried as European British subject in trial Court, can claim to be so dealt with in High Court. *H. G. Bolton v. Emperor*. 34 Cr. L. J. 671 : 143 I. C. 892 : 60 Cal. 676 : I. R. 1933 Cal. 492 : A. I. R. 1933 Cal. 240.

—S. 439—Miscellaneous—Application not to be entertained when contention can be raised elsewhere.

It would be improper to proceed with the revision petition when the accused's contention can properly be put forward elsewhere. *Atakuni Saravayya v. Emperor*. 17 L. W. 357 : 44 M. L. J. 366 : A. I. R. 1923 Mad. 484.

—S. 439—Miscellaneous.

Evidence not challenged during trial—Defence cannot, in revision, challenge it. *Moti Lal Nehru v. Emperor*. 32 Cr. L. J. 311 : 129 I. C. 443 : 1930 A. L. J. 1535 : I. R. 1931 All. 171 : A. I. R. 1931 All. 12.

—S. 439—Miscellaneous.

Further enquiry can be ordered only if the order of discharge is foolish or perverse or was based on a record which was manifestly incomplete. *Dula Singh v. Khushal Singh*. 35 Cr. L. J. 449 : 147 I. C. 447 : 34 P. L. R. 833 : 6 R. L. 419.

—S. 439—Miscellaneous.

Judgment of Appellate Court should be self-

Cr. P. CODE (1898), S. 439

contained. Full analysis of evidence should be given. Mere assurance in judgment that counsel were heard at length is not enough. *Ahmad Ali v. Emperor*. 32 Cr. L. J. 271 : 129 I. C. 276 : 32 P. L. R. 92 : I. R. 1931 Lah. 164 : A. I. R. 1930 Lah. 1051.

—S. 439—Miscellaneous—Objection to initiation of proceedings should be taken at early stage—No objection taken in trial or Appellate Court—If can be taken before High Court in revision.

An objection to initiation of proceedings must be taken at an early stage, and where no objection is raised in the trial Court against the validity of the complaint, nor is the matter agitated in appeal before the Court of Session, the validity of the complaint cannot be questioned in a revision petition to the High Court. *Kunjo Chaudhry v. Emperor*. 39 Cr. L. J. 353 : 173 I. C. 742 : 16 Pat. 650 : 19 P. L. T. 21 : 10 R. P. 440 : 4 B. R. 332 : A. I. R. 1938 Pat. 99.

—S. 439—Miscellaneous—Revision—Incorrect view of evidence.

Ordinarily the Judicial Commissioner's Court does not interfere in revision in criminal cases where the only question to be decided is whether the lower Court has not taken a correct view of the evidence. The principle *falsus in uno falsus in omnibus* cannot be universally applied to India. *Prag v. Emperor*. 25 Cr. L. J. 1169 : 82 I. C. 33 : 11 O. L. J. 693 : 1 O. W. N. 473 : A. I. R. 1925 Oudh 65.

—S. 439—Miscellaneous.

The exercise of jurisdiction under S. 439 subject to the limitations imposed by the section, purely discretionary, and an application in revision cannot be said to be a subsequent stage of the same case within the meaning of S. 454. *H. G. Bolton v. Emperor*. 34 Cr. L. J. 671 : 143 I. C. 892 : 60 Cal. 676 : I. R. 1933 Cal. 492 : A. I. R. 1933 Cal. 240.

—S. 439—Miscellaneous—Two counter-cases of rioting—Stay of proceedings in one before disposal of other, whether proper.

Proceedings in one of two counter-cases of rioting arising out of the same occurrence cannot be stayed merely on the ground that the prosecution witnesses in the one case, if examined as witnesses before the trial of the other case, in which they are the accused, will be seriously prejudiced in their defence, nor can proceedings in one of such cases be stayed on the ground that after the disposal of that case it may not be necessary to try the counter-case. *Rajendra Nath Ghosh v. Amrita Lal Chakarvarti*. 24 Cr. L. J. 233 : 71 I. C. 697 : A. I. R. 1924 Cal. 529.

—Ss. 439 (2), 562-(1-A)—Miscellaneous—Reference by District Magistrate—Order against accused without giving him notice—Power to rehear.

Where the High Court has made an order to

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grounds other than want of jurisdiction when a Criminal Court has taken action under S. 476, Cr. P. C. *In re : Ottupara Narayanan.*

10 Cr. L. J. 420 :
3 I. C. 934.

—S. 439—Interference in pending cases.

No doubt it is undesirable that the discretionary powers of Courts should become crystallized but it is well-established that only in exceptional cases should the High Court interfere in revision in pending cases. *Mahomed v. Mahomed Idris.*

26 Cr. L. J. 1101 :
88 I. C. 189 : 18 S. L. R. 274 :
A. I. R. 1925 Sind 328.

—S. 439—Interference in pending cases—Revision—Interlocutory orders, interference with—High Court, powers of.

The High Court can interfere in revision with interlocutory orders, but the power must be exercised with great care and only in most exceptional cases. It is inadvisable to interfere in a pending case unless there is some manifest and patent injustice apparent from the face of the proceedings and calling for prompt redress. *Emperor v. Seth Jivandas.*

20 Cr. L. J. 764 :
53 I. C. 492 : A. I. R. 1918 Nag. 31.

—S. 439—Interference in pending cases.

The High Court has power to interfere in a pending criminal case but power is only to be exercised in exceptional circumstances which cannot be laid down with precision, the main test being that the intervention should be necessary in the interests of justice and that a bare statement of the facts without any elaborate argument should be sufficient to convince the Court that it is a fit one for its interference at an intermediate stage. *Madhav Bhagwat v. Emperor.*

26 Cr. L. J. 1093 :
88 I. C. 181 : A. I. R. 1925 Nag. 345.

—S. 439—Interference in revision by High Court—Variation of sentence by District Magistrate—Term of imprisonment reduced, but amount of fine in default, increased—Enhancement.

A Subordinate Magistrate sentenced a person to undergo rigorous imprisonment for a period of one month and to pay a fine of Rs. 5. A period of one week's imprisonment was prescribed in case of default of payment of fine. On appeal, the District Magistrate reduced the period of imprisonment to one of three days and directed the accused to pay a fine of Rs. 100, or in default, to undergo imprisonment for one month: *Held*, that in the absence of any evidence to the fact that the convict considered the sentence of fine of Rs. 100 heavier than one month's rigorous imprisonment, the High Court would not interfere in revision. *Emperor v. Mehar Chand.*

15 Cr. L. J. 519 :
24 I. C. 607 : 12 A. L. J. 827 : 36 All. 485 :
A. I. R. 1914 All. 530.

—S. 439—Interference in revision.

High Court will not interfere in revision unless it can be shown that the Magistrate

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has gravely misapprehended the trend of the evidence or has overlooked some important points which, if he had taken into consideration, would have caused him to come to a different conclusion. *Nga Pa Tun v. Emperor.*

36 Cr. L. J. 1215 :
157 I. C. 472 : 8 R. Rang. 96.

—Ss. 439, 259—Interference in revision—Complaint against accused charging him with offences under Ss. 420, 406 and 403, Penal Code (Act XLV of 1860)—Complaint dismissed due to absence of complainant on first hearing and accused discharged—Dismissal presumably under S. 259—Fresh complaint on same facts—Charge framed after hearing evidence—Objection that previous order of discharge was illegal and vitiated subsequent proceedings—Accused not prejudiced and High Court would not interfere in revision.

The making of an illegal order does not necessarily vitiate the proceedings. There is no universal rule that disobedience even of a mandatory provision has the consequence of nullification, irrespective of any question of prejudice to the accused or other party. Where an accused has not been in any way prejudiced by a certain procedure followed by the Court and unless it were necessary to do so, it would obviously be undesirable to interfere in revision when the effect of the interference would merely be that the evidence which has been recorded will have to be recorded over again, with consequent waste of time and money. A complaint was brought against the petitioner charging him with offences under Ss. 420, 406 and 403, Penal Code. The case was fixed for hearing. The complainant was absent on that day and the Magistrate then made the order presumably under S. 259, Cr. P. C., "complainant absent. Accused discharged." A fresh complaint was filed on the same facts. This complaint was proceeded with, evidence was heard and ultimately a charge was framed. All this time the accused was not represented by an Advocate. But after the charge was framed, he engaged an Advocate to defend him and a point was then taken that the order of discharge was not a legal order and that it vitiated all subsequent proceedings: *Held*, the High Court would not interfere in revision as the accused had not been prejudiced by the procedure followed. *Alimahomed Joosab v. Kasturchand Balabhai Jhaveri.*

40 Cr. L. J. 346 :
180 I. C. 241 : 11 R. B. 291 :
41 Bom. L. R. 90 :
A. I. R. 1939 Bom. 89.

—Ss. 439, 476-B—Interference in revision—Appellate order refusing to withdraw complaint—Revision.

Interference in revision with appellate orders under S. 476-B, Cr. P. C., refusing to withdraw complaints is ordinarily not desirable. *Kaloomal v. Emperor.*

27 Cr. L. J. 1011 (a) :
96 I. C. 867

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of the offence during the pendency of the proceedings. *Brijnandan Rai v. Emperor*.

21 Cr. L. J. 633 :
57 I. C. 457 : 2 U. P. L. R. Pat. 165 :
1 P. L. T. 717 : A. I. R. 1920 Pat. 500.

S. 439—Other remedy.

Where the applicants have a separate remedy, the High Court should not interfere in revision. *Assudomal Ramanmal v. Issardas Kishnomal*.

35 Cr. L. J. 1251 :
151 I. C. 60 (a) : 7 R. S. 41 (1) :
A. I. R. 1934 Sind 78 (1).

S. 439—Party in contempt—Practice.

Party who was in contempt of Court, was not heard in revision. *Sh. Khairat Ali v. Wahid Ali*.
A. I. R. 1928 Cal. 241.

S. 439—Pending proceedings.

Except in exceptional cases, the High Court will not interfere with unfinished proceedings. *Ghanshamdas Pursumal v. Emperor*.

35 Cr. L. J. 519 (2) :
147 I. C. 1019 : 6 R. S. 171 :
A. I. R. 1933 Sind 412.

S. 439—Pending proceedings.

High Court will not generally interfere—Test is to see if a bare statement of the facts of the case without any elaborate argument would suffice to persuade High Court that case was but one for interference. *Varumal Lahrumal v. Emperor*.

34 Cr. L. J. 1049 :
145 I. C. 617 : 6 R. S. 36 :
A. I. R. 1933 Sind 169.

S. 439—Pending proceedings.

Only in exceptional circumstances will the High Court interfere in revision in pending cases. To justify such interference, would require that on the face of the proceedings there should appear some clear injustice requiring immediate redress. *Amirbux v. Emperor*.

36 Cr. L. J. 331 (1)
153 I. C. 320 : 7 R. S. 130 :
A. I. R. 1934 Sind 183 (1).

S. 439—Pending proceedings.

Sind Judicial Commissioner's Court will not interfere with the proceedings in the Court of a Magistrate except where the complaint on the face of it does not disclose any offence. *Jhamandas Thawerdas v. Khenchand Gellaram*.

34 Cr. L. J. 884 :
145 I. C. 136 : 27 S. L. R. 214 :
6 R. S. 18 : A. I. R. 1933 Sind 196.

S. 439—Pending proceedings.

Where the accused have been unnecessarily harassed by proceedings which have been restarted by order of Court, the High Court can exercise its extraordinary powers under S. 439, and set aside pending proceedings, *Dula Singh v. Khushal Singh*.

35 Cr. L. J. 449 :
147 I. C. 447 : 34 P. L. R. 833 :
6 R. L. 419.

S. 439—Powers of Chief Court in revision.

The Amildar Magistrate of Chiknayakanhalli refused to grant a licence to the petitioners to

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conduct an idol in procession along certain streets on the ground that they have not proved a *mamool* to carry the idol. The petitioners in preferring this Revision Petition prayed that the Magistrate might be directed to make fuller enquiries into the matter: *Held*, that the Chief Court could not interfere except to examine whether the Magistrate had jurisdiction, and since he had such jurisdiction, the Chief Court could not interfere with the order refusing license. *Veeranna Setty v. Krishnappa*.

9 Cr. L. J. 434 :
12 M. C. C. R. 242.

S. 439—Power of Chief Court to examine record of case.

Under S. 439, Cr. P. C., the Chief Court has full powers to examine the record of a case and pass such orders as may be necessary. *Maula Baksh v. Lal Chand*. 18 Cr. L. J. 121 :
37 I. C. 473 : 23 P. R. 1916 Cr. :
A. I. R. 1917 Lah. 277.

S. 439—Power of Court to grant sanction.

The power to grant sanction under S. 195, Cr. P. C. is included among the powers which can be exercised in revision under S. 439 of the Code, and if this power can be exercised in a proceeding arising out of a trial in any of the lower Courts, it can also be exercised for discharging an order made by a subordinate Court revoking the sanction granted by a trying Magistrate. *Brij Kumar v. Manna Lal Misra*.

24 Cr. L. J. 217 :
71 I. C. 681 : 25 O. C. 153 :
9 O. L. J. 662 : A. I. R. 1922 Oudh 18.

S. 439 (5)—Power of District Magistrate.

The power of the District Magistrate to make a reference to the High Court under S. 438, against an order of acquittal is not shut out by the provisions of S. 439 (5) inasmuch as the District Magistrate not being the Local Government, is not a person entitled to appeal, whether or not he may be able in his executive capacity to move the Local Government to appeal. *Emperor v. Bashir*.

32 Cr. L. J. 143 :
128 I. C. 395 : I. R. 1931 All. 43 :
53 All. 42 : A. I. R. 1930 All. 741.

S. 439—Power of District Magistrate to order re-trial on revision.

Where an accused has been convicted by a Second Class Magistrate under S. 323, Penal Code, the District Magistrate is not competent to revise the order and direct a re-trial of the accused for an offence under S. 330, Penal Code. *Bir Singh v. Emperor*.

28 Cr. L. J. 575 :
102 I. C. 511 : 28 P. L. R. 166.

S. 439—Powers of High Court—Appeal, right of, failure to exercise—Revision, whether lies.

Ordinarily the High Court will not permit a criminal revision petition to be heard when the petitioner has had an opportunity of appealing and has not exercised it. But where the effect of non-interference in revision would

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application in revision. It is an established practice of the Bombay High Court not to interfere in revision with orders of acquittal except where interference is urgently demanded in the interests of public justice. *Emperor v. Rameshawar Ramnath*.

30 Cr. L. J. 1062 :
119 I. C. 643 : 53 Bom. 564 :
I. R. 1929 Bom. 515 :
31 Bom. L. R. 529 :
A. I. R. 1929 Bom. 306.

—S. 439—*Interference with order of acquittal—Revision—High Court, interference by—Cognisable case—Prosecutor, private, position of.*

Where a discretion has been exercised by a Court of competent jurisdiction which is not on the face of it arbitrary, the practice of the High Court is that as a Revisional Court it will neither enquire into the reasons for, nor interfere with, the exercise of the discretion. The power of interference in revision with orders of acquittal should be most sparingly exercised and only in cases where it is urgently demanded in the interests of public justice. In cognisable cases, the Crown is the prosecutor and the custodian of the public peace and if it decides to let an offender go, no other aggrieved party can be heard to object on the ground that he has not taken his full toll of private vengeance. *Gulli Bhagat v. Narain Singh*.

25 Cr. L. 446 :
77 I. C. 734 : 2 Pat. 708 :
2 Pat. L. R. 165 & 187 Cr. :
5 P. L. T. 404 : A. I. R. 1924 Pat. 283.

—S. 439—*Interference with order of acquittal.*

The power of interference in revision with orders of acquittal should be most sparingly exercised, and only in cases where it is urgently demanded in the interest of public justice, for instance, where an order of acquittal has been made without trial under an error of law. The High Court will not, in any case, interfere in revision with an order of acquittal on the ground that the inferences drawn by the lower Court from evidence are erroneous. The Legislature does not intend that a private party shall secure by an application in revision a right which is reserved for the Crown only. The High Court has the right to interfere in revision with orders of acquittal, but will only do so in very exceptional cases; for instance, where there has been a denial of the right of fair trial. The High Court will, in exercising its power of revision against an order of acquittal under S. 439 of the Cr. P. C., observe the limitations which established practice has imposed upon appeals under S. 417 of the Code. But though in practice the broad rule of guidance that the Court will only interfere in revision with an acquittal, at least in a case where there has been trial, sparingly and only where interference is urgently demanded in the interests of public justice, may be accepted, no general rule can be laid down beyond this that the Court will interfere where the circumstances require it. *Siban Rai v. Bhagat Dass*.

27 Cr. L. J. 235 :
92 I. C. 219 : 6 P. L. T. 833 :
5 Pat. 25 : A. I. R. 1926 Pat. 176.

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—S. 439—*Interference with order of detention—Reformatory Schools Act (VIII of 1897), S. 16—Penal Code (Act XLV of 1860), S. 411—Dishonestly receiving stolen property—Youthful first offender—Sentence of six months' rigorous imprisonment or detention in Reformatory School—High Court, whether can interfere.*

A sentence of six months' rigorous imprisonment on a youthful first offender aged 14½ years for an offence of dishonestly receiving stolen property under S. 411, Penal Code, is improper, and where in lieu of this sentence the offender has been ordered to be detained in a Reformatory School, the High Court has jurisdiction to interfere with the order for detention. *Jagannath Chaubey v. Emperor*.

25 Cr. L. J. 1312 :
82 I. C. 480 : 6 P. L. T. 294 :
A. I. R. 1923 Pat. 297.

—S. 439—*Interference with pending case—Revision—Interference by High Court before conclusion of trial—Grounds.*

It is only upon allegations of the gravest departure from procedure that a High Court will interfere in revision so as to take the conduct of a criminal case pending before a subordinate Court before its termination out of its hands. *In re : Nachiappa Udayan*.

28 Cr. L. J. 979 :
105 I. C. 803 : 1927 M. W. N. 752 :
53 M. L. J. 528 : 26 L. W. 487 :
39 M. L. T. 452 : 51 Mad. 84 :
A. I. R. 1927 Mad. 975.

—S. 439—*Interlocutory order.*

Even in the case of proceedings of an interlocutory nature, the High Court will interfere to quash proceeding in cases where interference is necessary. *In re : Krishnarao Ramchandra*.

35 Cr. L. J. 230 :
146 I. C. 688 : 35 Bom. L. R. 845 :
57 Bom. 690 : 6 R. B. 170 :
A. I. R. 1933 Bom. 409.

—S. 439—*Interlocutory order.*

Interlocutory order—When can be interfered with in revision stated. *Maung Ba Yone v. Ma Hla Kin*.

35 Cr. L. J. 52 :
146 I. C. 402 : 6 R. Rang. 96 :
A. I. R. 1933 Rang. 297.

—S. 439—*Interlocutory order—Jurisdiction of Magistrate—Revision.*

Ordinarily there is no justification for a Supreme Court or any other Court to take up in revision what is really an interlocutory matter in a Criminal Court. Therefore, non-interference in revision is ordinarily justified with the order of a Magistrate holding that he has jurisdiction to try the case before him. *Kashi Ram Khosla v. R. L. Diskshil*.

27 Cr. L. J. 191 :
91 I. C. 1007 : 3 O. W. N. 104 :
1 Luck. 48 : 13 O. L. J. 662 :
A. I. R. 1926 Oudh 280.

—S. 439—*Interlocutory order—Revision.*

It is under very rare and exceptional circumstances that the Judicial Commissioner's Court would interfere on the revisional side

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doubtedly the complainant would be entitled to file a revision petition before the District Magistrate and the High Court would have jurisdiction under the Code to interfere, if necessary, in the interests of justice. *In re: Venkatasubba Pillai*.

39 Cr. L. J. 984 :
177 I. C. 937 : 1938 2 M. L. J. 372 :

11 R. M. 396 : 48 L. W. 801 :
1938 M. W. N. 973 :

A. I. R. 1938 Mad. 879.

—S. 439—*Powers of High Court—Order by Collector under Bengal Alluvial Lands Act for sale of huts on char land—Revision, if lies.*

An order passed by a Sub-Divisional Officer under Bengal Alluvial Lands Act directing certain huts erected on disputed char land to be sold and the sale proceeds to be credited to the Treasury cannot be revised by the High Court in the exercise of its criminal jurisdiction. *Osman Munshi v. Kadar Pramanick*.

31 Cr. L. J. 441 :
122 I. C. 640 : 33 C. W. N. 836 :
57 Cal. 282 : A. I. R. 1929 Cal. 768.

—S. 439—*Powers of High Court—Order by Judge refusing to set aside an order sanctioning prosecution—Revision.*

When a Sessions Judge refuses to interfere in the order of a Magistrate sanctioning prosecution, the High Court has power to call for and examine the record and pass such orders as a Court of Appeal could have passed, under S. 195, Cr. P. C. *Serh Mal v. Bhairon Prasad*.

7 Cr. L. J. 389 :
5 A. L. J. 247 : 28 A. W. N. 102 :
30 All. 243 : 3 M. L. T. 377.

—S. 439—*Power of High Court—Power to deal with non-appelling accused.*

The High Court in the exercise of the powers vested in it under S. 439 can, in a proper case, while setting aside the conviction and sentence of an accused-appellant, also release his co-accused who has not appealed. *Mir Mouze Ali v. Emperor*.

21 Cr. L. J. 554 :
56 I. C. 858 : 31 C. L. J. 305 :
A. I. R. 1920 Cal. 617.

—S. 439—*Powers of High Court—Revision—Debt—Criminal case—Evidence, weight of.*

The duty of a High Court in revision is not to weigh the evidence given on behalf of one side or the other but only to see whether the Court below has approached the consideration of the appeal in a fair way having regard to the interest not only of the prosecution but also of the accused. Ordinarily, where the evidence has been considered by two Courts, the High Court will not interfere in revision on the facts, but it has power so to interfere in exceptional cases. *Gur Din v. Emperor*.

22 Cr. L. J. 647 :
63 I. C. 407 : 24 O. C. 225 :
A. I. R. 1921 Oudh 115.

—S. 439—*Powers of High Court—Revision—High Court, power of interference of—Conviction under wrong section.*

It is for the Courts below to find the facts

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and if they convict under a wrong section in a case in which no charge is framed, it is open to the High Court, if necessary, to revise the section under which the conviction has been recorded without any further proceedings. *Saukhi Chand v. Emperor*.

19 Cr. L. J. 884 :
47 I. C. 80 : 3 P. L. J. 354 :
A. I. R. 1918 Pat. 314.

—S. 439—*Powers of High Court—Revision—High Court, power of, to order deletion of passage from Subordinate Court's judgment.*

There is no provision in the Cr. P. C., empowering a High Court to direct Subordinate Courts to delete any passage in a judgment which has once been duly signed and delivered. The High Court is reluctant to exercise its revisional powers where question of fact has been answered upon an appreciation of evidence, and very rarely where there are concurrent findings. It would interfere still less at the instance of a complainant whose complaint has been held proved but whose conduct has been animadverted upon by the lower Court. The High Court will not interfere in revision on the ground of preventing irreparable injustice at the instance of one who has not been convicted and sentenced, before being satisfied that the case is exceptionally strong and that no other means can possibly avert a grave miscarriage of justice. *Sidramaya Ghannaya Kudal v. Emperor*.

19 Cr. L. J. 97 :
43 I. C. 321 : 29 Bom. L. R. 912 :
A. I. R. 1918 Bom. 241.

—S. 439—*Power of High Court.*

The High Court has no power to convert an acquittal into a conviction, but it has power to direct the trial Court to conclude the trial in the manner provided by law. *Narain Das v. Meva Singh*.

22 Cr. L. J. 312 :
60 I. C. 1000 : 3 U. P. L. R. Lah. 39.

—S. 439—*Powers of High Court.*

The High Court's power as a Court of Appeal includes all its powers of revision; but in enhancing the sentence, that has to be done under its revisional power. *Kitabdi v. Emperor*.

32 Cr. L. J. 890 :
132 I. C. 247 : 35 C. W. N. 184 :
I. R. 1931 Cal. 567 :
A. I. R. 1931 Cal. 450.

—S. 439—*Powers of High Court.*

The High Court, under S. 439 of the Code, has powers as an Appellate Court to direct evidence to be taken. *Moni Mohun Mondol v. Iswar Chunder Mukereji*.

6 Cr. L. J. 357 :
6 C. L. J. 251.

—S. 439—*Powers of High Court.*

The powers of revision given to the High Court under S. 439 are wide enough to empower it to entertain a petition for revision at the instance of a third party, e. g., the Secretary of the Bar Association even though the

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period allowed for appeal and reasons for delay are not sufficient, Court can dismiss application. *Gokaran v. Emperor*.

33 Cr. L. J. 506 :
137 I. C. 684 : 9 O. W. N. 334 :
I. R. 1932 Oudh 257 :
A. I. R. 1932 Oudh 242.

—————S. 439—*Limitation for revision.*

Although there is no Law of Limitation applicable to revision application, it is the settled practice of the High Court not to admit them unless they are made within a reasonable time after the order complained of. *Emperor v. Ram Narain*, 27 Cr. L. J. 1021 : 96 I. C. 877 : A. I. R. 1926 All. 577.

—————S. 439—*Limitation for revision—Criminal revision—Application for revision after expiry of sixty days, competency of—Practice of High Court—Delay in moving Sessions Judge, effect of.*

It is the practice of the Patna High Court not to entertain save under the most exceptional circumstances, an application for revision of a criminal case after the expiry of sixty days from the date of the decision or order impugned. The period of sixty days is intended to cover the proceedings of normal length before the Sessions Judge, and ordinarily will not be extended because the petitioner negligently or deliberately delayed to move the Sessions Judge till the period had nearly expired and when an application is made to the Sessions Judge beyond or even within the period of sixty days from the decision impugned, a further period of sixty days does not become available to the applicant from the date when the Sessions Judge refuses to make a reference under S. 438, Cr. P. C. In all cases the petitioner must come to the High Court within a reasonable time of the order of the Sessions Judge and ought to do so expeditiously. *Kela Patra v. Iswar Parida*.

30 Cr. L. J. 1053 :
119 I. C. 401 : 8 Pat. 468 :
I. R. 929 Pat. 577 : 11 P. L. T. 18 :
A. I. R. 1929 Pat. 401.

—————S. 439—*Limitation for revision.*

In accordance with the practice of the Patna High Court, applications in revision are not usually entertained unless presented within sixty days of the order applied against. *Baldev Singh v. Dhenoo Goalia*.

37 Cr. L. J. 234 (a) :
160 I. C. 152 (a) : 2 B. R. 172 (1) :
8 R. P. 343 (2) : A. I. R. 1936 Pat. 109.

—————S. 439—*Limitation for revision—Order passed in proceedings under S. 145—General practice of High Court not to entertain revision after 60 days from such order in absence of most exceptional circumstances—Fresh period if accrues from date when Sessions Judge refuses to make reference under S. 438.*

The High Court will not, as a general practice, entertain, in the absence of the most exceptional circumstances, an application in its criminal revisional jurisdiction after the expiry of 60 days from the date of

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the decision or order made in proceedings under S. 145, Cr. P. C., and sought to be impugned, and a fresh period of 60 days does not accrue from the date when the Sessions Judge or the Deputy Commissioner refuses to make a reference under S. 438, Cr. P. C. The fact that the Pleaders in the *mofussil* are not aware of the practice of the High Court and that the petitioners include a *pardanashin* lady, who is in fact the principal petitioner, cannot be regarded as among the most exceptional circumstance. *Beehan Kuer v. Maharaja of Chota Nagpur*.

40 Cr. L. J. 196 :
179 I. C. 15 : 5 B. R. 206 :
11 R. P. 338 : A. I. R. 1939 Pat. 320.

—————S. 439 — *Limitation for revision—Practice of Calcutta High Court.*

The well-known practice in the High Court of Calcutta is that an application for criminal revision must be made within sixty days from the date of the order complained of, and to this period, an addition of the time which is necessary for obtaining copies is allowed. This is not an inflexible rule, and in exceptional circumstances, it might be departed from. *Khetra Mohan Giri v. Darpa Narain Giri*.

17 Cr. L. J. 419 :
35 I. C. 979 : 20 C. W. N. 1170 :
43 Cal. 1029 : A. I. R. 1917 Cal. 849.

—————S. 439—*Limitation for revision.*

So far as the Lahore High Court is concerned, there is no rule of practice that criminal revisions, which are filed after the expiry of sixty or ninety days, must be rejected simply on the ground of delay and laches. *Des Raj v. Emperor*, 35 Cr. L. J. 1447(2) :

151 I. C. 943 : 7 R. L. 227 :
A. I. R. 1934 Lah. 264.

—————S. 439—*Limitation for revision.*

The High Court, as a practice, will not entertain an application in its criminal revisional jurisdiction after the expiry of the sixty days from the date of the decision impugned. A fresh period does not accrue from the date when the Sessions Judge refuses to make a reference under S. 438. Where the Court is moved after the expiry of the period, the question is whether there exist such exceptional circumstances as to induce the Court to depart from its usual practice. *Bholanath Missir v. Bishun Parsad*.

36 Cr. L. J. 97 :
152 I. C. 311 : 15 P. L. T. 568 :
7 R. P. 176.

—————S. 439—*Limitation for revision.*

The rule that the High Court will not ordinarily interfere in revision on an application presented more than two months after the date of the order complained of, is not a rule of law. *Dhanmun Singh v. Balteshwar Prasad Singh*.

35 Cr. L. J. 91 :
146 I. C. 551 (2) : 6 R. P. 275 :
A. I. R. 1933 Pat. 601 (2).

—————S. 439—*Limitation for revision.*

Where in an application for revision, the accused is able to give a sufficient explanation

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—Ss. 439, 498—*Powers of High Court—Application by District Magistrate asking for cancellation of bail granted by Sessions Judge, if competent—Revision.*

When application of an urgent nature, *e. g.*, for cancellation of bail granted by the Sessions Judge is made by the District Magistrate, the rule that the High Court will not interfere with the order of the Sessions Judge except on an application by Government, will not hold good. It is, however, desirable that the Public Prosecutor should apply for the orders of Government in cases in which there is sufficient time to do so. The Court must be careful not to weaken the rule that when a District Magistrate is dissatisfied with an order made by a Sessions Judge, his proper course is to communicate with the Local Government so that the High Court may be moved in the regular way. *Emperor v Wahidino.*

30 Cr. L. J. 845 :
117 I. C. 773 : I. R. 1929 Sind 149 :
A. I. R. 1929 Sind 137.

—S. 439, 561-A—*Powers of High Court—Framing of charge—Revision—High Court, powers of.*

The High Court has ample jurisdiction to interfere in revision at any stage of the case, provided the case be a suitable one for interference. If a charge has been framed by a Magistrate when no charge should have been framed, the High Court can interfere under S. 561-A; Cr. P. C. *Gokal Prasad v. Debi Prasad.*

34 Cr. L. J. 748 :
86 I. C. 284 : 23 A. L. J. 21 :
A. I. R. 1925 All. 311.

—S. 439 (2)—*Powers of High Court.*

S. 439, Cr. P. C. authorizes the High Court to exercise any of the powers conferred on a Court of Appeal by S. 423. *Udhomal Karmumal v. Majnibai Udhomal.*

34 Cr. L. J. 861 :
144 I. C. 881 : 6 R. S. 14 :
A. I. R. 1933 Sind 205.

—S. 439 (5)—*Powers of High Court—Order making complaint—Revision.*

Where a complaint is made by the Court under S. 476, Cr. P. C., accused has right of appeal to superior Court, and the High Court is not competent to quash the proceedings in revision. *Abdul Karim v. Emperor.*

30 Cr. L. J. 765 :
117 I. C. 309 : 10 P. L. T. 161 :
I. R. 1929 Pat. 421 : A. I. R. 1929 Pat. 640.

—S. 439—*Power of High Court to alter conviction—Accused tried for murder but convicted for grievous hurt—Revision by Crown—High Court's power to alter conviction.*

Where a person is charged with the offence of murder under S. 302, Penal Code, but is convicted under S. 326 of the Code, he must be deemed to have been acquitted on the charge of murder and it is not open to the High Court in revision to alter the conviction from one under S. 326 to one under S. 302. *Emperor v. Gajju.*

30 Cr. L. J. 552 :
115 I. C. 851 : I. R. 1929 Lah. 438 :
A. I. R. 1929 Lah. 615.

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—S. 439—*Power of High Court to alter finding—Revision.*

The High Court, in the exercise of its revisional jurisdiction, has power to alter a finding under S. 323, Penal Code, to one under S. 323 of the same Code. *Anand Rao v. Baja.*

21 Cr. L. J. 647 :
57 I. C. 663 : A. I. R. 1920 Nag. 142.

—S. 439—*Powers of High Court to alter or refuse order under S. 526.*

The High Court has power under S. 439, to alter or refuse an order transferring a case made under S. 526. *V. C. R. M. V. Vellachami Chettiyar v. L. M. R. Murugappa Chettiyar.*

34 Cr. L. J. 832 :
144 I. C. 677 : 6 R. Rang. 1 :
A. I. R. 1933 Rang. 89.

—S. 439—*Power of High Court to call for record.*

The High Court, in a case in which both the Original Criminal Court and the Appellate Court refuse a sanction, may, as a Court of Revision, call for the record under S. 439, Cr. P. C., and if the refusal proceeds upon an error of law, the High Court may accord sanction, which will be operative for the purposes of S. 195 (b) and (c), Cr. P. C. *Palaniappa Chetti v. Annamalai Chetti.*

1 Cr. L. J. 321 :
14 M. L. J. 74 : I. L. R. 27 Mad. 223 :
2 Weir 208.

—S. 439, Cl. (4)—*Power of High Court to convert acquittal into conviction—Revision—Acquittal, whether must be complete.*

The High Court cannot, in revision, under S. 439, Cr. P. C., convert a finding of acquittal into one of conviction except on an appeal by the Local Government. A finding of acquittal referred to in S. 439, need not be a complete acquittal of the accused. It is sufficient if there has been an acquittal of a particular offence, although there has been a conviction for some other offence. *In re : Subha Chukli.*

28 Cr. L. J. 397 :
100 I. C. 1053 : 50 Mad. 259 :
52 M. L. J. 707 : 38 M. L. T. 379 :
26 L. W. 888 : A. I. R. 1927 Mad. 582.

—S. 439—*Power of High Court to convert conviction—Penal Code (Act XLV of 1860), Ss. 323, 326—Conviction under S. 326—Appeal—Conviction altered to one under S. 323, effect of—Revision.*

Accused were convicted of an offence under S. 326, Penal Code, but on appeal, the conviction was altered to one under S. 323 of the Code and the sentence was reduced. On an application for revision by the Government under S. 439, Cr. P. C. : *Held*, that the order of the lower Appellate Court amounted to an acquittal of the accused of the offence under S. 326, Penal Code, and that the High Court had, therefore, no power under S. 439, Cr. P. C. to convert a finding of acquittal into one of conviction. *Emperor v. Shivaputraya Durdundaya.*

26 Cr. L. J. 830 :
86 I. C. 478 : 26 Bom. L. R. 438 :
48 Bom. 510 : A. I. R. 1924 Bom. 456.

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the prejudice of an accused without issuing notice to him and giving him an opportunity of being heard, it has ample power under the present Cr. P. C. to vacate its order and re-hear the matter in the presence of both sides. *Ramesh Pada Mandal v. Kadambini Dasi*.

28 Cr. L. J. 831 :
104 I. C. 447 : 31 C. W. N. 960 :
47 C. L. J. 358 : 55 Cal. 417 :
A. I. R. 1927 Cal. 702.

—S. 439 — Notice — Further inquiry — Sufficient ground—Notice.

The mere fact that the District Magistrate does not agree with the decision of the trying Court is not a sufficient ground for ordering a further inquiry under S. 437, Cr. P. C. nor should action be taken under this section without given notice to the accused. *Umrao Khan v. Emperor*.

24 Cr. L. J. 184 :
71 I. C. 600 : 21 A. L. J. 194 :
A. I. R. 1923 All. 484.

—S. 439—Notice.

Notwithstanding his plea of guilty, an accused has a right to appeal both against the conviction and sentence passed against him, when notice for enhancement of sentence has been served upon him. *Nga Ywa v. Emperor*.

36 Cr. L. J. 336 :
153 I. C. 390 : 12 Rang. 616 :
7 R. Rang 208 : A. I. R. 1935 Rang. 49.

—Ss. 439, 202—Notice—Refusal to issue process—Revision—Notice to accused, whether necessary.

It is not obligatory on a Superior Court to give any notice to a person against whom a Magistrate has refused to issue process under S. 202 of the Cr. P. C., when proceedings are being taken to revise that order. *L. A. Morrison v. H. M. Crowder*.

27 Cr. L. J. 302 :
92 I. C. 590 : A. I. R. 1926 Sind 198.

—Ss. 439, 203 — Notice — Application to set aside order of dismissal under S. 203—Notice to accused, whether necessary.

Where an order is made to the prejudice of an accused, it is desirable that he should be afforded an opportunity of showing cause against the making of the order. But where he was not called upon to appear in the Court below in the first instance and where an order was only made under S. 203, Cr. P. C. the issue of a notice by the Sessions Judge before setting aside the order of dismissal and directing the case to be tried by another Magistrate is unnecessary. *Liaquat Husain v. Emperor*.

19 Cr. L. J. 206 :
43 I. C. 622 : 16 A. L. J. 30 :
40 All. 138 : A. I. R. 1918 All. 258.

—S. 439—Object of.

The object of S. 439, Cr. P. C., is to confer upon superior Criminal Courts a kind of paternal of supervisory jurisdiction, in order to correct miscarriage of justice arising from misconception of law, irregularity of procedure, neglect of proper precautions or apparent harshness of treatment, which has resulted, on

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the one hand, in some injury to the due maintenance of law and order, or on the other hand, in some undeserved hardship to individuals. *Emperor v. Nasrullah*. 29 Cr. L. J. 446 :
108 I. C. 587 : A. I. R. 1928 All. 287.

—S. 439—Object of—Powers of revision, when to be exercised.

The powers of revision are given to the High Court for the correction of injustices and not for the correction of mere illegalities. *In re : Govind Kunbi*.

29 Cr. L. J. 486 :
109 I. C. 214 : A. I. R. 1928 Nag. 172.

—S. 439 — Object of—Revision—Revision merely to re-examine evidence, competency of.

The revisional powers of the High Court under S. 439, Cr. P. C., are not intended to be used for mere re-examination of the evidence. *Mohammad Ali v. Bhagwan Din*.

30 Cr. L. J. 799 :
117 I. C. 452 : I. R. 1929 Oudh 356 :
A. I. R. 1929 Oudh 210.

—S. 439 — Omission of convict to appeal, effect of.

The omission of a convict to appeal is not by itself sufficient in law, or as a matter of well-established practice, to debar the High Court from examining the record *suo motu* or on a reference by a Sessions Judge, or at the instance of a third party, and from passing such order as it thinks appropriate. *Pars Ram v. Emperor*.

32 Cr. L. J. 700 :
131 I. C. 353 : 32 P. L. R. 71 :
I. R. 1931 Lah. 449 : A. I. R. 1931 Lah. 145.

—S. 439—Omission to state facts fully in revision-application, effect of—Revision—Second application on point omitted in first, whether competent.

Where a person makes an application to the High Court in revision with full knowledge of the facts and deliberately keeps back one point, he will not be heard in a second application on that point. *Gobind Ram v. Emperor*.

25 Cr. L. J. 612 :
81 I. C. 100 : 46 All. 146 :
A. I. R. 1924 All. 558.

—Ss. 439, 476—Order directing prosecution—Failing to disclose materials on which it is based, legality of—Order directing prosecution, when may be passed—Revision—High Court, power of interference of.

An order under S. 476, Cr. P. C. should disclose the materials upon which it is based; such an order is a judicial order and if it does not show the basis upon which it was passed, it is liable to be set aside in revision by the High Court. An order under S. 476 can only be passed if an offence is committed before the Court or is brought to its notice in the course of a judicial proceeding. An order passed months after the termination of proceedings directing the prosecution of a person for having committed an offence in those proceedings, is bad if it appears that the Magistrate did not become cognizant

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————S. 439—*Power of High Court to interfere.*

Concurrent finding—Lower Court's without inspecting *phatakas* coming to conclusion that they are explosives: *Held*, on examining *phatakas*, that High Court would interfere. *Pritamdas Chellaram v. Emperor.* 34 Cr. L. J. 1046 : 145 I. C. 621 : 6 R. S. 34 : A. I. R. 1933 Sind 171.

————Ss. 439, 195—*Power of High Court to interfere—Sanction granted by First Class Magistrate—High Court, power of interference of.*

Where a Magistrate of the First Class has, under S. 195, Cr. P. C., granted sanction to prosecute, the High Court has no authority to entertain an application in the matter. *Choti v. Khecheru.* 21 Cr. L. J. 746 : 58 I. C. 250 : 18 A. L. J. 758 : 2 U. P. L. R. All. 353 : 42 All. 649 : A. I. R. 1920 All. 177.

————Ss. 439, 476—*Power of High Court to interfere—Civil P. C. (Act V of 1908), S. 115—Government of India Act, 1915 (5 & 6 Geo. V. C. 61), S. 107—Revenue Court, order by High Court, jurisdiction of, to interfere.*

The High Court has no jurisdiction under S. 439, Cr. P. C., to entertain an application to revise an order passed by a Revenue Court, under S. 476. Such an order, however, is open to revision under S. 115, C. P. C., or S. 107 of the Government of India Act. *Raktu Singh v. Emperor.* 22 Cr. L. J. 403 : 61 I. C. 643 : 6 P. L. J. 178 : 2 P. L. T. 609 : A. I. R. 1921 Pat. 94.

————Ss. 439, 476—*Power of High Court to interfere—Order passed by Small Cause Court—Provincial Small Cause Courts Act (IX of 1887), S. 25.*

An application to revise an order, under S. 476, Cr. P. C., of the Judge of a Provincial Small Cause Court lies under S. 25 of Act IX of 1887 and not under S. 439, Cr. P. C. The power of revision conferred by S. 25 of the Provincial Small Cause Courts Act is much narrower than under the Cr. P. C. It is only when some substantial injustice has directly resulted from a material misapplication or misapprehension of law or from a material error of procedure that the High Court intervenes under S. 25 of the Provincial Small Cause Courts Act. *Gaggero Francesco v. Emperor.* 14 Cr. L. J. 496 : 20 I. C. 76 : 6 Bur. L. T. 144 : 7 L. B. R. 76.

————Ss. 439, 476—*Power of High Court to interfere—Penal Code (Act XLV of 1860), S. 182—Complaint not enquired into—Order calling upon complainant to show cause why he should not be prosecuted, legality of—Revision.*

Accused presented a complaint to the District Magistrate who, without giving him an opportunity of having his complaint inquired into, and without any inquiry into the complaint, called upon the accused to show cause why he should not be prosecuted under S. 182, Penal Code: *Held*, (1) that the order of the District Magistrate was illegal and improper, as a complainant can be made to

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suffer the consequences of his action only when his complaint, after full and open inquiry, is found to be false: (2) that the High Court had power to revise the order, although no final order directing the prosecution of the accused had been passed. *Sheo Balak v. Emperor.* 22 Cr. L. 81 : 59 I. C. 369.

————S. 439—*Power of High Court to interfere in pending cases—Revision—Purdah woman—Vexatious complaint.*

The High Courts rarely interfere in respect of pending criminal cases, but where a case is *prima facie* vexatious, an interference is clearly required to prevent an abuse of such right as the complainant may have to an action in the Criminal Courts. *Kirpa Devi v. Emperor.* 9 Cr. L. J. 151 : 1 I. C. 93 : 1 P. W. R. Cr. 1909 : 36 P. L. R. 1909.

————S. 439—*Power of High Court to interfere on criminal side—Sanction to prosecute given by Assistant Collector.*

An Assistant Collector of the 1st Class acting under S. 476, Cr. P. C., directed certain persons to be prosecuted under S. 193, Penal Code. On appeal, the District Judge confirmed the order of the Assistant Collector. An application for revision was made to the High Court on the Criminal side: *Held*, that the High Court had no jurisdiction to interfere in the matter under S. 439, Cr. P. C. *Abdul Ghafoor v. Raza Hussain.* 13 Cr. L. 141 : 13 I. C. 829 : 9 A. L. J. 231 : 34 All. 267.

————S. 439—*Power of High Court to interfere with appellate judgment of acquittal—Criminal trial—Revision.*

The High Court has power to interfere in revision with an appellate judgment of acquittal, and though that power should be sparingly exercised, it would be wrong to refuse to exercise it in cases where there has been a failure of justice by reason of the Appellate Court not having brought its judicial mind to bear upon the evidence. *Satish Chandra Das v. Chinta Haran Saha.* 39 Cr. L. J. 988 : 178 I. C. 56 : 67 C. L. J. 571 : 11 R. C. 316 : 43 C. W. N. 25 : A. I. R. 1938 Cal. 613.

————Ss. 439, 476—*Power of High Court to interfere with Civil Court's order of prosecution—Order of prosecution—Interference in revision.*

The High Court has no power under S. 439, Cr. P. C. to interfere in revision with an order made by a Civil Court under S. 476, Cr. P. C. *In re : Mannar Chetty.* 16 Cr. L. J. 232 : 27 I. C. 904 : 7 M. L. T. 268 : A. I. R. 1916 Mad. 209.

————Ss. 439, 476—*Power of High Court to interfere with order under S. 476 of Civil Court.*

The Sub-Divisional Court acting under S. 476, Cr. P. C., ordered the prosecution of A for giving false evidence. A thereupon applied for revision of the order to the Sessions Judge, who submitted the proceedings to the High

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be to sustain a heavy sentence of imprisonment which cannot stand in law, the High Court will hear the case under the general powers of revision and, if necessary, interfere. *In re : Pavanur Athamu.*

26 Cr. L. J. 747 :

86 I. C. 283 : 20 L. W. 914 :

A. I. R. 1925 Mad. 239.

———S. 439—Powers of High Court—Case before High Court on reference—Power to interfere with sentence as in revision.

Even where a case is before the High Court on reference, it is competent to interfere with the sentence under S. 439, Cr. P. C. *Bombardier I. E. Barnsfield v. Emperor.*

30 Cr. L. J. 918 :

118 I. C. 438 : I. R. 1929 Lah. 774 :

A. I. R. 1929 Lal. 187.

———S. 439—Powers of High Court.

Commitment order passed by District Magistrate under S. 437—High Court will not interfere, if there is some evidence to go to Jury. *Hussainbhoy Mahomedbhoy v. Emperor.*

35 Cr. L. J. 884 :

148 I. C. 1066 : 6 R. S. 217 :

A. I. R. 1934 Sind 27.

———S. 439—Powers of High Court—Commitment to the Court of Sessions ordered under S. 439 of Criminal Procedure Code (Act V of 1898)—High Court's power to revise under S. 439—Preliminary inquiry into Sessions cases, Magistrate's power and duties in regard thereto.

It is not incompetent to a Magistrate holding a preliminary enquiry into Sessions cases to examine the credibility of evidence adduced in the course of the enquiry. Such Magistrate should not commit the accused for trial in the Sessions Court if he be of opinion that notwithstanding direct evidence adduced against the accused, the prosecution case is improbable and the evidence is unreliable. The High Court has full jurisdiction under S. 439, to revise a commitment order made under S. 436 on points of law as well as of facts. *Rash Behari Lal v. Emperor.*

6 Cr. L. J. 406 :

12 C. W. N. 117 : 6 C. L. J. 760.

———S. 439—Power of High Court—Conviction of member of Bar Association—Right of President to apply for revision.

Where certain members of a Bar Association were convicted and the accused did not appeal though they had a right in law to do so, but the President of the Bar Association applied to the High Court invoking its powers under S. 439, Cr. P. C. : *Held*, that the Bar Association acted rightly in the discharge of their duty as such an Association to watch and protect the privileges and liberty of its members which they were entitled to enjoy under the laws of the country, and the High Court could take action under S. 439, Cr. P. C. *Emperor v. Mohan Lal.*

32 Cr. L. J. 104 :

128 I. C. 221 : 7 O. W. N. 895 :

I. R. 1931 Oudh 29 : 6 Luck. 266 :

A. I. R. 1930 Oudh 497.

———S. 439—Powers of High Court.

Criminal proceedings pending in Subordinate

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Court—High Court can interfere if there is harassment of subject of Crown or when there is exceptional reason. *Abdul Wali v. Emperor.*

35 Cr. L. J. 148 :

146 I. C. 661 : 10 O. W. N. 807 :

6 R. O. 155 : A. I. R. 1933 Oudh 387.

———S. 439—Powers of High Court—Illegality, technical—Revision—Interference.

The High Court will not interfere in revision where the illegality in trial has been purely technical and has not prejudiced the petitioner. *Murli Dhar v. Emperor.*

27 Cr. L. J. 558 :

93 I. C. 1054.

———S. 439—Powers of High Court.

In exercise of its revisional jurisdiction, the High Court can, on the appeal of one accused, deal with the sentences passed on his co-accused who have not appealed. *Mangal Singh v. Emperor.*

35 Cr. L. J. 1046 :

150 I. C. 21 : 36 P. L. R. 121 :

6 R. L. 829 : A. I. R. 1934 Lah. 346.

———S. 439—Power of High Court—Joint—Trial—Appealable and non-appealable sentences—Non-appealable sentences, whether can be appealed against—Revision—High Court, power of, interference of.

Per *Atkinson, J.*—Where two or more persons are jointly tried together for the same offence and one is convicted and awarded an appealable sentence, and the others are convicted and awarded non-appealable sentences, and the convict entitled by virtue of his sentence to appeal does appeal, the law does not warrant, under such appeal, the right to re-open the trial as an appeal in favour of those who have been convicted and awarded non-appealable sentences : in other words, those latter have no right of appeal and, so far as they are concerned, the correct procedure is to refer the matter to the High Court for its consideration in the exercise of its revisional jurisdiction. Per *Jwala Prasad, J.*—In such cases the accused who are awarded non-appealable sentences have the right of appeal along with the accused who have received an appealable sentence. *By the Court.*—The High Court has ample power under S. 439 of the Cr. P. C. to deal with a case reported to it for orders, or which otherwise comes to its knowledge. *Phetu Jha v. Emperor.*

20 Cr. L. J. 545 :

51 I. C. 833 : 1919 Pat. 265 :

4 P. L. J. 435 : A. I. R. 1919 Pat. 556.

———S. 439—Powers of High Court—Offence committed under S. 212, Madras Estates Land Act (I of 1908)—Procedure, is governed by Criminal Procedure Code—Revision, if lies, to High Court from order of District Magistrate.

Although the offence said to have been committed is one under S. 212 of the Madras Estates Land Act, and the complainant had applied in revision to the District Collector under S. 205 of the Act, yet the procedure to be adopted is governed by the Cr. P. C., and if the Magistrate does not act as he should, under S. 202, Cr. P. C., then un

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whilst they are still pending before the subordinate Courts, but the exercise of this power is sometimes fraught with considerable danger to the due administration of criminal justice. If parties are to be allowed to come up at every and any stage of a criminal prosecution to challenge the order of the Magistrate, a very powerful weapon is not once placed in the hands of the well-to-do to defeat the ends of justice and to protect indefinitely a criminal trial. It is for the Magistrate before whom the case is pending to determine whether the facts proved or the facts alleged do or do not constitute a criminal offence. The accused party has done his remedy by way of appeal or revision, when the case has been finally decided. It is the bounden duty of the High Court to interfere with a proceeding pending in a subordinate Court when it is brought to its notice that a person has been subjected, or is about to be subjected to the harassment of an illegal prosecution. *Nripendra Bhusau v. Gobinda Bandhu*.

25 Cr. L. J. 1258 :
82 I. C. 266 : 39 C. L. J. 266 :
A. I. R. 1924 Cal. 1018.

-----S. 439—Power of High Court to quash proceedings—Accused merely summoned—Revision—Penal Code (Act XLV of 1860), Ss. 429, Except, (9), 500—Defamation—"Pichhlag" and "lawaris," whether defamatory.

Where an accused person is only summoned and nothing further is done by a Subordinate Court, the High Court has power to quash the proceedings at that stage if it is apparent that grave injustice would be done if the proceedings were allowed to continue. Petitioner who was a candidate for the post of *lanbardar* made a statement concerning respondent, a rival candidate for the post, that he was not the son of the deceased *lanbardar* but was *pichhlag* and *lawaris*. Respondent filed a complaint against petitioner under S. 500, Penal Code, in pursuance of which a bailable warrant was issued against the petitioner to appear and answer the charge. Petitioner applied to the Sessions Judge to quash the proceedings and his application being rejected, he moved the High Court in revision: Held, (1) that the High Court had power to interfere in revision and quash the proceedings: (2) that the words '*pichhlag*' and '*lawaris*' did not mean illegitimate and were not defamatory; (3) that even if they had amounted to defamation, the case would have been covered by Exception (9) to S. 499, Penal Code, the allegation having been made by the petitioner in an application made by him *bona fide*. *Thakaria v. Bura Singh*.

23 Cr. L. J. 429 :
67 I. C. 589 : A. I. R. 1922 Lah. 42.

-----S. 439—Power of High Court to quash proceedings—Mere suspicion—No ground for conviction or even initiation of proceedings.

Mere suspicion is not sufficient to base a conviction upon and would not even warrant the harassment of a suspected person by criminal proceedings. The High Court can, in the exercise of its revisional powers, quash criminal proceedings initiated against a person

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where there is nothing but mere suspicion against him. *Lila Ram v. Emperor*.

29 Cr. L. J. 532 :
109 I. C. 356 : 9 L. L. J. 514 :
A. I. R. 1927 Lah. 862.

-----S. 439—Power of High Court to quash proceedings—Revision.

Where it appears to the High Court that the continuance of certain proceedings before a Subordinate Court would mean an abuse of the processes of the Court, it is the duty of the High Court to interfere and to quash the proceedings. *Harendra Nath Das v. Jolish Chandra Dutt*.

26 Cr. L. J. 545 :
85 I. C. 641 : 40 C. L. J. 283 :
52 Cal. 188 : A. I. R. 1925 Cal. 100.

-----S. 439—Power of High Court to quash proceedings.

Though an order framing a charge is interlocutory and it is not usual for the High Court to interfere with interlocutory orders, yet the High Court has undoubted power to examine the proceedings of the lower Court at the stage when charge is framed and, if necessary, to set aside the charge and quash the proceedings. *Tarak Singh v. Emperor*.

28 Cr. L. J. 755 :
103 I. C. 835 : 9 L. L. J. 440 :
29 P. L. R. 237.

-----S. 439 (4)—Power of High Court to record conviction and sentence.

If in a case tried under S. 302, Penal Code, on the facts disclosed and found, an offence under S. 325, Penal Code, is committed, but the trial Court without considering the applicability of S. 325 acquits the accused under S. 302 but convicts and sentences him under S. 323, Penal Code, the High Court is not precluded by anything in S. 439 (4), Cr. P. C., from recording the conviction and sentence under S. 325, Penal Code, inasmuch as there was no acquittal under S. 325. *Dnli v. Mangli*.

27 Cr. L. J. 564 :
94 I. C. 132 : 24 A. L. J. 414 :
A. I. R. 1926 All. 332.

-----S. 439—Power of High Court to re-examine evidence—Revision—High Court—Non-appealable sentence.

A High Court, as a Court of Revision, has power to re-examine the evidence if there are *prima facie* good grounds for doing so, especially where the accused has been given a non-appealable sentence and has no means of vindicating his character except in revision. *Tikekar v. Piarey Lal*.

19 Cr. L. J. 666 :
45 I. C. 1002 : A. I. R. 1918 Nag. 152.

-----Ss. 439, 526, 528—Power of High Court to revise—Letters Patent (Rang.) Cls. 28, 36—Transfer of case—Order of District Magistrate dismissing application—Revision, whether lies.

The High Court has no power either under S. 439, Cr. P. C., or under the Letters Patent, to revise an order of the District Magistrate dismissing an application for the transfer of a case made under S. 528 of the Code. *Ashu v. Maung Po Khan*.

25 Cr. L. J. 485 :
77 I. C. 885 : 2 Bur. L. J. 236 :
1 Rang. 632 : A. I. R. 1924 Rang. 100.

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accused person has not preferred an appeal. *Secretary, High Court Bar Association, Lahore v. Emperor.*

33 Cr. L. J. 831 :
139 I. C. 696 : 33 P. L. R. 911 :
I. R. 1932 Lah. 606 :
A. I. R. 1932 Lah. 559.

—S. 439—Powers of High Court.

The powers of the High Court under S. 439 are general and ought, as far as practicable, to be left untrammelled and free so as to be fairly exercised according to the exigencies of each case. They cannot be cut down by decisions. *In re : Sriramamurthy.*

32 Cr. L. J. 763 :
131 I. C. 649 : 1930 M. W. N. 819 :
60 M. L. J. 370 :
33 L. W. 640 : 3 Mad. Cr. Cas. 381 :
I. R. 1931 Mad. 553 :
A. I. R. 1931 Mad. 242.

—S. 439—Powers of High Court.

The question of punishment is peculiarly a matter for the Court. In revision the Crown has no right to seek to influence the Court on this question unless invited by the Court to do so. *Dahu Raut v. Emperor.*

34 Cr. L. J. 1100 :
145 I. C. 937 : 6 R. C. 168 :
38 C. W. N. 25 :
A. I. R. 1933 Cal. 870.

—S. 439—Powers of High Court.

Valid order of commitment—High Court interferes in revision only in exceptional cases when no question of law is involved—Absence of evidence for commitment is a point of law. *Hussainbhoy Mahomedbhoy v. Emperor.*

35 Cr. L. J. 884 :
148 I. C. 1066 : 6 R. S. 217 :
A. I. R. 1934 Sind 27.

—Ss. 439, 342—Powers of High Court—Revision—Error of law, how far ground for interference.

The controlling power of the Court under S. 439, Cr. P. C., being by its terms entirely discretionary, the Court is not bound on revision to set aside a conviction in every case in which an illegality has been committed, especially where no prejudice is shown to have been caused by such illegality. The High Court is not, therefore, bound to interfere with a conviction in revision merely because the accused was not re-examined a second time after the conclusion of the prosecution evidence. *Emperor v. Gian Singh.*

29 Cr. L. J. 905 :
111 I. C. 665 : A. I. R. 1928 Lah. 230.

—Ss. 439, 423—Powers of High Court—Order making or refusing to make complaint—Second appeal, if lies—Powers of Court under S. 433 to order complaint to be restored to file.

There is no second appeal against an order making or refusing to make a complaint. S. 195 no longer occurs in S. 439, Cr. P. C., and S. 476-B, Cr. P. C., has not been put in its place but under S. 423 (1) (c), Cr. P. C.,

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the High Court has power to reverse the order of the Judge and under S. 423 (1) (d) the High Court has power to order the Magistrate's complaint, which the Judge has ordered to be withdrawn, to be restored to the file and to be disposed of according to law. *Teomal Girmal v. Pir Ali Muhammad Shah Rashidi.*

38 Cr. L. J. 873 :
170 I. C. 360 : 10 R. S. 53 :
31 S. L. R. 77 :
A. I. R. 1937 Sind 116.

—Ss. 439 and 476—Powers of High Court—Order for prosecution—Power of High Court to revise—Jurisdiction of Sessions Judge to revise—Indian Penal Code (Act XLV of 1860), S. 211—False charge—Order for prosecution when to be made.

A Sessions Judge has no jurisdiction to revise an order of a Magistrate passed under S. 476, Cr. P. C. It is only the High Court which has power to revise such order either under S. 439, Cr. P. C., or under its general powers of superintendence. A proceeding under S. 476 (1) is a judicial proceeding and covered by S. 439 of the Code. It is not in every case that a Magistrate considers to be false that he could direct a prosecution under S. 211 of the Penal Code. *The Deputy Legal Remembrancer v. Gopal Barik.*

4 Cr. L. J. 460 :
11 C. W. N. 125 : I. L. R. 34 Cal. 42.

—Ss. 439 and 476—Powers of High Court—Whether such can be exercised to interfere with the action of a Magistrate in cases of contempt of lawful authority of public servants, of offences against public justice and of offences relating to documents given in evidence—Whether a Bench of this Court is bound to give a decision on a question referred, which is not one on the decision of which by the Bench the disposal of any case depends—Lower Burma Courts Act (VI of 1900, S. 11).

There were two questions referred in this case, viz. 1. Can the High Court, under S. 439, Cr. P. C. interfere with the action of a Magistrate under S. 476, Cr. P. C. 2. If so, can such interference operate to stop the proceedings of the Magistrate, who is acting under S. 476 (2), or to render them void, if they are completed : *Held*, as to the first question, that the Code of 1898 has made no change in the law with respect to the power of High Courts to revise proceedings of inferior Criminal Courts, and, therefore, a High Court can, under S. 439, interfere with the action of a Magistrate, under S. 476, Cr. P. C. : *Held*, as to the second question, that it cannot be dealt with by this Bench, as, under S. 11 of the Lower Burma Courts Act, the question referred must arise in the case, and the decision of the case must be dependent on it for the Judge who refers must ultimately dispose of the case in accordance with the decision of the Bench, to which the question has been referred, and the question referred is not one, on the decision of which by this Bench, the disposal of any case depends and is consequently not one on which the Bench is called upon to give a decision. *A. K. Nur Mahomed v. Ko Aung Gyi.*

5 Cr. L. J. 123 :
12 Bur. L. R. 318 : 3 L. B. R. 234.

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———Ss. 439, 423-A—*Power of High Court to set aside conviction—Appeal—Joint accused—Appeal by some alone.*

The High Court is not precluded by S. 439 (5) Cr. P. C., from interfering with the conviction of an accused who has not appealed where the matter comes before the High Court in an appeal preferred by his co-accused. *Champa Pasin v. Emperor.* 29 Cr. L. J. 325 : 108 I. C. 81 : A. I. R. 1928 Pat. 326.

———Ss. 439, 476—*Power of High to set aside an order—Penal Code (Act XLV of 1860), S. 182—Petition before Magistrate asking that enquiry might be made—Allegations found to be false—Order directing prosecution, legality of—Jurisdiction—Revision.*

Accused presented a petition before a Magistrate, stating that a certain person was collecting men and that the accused was under the apprehension that the object was to cause him some injury, and asked that an enquiry might be made through the Police. After the enquiry the Magistrate, holding that the petition was false and vexatious, directed the prosecution of the accused for an offence under S. 182 of the Penal Code: *Held*, that the accused having given information to a Magistrate which had been held to be false and which was intended to cause the Magistrate to use his lawful powers to the injury or annoyance of another within the meaning of S. 182, Penal Code, the order directing the prosecution of the accused could not be said to be illegal. The mere fact that the High Court would, if dealing with a certain matter, have come to a conclusion different from that arrived at by a Subordinate Court, is no reason for setting aside in revision an order which is not illegal. *Sadhu Charan Singh v. Udho Prasad Singh.*

20 Cr. L. J. 821 : 53 I. C. 821 : A. I. R. 1919 Pat. 321.

———S. 439—*Power of High Court to set aside order of acquittal—Revision—High Court, power of interference of—Offence, personal—Defamation.*

Although, as a general rule, it is inexpedient to interfere in revision at the instance of a private person with an acquittal after trial by a competent tribunal, yet S. 439, Cr. P. C., undoubtedly confers power on the High Court to set aside an order of acquittal at the instance of a private prosecutor especially in a case of defamation, where the offence is of so essentially personal a character that the Local Government would seldom be willing to appeal from an acquittal. *Sunderabai v. Kishore Singh.* 20 Cr. L. J. 708 : 52 I. C. 788 : A. I. R. 1919 Nag. 64.

———S. 439 (3)—*Power of High Court to set aside order of acquittal—Death in course of fight—Case compromised by relations of deceased—Revision.*

One S was alleged to have been killed in the course of a fight. The relations of the deceased put in a compromise, which was accepted by the trying Magistrate as a compromise of an offence under S. 325, Penal Code, and the accused were acquitted. The District Magistrate reported the case for orders of

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the Judicial Commissioner's Court pointing out that the relations had no authority to compromise the case on behalf of the deceased: *Held*, (1) that it was a case in which the Court ought, on the merits, to interfere in revision; (2) that S. 439 (5) Cr. P. C., was no bar to the Court setting aside on revision the order of acquittal passed without a full trial in the case. *Emperor v. Ramzan Bachal.* 15 Cr. L. J. 553 : 24 I. C. 961 : 7 S. L. R. 200 : A. I. R. 1914 Sind 134.

———S. 439—*Power of High Court to set aside order of discharge by Presidency Magistrate.*

Duty of Magistrate—Revision—High Court's power to interfere in revision to set aside order of discharge passed by Presidency Magistrate. *National Bank of India, Ltd. v. Kothandarama Chelli.* 14 Cr. L. J. 529 : 21 I. C. 129 : 14 M. L. T. 200 : 1913 M. W. N. 728.

———Ss. 439, 562—*Power of High Court to set aside order under S. 562 and pass sentence—Revision.*

A High Court cannot set aside an order under S. 562, Cr. P. C., and of its own authority substitute for that order a sentence of whipping or imprisonment. *Emperor v. Ghasile.* 16 Cr. L. J. 43 :

26 I. C. 635 : 12 A. L. J. 1244 : 37 All. 31 : A. I. R. 1914 All. 543.

———S. 439—*Powers of High Court under.*

If a lower Court finds that it has passed an illegal order and informs the High Court of the mistake, it is competent to the High Court to set right the illegality. The High Court can do so even when it has dismissed the appeal against the order. *Emperor v. Rashbehari Singh.* 36 Cr. L. J. 100 : 152 I. C. 291 : 15 P. L. T. 475 : 7 R. P. 179 : A. I. R. 1934 Pat. 551.

———S. 439—*Powers of High Court under.*

If the illegality of a sentence is patent and has come to the notice of the High Court, even in the absence of an appeal by the accused, the High Court should deal with the matter in the exercise of its powers under S. 439. *Bhagwan Din v. Emperor.*

35 Cr. L. J. 915 : 149 I. C. 195 : 11 O. W. N. 444 : 6 R. O. 529 : A. I. R. 1934 Oudh 151.

———S. 439—*Power of revision.*

A High Court cannot interfere under S. 439, Cr. P. C., with proceedings of a Civil Court taken under S. 476, as S. 439 must be read with S. 435 and the power of revision is expressly confined to the records of inferior Criminal Courts. An order passed by a District Judge under S. 476, Cr. P. C., can only be interfered with by a High Court in the exercise of its civil jurisdiction under S. 115, C. P. C. *Nga San Chein v. So Okaram.*

17 Cr. L. J. 82 : 32 I. C. 674 : U. B. R. 1915 II, 83 : A. I. R. 1916 U. Bur. 13.

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———S. 439—*Power of High Court to direct re-hearing and appeal.*

Though the High Court should not, in revision, direct re-hearing of an appeal on the ground that the Appellate Court had taken a mistaken view of the facts (for that would be tantamount to a direction to take the view that commended itself to the High Court and in effect to direct that an acquittal be turned into a conviction), yet the High Court can, and should, in proper cases, where the Appellate Court has misdirected itself on a point of law, point out the error and direct the re-hearing of the appeal. *Ma Thang v. Nandiya*.

39 Cr. L. J. 623 :

175 I. C. 547 : 1938 Rang. 121 :

10 R. Rang. 511 : A. I. R. 1938 Rang. 193.

———S. 439—*Power of High Court to direct Sessions Judge to re-hear in appeal—Government of India Act, 1915 (5 and 6 Geo. V. 61), S. 107—Revision—High Court, power of, to direct Sessions Judge to re-hear appeal.*

Both under the Cr. P. C. and under S. 107 of Government of India Act, the High Court has power to direct a Sessions Judge to re-hear an appeal after obtaining additional evidence. *Mahomed Zamiruddin v. Emperor*.

19 Cr. L. J. 902 :

47 I. C. 274 : 3 P. L. J. 632 :

A. I. R. 1918 Pat. 272.

———S. 439—*Power of High Court to entertain time-barred petition—Limitation—Refusal to entertain application as being time-barred—Revision.*

Where an Appellate Magistrate erroneously refuses to entertain a petition on the ground that it is time-barred, the High Court can interfere in revision under S. 439, Cr. P. C. *Srinivasamoorthi v. Narasimulu Naidu*.

28 Cr. L. J. 879 :

104 I. C. 719 : 26 L. W. 168 :

39 M. L. T. 18 : 53 M. L. J. 309 :

1927 M. W. N. 692 : 50 Mad. 916 :

A. I. R. 1927 Mad. 797.

———S. 439—*Power of High Court to entertain petition—Revision—Practice—Power to entertain petition without insisting on applicant going to Sessions Judge or District Magistrate.*

A High Court can entertain an application for revision without insisting on the applicant going to the Sessions Judge or the District Magistrate in the first instance to file the application for revision. *Gulzari Lal v. Gunga Ram*.

13 Cr. L. J. 268 :

14 I. C. 652 : 9 A. L. J. 170.

———S. 439—*Power of High Court to expunge—Accused acquitted—Judgment of acquittal recorded—Case “not false” according to Magistrate’s own impression—Direction that case be entered as ‘true’ in Police register—Magistrate’s own impression and direction, recorded as part of judgment—Revision—Judicial or executive order—Government of India Act, 1915 (5 & 6 Geo. V. C. 61)—Acquittal—Not guilty—Judicial functions—Executive powers.*

In a case of extortion against a Police Officer, the trying Magistrate, finding the prosecution

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evidence as insufficient and unconvincing, recorded a judgment of acquittal but added that his own impression was that the case was “not false” and that it should be entered as “true” in the Police register. The Police Officer sought in revision that that part of the Magistrate’s judgment which cast a slur upon his character and was inconsistent with the verdict of acquittal may be expunged: *Held*, (1) that the order of the Magistrate being a judicial one, the High Court had power to deal with it under S. 439, Cr. P. C., and that it had also power to deal with it under its general superintendence under the Government of India Act; (2) that as a judicial order the order objected to was illegal and inconsistent with the judgment of acquittal; that as an executive order it had no business to be in a judgment and that, therefore, whether executive or judicial, it should be expunged from the judgment. No suggestions of any kind can be made against the accused when a verdict of not guilty is recorded except that of establishing his complete innocence. Even a judgment of acquittal, merely upon the benefit of doubt being given to the accused by reason of suspicious circumstances in the case of the prosecution is entitled to be regarded as a complete exoneration of the accused. A Magistrate exercising judicial functions has to divest himself for a moment of his executive powers and has to forget himself that he has to deal with the person before him as an executive authority. *Birnaranjan Singh v. Emperor*.

23 Cr. L. J. 371 :

67 I. C. 195 : 3 P. L. T. 239 :

A. I. R. 1922 Pat. 97.

———S. 439—*Power of High Court to go into evidence in revision—Inadmissible evidence, admission of—Grossly absurd story—Revision.*

A High Court would be justified in revision in going into the evidence if there is something grossly absurd or improbable in the story or if the lower Court has taken into consideration a matter not legally admissible in evidence. *Habibul Razzaq v. Emperor*.

25 Cr. L. J. 961 :

81 I. C. 609 : 21 A. L. J. 850

46 All. 81 : A. I. R. 1924 All. 197.

———S. 439—*Powers of High Court to grant leave to compound offence.*

A High Court has power in revision to allow the composition of an offence in a case in which a Court of Appeal can allow a composition, as S. 439, Cr. P. C., authorizes the High Court to exercise any of the powers conferred on a Court of Appeal. *Shiboo v. Emperor*.

24 Cr. L. J. 854 :

74 I. C. 1046 : 45 All. 17 :

A. I. R. 1922 All. 488.

———S. 439—*Power of High Court to interfere.*

Accused not preferring appeal—Application for revision by third party—High Court can interfere. *High Court Bar Association v. Emperor*.

33 Cr. L. J. 339 :

136 I. C. 717 : 33 P. L. R. 384 :

I. R. 1932 Lah. 253 :

A. I. R. 1932 Lah. 364.

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there is enmity between the parties, the element of doubt is so very strong therein that the conviction must be set aside giving benefit of doubt to the accused even on revision notwithstanding the concurrent findings of fact by the Courts below. *Brij Kishore v. King-Emperor*.

40 Cr. L. J. 463 :
180 I. C. 467 : 1939 O. W. N. 265 :
1939 O. L. R. 140 : 11 R. O. 247 :
A. I. R. 1939 Oudh 156.

————S. 439—Power to set aside order of acquittal—Revision against order of acquittal—Misappreciation of evidence, whether ground for interference.

Misappreciation of evidence can afford no ground for setting aside an order of acquittal in revision. *Sakharam v. Mujahiduddin*.

31 Cr. L. J. 194 :
121 I. C. 51 : I. R. 1930 Nag. 83.

————S. 439—Power to set aside order of acquittal—Revision by private prosecutor—Interference—Evidence, improper appreciation of, whether ground for interference—Warrant case—Charge framed—Defence not satisfactory—Procedure.

The High Court has jurisdiction under S. 439, Cr. P. C., to set aside the order of acquittal, but it will not ordinarily interfere in revision in such cases as the instance of a private prosecutor unless it considers that interference is urgently demanded in the interests of justice. Where a revision petition is based solely on the ground that the Trying Magistrate has not properly appreciated the evidence, it ought to be thrown out; the mere fact that the High Court sitting as a Court of Appeal may come to a different conclusion on fact is no ground for entertaining such an application. Although in a warrant case a Magistrate has, in the first instance, thought fit to frame a charge against an accused person, it is not incumbent on him to convict the accused merely because the latter has failed to adduce satisfactory rebutting evidence. It is his duty when he proceeds to judgment to carefully consider all the evidence adduced in the case and the probabilities and surrounding circumstances, and, if at the time he comes to the conclusion that the guilt of the accused has not been satisfactorily established, he is bound to acquit him although he may have framed a charge against him in the first instance. *Damodar v. Jujhar Singh*. 26 Cr. L. J. 1348 : 89 I. C. 388 : A. I. R. 1926 Nag. 115.

————S. 439—Power to set aside order of acquittal.

Where an Appellate Court sets aside a conviction on the ground that the proceedings in the Trial Court were without jurisdiction, the finding being based on a misreading of a statutory provision, the High Court is entitled to set aside the order of acquittal in revision. *Masala v. Emperor*.

27 Cr. L. J. 358 :
92 I. C. 870 : A. I. R. 1926 All. 368.

————S. 439—Power to set aside order of prosecution—Revision—Order for prosecution—Interference—Jurisdiction.

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The High Court has power in revision to set aside an order for prosecution under S. 476, Cr. P. C. But the High Court ought not to interfere in revision merely on the ground that it disagrees with the opinion of the lower Court, but only when it appears that the lower Court has acted on merely fanciful grounds, on grounds so empty, so obviously wrong that it could not be said to have formed a serious judicial opinion. *Abdul Husen v. Emperor*.

15 Cr. L. J. 33 :
22 I. C. 177 : 9 N. L. R. 184 :
A. I. R. 1914 Nag. 1.

————S. 439—Powers under, to revise order of its Judges by High Court.

Per *Oldfield, J.*—There is no power of revision under the Cr. P. C. against the judgment of one or more Judges of the High Court in a criminal appeal. The High Court is a Court of Record and can direct any mistake of the Court Clerk in making up the record and in general all slips in legal proceedings, to be amended by an order of the Court to be obtained in a summary way. But there is no power of review in a criminal case vested in the High Court either by virtue of any power conferred by the Cr. P. C. or of the position of the High Court as a Court of Record or any general inherent power. *Kinnhamad Haji v. Emperor*.

24 Cr. L. J. 439 :
72 I. C. 599 : 1923 M. W. N. 94 :
44 M. L. J. 450 : 46 Mad. 382 :
A. I. R. 1923 Mad. 426.

————S. 439—Practice—Concurrent revisional jurisdiction of High Court and Sessions Judge.

If a remedy which is asked for in the High Court can also be obtained from the Sessions Judge, the High Court will decline to exercise jurisdiction unless there be special reasons to the contrary, and will relegate the party seeking relief to the lower Court. Such is the established practice of the High Courts of Calcutta, Allahabad and Bombay, and should not ordinarily be departed from. *Musan Rai v. Birich Roy*.

18 Cr. L. J. 863 :
41 I. C. 831 : 2 P. L. W. 115 :
A. I. R. 1917 Pat. 596.

————S. 439—Practice—Going into facts in revision to determine if re-trial necessary.

Although ordinarily the High Court does not go into evidence when exercising its power of revision under S. 439, Cr. P. C., yet it will do so in a particular case, when necessary; for instance, to ascertain whether a re-hearing should be directed. *Dhaunkdhari Singh v. Harihar Singh*.

4 Cr. L. J. 162 :
4 C. L. J. 232.

————S. 439—Practice.

Neither an application in Revision by an accused nor an application by a third party for the purpose of informing the High Court, should be entertained, unless there are special reasons why the applicant should not have gone to the District Magistrate or the Sessions Judge in the first instance; but if a Judge on very special grounds decides to intervene, he

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Court with the recommendation that the order should be quashed : *Held*, that S. 439 does not confer jurisdiction to interfere with the order of the Civil Court made under S. 476. *San Gaing v. Emperor*.

9 Cr. L. J. 24 :
4 L. B. R. 339.

———Ss. 439, 423 (d), 148 (3)—*Power of High Court to order costs.*

The High Court has power, under S. 439 read with Ss. 423 (d) and 148 (3) of the Cr.P.C. to pass an order for costs incurred in the hearing of a revision petition arising out of a proceeding under S. 145 of the Code. *Bai Jiba v. Chandulal Ambalal*.

27 Cr. L. J. 661 :
94 I. C. 709 : 27 Bom. L. R. 1353 :
A. I. R. 1926 Bom. 91.

———S. 439—*Power of High Court to order punishment in revision—Conviction under S. 324, Penal Code—Court sentencing accused to fine only.*

The High Court can in revision send to Jail a person who has been merely fined if in its opinion the circumstances of the case are such as to require substantial punishment of imprisonment. *Emperor v. Karam Khan*.

30 Cr. L. J. 939 :
118 I. C. 540 : I. R. 1929 Lah. 796 :
A. I. R. 1929 Lah. 102.

———S. 439—*Power of High Court to order re-trial—Revision—Acquittal, setting aside of—Jurisdiction of High Court—Summary disposal of appeal quashing conviction.*

The High Court can, in proceedings under S. 439, Cr. P. C., set aside an order passed by an Appellate Court quashing a conviction where the judgment of the latter Court is very summary and contains a very inadequate discussion of the evidence or the materials placed before it. Where the District Magistrate on appeal, without discussing the evidence on the record, sets aside the order of conviction by a summary judgment, holding that the common object alleged in the charge had not been established, although the accused might have some other common object, the High Court in revision set aside the appellate order and sent the case back for a re-trial by the Sessions Judge on a due consideration of the evidence on the record. *Nabin Chandra v. Rajendra Nath*.

18 Cr. L. J. 519 :
39 I. C. 487 : A. I. R. 1918 Cal. 392.

———S. 439 (1)—*Power of High Court to order re-trial by competent Court—Fact of previous convictions of accused not known to Magistrate—Accused not charged under S. 75, Penal Code (Act XLV of 1860), and case not referred to Superior Magistrate.*

The accused had no less than six previous convictions under Ss. 379, 380 and 381, Penal Code. This fact was, however, not put before the Second Class Magistrate who was trying the case under S. 380, Penal Code, and in consequence the accused was not charged under S. 75, Penal Code, and the case was disposed of by the Magistrate himself instead of being sent up to a Magistrate with higher powers under S. 349, Cr. P. C. : *Held*,

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that under the provisions of S. 439, Cl. 1, the High Court had the power to reverse the finding and sentence and order that the accused be re-tried by a Court of competent jurisdiction subordinate to the High Court or committed for trial. *Emperor v. Mahadco*.

40 Cr. L. J. 25 :
178 I. C. 248 : 11 R. O. 100 :
1938 O. L. R. 472 :
1938 O. W. N. 1062 :
A. I. R. 1938 Oudh 261.

———S. 439—*Power of High Court to quash charge—Charge—No offence disclosed.*

A High Court is competent to quash a charge and dismiss a complaint, in exercise of its revisional powers where no offence is discharged by the Prosecution evidence. *Tahiru v. Jallu*.

28 Cr. L. J. 1040 :
106 I. C. 224 : 9 L. L. J. 351.

———S. 439—*Power of High Court to quash charge—Revision.*

The High Court has power under S. 439, Cr. P. C., to quash a charge in a criminal case though such power will be exercised in exceptional cases only. *Amar Nath v. Emperor*.

30 Cr. L. J. 162 :
113 I. C. 536 : 10 L. L. J. 485 :
I. R. 1929 Lah. 184 :
A. I. R. 1928 Lah. 945.

———S. 439—*Power of High Court to quash order directing issue of warrant—Revision.*

Parties should not be encouraged to resort to the Criminal Courts in cases in which the point at issue between them is one which can more appropriately be decided by a Civil Court. The tendency on the part of litigants to do so should be checked by Criminal Courts who should be on their guard against lending their aid to such procedure. Accused obtained a decree against the complainant, which the latter alleged had been satisfied by the execution of a mortgage-deed by the complainant in favour of the accused. The latter nevertheless took out execution of the decree against the complainant, who thereupon filed a complaint under Ss. 417 and 420 of the Penal Code against the accused : *Held*, that as the question between the parties, viz., whether the decree against the complainant had been satisfied or not by the transfer to the decree-holder of certain land, could more appropriately be dealt with by the Execution Court, the complaint should not be proceeded with. The High Court has power, in revision, to quash an order of a Magistrate directing a warrant to issue against an accused person. *Ladha Shah v. Zaman Ali*.

26 Cr. L. J. 287 :
84 I. C. 351 : A. I. R. 1925 Lah. 289.

———S. 439—*Power of High Court to quash pending proceedings—Revision.*

The High Court has power to quash a criminal proceeding in its early stages before any evidence has been recorded, but this is a power which will be only exercised in exceptional cases. The High Court has the power of interfering with criminal cases

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———Ss. 439, 195 (1) (a)—*Proceedings under S. 195 (1) (a), Cr. P. C.—Complaint under S. 195 (1) (a)—District Magistrate ordering its withdrawal under S. 195 (5)—Revision, if lies against his order.*

Making of a complaint under S. 195 (1) (a), Cr. P. C., is not a judicial act but is the act of a public servant. Where, therefore, upon such complaint being made, the District Magistrate orders it to be withdrawn under S. 195 (5), such order is not made by him as a Criminal Court and hence no revision lies under S. 439, against his order. *Baba Dane Shah Suthra v. Gurditta Mal.* 39 Cr. L. J. 445 : 174 I. C. 344 : 10 R. Pesh. 63 : A. I. R. 1938 Pesh. 9.

———S. 439 (4)—*Prohibition under, refers also to a case where accused has been acquitted of one charge but convicted of a minor offence.*

Where a person is charged with an offence under S. 325, Penal Code, but is acquitted under S. 323, the Appellate Court has no power to alter the conviction to one under S. 325. *Emperor v. Hasan Khan.*

33 Cr. L. J. 162 (2) : 135 I. C. 382 : 8 O. W. N. 1299 : I. R. 1932 Oudh 30 : A. I. R. 1932 Oudh 25.

———S. 439—Quashing proceedings.

It is invariably the practice of the High Courts to be very reluctant to quash proceedings in limine. *Amirbux v. Emperor.*

36 Cr. L. J. 331 (1) : 153 I. C. 320 : 7 R. S. 130 : A. I. R. 1934 Sind 183 (1).

———S. 439—Quashing proceedings.

Power to quash criminal proceedings at the outset is vested in the High Court and will, in proper cases, be exercised. *Kalumal Gelawal v. Kissumal Issardas.*

36 Cr. L. J. 881 : 156 I. C. 219 : 7 R. S. 228 : A. I. R. 1935 Sind 81.

———S. 439—Quashing proceedings.

Sub-Divisional Officer finding *prima facie* case against accused—Accused's explanation found reasonable by Sessions Judge—Quashing of proceedings in revision is proper. *Kumud Nath Chaudhuri v. Brojendra Nath Rao.*

35 Cr. L. J. 29 : 146 I. C. 366 : 6 R. C. 207 : A. I. R. 1933 Cal. 647 (2).

———S. 439—Quashing proceedings.

The fact that the case against the accused is a weak one is no ground for quashing the charge in revision. *Nand Lal v. Emperor.*

34 Cr. L. J. 82 : 140 I. C. 807 : 33 P. L. R. 231 : I. R. 1933 Lah. 35 (1) : A. I. R. 1932 Lah. 349 (1).

———S. 439—Quashing proceedings.

Where a person has been charged with an offence but the charge does not disclose any offence, the only course in the circumstances

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is to set aside the charge and quash the proceedings. *Varumal Lahrumal v. Emperor.*

34 Cr. L. J. 1049 : 145 I. C. 617 : 6 R. S. 36 : A. I. R. 1933 Sind 169.

———S. 439—Quashing proceedings.

High Court has power under S. 439 to question commitment on a question of law and may either drop proceedings or order fresh inquiry. *Mohammad Mehdi v. Emperor.* (F. B.)

36 Cr. L. J. 137 : 152 I. C. 667 : 1934 A. L. J. 965 : 4 A. W. R. 524 : 7 R. A. 365 : A. I. R. 1934 All. 963.

———S. 439—"Quashing of proceedings," meaning of.

"Quashing of proceedings" is a term of compendious connotation and the practical result of quashing is the setting aside or reversal of the order initiating the proceedings. This power is vested in the High Court under S. 439 read with Cl. (1) of S. 423, Cr. P. C. *S. C. Mitra v. Kali Charan.*

29 Cr. L. J. 102 : 106 I. C. 694 : 1 Luck. Cas. 653 : 3 Luck. 287 : A. I. R. 1928 Oudh 104.

———S. 439—Question of fact—*Bombay Prevention of Gambling Act (IV of 1887, as amended in 1910), S. 12—Question whether place is public place is one of fact.*

Whether a place is a place to which the public have or are permitted to have access within the provision of S. 12, Bombay Prevention of Gambling Act, is a question of fact. The High Court will not ordinarily in revision interfere with the findings of a competent Magistrate on question of fact. *Tahirali v. Emperor.*

37 Cr. L. J. 876 : 164 I. C. 58 : 30 S. L. R. 72 : 9 R. S. 29 : A. I. R. 1936 Sind 90.

———S. 439—Question of Law.

A question of pure law which may be decided on the materials already on the record, may be taken for the first time before the High Court although it has not been taken in any of the Courts below. *Shailabala Devi v. Emperor.* (F. B.)

34 Cr. L. J. 1115 : 145 I. C. 977 : 1933 A. L. J. 1059 : 6 R. A. 216 : A. I. R. 1933 All. 678.

———S. 439—Questions of fact—Criminal revision—Interference with facts.

Ordinarily, the High Court will not consider the questions of fact in criminal revision, but it will do so where the lower Courts have approached the case from a wrong point of view and the evidence which has been produced in the case has not received due consideration. *Rangi Lal v. Emperor.*

31 Cr. L. J. 1078 : 126 I. C. 679 : 7 O. W. N. 556 : A. I. R. 1930 Oudh 321.

———S. 439—Question of fact—Revision—High Court, interference by.

In revision, the High Court will not look into a question of fact which has not been

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—S. 439 (4) (5)—*Power of High Court to revise order of acquittal.*

The revisionary power granted by S. 439, Cr. P. C., though extremely wide, constitutes an extraordinary jurisdiction, to be exercised only in exceptional cases and as a last resort, after all other available remedies have been exhausted. It is essentially a discretionary power of control, not to be crystallized by action under hard and fast rules, but to be left free and untrammelled to the exigencies of each case. The High Court has power to revise an order of acquittal, otherwise than at the instance of the Local Government, having a right of appeal against it; but it will ordinarily refuse to exercise that power, because every such order is appealable. Upon a proper interpretation of S. 439 (4), Cr. P. C., a High Court, acting as a Court of Revision, is not competent to question an order of acquittal upon the merits thereof, or on the ground that it takes a different view of the fact or of the law applicable thereto. *Binda Prasad v. Ripusudan*. 9 Cr. L. J. 211 : 1 I. C. 238 : 5 N. L. R. 4.

—Ss. 439, 423—*Power of High Court to revise order of discharge by Presidency Magistrate.*

The High Court has power, under S. 439 read with S. 423, Cr. P. C., to revise an order of discharge passed by a Presidency Magistrate and to direct a further inquiry, if there are good reasons for doing so, although no question of jurisdiction arises in the case. When one of four accused persons jointly charged with an offence was discharged by a Presidency Magistrate, and on appeal by the others who were convicted, the High Court directed his evidence to be taken, and on such evidence being taken and considered, the appeal was dismissed and a Rule was issued upon that person to show cause why the order of discharge should not be set aside and the case against him inquired into again: *Held*, that although the High Court was not deprived of its jurisdiction to revise the order of discharge by the mere fact of calling upon the accused to give his evidence in the case, yet under the circumstances of the case the order of discharge should not be set aside and the case against him should not again be inquired into. *Emperor v. Nanda Gopal Roy*. 17 Cr. L. J. 428 : 35 I. C. 988 : 20 C. W. N. 1128 : A. I. R. 1917 Cal. 261.

—Ss. 439, 488—*Power of High Court to revise order under S. 488, Criminal Procedure Code—Maintenance proceedings by Chin woman against Burmese husband—Revision, power of—Proceedings, whether of civil nature.*

Although the failure on the part of a father to maintain a child is not a criminal offence, an application under S. 488, Cr. P. C., cannot be regarded as a proceeding of a civil nature within the meaning of S. 12 (1) of the Chin Hills Regulation. The High Court has, therefore, jurisdiction to revise an order passed in a proceeding under S. 488, Cr. P. C., instituted by a Chin woman against a Burmese husband. *Maung v. Maung Tom*. 25 Cr. L. J. 111 : 76 I. C. 111 : 4 U. B. R. 1922 169 : A. I. R. 1925 Rang. 140.

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—S. 439—*Power of High Court to revise Session Judge's order allowing bail.*

High Court can revise Sessions Judge's order allowing bail. *Emperor v. Prilam Singh*.

33 Cr. L. J. 335 :
136 I. C. 709 : 33 P. L. R. 387 :
I. R. 1932 Lah. 245 :
A. I. R. 1932 Lah. 433.

—S. 439—*Power of High Court to scrutinise evidence—Revision.*

It is not the practice of the High Court to go behind a finding of fact in revision, but there is no provision of law which debars it from going into the evidence in revision if it is of opinion that it is necessary to do so in the interest of justice. When dealing with a case on revision, the High Court has power to scrutinise the evidence with a view to find out whether the convictions of those of the accused who did not appeal from the order of the trial Magistrate are justified. *Allah Ditta v. Emperor*. 25 Cr. L. J. 435 : 77 I. C. 723 : A. I. R. 1924 Lah. 585.

—S. 439—*Power of High Court to set aside a charge—Revision.*

A High Court has the power to set aside in revision an order of a Magistrate charging an accused person with an offence, but it should exercise that power only in very exceptional cases. *Bula Singh v. Emperor*.

24 Cr. L. J. 118 :
71 I. C. 246 : 5 L. L. J. 36 :
A. I. R. 1923 Lah. 278.

—S. 439—*Power of High Court to set aside acquittal—Revision by private prosecutor against order of acquittal—Practice.*

A High Court has jurisdiction to set aside on revision an order of acquittal at the instance of a private prosecutor but it should ordinarily exercise this jurisdiction sparingly and only where it is urgently demanded in the interests of public justice. A High Court has ample jurisdiction, under S. 439, Cr. P. C., to interfere with an acquittal and remedy the wrong, if wrong has been done. S. 439 is expressed in the widest terms and vests in the Court an absolute and unqualified discretion which cannot be restricted by any series of decisions. *Faujdar Thakur v. Kasi Choudhuri*.

16 Cr. L. J. 122 :
27 I. C. 186 : 19 C. W. N. 184 :
21 C. L. J. 53 : 42 Cal. 612 :
A. I. R. 1915 Cal. 388.

—S. 439—*Power of High Court to set aside conviction—Revision—Concurrent findings of two Courts—Strong element of doubt.*

When a case seems *ab initio* improbable and there is enmity between the parties, the element of doubt is so very strong therein that the conviction must be set aside even on revision, notwithstanding concurrent findings of fact by the Courts below. *Boori v. Emperor*.

13 Cr. L. J. 712 :
16 I. C. 520 : 28 P. W. R. 1912 Cr.

Cr. P. CODE (1898), S. 439

under S. 439 of the Cr. P. C. *Uchit Jha v. Barhmo Singh*. 18 Cr. L. J. 759 :

41 I. C. 135 : A. I. R. 1917 Pat. 342.

—————S. 439—*Revision*.

A complaint under S. 476 is an order within the meaning of Ss. 435 and 439, Cr. P. C. (read with S. 423), and the High Court has power to set it aside in revision. *Nga Paw U v. Emperor*. 6 Cr. L. J. 25 :

U. B. R. 1907 Cr. P. Code (1) :
13 Bur. L. R. 338

—————S. 439—*Revision*—*Accused furnished with copies of Police diaries—Omission, material, in copies—Re-cross-examination, right of—Refusal of Court to allow exercise of right—Irregularity—Revision—High Court, power of interference of*.

An accused was, under S. 162, Cr. P. C., furnished with copy of Police diaries and with statements of the prosecution witnesses, recorded by the Police. During the pendency of appeal, it was discovered that the statement of one of the witnesses furnished to accused was not complete. He thereupon applied recalling that witness for re-cross examination to impeach his credit. The Judge rejected the application, assuming that the statement made by the witness to the Police was untrue: *Held*, the accused was entitled to have the witness re-called for the re-cross-examination, and the Judge committed a grave error of law in refusing the application, justifying interference by the High Court in the exercise of its revisional jurisdiction. *Sadanand Misra v. Ramasray*.

21 Cr. L. J. 289 :

55 I. C. 337 : A. I. R. 1920 Pat. 378.

—————S. 439—*Revision—Administrative orders—Interference*.

The High Court has no appellate or revisional authority over administrative orders of a District Magistrate. A public servant qua public servant is not subordinate to the authority of the High Court as required by S. 195 (6) of the Cr. P. C. *Arunachalam Pillai v. Ponnusami Pillai*. 20 Cr. L. J. 78 :

48 I. C. 878 : 35 M. L. J. 454 :

8 L. W. 422 : 24 M. L. J. 396 :

42 Mad. 6 : 1908 M. W. N. 224 :

A. I. R. 1919 Mad. 610.

—————S. 439—*Revision*.

Although a motion for revision lies against an order of a Sessions Judge passed in an appeal from a conviction by an Assistant Sessions Judge in a trial by Jury, it is not the intention of the law that the motion should be heard as an appeal. All that a petitioner can claim in an application for revision of this kind is a right to show that the Sessions Judge has decided wrongly and he starts with a heavy onus. *Gajo Singh v. Emperor*.

24 Cr. L. J. 495 :

72 I. C. 959 : 4 P. L. T. 265 :

1 P. L. R. 25 Cr. : 1923 Pat. 109 :

A. I. R. 1923 Pat. 238.

—————S. 439—*Revision*.

An order of a Sessions Judge or District Magis-

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trate passed under S. 436, directing commitment can be quashed by the High Court in the exercise of its revisional powers, though not under S. 215, but an order passed by the High Court itself under S. 526 cannot be so revised. *In re : Kalagava Bapiiah*. 1 Cr. L. J. 275 :

I. L. R. 27 Mad. 54 : 2 Weir 227.

—————S. 439—*Revision—Appeal against conviction dismissed—Recommendation for enhancement made subsequently—Accused asked to show cause—Whether can show cause against conviction*.

When an appeal is preferred and it appears to the Judge that there is reason to believe that an enhancement of the sentence should be considered, it is the practice of the Rangoon High Court to issue notice in revision to the accused to show cause against enhancement, and the appeal and the revision are heard at one and the same time. Where a recommendation for enhancement of sentence has been made to the High Court after the decision of the appeal, the accused when called upon to show cause against the enhancement of the sentence cannot be allowed to show cause against his conviction, but may only show cause against enhancement of the sentence. The order of the High Court in appeal must be regarded as final, and the accused person cannot be heard to show cause against his conviction. It does not make any difference that the accused's appeal from jail was dismissed summarily. Such appeals are dismissed summarily after consideration of the grounds of appeal, in addition to the judgement and, if necessary, the evidence. *The King v. Nga Ba Saing*. 41 Cr. L. J. 108 :

185 I. C. 142 : 1940 Rang 145 :

12 R. Rang. 181 : A. I. R. 1939 Rang. 392.

—————S. 439 — *Revision—Application for—Disposal of*.

Ordinarily a Judge disposing of a revision petition filed by a convicted person or his pleader against the propriety of his conviction cannot be said to be adjudicating on the question of enhancing the sentence. A Court exercising its revisional powers upon a revision petition ordinarily deals with the points, raised in the petition and has no occasion to travel outside them and consider the whole case upon its merits as the Court that tries the accused and the Court that hears the appeal, if any, does. It might be otherwise, in a revision case taken up by the Court *suo motu*. *In re : Anif Sahib*. 26 Cr. L. J. 583 :

85 I. C. 727 : A. I. R. 1925 Mad. 993.

—————S. 439—*Revision — Application for—Limitation on*.

The only limitation to the exercise of the right to apply for revision is that an application for revision cannot be made both to the Sessions Judge and to the District Magistrate, also that a petitioner in practice is required to state all his grounds for revision in a single petition. With these exceptions, there is nothing in the Cr. P. C. to make the disposal of one criminal revision case a bar to the disposal of

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—S. 439—*Power of revision in cases involving appreciation of evidence.*

No revision can be entertained ordinarily in cases which involve appreciation of evidence by Subordinate Courts unless exceptional grounds are shown to exist. *Nanjundayya v. Deveraj Urs.* 9 Cr. L. J. 437 : 12 M. C. C. R. 271.

—S. 439—*Power to interfere.*

Where it is clear that the lower Courts have not applied their minds properly to the defence set up by the accused and consequently there has been a failure of justice, it is necessary for the High Court to interfere. *Keshovdas Uttamchand v. Emperor.*

35 Cr. L. J. 206 :
146 I. C. 952 : 6 R. S. 100 :
A. I. R. 1933 Sind 359.

—S. 439—*Power to interfere with acquittal.*

Appeal—Power of Appellate Court—Accused convicted of one offence and acquitted of another—Conviction and acquittal based on same evidence—Power of Appellate Court to alter conviction—Revision—High Court's power to interfere with acquittal. *Alimuddin v. Meah Jan.* 13 Cr. L. J. 457 : 15 I. C. 89 : U. B. R. 1911 I, 100.

—S. 439—*Power to interfere with charge framed during pendency of trial—Revision—High Court's jurisdiction to interfere with charge during pendency of trial.*

A High Court can, as a Court of Revision, under S. 439, Cr. P. C., interfere with a charge framed by a Magistrate during the pendency of the trial. *Balbir Singh v. Emperor.*

29 Cr. L. J. 1008 :
112 I. C. 224 : A. I. R. 1929 Lah. 67.

—S. 439—*Power to order re-trial—Re-trial—Appeal not preferred against acquittal—High Court, if can order re-trial.*

S. 439 does not prohibit the High Court from ordering a re-trial, even where there has been an acquittal and there has been no appeal preferred by Government against such an acquittal. The power to order a re-trial is unrestricted, and such an order does not amount to a conversion of a finding of acquittal into one of conviction, which obviously means convicting an accused who has already been acquitted by a Subordinate Court. *Sarda Parsad v. Emperor.*

38 Cr. L. J. 521 :
168 I. C. 17 : 1937 A. L. J. 143 : 9 R. A. 623 :
1937 A. W. R. 66 : A. I. R. 1937 All. 240.

—Ss. 439, 562—*Power to quash conviction—Revision—Power to quash conviction of persons not applying for revision.*

The High Court has power on revision to quash the conviction of the accused who have been dealt with by an Appellate Court under S. 562, Cr. P. C., even if the convicts have not moved the High Court to exercise that power. *Radha Kishan v. Emperor.*

13 Cr. L. J. 476 :
15 I. C. 316 : 7 P. W. R. 1912 Cr. :
67 P. L. R. 1912.

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—S. 439—*Power to quash proceedings—Magistrate consulting Appellate Magistrate—Irrregularity.*

It is extremely irregular for a Magistrate to consult and take the advice of an Appellate Magistrate in regard to proceedings pending before himself. The High Court will not, however, quash the proceedings on revision on that ground alone during the pendency of the trial before the Magistrate although it has power to do so at any stage on a proper case being made out. *In re : Sami Goundan.*

26 Cr. L. J. 421 :
85 I. C. 37 : 20 L. W. 937 :
A. I. R. 1925 Mad. 315.

—S. 439—*Power to quash proceedings—Power of High Court to quash proceedings in lower Court.*

The High Court can interfere in revision with a pending proceeding where a criminal charge is unsustainable on the evidence of the prosecution witnesses. It is the duty of the High Court to interfere when the facts proved do not constitute an offence and the continuance of the trial would be an abuse of the process of the Court. *Abdul Rahim Khan v. Emperor.* 41 Cr. L. J. 753 : 189 I. C. 579 : 1940 N. L. J. 183 : 13 R. N. 67 : A. I. R. 1940 Nag. 360.

—Ss. 439, 476—*Power to revise order of Civil Court under S. 476—Order by Civil Court under S. 476—Revision.*

S. 439, Cr. P. C., does not confer jurisdiction on the High Court exercising criminal jurisdiction to revise an order made by a District Court under S. 476. *Ko Maung Gyi v. Ma Ma.* 18 Cr. L. J. 121 : 37 I. C. 473 : 10 Bur. L. T. 13 : A. I. R. 1917 L. Bur. 102.

—S. 439—*Power to set aside conviction—Revision—Serious discrepancy in evidence for the prosecution—Failure of both Courts to take notice thereof—Power of High Court to set aside conviction on revision.*

A conviction based on evidence containing a serious discrepancy of which no notice was taken by the lower Courts may be set aside on revision. *Sadda Singh v. Emperor.*

13 Cr. L. J. 463 :
15 I. C. 95 : 8 P. W. R. 1912 Cr. :
113 P. L. R. 1912.

—S. 439—*Power to set aside conviction.*

Where the record is before the High Court, it can set aside the conviction of a party who had not come in appeal if it thinks that he should not have been convicted. *Abdul Kayum v. Emperor.* 35 Cr. L. J. 1254 : 151 I. C. 175 : 28 S. L. R. 140 : 7 R. S. 43 : A. I. R. 1934 Sind 72.

—S. 439—*Power to set aside conviction—Enmity between accused and complainant—Case ab initio improbable—Conviction can be set aside notwithstanding concurrent findings of fact by lower Courts.*

When a case seems *ab initio* improbable and

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petence of the lower Court. *Gajadhar Lal v. Emperor.* 22 Cr. L. J. 230 :

60 I. C. 422 : A. I. R. 1920 Pat. 775.

———S. 439—Revision—Further enquiry—Notice to accused.

Though S. 437 makes no mention of any notice to an accused person or recording of any reasons, the ordinary practice is that an order should not be passed to the prejudice of an accused person without giving him an opportunity of being heard and it is necessary that sufficient reasons should be recorded to show that the order is a proper one. *Nga Than v. Emperor.* 13 Cr. L. J. 301 :

14 I. C. 765 : 5 Bur. L. T. 37.

———S. 439—Revision—High Court's power to interfere with acquittal.

As a general rule, the High Court will not, in revision, interfere with an order of acquittal but it has the power to do so, and this power may be properly exercised in certain circumstances. *Alimuddin v. Mean Jan.*

13 Cr. L. J. 457.

'15 I. C. 89 : U. B. R. 1911 I, 100.

———S. 439—Revision.

High Court will not interfere where case has not been completed in trial Court. *Raghunath Das v. Emperor.* 34 Cr. L. J. 956.

145 I. C. 400 : 1933 A. L. J. 30 :

6 R. A. 63 : A. I. R. 1933 All. 211.

———S. 439—Revision.

Inasmuch as an order under S. 195 is appealable, the High Court will not interfere in revision, but it will do so in respect of an order under S. 476, if that order is shown to be perverse. *Krishnarao v. Sitaram.*

22 Cr. L. J. 151 :

59 I. C. 855 : A. I. R. 1921 Nag. 91.

———S. 439—Revision.

In case of a Court refusing to make a complaint and the Appellate Court accepting the appeal, revision lies to the High Court under S. 439, in all cases whether the Court be a civil, criminal or revenue Court. *Dhampal Rai v. Balab Ram.* 33 Cr. L. J. 178 :

135 I. C. 594 : 33 P. L. R. 558 :

13 Lah. 342 : I. R. 1932 Lah. 130 :

A. I. R. 1931 Lah. 761.

———S. 439—Revision—Interference at interlocutory stage.

Ordinarily, the High Court would not interfere at an interlocutory stage with the proceedings, pending before a Magistrate, but when it appears that the accused is not guilty on the face of the proceedings, the High Court will interfere even at an interlocutory stage in order to prevent further harassment of the accused. *In re : Sripad G. Chandavarkar.*

29 Cr. L. J. 317 :

108 I. C. 27 : 30 Bom. L. R. 70 :

52 Bom. 151 : I. L. T. 40 Bom. 116 :

A. I. R. 1928 Bom. 184.

———S. 439—Revision—Interference by High Court.

Per Lindsay, J.—The discretion vested in the

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High Court to interfere in revision ought to be exercised in all cases where an attempt is made to abuse the process of the Court so as to prevent parties from resorting to the Criminal Courts to compel a decision regarding matters which properly lie within the cognizance of the Civil Courts. *Wahid Khan v. Abdullan Khan.* 24 Cr. L. J. 817 :

74 I. C. 849 : 21 A. L. J. 529 :

45 All. 656 : A. I. R. 1924 All. 1.

———S. 439—Interlocutory proceeding—High Court, interference by.

As a general rule the High Court will not interfere in interlocutory proceedings. *Jai Kishen v. Kalla.* 21 Cr. L. J. 379 :

55 I. C. 859 : 2 U. P. L. R. All. 75 :

A. I. R. 1920 All. 8.

———S. 439—Revision.

It is out of the functions of a Revisional Court to allow a witness applying for revision of an order sanctioning his prosecution for making contradictory statements, to start a wholly fresh theory in that Court, though that theory may be the correct explanation and may have been omitted for any reason. Such a reason may be duly considered in the trying Court but a Court of Revision should not interfere at the stage of the proceedings. *Valias Lalji Ramji v. Sutar Arjan Punja.*

7 Cr. L. J. 136.

———S. 439—Revision.

Mere delay of the Magistrate in drawing up the formal proceeding instead of drawing it up immediately on receipt of Police report, is no ground for interference in revision. *Dhunmun Singh v. Baleshwar Prasad Singh.*

35 Cr. L. J. 91 :

146 I. C. 551 (2) : 6 R. P. 275 :

A. I. R. 1933 Pat. 601 (2).

———S. 439—Revision—Omission in trial Court to claim to be dealt with as an European British subject—Proper Court, or entertaining revision—Revision, whether 'subsequent stage of case.'

Proceedings in revision before the High Court on a conviction by a trial Court or an Appellate Court are a subsequent stage of the case for the purposes of S. 528-B, Cr. P. C., and consequently, if an European British subject residing in Coorg does not claim to be dealt with as an European British subject, either in the trial Court or the Appellate Court, it is the Court of the Judicial Commissioner of Coorg and not the High Court of Madras that has revisional jurisdiction over the matter. *In re : H. B. Babington.* 38 Cr. L. J. 336 :

167 I. C. 160 : 1936 M. W. N. 1091 :

44 L. W. 755 : 71 M. L. J. 827 :

9 R. M. 430 : I. L. R. 1937 Mad. 339 :

A. I. R. 1937 Mad. 14.

———S. 439—Revision—Order of acquittal—Miscarriage of justice.

The High Court will, in revision, interfere to set aside an order of acquittal which is illegal, having been passed on a composition which was invalid. *Harnam Singh v. Sain Dass.*

24 Cr. L. J. 120 :

71 I. C. 248.

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cannot be said to be acting illegally although it may be contrary to the practice. Once the application has been admitted and the record called for, such an objection should not be entertained. *Shailabala Devi v. Emperor*. (F. B)

34 Cr. L. J. 1115 :
145 I. C. 977 : 1933 A. L. J. 1059 :
6 R. A. 216 : A. I. R. 1933 All. 678.

—S. 439—Practice—Revision—Discretion of Court as to entertainment of application in revision.

It is not the practice of the High Court to entertain an application for revision on the criminal side, where there exists a lower Court having concurrent revisional jurisdiction, unless a similar application has first been made to the lower Court and has been rejected. *Shafagat-Ullah v. Wali Ahmad Khan*.

7 Cr. L. J. 48 :
28 A. W. N. 25 : 30 All. 116.
3 M. L. T. 124.

—S. 439—Practice—Revision—Previous conviction discovered after conviction by a Magistrate—Re-trial.

Where the previous convictions against a convict were discovered after his conviction by a Magistrate, the Chief Court refused to order his re-trial with a view to the passing of an enhanced sentence. *Emperor v. Nur Muhammad*.

3 Cr. L. J. 341 :
7 P. L. R. 128 : 43 P. R. Cr. 1905.

—Ss. 439, 562—Practice—Embezzlement—Sentence—Felling of accused on probation of good conduct—Revision—Interference.

Although in a case of embezzlement, usually a sentence of imprisonment should be passed, where the trying Magistrate has given the accused benefit of S. 562, Cr. P. C., the High Court will not interfere with his order in revision especially after the lapse of a long time. *Emperor v. Khairati Lal*.

29 Cr. L. J. 291 :
107 I. C. 775 : A. I. R. 1928 Lah. 926.

—S. 439—Procedure—Criminal trial—Cross-examination of prosecution witnesses—Accused, right of, denial of—Revision.

No Magistrate or Court can refuse to allow an accused person to cross-examine prosecution witnesses before the charge is framed. Such a procedure is most irregular, and in contravention of law. The proper course, in revision, where such a procedure has been adopted, is for the High Court to cancel the charge and direct the cross-examination of the witnesses to be permitted. *In re : Mathiah Chetty*.

25 Cr. L. J. 556 :
81 I. C. 44 : 19 L. W. 391 :
A. I. R. 1924 Mad. 735.

—S. 439—Procedure—Revision—Application to lower Court essential before moving High Court.

Before moving the High Court in revision an application to the lower Court is an essential step in the procedure, irrespective of whether the District Magistrate or the Sessions Judge

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has power to grant the relief or not. *Sharif Ahmad v. Qabul Singh*.

22 Cr. L. J. 715 :
63 I. C. 875 : 19 A. L. J. 425 :
3 U. P. L. R. All. 77 : 43 All. 497 :
A. I. R. 1921 All. 30.

—S. 439—Procedure—Revision—District Magistrate, whether can make reference against order of Sessions Judge.

It is not the practice of the High Court in India to take action under S. 439, Cr. P. C., on a report by a District Magistrate which has, for its object, interference with a decision by a Court of Session. The proper procedure for a District Magistrate who considers an order of the Sessions Judge illegal, is to move the Public Prosecutor to bring the matter before the High Court. *Emperor v. Fazal Dad*.

24 Cr. L. J. 573 :
73 I. C. 269.

—Ss. 439, 145—Proceedings under S. 145, Cr. P. C.—Party admitting that he is not in actual possession—Possession claimed being through tenant—Refusal of Magistrate to take further evidence—Whether failure of justice—Revision, if lies.

Where in proceedings under S. 145, Cr. P. C., the only possession claimed by a party is that of his tenant and admits that he is not in actual possession, a refusal by the Magistrate to take further evidence cannot be said to have resulted in failure of justice to the party and the order passed by him will not be open to revision. *Penumatsa Ranga Razu v. Kandregula Sheenwasa Jagannatha Rao Pantulu Garu*.

39 Cr. L. J. 922 :
177 I. C. 584 : 1938 M. W. N. 252 :
47 L. W. 340 : 1938 1 M. L. J. 453 :
11 R. M. 346 : A. I. R. 1938 Mad. 654.

—Ss. 439, 145—Proceedings under S. 145—Revision.

S. 439, Cr. P. C., empowers the Chief Court to revise an order under S. 145 of the said Code, when there has been a grave irregularity or non-compliance with the provisions of the Code amounting to an abuse of jurisdiction. *Lakhan v. Begau*.

4 Cr. L. J. 425 :
1 P. W. R. Cr. 20.

—Ss. 439, 145—Proceedings under S. 145—Revision, powers of—Parties to revision.

The Chief Court will not interfere on revision with the order of a Magistrate under S. 145, where it is inconvenient and unnecessary to do so, even though such order is based on irregular procedure, as it is not usually the practice of the Chief Court to interfere on revision in a civil or quasi civil case when the party asking for revision has got a regular remedy at his command. An omission to make a joint owner of the property a party to the revision is immaterial where no mention is made of such joint owner in the order of the Magistrate and only one man has been declared to be in possession. *Muhammad Sharif v. Dhanpat Rai*.

15 Cr. L. J. 219 :
23 I. C. 487 : 15 P. W. R. 1914 Cr. :
65 P. L. R. 1914 : A. I. R. 1914 Lah. 295.

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of the Cr. P. C., to set aside an order made by a Court of Small Causes directing the prosecution of a decree-holder for perjury in respect of a statement made by him before that Court, nor can such an order be interfered with under S. 115 of the C. P. C. *Ram Prasad v. Emperor*.

20 Cr. L. J. 19 :
48 I. C. 499 : 16 A. L. J. 921 :
A. I. R. 1918 All. 68.

————S. 439 — Revision — Sanction — Miscellaneous proceedings — Charge — Legal Practitioners Act (XVIII of 1879), S. 14.

A Pleader purporting to act on behalf of a lady filed a compromise. The lady complained to Subordinate Judge that she had not authorised the Pleader to compromise, but the application was "shelved." The lady then complained to the District Judge who directed an enquiry by the Subordinate Judge. The Subordinate Judge then held an enquiry and examined certain witnesses on behalf of the lady. He disbelieved the applicant, who was a witness, and on the application of the Pleader sanctioned his prosecution. This order was confirmed by the District Judge: *Held*, that the High Court could not revise this order under S. 439, Cr. P. C.: *Held*, further, that no revision lay on the Civil side, as the Courts below had not acted without jurisdiction: *Held*, further, that the shelving of the first complaint was not a refusal to entertain the charge, and this complaint followed by the communication from the District Judge amounted to a "re-charging of the Pleader in the Court of the Subordinate Judge" within the meaning of S. 14, Legal Practitioners' Act. *Mazhar Hasan v. Saeed Hasan*.

9 Cr. L. J. 39 :
1 I. C. 569 : 28 A. W. N. 273 : 31 All. 38 :
5 A. L. J. 749.

————S. 439—Revision—Sanction to prosecute given or refused by a Civil Court.

Where sanction, under S. 195, Cr. P. C., is given, or refused by a Civil Court, the High Court in the exercise of its Criminal Revisional Jurisdiction, under S. 439 of the Code, is empowered to interfere. It is not expedient to put an order of sanction to prosecute into the hands of a debtor to use it against his creditor. *Nazir Hasan v. Dost Muhammad*.

1 Cr. L. J. 120 :
I. L. R. 26 All. 1 : 1903 A. W. N. 171.

————S. 439—Revision—Sanction to prosecute — Revision—Interference by High Court, when justified.

Where an application for sanction to prosecute has been dealt with by two Courts, the High Court can only interfere, if at all, in the exercise of its revisional jurisdiction under S. 439 and then only to prevent a gross and palpable failure of justice. *Joti Prasad v. Durga Prasad*.

25 Cr. L. J. 454 :
77 I. C. 806 : A. I. R. 1924 All. 461.

————S. 439—Revision.

S. 439 as amended in 1923, makes no mention of S. 195, which was referred to in S. 439 before

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the Code was amended. *Somabhai Vallabh v. Adilbhai Parshottam*. 25 Cr. L. J. 1123 :
81 I. C. 947 : 26 Bom. L. R. 289 :
A. I. R. 1923 Bom. 347.

————S. 439—Revision.

Such an order, when made by what is a Civil or Revenue Court with reference to the nature of its ordinary business, can only be revised by the High Court under S. 439, Cr. P. C. *Shankar Rao v. Shaik Daud*. 8 Cr. L. J. 351 :
4 N. L. R. 140.

————S. 439—Revision.

The Chief Court has power to revise orders passed under S. 476. *Emperor v. Barkat Ram*. 12 Cr. L. J. 16 :
10 I. C. 121 : 158 P. L. R. 1911 :
38 P. W. R. 1911 Cr.

————S. 439—Revision.

The High Court has power to interfere on revision with an order for prosecution under S. 476. *Ma Ma v. Emperor*. 12 Cr. L. J. 521 :
12 I. C. 289 : 4 Bur. L. T. 246.

————S. 439—Revision.

The High Court has power to interfere with the order of an Appellate Court granting or revoking sanction, whether in affirmance or reversal of the order of the primary Court under S. 195 (6), Cr. P. C. *Ram Nandan Prasad Narain Singh v. Public Prosecutor*. 22 Cr. L. J. 467 :
61 I. C. 995.

————S. 439—Revision.

The High Court will entertain [a revision on facts where either there is no evidence to support the finding or where the finding arrived at is perverse or such as no reasonable man could have arrived at on the evidence produced. *Wahid Khan v. Abdullah Khan*.

24 Cr. L. J. 817 :
74 I. C. 849 : 21 A. L. J. 529 :
45 All. 656 : A. I. R. 1924 All. 1.

————S. 439—Revision.

The High Court will not ordinarily interfere, if the Court refusing to act under S. 344, Cr. P. C., has exercised a judicial discretion. *Chitrata Ramiah v. Natukula Ramiah*.

28 Cr. L. J. 812 :
104 I. C. 252 : 26 L. W. 113 :
39 M. L. T. 14 : 53 M. L. J. 265 :
1927 M. W. N. 672 :
50 Mad. 839 : A. I. R. 1927 Mad. 778.

————S. 439—Revision.

The order of a Sessions Judge passed on an application to revoke a sanction given by a Magistrate under S. 195, Cr. P. C., is not open to revision by the High Court. *Debi Sahai v. Raghumathi Sahai*. 22 Cr. L. J. 349 (b) :
61 I. C. 173.

————S. 439—Revision.

The word 'conviction' is used in the Cr. P. C., in the sense of verdict as well as in the sense of conviction by the Court and in order to know the sense in which the word is used in

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put forward in the lower Courts. *Bhagwat Singh v. Emperor*. 26 Cr. L. J. 932 :

86 I. C. 996 : 6 P. L. T. 73 :
4 Pat. 231 : A. I. R. 1925 Pat. 378.

—S. 439—Question of sentence—Interference in revision.

Before the High Court would interfere in revision on the question of sentence, it should be satisfied that the sentence was so unreasonable and so excessive as to require a reduction. *Murido v. Emperor*.

31 Cr. L. J. 763 :
125 I. C. 46 : A. I. R. 1930 Sind 58.

—Ss. 439, 440—Question of sentence—Order in revision that Counsel should be heard only on question of sentence—Legality.

An order passed by a Judge in revision that Counsel should not be heard on the question of the finding but that there should be a hearing on the question of sentence only, is perfectly legal and one which he has full jurisdiction to pass. *Sat Narayan Lal v. Emperor*.

41 Cr. L. J. 876 :
190 I. C. 225 : 1940 A. L. J. 462 ;
I. L. R. 1940 All. 539 : 13 R. A. 188 :
A. I. R. 1940 All. 426.

—S. 439—Question of severity of sentence—Revision—Sentence, plea of, when can be urged.

Where no plea on the question of the severity of the sentence is urged before the Court of Appeal, it cannot be taken in revision before the High Court. *Mahadco Prasad v. Emperor*.

24 Cr. L. J. 911 :
75 I. C. 159 : 21 A. L. J. 654 :
45 All. 680 : A. I. R. 1924 All. 131.

—S. 439—Refusal to plead.

Accused refusing to take part in proceedings—Revision from conviction is not barred—If illegality of conviction is brought to notice of High Court, they should not refuse to interfere merely because accused does not wish to challenge order. *Shailabala Devi v. Emperor*. (F. B.) 34 Cr. L. J. 1115 :

145 I. C. 977 : 1933 A. L. J. 1059 :
6 R. A. 216 : A. I. R. 1933 All. 678.

—S. 439—Refusal to plead.

Even where an accused person refuses to plead and shows himself ready to be sent to jail, it is nevertheless the duty of the court to shift the evidence for the prosecution and refuse to convict the accused if that evidence is insufficient to prove a definite offence. *R. N. Basu v. Emperor*.

34 Cr. L. J. 1053 :
145 I. C. 736 : 1933 A. L. J. 1112 :
55 All. 857 : 6 R. A. 156 :
A. I. R. 1933 All. 612.

—S. 439—Re-trial.

A re-trial can only be ordered in cases of acquittals in which the trial has been radically and incurably defective. The High Court has no power to order the re-trial of a person, who has been acquitted, except on the ground that the trial has been illegal, or so radical-

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ly or incurably irregular, as in fact to have occasioned a failure of justice. *Binda Prasad v. Ripusndan*. 9 Cr. L. J. 211 :
1 I. C. 238 : 5 N. L. R. 4.

—S. 439—Re-trial—Case doubtful—Accused discharged.

If after fully considering the evidence in a case the trying Magistrate comes to the conclusion that the evidence against the accused is doubtful and discharges him accordingly, it cannot be said that the order of discharge is foolish and perverse to justify a re-trial. *Khan Zman Khan v. Emperor*.

26 Cr. L. J. 1357 :
89 I. C. 397 : 1 Lah. Cas. 372 :
A. I. R. 1926 Lah. 81.

—S. 439—Re-trial.

Where the High Court sets aside a conviction in revision on the ground that the trial was illegal, it has power to direct a re-trial. *Emperor v. Manan K. Mehta*.

27 Cr. L. J. 30 :
92 I. C. 689 : 27 Bom. L. R. 1343 :
4 Bom. 892 : A. I. R. 1926 Bom. 110.

—S. 439—Revision.

A High Court always looks with suspicion on cases where proceedings under S. 110, Cr. P. C., are started against a person after the Police have failed to procure evidence against him on a charge of substantive offence. *Bhagat Prasad v. Emperor*. 23 Cr. L. J. 119 :

65 I. C. 551 : 24 O. C. 317 :
9 O. L. J. 57 : A. I. R. 1922 Oudh 26.

—S. 439—Revision.

A High Court has no power to interfere with such an order in revision. *Ali Hussain Khan v. Harcharan Das*. 23 Cr. L. J. 113 :

65 I. C. 545 : 2 Lah. 305 :
4 P. W. R. 1922 Cr. : 35 P. L. R. 1922 :
4 U. P. L. R. Lah. 47 : A. I. R. 1922 Lah. 146.

—S. 439—Revision.

A High Court should not interfere with the discretion of a subordinate Court in the matter of the grant of a sanction unless there is some *prima facie* strong ground for holding that there is no reasonable probability of having a conviction on the sanction or that it is otherwise inexpedient to award the sanction on the facts of the particular case or that the party against whom sanction is granted was probably innocent. *In re : Narayana Nandan*. 15 Cr. L. J. 271 :

23 I. C. 479 : 1 L. W. 381 :
26 M. L. J. 486 : A. I. R. 1915 Mad. 229.

—S. 439—Revision.

A Sessions Judge is not the authority to whom a District Magistrate, in the exercise of his powers under S. 95, Cr. P. C., is subordinate and consequently it is not open to the Sessions Judge, even if an application is made to him, to interfere under S. 195 with an order of the District Magistrate in appeal granting sanction to prosecute the accused. The only remedy of the accused is by way of revision to the High Court

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————S. 439—*Revision against acquittal—Non-compoundable case Compromise—Acquittal order passed without consideration of evidence—Interference in revision on application of private party.*

As a rule, an interference is not made in revision with an order of acquittal on the application of a private party except where such interference is imperatively demanded in the interests of public justice or where the procedure adopted is so irregular or illegal as to vitiate the whole trial. Therefore, if in a non-compoundable case, instituted on a private complaint, after completion of the prosecution evidence and the framing of a charge, the parties file a compromise stating that they have settled all their differences and have no further dispute left requiring determination, and upon this the trying Magistrate acquits the accused without an appreciation of the evidence and a consideration of the merits of the case, there is a patent error or irregularity which justifies interference in revision with the order of acquittal. *Zahir-ud-Din v. Nasir-ud-Din.*

24 Cr. L. J. 186 :

71 I. C. 602 : A. I. R. 1924 Oudh 171.

————S. 439—*Revision against acquittal—Application by private prosecutor—Interference.*

Although the High Court has jurisdiction under S. 439, Cr. P. C., to set aside an order of acquittal, it is a settled practice that it will not ordinarily interfere in revision at the instance of a private prosecutor unless there has been a miscarriage of justice or that interference is called for either in the interests of law and order or in the interests of public justice or unless the trial has been illegal or so radically and incurably irregular as in fact to have occasioned a failure of justice. The Court will refuse to interfere if the complainant is not anxious so much to secure due administration of justice as to serve his personal grudge or end by attempting to set aside the acquittal. As a matter of practice, the Court of the Judicial Commissioner of Nagpur will not go into evidence as a rule in revision. It will ordinarily confine its interference to cases of exceptional circumstances or where there is an error of law and where the question is merely as to the application of doubtful evidence. *Sherkhan v. Anwar Khan.*

28 Cr. L. J. 523 :

102 I. C. 219 : 23 N. L. R. 40 :

A. I. R. 1927 Nag. 170:

————S. 439—*Revision against acquittal—Interference, when justified—Police report, use of—Final report of investigating officer used without examining him, effect of—Error of law—Ground for setting aside acquittal.*

The power of interference in revision with a judgment of acquittal is sparingly exercised and ordinarily only in cases where it is urgently demanded in the interests of public justice. But it is neither possible nor expedient to lay down general principles. The High Court will interfere where circumstances require it. The final report and diary of an

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investigating officer, who was not called as a prosecution witness, might be used to suggest means of further elucidating points which needed clearing up but only of elucidating them by legal evidence. The use of such a report as evidence is an error in law but it is not by itself a good ground for setting aside an acquittal. An error of procedure of a grave character would afford ground for interference but not a mere error of improper admission of evidence which was not essential to the result which might have been come to wholly independently of it. *Ganga Singh v. Rambhajan Singh.*

25 Cr. L. J. 1266 :

82 I. C. 274 : A. I. R. 1925 Pat. 165.

————Ss. 439, 423 (1) (a)—*Revision against acquittal—Revision against acquittal by private complainant, if can be entertained.*

The High Court can entertain an application for revision against an order of acquittal at the instance of a private complainant. The power appears to be expressly given by S. 439 as read with S. 423 (1) (a), Cr. P. C., as limited by S. 439 (4). *Raghunathmal v. Patiram.*

39 Cr. L. J. 75 :

172 I. C. 177 : I. L. R. 1938 Nag. 157 :

10 R. N. 172 : A. I. R. 1937 Nag. 394.

————S. 439—*Revision against appellate order.*

No revision lies against appellate order affirming order under S. 476. *Purna Chandra Dutta v. Dhalu.*

32 Cr. L. J. 377 :

129 I. C. 561 : 58 Cal. 374 :

39 C. W. N. 914 : 52 C. L. J. 87 :

I. R. 1931 Cal. 209 : A. I. R. 1930 Cal. 72.

————S. 439—*Revision against order of acquittal—Procedure to be adopted—Interference at instance of private parties—Powers of High Court.*

A High Court has jurisdiction under S. 439, Cr. P. C., to set aside an order of acquittal but it cannot convert a finding of acquittal, into one of conviction and has no alternative but to order a re-trial if it is of opinion that the order of acquittal is wrong. It is the settled practice of the High Courts not to interfere in revision with an order of acquittal at the instance of a private prosecutor, except in those cases in which the Local Government is not likely to appeal. The High Court, as a Court of Revision, not as an Appellate Court, will not go into questions of fact and will not ordinarily confine its interference to cases of exceptional circumstances or where there is error of law, which is illegal, or so radically and incurably irregular, as in fact to have occasioned an injustice. *Ram Chand v. Chautmal.*

30 Cr. L. J. 405 :

115 I. C. 169 : 11 N. L. J. 242 :

I. R. 1929 Nag. 105 :

A. I. R. 1929 Nag. 87.

————S. 439—*Revision against order of discharge—Further enquiry, when to be ordered.*

It is improper to direct further enquiry in a case in which the accused has been discharged, when the trying Magistrate has considered all the evidence produced and has come to the

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another revision case arising out of the same original trial. It is only when there has been an actual adjudication upon a particular point, such as the jurisdiction of the lower Court to try the accused or the adequacy of the sentence, that the High Court will not review its own decision. *In re: Anif Sahib*.

26 Cr. L. J. 583 :

85 I. C. 727 : A. I. R. 1925 Mad. 993.

—S. 439—Revision—Application to High Court without applying to District Magistrate or Sessions Judge, competency of—Practice of Allahabad High Court.

It is a settled practice of the Allahabad High Court to refuse to hear an application for revision, even after an *ex parte* admission of the application, when the applicant has not first applied to the District Magistrate or to the Sessions Judge for revision and it is not advisable to depart from it though there is no rule of Statute Law on the subject. *Jadunandan Misra v. Sheopahal*.

30 Cr. L. J. 1079 :

119 I. C. 444 : 1929 A. L. J. 514 :

I. R. 1929 All. 1020 : A. I. R. 1929 All. 272.

—S. 439—Revision.

A petition to revise proceedings of a Civil Court under S. 195, Cr. P. C. should be filed under S. 439 of the Code and not under S. 115 of the C. P. C. *Nallapparaju Venkataramaraju v. Mediseti Achayya*.

17 Cr. L. J. 184 (a) :

33 I. C. 824 : A. I. R. 1917 Mad. 158.

—S. 439—Revision

As to the further question, whether the revisional powers of this Court should be exercised and the Magistrate's order interfered with: *Held*, that the exercise of such powers is discretionary and it is not usual to interfere (especially where there had been an order of acquittal) with the errors of procedure, unless there is reason to believe that there has been a failure of justice, and there did not seem to be any failure of justice in this case, as it was not urged that the complainant and his witnesses were not heard and, though the Magistrate may have been mistaken, he acquitted the accused, and in the diary, classed the case as probably a false one. *Naraynasawmy v. A. Blakk*.

3 Cr. L. J. 433 :

12 Bur. L. R. 59.

—S. 439—Revision—Civil Procedure Code (Act XLV of 1882), S. 622—Appeal from order refusing sanction—Criminal Revision of order passed in such appeal after proceedings commenced in Magistrate's Court.

An order refusing sanction to prosecute a witness for making contradictory statements was quashed, and sanction granted by a Civil Appellate Court. When the criminal proceedings commenced, the witness applied for revision of the appellate order under S. 439, Cr. P. C. and not under S. 622, C. P. C.: *Held*, that when the Court was an appellate one exercising civil jurisdiction, the mere fact that a criminal proceeding was

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instituted by a civil Court, could not change the nature of the jurisdiction in revision; that, if an appeal lay to a Civil Court regarding the order respecting a criminal proceeding, it was reasonable to suppose that revision would also lie to the High Court on its civil side under S. 622, C. P. C.; that criminal jurisdiction of the High Court would not arise until the Criminal Court took action; and that, as the civil Court had called upon the Criminal Court to take action so far only, all jurisdiction so far was exercised in civil capacity and was capable of revision only on the civil side, but that it was improper to follow this view in preference to the rulings of High Courts, which laid down that S. 439, Cr. P. C., granted criminal revision in a case like this. *Valias Lalji Ramji v. Sutar Arjan Punja*.

7 Cr. L. J. 136.

—S. 439—Revision—Dismissal for default—Restoration.

The High Court has power to re-hear a criminal petition dismissed for default. *Kishen Singh v. Girdhari Lal*.

23 Cr. L. J. 750 :

69 I. C. 638.

—S. 439—Revision—Enhancement of sentence—Notice to accused, absence of—Order, legality of—Review, power of.

A reasonable opportunity for the accused to be heard is an essential condition precedent to the exercise of jurisdiction under S. 439, Cr. P. C., where the Court is considering the question of enhancing the punishment inflicted on the accused. Where this condition is not fulfilled, the Court acts without jurisdiction in enhancing the sentence and its order is void *ab initio* and without jurisdiction and does not operate to bar a fresh hearing on the merits. *In re: Tadisonu Naidu*.

26 Cr. L. J. 370 :

84 I. C. 850 : 46 M. L. J. 456 :

34 M. L. T. 218 : 20 L. W. 18 :

47 Mad. 428 : A. I. R. 1924 Mad. 640.

—S. 439—Revision—Failure to examine accused.

It is not incumbent on the High Court in revision to set aside a conviction in every case where an illegality has been committed, especially when no prejudice is shown to have been caused by such illegality. The High Court in revision is not bound to interfere in a case in which a Magistrate has once examined the accused under S. 342, Cr. P. C., but has failed to examine him a second time on his taking further evidence for the prosecution, unless it is satisfied that the petitioner has been, as a fact, prejudiced thereby. *Hazari Singh v. Emperor*.

27 Cr. L. J. 727 :

95 I. C. 55 : 8 L. L. J. 90 : 27 P. L. R. 183 :

A. I. R. 1926 Lah. 553.

—S. 439—Revision—Finding of fact—Interference.

The High Court will not in revision interfere with a finding of fact which is within the com-

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discretion, but the position must be most clearly established that the Magistrate's decision was unreasonable and improper before the interference of the High Court could properly be invoked or expected. *Ajo Mian v. Emperor*.

27 Cr. L. J. 3 :
92 I. C. 865 : 6 P. L. T. 626 :
A. I. R. 1925 Pat. 696.

—S. 439—*Revisional jurisdiction object of—Magistrate accepting certain set of facts—Finding on such facts—Revision—Criminal trial—Revision.*

The revisional jurisdiction of the High Court under S. 439, Cr. P. C., can always be exercised in order to prevent a gross and palpable failure of justice which means an error of fact as is obvious upon the face of the record and is not in effect a mistake made by the Magistrate as to the question of which set of facts should be deemed more acceptable but a blunder relating to the question as to whether some fact has been proved or not. The machinery of the High Court in criminal revision cannot be invoked in a case where there was evidence before the Magistrate which, if he believed it, would enable him to find as he did, and the revision cannot be treated as an appeal. *Pandita v. Muung Tint*.

39 Cr. L. J. 492 :
174 I. C. 860 : 10 R. Rang. 438 :
A. I. R. 1938 Rang. 103.

—Ss. 439, 476—*Revisional jurisdiction—Prosecution directed by a Munsif—Revision of Munsif's order—Jurisdiction of a Criminal Bench of the High Court to revise the order.*

Application for revision having been made under S. 439, Cr. P. C., and not under S. 622 of the Code of Civil Procedure, the Criminal Bench has no authority to interfere with the proceedings of a Munsif taken under S. 476, Cr. P. C. *Kali Prasad Chatterji v. Bhuban Mohini Dasi*.

1 Cr. L. J. 21.
8 C. W. N. 73.

—S. 439—*Revisional jurisdiction, nature of.*

Revision—Nature of revisional jurisdiction indicated. *Emperor v. Jafar Khan*.

36 Cr. L. J. 907 :
156 I. C. 101 : 1935 A. L. J. 969
1935 A. W. R. 942 : 7 R. A. 1056 :
A. I. R. 1935 All. 814.

—S. 439—*Revisional powers of High Court.*

Interference in revision is a matter which will be undertaken or left open upon a consideration of the character of the case as a whole and in detail and even though High Court has very wide revisional powers, not being confined to matters of law alone, it will not go into evidence unless it is necessary to do so. *Phakir Mandal v. Madar Mandal*.

32 Cr. L. J. 1237 :
134 I. C. 915 : 35 C. W. N. 374 :
I. R. 1931 Cal. 915 : A. I. R. 1931 Cal. 619.

—S. 439—*Revisional powers of High Court.*

The prohibition contained in Sub-s. (5),

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S. 439, Cr. P. C., is limited only to those cases in which the Court is asked to interfere at the instance of the party who could have appealed, but has not done so. It leaves untouched the power of the Court to exercise its revisional powers under Sub-s. (1), S. 439, in all other cases. *Pars Ram v. Emperor*.

32 Cr. L. J. 700 :
131 I. C. 353 : 32 P. L. R. 71 :
I. R. 1931 Lah. 449 :
A. I. R. 1931 Lah. 145.

—S. 439—*Right of accused.*

Revision—Accused is entitled to contend that he was convicted on the strength of tainted evidence only. *Emperor v. Shankorshet Ramshet Uravane*.

35 Cr. L. J. 317 :
147 I. C. 25 : 35 Bom. L. R. 1040 :
58 Bom. 40 : 6 R. B. 18 :
A. I. R. 1933 Bom. 482.

—S. 439—*Right of accused to show cause against conviction—Revision—Notice to show cause against enhancement of sentence.*

It is competent to an accused person, when notice of enhancement is served upon him, to show from the whole record that he ought to have been acquitted and he cannot be restricted with any considerations that the application was in revision only and not an appeal. *Kala v. Emperor*.

30 Cr. L. J. 699 :
116 I. C. 883 : I. R. 1929 Lah. 595 :
30 P. L. R. 437 : A. I. R. 1929 Lah. 584.

—S. 439—*Scope—Application for enhancement of sentence, if can be heard after dismissal of appeal by accused—Accused, whether entitled to re-hearing to show cause against conviction—Finality of judgments—Practice as to notice of enhancement.*

The provision contained in S. 439, Sub-s. 6, Cr. P. C., that the accused may, in an application for enhancement of sentence, show cause against his conviction, does not entitle him to do so and to claim a re-hearing on the merits for that purpose where an appeal preferred by him against his conviction has been heard and dismissed by the Court before entertaining the application for enhancement. *Emperor v. Jorabhai Kisanbhai*.

27 Cr. L. J. 1173 :
97 I. C. 805 : 28 Bom. L. R. 1051 :
50 Bom. 783 : A. I. R. 1926 Bom. 555.

—S. 439—*Scope—Order of commitment, whether can be quashed in Revision.*

Under S. 439 of the Cr. P. C., a Court has a jurisdiction to exercise the powers of an Appellate Court conferred by S. 423 (1) (c) and a fortiori to reverse or alter an order or commitment passed by a Sessions Judge under S. 423 (1) (b), Cr. P. C. *Ram Samraj Lal v. Emperor*.

25 Cr. L. J. 1375 :
82 I. C. 767 :
11 O. L. J. 748 : 1 O. W. N. 525 :
A. I. R. 1925 Oudh 233.

—S. 439—*Scope.*

S. 439 is not independent of S. 435. The provisions of S. 437 and 439 must be read with the provisions of S. 435. *Thakar Dass v. Emperor*.

15 Cr. L. J. 217 :
17 O. C. 25 : A. I. R. 1914 Oudh 225.

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—S. 439—*Revision—Point not urged before trial Magistrate or Sessions Judge.*

Where a point is not urged in the Court of first instance or before the Session Judge on appeal, the High Court will not interfere in revision unless there has been a miscarriage of justice. *Yusuf Ali Khan v. Emperor.*

21 Cr. L. J. 96 :
54 I. C. 496 : A. I. R. 1920 Pat. 518.

—S. 439—*Revision—Practice—Plea of guilty.*

The High Court is not inclined to exercise its discretionary powers of revision, in cases where the applicant has made undue delay in coming to the Court for relief. In a summary trial for an offence under the Cantonment Code, the Magistrate recorded in his order :—“Finally the accused admits his error in not having complied with the notice and thrown himself on the mercy of this Court: *Held*, that this was equivalent to a plea of guilty, and that the accused could not be heard in revision except as to the extent or legality of the sentence. *Emperor v. Pullan Lal.*

6 Cr. L. J. 153 :
27 A. W. N. 204.

—S. 439—*Revision—Proceedings under S. 476 initiated long before final disposal of case, whether liable to be set aside.*

The petitioner lodged a complaint charging two persons A and F with offences under Ss. 467 and 468 of the Penal Code. An enquiry was held in the matter by a Deputy Magistrate, who discharged the two accused and by an order under S. 476, Cr. P. C., directed the prosecution of the petitioner for offences under Ss. 193, 465 or 467, Penal Code. The order of discharge was not set aside by the Sessions Judge who directed a further inquiry into the case. The case then came before another Deputy Magistrate, who committed A and F to the Sessions Court for trial. Eventually A was acquitted by the Sessions Judge, who did not expressly find that the case was false but contented himself with saying that the case as against A was a doubtful one. After the acquittal of A, the proceedings against the petitioner initiated by the order of the Deputy Magistrate under S. 476, Cr. P. C., which had been in abeyance were resuscitated. Thereupon the petitioner applied to the Sessions Judge to refer the order under S. 476, Cr. P. C., to the High Court for the purpose of having it quashed. The Sessions Judge refused the application and the petitioner moved the High Court: *Held*, that as the order under S. 476, Cr. P. C., was more than a year old and as it was made at a time when the evidence had not been so fully brought before the Court as it afterwards was, the order should be set aside and that regard being had to what had subsequently happened, if proceedings were to be taken against the petitioner, they should be initiated afresh. *Chouduri Meah v. Emperor.* 20 Cr. L. J. 286 :
50 I. C. 174 : A. I. R. 1919 Cal. 165.

—S. 439—*Revision.*

Questions which the Magistrate should decide

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cannot be decided by High Court. *Atmaram v. Emperor.*

35 Cr. L. J. 891 :
148 I. C. 985 : 6 R. S. 220 :
A. I. R. 1934 Sind 20.

—S. 439—*Revision—Return of property.*

In making an order for return of property under the Cr. P. C., the Magistrate has a wide discretion and unless it is clear that he has exercised it on some wrong principle and returned the property to somebody who is obviously not entitled to have it, the High Court will not set aside his order in revision. *S. R. Sufarama Ayyar v. Damodaram.*

38 Cr. L. J. 690 :
169 I. C. 80 : 9 R. M. 680 :
1937 M. W. N. 53 :
1937 1 M. L. J. 128 :
A. I. R. 1937 Mad. 313.

—S. 439—*Revision.*

Revision against acquittal by private complainant—Crown not preferring appeal—Principles of interference stated. *Rama Murti v. Jai Indra Bahadur Singh.*

34 Cr. L. J. 661 :
143 I. C. 852 : 10 O. W. N. 345 :
I. R. 1933 Oudh 215 :
A. I. R. 1933 Oudh 257.

—S. 439—*Revision—High Court, duty of.*

When the matter is brought to the notice of the High Court in revision, it is its duty to satisfy itself that there has been no unreasonable delay, that the order passed under S. 476 is not vexatious and that the charges are not of a flimsy character. *Sundar Lal v. Emperor.*

23 Cr. L. J. 603 :
68 I. C. 817 : 20 A. L. J. 666 : 44 All. 642 :
A. I. R. 1922 All. 233.

—S. 439—*Revision—Power of High Court to set aside order of acquittal.*

In the exercise of its revisional powers, the High Court has power to reverse an order of acquittal and to direct that further inquiry be made or that the accused be re-tried or committed for trial. But this revisional jurisdiction will be exercised sparingly and generally in those cases only where there is an error of law and procedure patent on the face of the judgment. *Emperor v. Tirithdas.*

13 Cr. L. J. 771 :
17 I. C. 493 : 6 S. L. R. 121.

—S. 439—*Revision—Sanction to prosecute.*

Where sanction to prosecute is granted under the provisions of S. 195, Cr. P. C., by a Civil Court, the High Court has no jurisdiction in the exercise of its revisional powers on the criminal side to interfere with such an order. *Salig Ram v. Ramji Lal.*

3 Cr. L. J. 400 :
26 A. W. N. 103 :
3 A. L. J. 394 : 1 M. L. T. 219.

—S. 439—*Revision—Sanction for prosecution granted by Small Cause Court—Revision—High Court, power of, interference of.*

The High Court has no power under S. 439

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the order of a Civil Court. *Ramzan Ali v. Opporno Charan Chowdry.* 7 Cr. L. J. 416 : 4 L. B. R. 138.

-----Ss. 439, 423—Scope of—Accused showing cause against conviction, whether entitled to argue on facts.

S. 439, Cr. P. C., does not override the express terms of S. 423 and a convicted person in showing cause against his conviction under S. 439 (6), Cr. P. C., has only the same right as he has when he comes before the Court by way of an appeal under S. 423. *Ratanasabapathy Goundan v. Public Prosecutor.*

37 Cr. L. J. 909 :
164 I. C. 213 : 1936 M. W. N. 459 :
44 L. W. 155 : 71 M. L. J. 231 :
59 Mad. 904 : 9 R. M. 99 :
A. I. R. 1936 Mad. 516.

-----Ss. 439, 561-A—Scope of—Revision—Refusal to accept recommendation of Sessions Judge, whether bar to exercise of revisional powers of Chief Court.

The refusal of a Judge of the Chief Court to accept the recommendation of a Sessions Judge at a certain stage of trial to quash the proceedings, on the ground that there was no law under which the Sessions Judge could take up the proceedings at that stage does not, in any way, operate as a bar against the exercise of the jurisdiction of the Chief Court under Ss. 439 and 561-A of the Cr. P. C.; in proceedings initiated before itself for quashing the proceedings. *Sheo Saran Vaish v. Jitendar Nath Daw.* 29 Cr. L. J. 657 : 110 I. C. 209 : 5 O. W. N. 357 : A. I. R. 1928 Oudh 292.

-----S. 439 (4)—Scope of—Bar in S. 439 (4), if applies to partial acquittal.

The bar in Sub-s. (4) of S. 439, Cr. P. C., applies to a partial as well as to a total acquittal. Where therefore an accused charged with murder is convicted under S. 304 (1), Penal Code, and thus acquitted of offence under S. 302, he cannot be convicted under S. 302 in revision. *Jado Rahim v. Emperor.*

40 Cr. L. J. 93 :
178 I. C. 520 : 11 R. S. 93 :
1939 Kar. 75 : A. I. R. 1938 Sind 252.

-----S. 439, Sub-s. (4)—Scope of Penal Code (Act XLV of 1860), Ss. 302, 304—Acquittal of murder and conviction for culpable homicide not amounting to murder—Power of High Court, on application for revision, to convert finding of acquittal on charge of murder into one of conviction for murder.

The accused was committed by a Magistrate of the First Class to stand his trial before the Court of Session on a charge of murder. At the Sessions trial, he was not convicted of murder, but was found guilty of culpable homicide not amounting to murder and was sentenced to a term of imprisonment. The Government Advocate, on behalf of the Local Government, filed a petition for revision in the High Court, with the object of obtaining a conviction of the accused in respect of murder. The learned Judges of the High Court accepted the ap-

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plication for revision and directed that the conviction of the accused should be altered to a conviction under S. 302, Penal Code, and they sentenced him to death: *Held*, on appeal to the Privy Council:—(1) that although the only charge framed against the accused was that he had committed an offence punishable under S. 302 of the Penal Code, viz., murder, it was legitimate for Sessions Judge, in view of the provisions of S. 238, (2) Cr. P. C., to convict him of the minor offence punishable under S. 304, viz., culpable homicide not amounting to murder; (2) that though the Sessions Judge did not record an express finding of acquittal in respect of the charge of murder, the conclusion at which he arrived at was tantamount to an acquittal of the accused of the charge of murder; (3) that against such acquittal, the Local Government could have applied to the High Court in pursuance of S. 417, Cr. P. C., and not having so appealed, the provisions of S. 439, Sub-s. (5) became applicable; (4) that in view of the provision contained in S. 439 (4) that nothing in that section shall be deemed to authorize a High Court to convert a finding of acquittal into one of conviction, the learned Judges of the High Court, who were dealing with only with the application for revision, had no jurisdiction (on the said application) to convert the Sessions Judge's finding of acquittal of the accused on the charge of murder into one of conviction for murder; and the prohibition in S. 439, Sub-s. (4) that nothing in the section shall be deemed to authorize a High Court to convert a finding of acquittal into one of conviction cannot be construed as referring only to cases where the trial has ended in a complete acquittal of the accused in respect of all charges or offences. The words of the subsection are clear and unqualified and apply equally to a case where the accused has been acquitted of the charge of murder, but convicted of the minor offence of culpable homicide not amounting to murder. *Kishan Singh v. Emperor.* 29 Cr. L. J. 828 : 111 I. C. 332 : 5 O. W. N. 911 : 28 L. W. 396 : 1928 M. W. N. 749 : 29 P. L. R. 575 : 33 C. W. N. 1 : 48 C. L. J. 397 : 50 All. 722 : 30 Bom. L. R. 1572 : 55 M. L. J. 786 : 55 I. A. 390 : 26 A. L. J. 1099 : A. I. R. 1928 P. C. 254.

-----S. 439 (5)—Scope of—Revision—Appeal competent—Revision, whether entertainable.

Where it is open to an accused person to appeal and he does not do so, S. 439 (5), Cr. P. C. bars the entertainment of application for revision. *Harbhagwandas Mitharam v. Emperor.*

22 Cr. L. J. 313 :
60 I. C. 100 : 14 S. L. R. 173 :
A. I. R. 1920 Sind 75.

-----S. 439 (6)—Scope of—Sub-s. (6) of S. 439 only refers to Sub-s. (5).

Sub-s. (6) of S. 439, Cr. P. C., can only refer to Sub-s. (5) of the section and means that, although a party who has not appealed cannot be allowed

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S. 439 (6), Cr. P. C., in its application to any particular case, it is necessary to enquire what has happened. *Superintendent and Remembrancer of Legal Affairs, Bengal v. Jnanendra Nath Ghose.*

30 Cr. L. J. 1038 :
119 I. C. 304 : 49 C. L. J. 432 :
33 C. W. N. 599 : 56 Cal. 1145 :
I. R. 1929 Cal. 781 :
A. I. R. 1929 Cal. 747.

—S. 439—Revision.

When an order granting or refusing sanction to prosecute under S. 195 (1) (6), Cr. P. C., has been dealt with under S. 195 (6) by the Court to which appeals from the Court which passed the order ordinarily lie, the High Court has no power to interfere in revision with the order passed under S. 195 (7). *Kusal v. Badri Prasad.*

6 Cr. L. J. 372 :
27 A. W. N. 283.

—S. 439—Revision—When competent—Case pending before Sub-Divisional Magistrate—Order of bail by Sessions Judge—High Court, whether can interfere—“Any proceedings” in S. 439, scope of.

A High Court has no jurisdiction to entertain an application under S. 497 (5) or S. 498, against an order granting bail, passed by a Sessions Judge in a case pending before a Subordinate Magistrate. The powers of the High Court under S. 497 (5) are restricted to the cases of persons released by the Trial Magistrate; and those under S. 498, enable the High Court to release an accused on bail but not to order the arrest and committal to custody of persons already released on bail by the Sessions Judge. But proceedings in which it is or has been determined whether bail from the accused person should be taken or not fall within the definition of “any proceedings” under S. 439, and the High Court has powers under that section to interfere and thus to control the propriety as well as the regularity of orders in such proceedings. *Local Government v. Gulam Jilani.*

25 Cr. L. J. 1363 :
82 I. C. 755 : A. I. R. 1925 Nag. 228.

—S. 439—Revision.

When sanction is given and the aggrieved party does not prefer an appeal against the order, the Court will not interfere in revision on a reference made at a late stage of the proceedings. *Emperor v. Nathu.*

15 Cr. L. J. 662 (a) :
25 I. C. 990 : 8 S. L. R. 21 :
A. I. R. 1914 Sind 159.

—S. 439—Revision.

Where an application under S. 195 (6), Cr. P. C., is made to an Appellate Court against the order of the First Court refusing or granting sanction to prosecute the order of the Appellate Court is open to revision under S. 439 of the Code. *Khazan Singh v. Kirpa Singh.*

24 Cr. L. J. 683 :
73 I. C. 779 : 4 Lah. 130 : 5 L. L. J. 372 :
A. I. R. 1923 Lah. 341.

—S. 439—Revision.

Where in a revision petition to quash

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proceedings against the petitioner it is alleged among other grounds that no offence has been committed on the facts as given in the complaint, it is not desirable that a High Court should give its preliminary finding on those facts. *Bassarmal Awatmal v. Emperor.*

23 Cr. L. J. 31 :
64 I. C. 511 : 15 S. L. R. 149.

—S. 439—Revision.

Where there has been no legal disposal of a complaint, no sanction to prosecute the complainant on the footing that it is a false complaint should be granted. Where a complaint is dismissed under S. 203, Cr. P. C., without examining the complainant, the latter cannot be prosecuted for offences under Ss. 132 and 211, Penal Code, with reference to the subject-matter of the complaint. On an application in revision for setting aside an order granting sanction to prosecute a complainant for offences under Ss. 182 and 211, Penal Code, the High Court has jurisdiction to hold that the order dismissing the complaint was wrongly made. *In re : Ningappa Rayappa Ghotadki.*

25 Cr. L. J. 960 :
81 I. C. 608 : 26 Bom. L. R. 183 :
48 Bom. 260 : A. I. R. 1924 Bom. 321.

—S. 439—Revision.

Under S. 439, Cr. P. C., however, the High Court has power to revise a commitment order made under S. 436 of the Code on points of law as well as of fact. *Sambi v. Emperor.*

19 Cr. L. J. 801 (b) :
46 I. C. 817 : 9 L. B. R. 208 :
A. I. R. 1919 L. Bur. 146.

—Ss. 439 and 195—Revision—Sanction to prosecute.

The petitioner applied to the District Magistrate for sanction under S. 195, Cr. P. C., for the prosecution of the respondent for giving false evidence. The District Magistrate rejected this application, but of its own motion directed the prosecution of the respondent for giving false evidence with the intention of evading payment of income-tax. The order of the District Magistrate was set aside by the Sessions Judge. The petitioner applied for revision, and contended that the District Magistrate accorded sanction as Collector of the District and that his order could not be interfered with by the Court of Sessions. *Held*, that the petitioner's application for sanction having been rejected by the District Magistrate, his remedy was by revision of that order, and there was no reason for the exercise by the Chief Court on his initiative, the discretion vested in it under S. 439, Cr. P. C.; that an order passed by a District Magistrate as such can be set aside, on cause shown, by a Court of Sessions, and the order was passed by an official purporting to act as a District Magistrate. *Gurmukh Singh v. Naman.*

1 Cr. L. J. 112 :
5 P. L. R. 93 : 30 P. R. Cr. of 1903.

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on District Magistrate—Locus standi of opposite party—Practice.

The power of granting sanctions possessed by Appellate Courts ought to be exercised carefully, especially when sanction is refused by the Court of first instance. Where sanction was granted by a Sessions Judge for purposes of public justice, and upon a petition for revision, the Rule was issued on the District Magistrate and a Counsel applied to be heard on behalf of the opposite party: *Held*, that in accordance with the practice of the High Court, the opposite party had no *locus standi* to be heard. *Jhalan Jha v. Buchar Gope.*

1 Cr. L. J. 850 :
I. L. R. 31 Cal. 811.

————S. 440—Right of hearing.

Under S. 440 no party has any right to be heard either personally or by pleader before any Court while exercising its powers of revision. *Hafiz Khan v. Emperor.*

26 Cr. L. J. 527 :
85 I. C. 367 : 1 O. W. N. 878 :
A. I. R. 1925 Oudh 558.

————S. 440—Right to be heard—Applicant released on bail—Disappearance of applicant.

A person who applies for revision to the High Court and on being released on bail disappears and is not to be found, is not entitled to be heard through his pleader, and the High Court may refuse to proceed with his application. *Har Narain Prasad v. Emperor.*

24 Cr. L. J. 240 :
71 I. C. 704 : A. I. R. 1923 All. 327.

————S. 441.

See Cr. P. C. 1898, S. 370.

————Ss. 441—Scope—Presidency Magistrate discharge by, on particular ground—Report under S. 441, giving different ground, legality of.

S. 441 of the Cr. P. C. is not enacted to enable Presidency Magistrates to give fresh reasons for their decisions contradictory to those already given, but to enable them to supply reasons where in exercise of their privilege under S. 370 of the Cr. P. C., they have given no reasons at all. *Swarnammal v. K. Munuswami Chetty.*

31 Cr. L. J. 460 :
122 I. C. 800 : 1929 M. W. N. 893 :
A. I. R. 1930 Mad. 225.

————S. 441—Scope—S. 441, scope and effect of—Presidency Magistrate—Reasons for conviction, omission to record—Grave irregularity—High Court, when will interfere.

S. 441, Cr. P. C., merely allows a Presidency Magistrate to supplement the reasons which have already been stated under Ss. 263 and 370, for convicting an accused person. *In re : Dervish Hussain.*

24 Cr. L. J. 84 :
71 I. C. 212 : 17 L. W. 18 : 44 M. L. J. 84 :
32 M. L. T. 100 : 46 Mad. 253 :
A. I. R. 1923 Mad. 185.

————S. 441—Scope.

The effect of S. 441 is not to abrogate the terms of S. 263 or S. 370 and the omission to record reasons is a grave irregularity

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which, in most cases, would be sufficient to warrant interference by the High Court. But where the reports submitted under S. 441 contain good grounds for the decision, they may be considered as setting forth the reasons for the conviction, and if no substantial failure of justice has resulted, the High Court will not interfere. *In re : Dervish Hussain.*

24 Cr. L. J. 84 :
71 I. C. 212 : 17 L. W. 18 : 44 M. L. J. 84 :
32 M. L. T. 100 : 46 Mad. 253 :
A. I. R. 1923 Mad. 185.

————S. 442—Application—When to be made.

Inasmuch as an application under S. 442, Sub-cl. (1) (c), for determination of the prisoner's Status must necessarily precede an application for leave to appeal, where no application for leave to appeal can be presented, the time for appealing having expired, the application for determination of the prisoner's status is also not maintainable. *Thomas v. Emperor.*

27 Cr. L. J. 1304 :
98 I. C. 248 : 53 Cal. 746 :
A. I. R. 1926 Cal. 1203.

————S. 443.

See also Cr. P. C., Ss. 263, 408.

————S. 443—Applicability.

Procedure prescribed by Chap. XXXIII, Cr. P. C., can be availed of even in the course of a trial of the offence of murder. *A. Armstrong v. Emperor.*

33 Cr. L. J. 529 :
137 I. C. 763 : 33 P. L. R. 578 :
I. R. 1932 Lah. 352 : A. I. R. 1932 Lah. 490 (2).

————S. 443—Applicability.

The provisions of S. 443 are not applicable to proceedings under S. 107. *Mr. W. G. Christy v. Mrs. Doris Christy.*

35 Cr. L. J. 505 :
147 I. C. 997 (2) : 35 P. L. R. 268 :
6 R. L. 438 : A. I. R. 1933 Lah. 1019.

————S. 443—Both parties Europeans—Accused and complainant both being European British subjects, effect of.

No special procedure is prescribed where both the accused and the complainant are European British subjects and the Magistrate trying the case need not be a Justice of the Peace. *Bombardier I. E. Barnsfield v. Emperor.*

30 Cr. L. J. 918 :
118 I. C. 438 : I. R. 1929 Lah. 774 :
A. I. R. 1929 Lah. 187.

————S. 443—Claim—Proof of.

Whereas in a claim to be dealt with as European British subject or an Indian British subject or a European not being a European British subject or an American, the claimant has to prove his own status, in a claim to be tried under the provisions of Ch. XXXIII, Cr. P. C., the claimant may or may not have to do so. If the latter claim is based upon S. 443 (1) (a), claimant has to prove that the complainant and the accused persons or any of them are respectively European and Indian British subjects or Indian and European British subjects. If it is based upon S. 443 (1) (b) claimant will have to prove that in view

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conclusion that that evidence did not make out a *prima facie* case. Where a Magistrate completes an enquiry and discharges the accused, further enquiry should not be ordered except for very strong reasons. *Bhaulal v. Kalhu*.

31 Cr. L. J. 279 :

121 I. C. 671 : A. I. R. 1929 Nag. 360.

———Ss. 439, 476—Revision by District Magistrate—Magistrate ordering prosecution under S. 476—Revision by District Magistrate—Jurisdiction.

Where an order to prosecute a person is passed by a Magistrate under S. 476, Cr. P. C., the District Magistrate has no jurisdiction to interfere, it is only when sanction to prosecute has been granted under S. 195, that the District Magistrate has such powers. *Sita Ram v. Emperor*.

24 Cr. L. J. 658 :

73 I. C. 690 : A. I. R. 1923 All. 597.

———S. 439—Revision, grounds for—Inferences not warranted by evidence.

Inferences not warranted by the evidence, drawn to the prejudice of the accused are good grounds for a criminal revision. *Nga Shrow Kyaw v. Emperor*.

18 Cr. L. J. 116 :

37 I. C. 468 : A. I. R. 1917 L. Bur. 93.

———S. 439—Revision in interlocutory orders.

There is ordinarily no justification for a High Court to take up in revision what are really interlocutory matters in a Criminal Court. *Jagan Parshad v. Emperor*.

32 Cr. L. J. 82 (a) :

128 I. C. 50 : 31 P. L. R. 893 :

I. R. 1931 Lah. 2 :

A. I. R. 1930 Lah. 346.

———S. 439—Revision of interlocutory orders during pendency of suit.

The High Court will not interfere in revision with an interlocutory order passed in a case pending in a subordinate Court unless it is of an exceptional nature and one test of its being of exceptional nature is that a bare statement of the facts of the case without any elaborate argument should be sufficient to convince the High Court that the case is a fit one for its interference at an intermediate stage. Where a Magistrate in a proceeding under S. 488, Cr. P. C., against the husband, rejected certain letters written by the wife to the husband as inadmissible under S. 122, Evidence Act: *Held*, that the order being a purely interlocutory one and not of an exceptional character, the High Court would not interfere with it in revision during the pendency of the case in the subordinate Court. *Donlea v. Mrs. Donlea*.

32 Cr. L. J. 145 :

128 I. C. 542 : I. R. 1931 Lah. 78 :

31 P. L. R. 809 : A. I. R. 1930 Lah. 881.

———S. 439—Revision on facts.

The power of the High Court to interfere in revision on facts is one that should be very sparingly exercised. *Muhammad Zahur v. Emperor*.

25 Cr. L. J. 278 :

76 I. C. 870 : 9 O. L. J. 488 :

A. I. R. 1923 Oudh 8.

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———S. 439—Revision on order by Civil Court under S. 476—Whether lies—Civil Procedure Code (Act V of 1908), S. 115—Sanction to prosecute—Sanction granted by Civil Court under S. 476, Criminal Procedure Code—Revision—High Court, power of interference of—Law applicable—"Inferior Criminal Courts," meaning of.

An order passed by a Civil Court under S. 476, Cr. P. C., is open to revision by the High Court only under S. 115, C. P. C., and not under S. 439, Cr. P. C. *Babulal v. Emperor*.

21 Cr. L. J. 270 :

55 I. C. 286 : 16 N. L. R. 23 :

A. I. R. 1920 Nag. 146.

———S. 439—Revision, propriety of.

The accused, licensed sub-contractors, for sale of liquor in a Native State, were found travelling in train at a station in British territory proceeding to their place of business in the State with liquor which they had purchased in the State under a State Pass. As they failed to obtain a Pass from the Collector of the District in which they were found travelling, they were arrested and charged with an offence under S. 46 (c) of Act XII of 1896, but acquitted by the trying Magistrate on the strength of remarks on page 106 of the Punjab Excise Pamphlet. The District Magistrate reported the case to the Chief Court for revision under S. 438, Cr. P. C.: *Held*, that interference on revision would be quite improper, it being open to Government to appeal if they so desired. *Emperor v. Gurdit Singh and Ram Ditta*.

1 Cr. L. J. 30 :

5 P. L. R. 1.

———S. 439—Revision, when can be granted—Prosecution under S. 193—Lower Court's concurring order, if can be revised.

Revision can only be granted, if there is some error of law, some irregularity, or some abuse of or failure to exercise jurisdiction. It is inadvisable for the High Court to interfere in revision when two Courts have concurred in holding that a prosecution is in the interests of public policy. In case of a prosecution under S. 193, I. P. C., such a course is not even in the interests of the accused person as it deprives him of the only means of clearing his character, which would otherwise remain affected by the fact of the complaint having been made and endorsed by the Court of Appeal. *Behari Lal Sud v. Emperor*.

41 Cr. L. J. 204 :

185 I. C. 588 : 41 P. L. R. 652 :

12 R. L. 313 : A. I. R. 1939 Lah. 529.

———Ss. 439, 520—Revision, use of powers.

Neither under S. 439, nor under S. 520, will the High Court exercise its revisional jurisdiction except as a Court of last resort. *Emperor v. Hussain Shah*.

1 Cr. L. J. 764 :

17 C. P. L. R. 17.

———S. 439—Revisional interference—Grounds for.

If a good case is made out that the Magistrate's refusal to summon the witnesses was outside the limits of a reasonable discretion, the High Court would interfere with the exercise of such

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English parents, though not controverted by the Crown by a counter-affidavit is hearsay evidence and is not sufficient to establish the status of the accused as a European British Subject. *Thomas v. Emperor*.

27 Cr. L. J. 1304 :
98 I. C. 248 : 53 Cal. 746 :
A. I. R. 1926 Cal. 1203.

—S. 443—Record of finding—Absence of—Effect of.

The omission of the District Magistrate to record his separate finding on the application under S. 443, does not invalidate his proceeding if his committal order implies that he had come to a finding. It is sufficient that he decides under S. 443 that the case ought to be tried under the provisions of Chap. XXXIII, and consequently commits the case for trial to the Court of Session under S. 446 (1). *M. I. Mamsa v. The King*.

39 Cr. L. J. 470 :
174 I. C. 824 : 10 R. Rang. 433 :
A. I. R. 1938 Rang. 105.

—S. 443—Scope.

An Indian British subject has certain privileges just as a European British subject has under Ch. XXXIII. The distinctive rights of a European British subject are detailed in Chap. XLIV-A, which also deals with the distinctive rights of an Indian British subject. The determination of this question of the class of British subjects is necessary for the application of the provisions of S. 275, in the case of the Jury and the provisions of S. 284-A, in the case of Assessors. *Hay v. Emperor*.

26 Cr. L. J. 1217 :
88 I. C. 833 : 2 O. W. N. 469 :
28 O. C. 230 : A. I. R. 1925 Oudh 469.

—S. 444—Proviso—Complaint by European British subject as public servant, effect of.

Where a public servant makes a complaint under the orders of Government as such public servant, Chap. XXXIII of the Cr. P. C. has no application to the case. *Emperor v. Zahir Haider*.

27 Cr. L. J. 1041 :
97 I. C. 17 : 7 P. L. T. 367 :
A. I. R. 1926 Pat. 566.

—S. 444—Proviso—Object of—European British subject—Public servant, complaint by—Personal knowledge or interest of complainant, effect of—Procedure.

The proviso to S. 444 is intended to exclude generally from the application of the definition of "complainant" in that section, public prosecutors and public servants, etc., who make complaints or lodge information before the Police in their official capacity as such public prosecutors or public servants, etc., irrespective of whether or not they have a personal knowledge of the facts or a personal interest in the case. *Burchell v. Emperor*.

27 Cr. L. J. 770 :
95 I. C. 306 : 20 S. L. R. 178 :
A. I. R. 1926 Sind 230.

—S. 446—Applicability—European British subject, waiver by, of right to be tried as such, effect of—Appeal—Court, proper.**Cr. P. CODE (1898), S. 446**

The result of waiver is to render Ss. 408 and 446 inapplicable to the case and the accused has no right of appeal to the High Court. *Dawson Downing v. Emperor*. 18 Cr. L. J. 986 :
42 I. C. 602 : 2 P. L. W. 79 :
A. I. R. 1918 Pat. 59.

—S. 446—Commitment—Duty of Court.

Before a Magistrate makes a commitment under S. 446 (1), he must consider whether there are grounds for discharging the accused under S. 209 or S. 203 and he cannot do this without taking the evidence for the prosecution. *Emperor v. K. T. Keshan*.

35 Cr. L. J. 174 (1) :
146 I. C. 879 (1) : 12 Pat. 707 :
14 P. L. T. 726 : 6 R. P. 290 :
A. I. R. 1933 Pat. 677 (1).

—S. 446—Commitment—Duty of Court.

Before an accused is committed to the Court of Sessions, there must be some evidence on the record to prove a *prima facie* case against him. In the absence of such evidence, it is not permissible to a Magistrate to commit the accused to take his trial in the Court of Session. The Second Class Magistrate cannot hold an inquiry, in view of S. 29-A of the Cr. P. C., into a case under Ss. 403, 417 and 427, Penal Code, being punishable otherwise than with fine not exceeding Rs. 50. In such a case it is incumbent upon him to direct the complainant to make a complaint to a Magistrate who is empowered to hold a preliminary inquiry before committing the accused to the Sessions. Where the offences mentioned in the complaint are all triable by a Second Class Magistrate and the fact that the accused is a European British subject is not admitted by the complainant and is not known to the Magistrate at the time the warrant is issued, it is open to the accused to submit to the jurisdiction of the Magistrate. *G. A. St. George v. Uma Dntl Sharma*.

40 Cr. L. J. 917 :
184 I. C. 313 : 1939 A. L. J. 574 :
12 R. A. 217 : I. L. R. 1939 All. 851 :
1939 A. W. R. 570 : A. I. R. 1939 All. 602.

—S. 446 (1)—Conditional release—Validity of.

There is nothing in this section to empower the Magistrate to add any other condition. Order that the accused be released provided "a responsible gentleman comes forward to take care of her outside Karachi", cannot be sustained. *Narain Shanker Kannsh v. Emperor*.

35 Cr. L. J. 200 :
146 I. C. 850 : 6 R. S. 94 :
A. I. R. 1933 Sind 267.

—S. 446—Duty of Court.

In suitable cases it is the duty of a Magistrate to issue warrant of arrest. The position of an accused person should not influence the Court, but before exercising the power vested in the Magistrate, he should take some trouble to satisfy himself that the statement of the complainant was based

Cr. P. CODE (1898), S. 439**—S. 439—Scope.**

S. 439 simply sets out the revisional powers of a High Court. It does not purport to qualify, add to, or detract from any of the provisions of S. 435, and has to be read along with that section in order to find whether certain proceedings are open to revision by the High Court. The words in S. 439, "the record of which has been called for by itself", are not used in contradistinction to "which otherwise comes to its knowledge", and these latter words cannot be read so as to have reference to a petition. *Udai Bhan Parlab Singh v. Ram Samajh*. 18 Cr. L. J. 100 :

37 I. C. 308 : 3 O. L. J. 546 :

19 O. C. 136 : A. I. R. 1917 Oudh 400.

—S. 439—Scope.

Under S. 439 of the Cr. P. C. a High Court has power to revise an order made under S. 476 (1) and to direct that the proceedings started under S. 476 (2) should cease. *Nga San Tin v. Emperor*. 13 Cr. L. J. 492 (a) :

15 I. C. 492 : 5 Bur. L. T. 107 :

6 L. B. R. 49.

—S. 439 (5)—Scope.

An order of-conviction without sentence under S. 562 is appealable under S. 408. No revision can be entertained where an appeal is allowed. *Ma Chil Su v. Emperor*.

11 Cr. L. J. 152 :

4 I. C. 1027 : 5 L. B. R. 129.

—S. 439—Scope of—Compensation order—Illegal order in favour of accused—When can be set aside.

Although the interests of justice require that ordinarily an accused person should have notice of any proceeding in which an order awarding compensation to him is to be set aside, he cannot be deemed an accused on his defence within the meaning of S. 439 (2), Cr. P. C., so that if after proper attempts have been made, he cannot be served, an illegal order for compensation passed under S. 250, Cr. P. C., must not necessarily stand for ever. Moreover, S. 439 (2) must be read with Sub-s. (1) of the same section and the frame of the whole section has application to an accused charged with some offence and not to an accused to whom compensation has been ordered to be paid. *Jumo Sileman v. Hashim Umar*. 38 Cr. L. J. 783 :

169 I. C. 431 : 31 S. L. R. 51 :

10 R. S. 3 : A. I. R. 1937 Sind 125.

—S. 439—Scope of.

Guilty persons should not be allowed to escape on basis of unsubstantial technicality. *Abdul Rahman v. Emperor*. 36 Cr. L. J. 982 :

156 I. C. 678 : 62 Cal. 749 :

8 R. C. 21 : A. I. R. 1935 Cal. 316.

—S. 439—Scope of—No revision lies from order of Magistrate under Railways Act (IX of 1890), S. 113 (4).

Under S. 113 (4), Railways Act, an order of a Magistrate is merely an administrative or a ministerial order and the proceedings before him are not criminal proceedings in a Criminal

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Court within the scope of the Cr. P. C. and, therefore, such an order is not open to revision. *Secretary of State for India v. Gobindram Jaichandrai*. 31 Cr. L. J. 952 :

126 I. C. 58 : A. I. R. 1930 Sind 162.

—S. 439—Scope of—Revision—Argument ad misericordiam.

An argument *ad misericordiam* is out of place in a Court of Revision which is concerned with law and procedure. *Ram Harak v. Emperor*.

32 Cr. L. J. 124 (a) :

128 I. C. 275 : 7 O. W. N. 751 :

I. R. 1931 Oudh 35 :

A. I. R. 1930 Oudh 80.

—S. 439—Scope of—Revisional powers under—Interference at interlocutory stage of criminal proceedings.

Under S. 439, Cr. P. C., High Court's revisional powers are only exercisable to rectify any illegality, irregularity, impropriety or mistake appearing on the face of the record of any proceeding in any inferior Court. While it is not desirable to crystalise or restrict the revisional powers of a High Court, these powers are to be exercised with circumspection and care, and are discretionary. The High Court is restricted to what appears on the record of the proceedings in the inferior Court and it would appear improper in considering the question of the propriety or legality of any such proceedings or integral part thereof to take into consideration matter entirely extraneous to the record of such proceedings. The Judicial Commissioner's Court does not interfere at an interlocutory stage of a criminal proceeding save where exceptional circumstances called for the exercise of its revisional jurisdiction; for example, when it was apparent on the face of the record that there was no ground at all for the institution of criminal proceedings or for the continuation of such proceedings already instituted. *Emperor v. Jumo Machhi*. 41 Cr. L. J. 568 :

188 I. C. 306 : 140 Kar. 157.

12 R. S. 278 : A. I. R. 1940 Sind 65.

—S. 439—Scope of.

S. 439, Cr. P. C., which defines the powers of the Court of Revision, does not confer on it the power to sanction the composition of offences, and a Revisional Court cannot, therefore, sanction the composition of a compoundable offence after conviction of the accused. *Akshoy Singh v. Rameswar Bagdi*.

17 Cr. L. J. 339 :

35 I. C. 515 : 20 C. W. N. 1071 :

43 Cal. 1143 : A. I. R. 1917 Cal. 705.

—Ss. 439, 195 (6)—Scope of—Power of High Court in revision—Jurisdiction—Revision of Civil Court's sanction to prosecute.

The District Court sanctioned the prosecution of the applicant for giving false evidence. He thereupon applied to the Chief Court on the Criminal Side to revise the order of the District Court in exercise of the powers conferred by S. 439, Cr. P. C. : *Held*, that this section did not confer jurisdiction to interfere with

Cr. P. CODE (1898), S. 449

applies also to appeals to the High Court under S. 449, Sub-cl. (1) (c) from an order or sentence passed by a Judge of the High Court presiding at the Ordinary Original Criminal Sessions of the High Court. *Thomas v. Emperor*.

27 Cr. L. J. 1304 :
98 I. C. 248 : 53 Cal. 746 :
A. I. R. 1926 Cal. 1203.

S. 449—Appeal—Limitation for.

Quære.—Whether in view of Art. 155 read with Art. 150 of the Limitation Act, an application for leave to appeal under S. 449 made on July 25 lies, when conviction and sentence of death is passed on June 16. *Cyril Bertram Plucknett v. Emperor*.

41 Cr. L. J. 72 :
184 I. C. 757 : 43 C. W. N. 120 :
I. L. R. 1939 1 Cal. 162 : 12 R. C. 295 :
A. I. R. 1939 Cal. 545.

S. 449—Appeal, when lies.

A person who has not been tried under the provisions of Ch. XXXIII of the Cr. P. C., has no right of appeal under S. 449 of the Code. *U. Zagriya v. Emperor*.

26 Cr. L. J. 1371 :
89 I. C. 459 : 4 Bur. L. J. 44 :
3 Rang. 220 : A. I. R. 1925 Rang. 239.

S. 449 (1) (a)—Appeal.

Appeal under S. 449 (1) (a) when lies, stated. *H. W. Scott v. Emperor*. (F. B.)

36 Cr. L. J. 595 :
154 I. C. 837 : 13 Rang. 104 : 7 R. Rang. 318 :
A. I. R. 1935 Rang. 67.

S. 449 (1) (a)—Claim under Chap. XXXIII—Claim when to be made.

Trial by Jury under Chap. XXXIII—Accused must claim such trial before Magistrate. *H. W. Scott v. Emperor*. (F. B.)

36 Cr. L. J. 595 :
154 I. C. 837 : 13 Rang. 104 :
7 R. Rang. 318 : A. I. R. 1935 Rang. 67.

S. 449—Defence of Pleader—Practice—Criminal appeal from Original Side of High Court—Vakil's right to act for appellant.

The proper and the only permissible course in cases under new S. 449 where a new right of appeal is given by the Code to the subject, is for this right to be exercised, so long as the present rules remain unchanged, in the way laid down by these rules, namely on the footing that it is part of the business of the Court from which, as the rules stand, Vakils are excluded. *Satya Narain Mohata v. Emperor*.

29 Cr. L. J. 1022 :
112 I. C. 350 : 55 Cal. 858 :
32 C. W. N. 319 :
A. I. R. 1928 Cal. 675.

S. 449—Duty of Appellate Court.

Appeal against judgment of Judge sitting with Jury—Full weight to unanimous opinions to be given. *James Dowdall v. Emperor*.

37 Cr. L. J. 607 :
162 I. C. 430 : 8 R. N. 262 :
31 N. L. R. 215 Sup. :
A. I. R. 1936 Nag. 103.

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S. 449—Leave to appeal—Forum.

An application for leave to appeal under S. 449 (1) (c) should be heard by a Division Bench and not by the Judge who tried the case. *Turner v. Emperor*.

26 Cr. L. J. 835 :
86 I. C. 659 : 29 C. W. N. 458 :
41 C. L. J. 325 : 52 Cal. 636 :
A. I. R. 1925 Cal. 673.

S. 449—Leave to appeal—Forum.

Per Walmsley, J.—An application for leave to appeal under S. 449 (1) (c) of the Cr. P. C., should be made to the Trying Judge. The right of appeal, if there is one, is at best a qualified right, and very different from the right conferred by S. 410. *Martindale v. Emperor*.

26 Cr. L. J. 401 :
84 I. C. 1041 : 40 C. L. J. 256 :
29 C. W. N. 447 : 52 Cal. 347 :
A. I. R. 1925 Cal. 14.

S. 449—Leave to appeal—Notice to Crown—Necessity for.

Leave to appeal under S. 449 (1) (c) should not be granted *ex parte* and notice of the application should be given to the Crown to show that circumstances do not exist justifying an appeal. *Martindale v. Emperor*.

26 Cr. L. J. 401 :
84 I. C. 1041 : 40 C. L. J. 256 :
29 C. W. N. 447 : 52 Cal. 347 :
A. I. R. 1925 Cal. 14.

S. 449—Leave to appeal—Refusal—Grounds for.

The power to grant leave to appeal also indicates the power to refuse leave to appeal; but where the power to grant leave to appeal is limited to a single ground, all that follows is that the Court which has power to grant leave to appeal on that ground, can refuse leave to appeal when that ground is not established. *Turner v. Emperor*.

26 Cr. L. J. 835 :
86 I. C. 659 : 29 C. W. N. 458 :
41 C. L. J. 325 : 52 Cal. 636 :
A. I. R. 1925 Cal. 673.

S. 449 (1) (c)—Leave to appeal when to be granted.

The Court to whom an application for leave to appeal under S. 449 (1) (c) is made, has only to decide whether the case would, if it had been tried outside the Presidency Town, have been triable under the provisions of Chap. XXXIII. If this condition is established, the applicant would have an absolute right of appeal. *Turner v. Emperor*.

26 Cr. L. J. 835 :
86 I. C. 659 : 29 C. W. N. 458 :
41 C. L. J. 325 : 52 Cal. 636 :
A. I. R. 1925 Cal. 673.

S. 449—Question of fact—Appeal, whether lies.

S. 449 only extends scope of appeal to questions of fact as well. *Superintendent and*

Cr. P. CODE (1898), S. 439

to make an application in revision, yet, if proceedings are taken against him in revision and notice to show cause why his sentence should not be enhanced is issued to him, he shall, in showing cause, be entitled also to show cause against his conviction. Sub-s. (6) is intended to operate as an exception to what is otherwise laid down in the section itself. *The King v. Nga Ba Soing*.

41 Cr. L. J. 108 :

185 I. C. 142 : 1940 Rang. 145 :

12 R. Rang. 181 : A. I. R. 1939 Rang. 392.

-----Ss. 439 (6), 423 (2)—*Scope of S. 439 (6) should be read with S. 423 (2)*—S. 439 (6), whether gives accused unlimited right to impugn his conviction.

S. 418, Cr. P. C., limits the right of appeal in cases of convictions based on verdicts of jury to matters of law only. S. 439 (6), Cr. P. C., entitled the person who has been called upon to show cause why his sentence should not be enhanced to show cause against his conviction only so far as S. 423 (2), Cr. P. C., allows. The combined effect of S. 439 (6) and S. 423 (2), Cr. P. C., is to entitle the accused to question the conviction by showing that the Judge misdirected the jury or that the jury misunderstood the law laid down by the Judge in his charge. To hold that S. 439 (6) confers an unlimited right of impugning the conviction would be to introduce the anomaly that a person convicted on the verdict of a jury can question the conviction only within the narrow limits laid down in S. 423 (2), but if he has to show cause against a motion for enhancement of sentence, his right to question his conviction is very materially enlarged. *Emperor v. Bishwanath*.

38 Cr. L. J. 137 :

166 I. C. 176 : 1936 A. L. J. 1287 :

9 R. A. 368 : I. L. R. 1937 All. 308 :

1936 A. W. N. 1042 : A. I. R. 1936 All. 850.

-----S. 439 (3)—Sentence passed by Magistrate under S. 34—*Enhancement, limit of.*

The limitation imposed by S. 439 (3) upon the power of enhancement of sentence does not apply to a sentence which has been passed by a Magistrate acting under S. 34 of the Code. *Sreen Singh v. Ranjha*.

24 Cr. L. J. 932 :

75 I. C. 353 : A. I. R. 1923 Lah. 600.

-----S. 439—Stay of criminal proceedings by High Court in revision—*Stay of criminal proceedings pending civil suit in regard to the same subject-matter.*

Unless some special reason is shown, the High Court would not order on revision the stay or postponement of criminal proceedings pending in a Magisterial Court until the disposal of a civil suit in regard to the same subject-matter. *Dwarka Nath Rai Chowdhry v. Emperor*.

1 Cr. L. J. 852 :

I. L. R. 31 Cal. 858.

-----S. 439—Wrong procedure.

Prosecution witnesses examined before charge. Only complainant allowed to be cross-examined and charge framed. No ground for interference in absence of prejudice. *Mohamed Husain v. Fakhrullah Beg*.

34 Cr. L. J. 58 :

140 I. C. 689 : 9 O. W. N. 782 :

8 Luck. 135 : I. R. 1933 Oudh 10 :

A. I. R. 1932 Oudh 298.

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-----S. 439—*Wrong procedure, objection to—Objection to irregularity of procedure taken for first time in revision not entertainable.*

The objection as to an improper procedure adopted by the original Court, if taken neither before that Court nor before the Appellate Court, cannot be entertained in revision by the High Court. *Inar Dat v. Emperor*.

15 Cr. L. J. 516 :

24 I. C. 604 : 17 O. C. 142 :

A. I. R. 1914 Oudh 345.

-----S. 440.

See also Cr. P. C., 1898, S. 439.

-----S. 440—*Applicability of—Revision—Party's right to be heard.*

S. 440, Cr. P. C., which provides that no party has a right to be heard before any Court when exercising its powers of revision applies to an accused and, therefore, still more strongly does it apply to a complainant. *In re : P. D. Shamdasani*.

31 Cr. L. J. 383 :

122 I. C. 141 : 31 Bom. L. R. 1144 :

A. I. R. 1929 Bom. 443.

-----S. 440—*Applicability.*

The provisions of S. 440, Cr. P. C., are not applicable to a case, where an application under S. 105 (6), Cr. P. C., is preferred by way of appeal against an order granting sanction to prosecute. *Raj Kumar Singha v. Tincowri Mazumdar*.

9 Cr. L. J. 189 :

12 C. W. N. 248.

-----S. 440—*Hearing of party—Revision—Omission to hear party—Second application, whether maintainable—Review—Duty of Counsel to see that application is placed before same Judge—Attempt to have application heard by another Judge, improperly of.*

No party has a right to be heard before any Court exercising its powers of revision under the Cr. P. C. although the Court may, if it thinks fit, hear any party either personally or by Pleader. The fact that the Pleader for a party was not heard when a Court was exercising such powers is not, therefore, a ground for a second application for revision or for a review. It is a good practice to hear Counsel in criminal references in matters of importance, but whether a matter is a matter of importance must be left to the discretion of the Judge hearing the reference. An application for review must come before the Judge who passed the decision which is to be reviewed, and the Counsel for review should ask that the application be put before the Judge who decided the matter. It is contrary to all propriety that a Counsel should put in an application for review and attempt to get it heard by another Judge by styling his application as an application in revision. *Sripal Narain Singh v. Gahbar Rai*.

29 Cr. L. J. 88 :

106 I. C. 680 : 25 A. L. J. 1010 :

A. I. R. 1927 All. 724.

-----Ss. 440, 195—*Practice—Sanction to prosecute—Appellate Court's power to grant when refused by Court of first instance—Rule issued*

Cr. P. CODE (1898), S. 465**—S. 465—Insanity of accused—Determination—Procedure.**

The first stage in the procedure laid down by S. 465 is that it must appear to the Court that the accused placed on his trial, was of unsound mind and incapable of making his defence. The next stage that is to follow when it appears to the Judge that the accused is of unsound mind and consequently incapable of making his defence, is that the fact of such unsoundness of mind and incapacity should be enquired into on the materials placed before the Court. *Emperor v. Durga Charan Singh*.

39 Cr. L. J. 308 :
173 I. C. 475 : 41 C. W. N. 1312 :
10 R. C. 524 : A. I. R. 1938 Cal. 6.

—S. 465—Insanity of accused, determination of—Procedure.

The moment a question arises as to insanity of an accused person in a Sessions trial, the Judge ought to put to the Jury as a preliminary issue to be tried by them as to whether or not the Jury are satisfied that the accused is a person of unsound mind and can stand his trial and is in a position to understand the proceedings which are going on in Court. Evidence must be led on this point and the Jury must arrive at their conclusion upon the basis of such evidence. *Radhanath Mandal v. Emperor*.

27 Cr. L. J. 896 :
96 I. C. 160 : 44 C. L. J. 285 :
A. I. R. 1927 Cal. 289.

—S. 465—Insanity of accused—Determination of—Procedure.

Where a Sessions Judge's mind is not free from doubt as to the mental state of accused at the time of trial, it is incumbent upon him to hold an inquiry on the question whether accused is capable of making his defence when he comes before him and to take the opinion of the Assessors on that question and to come to a decision before proceeding further with the trial. *Santokh Singh v. Emperor*.

27 Cr. L. J. 552 :
93 I. C. 1048 : 7 Lah. 315 :
2 Lah. Cas. 339 : 27 P. L. R. 454 :
A. I. R. 1926 Lah. 498.

—S. 465—Insanity of accused, determination of—Procedure.

Where doubts exist as to the soundness of mind of an accused who has been committed to the Court of Session for trial, the Court should act under S. 465 and try the fact whether on the date on which the accused was called on to plead, he was or was not of unsound mind and capable or incapable of making his defence. *Jagdeo v. Emperor*.

18 Cr. L. J. 470 :
39 I. C. 310 : 15 A. L. J. 239 :
A. I. R. 1917 All. 328.

—S. 465—Insanity of accused—Meaning of.

This question is quite separate from the question whether at the time when it is alleged that the accused committed the offence of

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which he is charged, he was of sound mind. *Jagdeo v. Emperor*.
18 Cr. L. J. 470 :
39 I. C. 310 : 15 A. L. J. 239 :
A. I. R. 1917 All. 328.

—S. 465—Medical inquiry—Commencement of.

An inquiry under S. 465 into the question of the soundness of mind of the accused is a preliminary inquiry which is conducted for the satisfaction of the Court and should be begun by the prosecution giving their evidence. *Emperor v. Gopi Mohan Shah*.

26 Cr. L. J. 276 :
84 I. C. 340 : 51 Cal. 827 :
A. I. R. 1925 Cal. 479.

—S. 465—Medical inquiry—Necessity of.

First point for Court to be considered when an accused person is brought before it who is suspected or alleged to be a lunatic before it can even proceed with the trial for the offence alleged to have been committed is whether the accused person appears to it to be of unsound mind and consequently incapable of making his defence. *Nabi Ahmad Khan v. Emperor*.

33 Cr. L. J. 542 :
137 I. C. 800 (2) : 9 O. W. N. 355 :
I. R. 1932 Oudh 283 :
A. I. R. 1932 Oudh 190.

—S. 465—Preliminary inquiry—Inquiry as to sanity of accused, whether part of trial.

The preliminary enquiry held under S. 465 is not a trial in the sense of ascertaining whether the accused is guilty or not of the offence charged. *Ghinua Uraon v. Emperor*.

19 Cr. L. J. 135 :
43 I. C. 423 : 4 P. L. W. 14 :
1918 Pat. 27 : 3 P. L. J. 291 :
A. I. R. 1918 Pat. 179.

—S. 465—Unsoundness of mind, plea of—Burden of proof.

Semble :—Under S. 465 it is for the prosecution to establish that a person who is alleged to be of unsound mind is capable of standing his trial, and not for the defence to establish the contrary. *Shib Das Kundu v. Emperor*.

25 Cr. L. J. 1051 :
81 I. C. 827 : 51 Cal. 584 :
A. I. R. 1924 Cal. 713.

—S. 468—Resumption, validity of.

Accused incapable of making defence—Trial postponed—Inspector-General of Jails certifying as to capacity—Magistrate is justified in proceeding with inquiry and committing him to Sessions. *Emperor v. Ahmad Ali*.

159 I. C. 963 : 16 P. L. T. 828 :
2 B. R. 129 : 8 R. P. 319 :
A. I. R. 1935 Pat. 501.

—S. 468—Scope.

Under S. 468 (1), there is no injunction upon the Magistrate or Court to take evidence as to the capacity of the accused to make his defence. The view of the Magistrate or Court is made the criterion of

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of the connection with the case of both a European British subject and an Indian British subject, it is expedient that the case should be tried under the provisions of Ch. XXXIII. *Martindale v. Emperor.*

26 Cr. L. J. 401 :
84 I. C. 1041 : 40 C. L. J. 256 :
29 C. W. N. 447 : 52 Cal. 347 :
A. I. R. 1925 Cal. 14.

—S. 443—Claim—When to be made.

When once an opportunity to make a claim under S. 443 is missed by the accused and the case is committed under S. 213, the provisions of Ch. XXXIII do not give him another opportunity of claiming the benefit of the special provisions. *Hay v. Emperor.*

26 Cr. L. J. 1217 :
88 I. C. 833 : 2 O. W. N. 469 :
28 O. C. 230 : A. I. R. 1925 Oudh 469.

—S. 443—Claim—When to be made and when final.

A claim by the accused under S. 443 and a finding by the Magistrate are necessary ingredients for the application of the provisions of Ch. XXXIII, Cr. P. C. If no such claim is made prior to commitment and there is no finding by the Magistrate, the question cannot be raised in the Court of Session. If such a claim is made and a finding favourable to the accused is recorded by the Magistrate, the Sessions Judge is bound to act under the provisions of Ch. XXXIII and cannot refuse to do so on the ground that those provisions do not apply. When the finding of the Magistrate is adverse to the claim, it is final, unless the claimant appeals and in the case of an appeal, the decision of the Sessions Judge is final. *Hay v. Emperor.*

26 Cr. L. J. 1217 :
88 I. C. 833 : 2 O. W. N. 469 :
28 O. C. 230 : A. I. R. 1925 Oudh 469.

—S. 443—Claim—When to be made—Omission—Effect of.

An accused person is not obliged to put forward his claim to be dealt with as a European British subject either before a Magistrate holding an inquiry or trial in a Presidency Town or before the High Court during the trial of the case. The fact that he omits to do so does not debar him from relying on his right for the purposes of appeal under S. 440 (1) (c) of the Cr. P. C. *Martindale v. Emperor.*

26 Cr. L. J. 401 :
84 I. C. 1041 : 40 C. L. J. 256 :
29 C. W. N. 447 : 52 Cal. 347 :
A. I. R. 1925 Cal. 14.

—S. 443—Claim to special procedure—Accused—European British Subject—Right of special procedure.

Under the Cr. P. C. as amended in 1923, the mere fact that an accused person is an European British subject does not *ipso facto* entitle him to a right of any special procedure or specially restrict a Magistrate or a Court of Session in his or its power of

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punishment. *Bomhardier I. E. Barnsfield v. Emperor.*

30 Cr. L. J. 918 :
118 I. C. 438 : I. R. 1929 Lah. 774 :
A. I. R. 1929 Lah. 187.

—S. 443—Claim upheld—Revision, whether lies.

Although no appeal lies from order accepting a claim under S. 443, revision is competent. *Mr. W. G. Christy v. Mrs. Doris Christy.*

35 Cr. L. J. 505 :
147 I. C. 997 (2) : 35 P. L. R. 268 :
6 R. L. 438 : A. I. R. 1933 Lah. 1019.

—S. 443—Claim upheld—When questionable.

An order passed by a Magistrate that an accused should be tried under S. 443, Cr. P. C., cannot, when no steps have been taken to have it set aside or corrected, be disputed by the Crown at the appellate stage. *Singleton v. Emperor.*

26 Cr. L. J. 662 :
86 I. C. 38 : 29 C. W. N. 260 :
41 C. L. J. 87 : A. I. R. 1925 Cal. 501.

—S. 443, Ch. XXXIII—Duty of Court—European British Subject—Special procedure—When accused European British Subject, he must be informed of his right to be tried according to special procedure.

Where the accused, a European British Subject, was not informed of his right under the law to be tried according to the procedure laid down for the trial of European British Subjects, the trial was held to be bad. *Clarke A. A. M. v. Balader Misra.*

15 Cr. L. J. 297 :
23 I. C. 505 : 18 C. W. N. 385 :
A. I. R. 1914 Cal. 451.

—S. 443—Object.

By the provisions of the second paragraph of S. 443, the Legislature desired the matter of the benefit of the provisions of Ch. XXXIII to be decided finally by the Sessions Court so as to make it impossible that it could be raised in the High Court after a prolonged trial in the Sessions Court. The Sessions Judge has, however, no power to determine the matter except on appeal under Cl. (2) of S. 443 of the Cr. P. C. *Hay v. Emperor.*

26 Cr. L. J. 1217 :
88 I. C. 833 : 28 O. C. 230 :
2 O. W. R. 469 : A. I. R. 1925 Oudh 469.

—S. 443—Proceedings under S. 107—Application—"Enquire into or try any charge" applicable to case under S. 107.

The expression "enquire into or try any charge" in S. 443 applies to proceedings under S. 107 as the party against whom such proceedings are instituted, is in the position of an accused party. *R. T. Hopcroft v. Emperor.*

9 Cr. L. J. 359 :
1 I. C. 737 : 13 C. W. N. 151 :
36 Cal. 163.

—S. 443—Proof of Nationality.

A statement in an affidavit by the accused's wife that she heard from their grand-parents while they were all living together that the accused's grandfather was born in England of

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the quality of his act and the offence with which the accused is charged cannot be said to have been committed unless the accused person knew the property to have been stolen and in the case of a deaf and dumb person, it cannot be said to be so.

Emperor v. A. Deaf & Dumb. 37 Cr. L. J. 107 :
159 I. C. 577 (b) : 16 P. L. T. 568 :
2 B. R. 96 : 8 R. P. 292 :
A. I. R. 1935 Pat. 451.

—S. 473—Scope of.

S. 473 does not preclude Court from proceeding under S. 468 when accused is brought—Trial is not against law although Sessions Judge should keep on record that he considered accused capable of making defence.

Ibrahim v. Emperor. 35 Cr. L. J. 869 :
148 I. C. 987 : 6 R. L. 619 :
A. I. R. 1934 Lah. 123.

—S. 475—Non-appealable order—Court refusing to take action on application of party—Appeal.

An order of a Munsif refusing, on the application of a party, to take action against another party under S. 476, Cr. P. C. is not appealable. *Bhagirathi v. Suraj Mal.*

15 Cr. L. J. 575 :
24 I. C. 327 : 12 A. L. J. 684 :
A. I. R. 1914 All. 373.

—S. 475—Power of Judge to hand over insane accused to relatives—'Detained in safe custody,' meaning of.

When a person is acquitted upon the ground that he was insane at the time at which he committed an offence, all that the Judge could do under S. 471, Cr. P. C., is to detain the accused in safe custody and to report the matter to the Local Government, and it is the Local Government who can, if so satisfied, deliver the accused to any relative or friend of his for safe custody.

Superintendent and Remembrancer of Legal Affairs v. Srish Chandra Roy. 29 Cr. L. J. 847 :
111 I. C. 399 : 48 C. L. J. 148 :
56 Cal. 208 : A. I. R. 1928 Cal. 653.

—S. 476.

- Abetment.
- Additional evidence.
- Adjournment.
- Amendment.
- Appeal.
- Applicability.
- Application for revision.
- Application under.
- Changes.
- Competency of Civil Court to pass order of commitment to Sessions Court.
- Complainant not allowed to produce his evidence.
- Complaint.
- Costs.
- Court.
- Death of applicant.
- Defect in procedure.
- Delay.
- Delay in appeal.
- Discretion.

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- Duty of Appellate Court.
- Duties of Court making complaint.
- Duty of Court.
- Duty of District Magistrate.
- Duty of Magistrate.
- Duty of Superior Court.
- Evidence.
- Exercise of discretion.
- Expert evidence.
- Finding of alternative offences.
- Finding of expediency.
- Grounds of inquiry.
- Grounds for interference.
- Illegality.
- “In relation,” meaning of.
- Initiation of proceedings.
- Interests of justice.
- Interference.
- Irregularity.
- Judicial enquiry.
- Judicial proceeding.
- Jurisdiction.
- Legality of order.
- Limitation.
- Miscellaneous.
- Notice.
- Opportunity to cross-examine.
- Order.
- Perjury.
- Power of Appellate Court.
- Power of Assistant Collector.
- Power of Chief Court to interfere.
- Powers of Court.
- Powers of Criminal Bench of High Court to revise.
- Power of Deputy Commissioner.
- Power of District Judge.
- Power of District Magistrate acting in executive capacity.
- Power of executing Court to sanction prosecution.
- Power of High Court.
- Power of Magistrate.
- Power of Sessions Judge.
- Power of successors in office of Judge.
- Powers of Superior Court.
- Power to direct prosecution.
- Power to make complaint.
- Power to review orders.
- Powers under.
- Practice.
- Preliminary enquiry.
- Probability of conviction.
- Procedure.
- “Proceedings according to law,” meaning of.
- Proceedings under.
- Proof.
- Proper Court.
- Prosecution for false conviction.
- Prosecution for perjury.
- Prosecution of complaint.
- Prosecution under Ss. 182, 211, Penal Code.
- Prosecution when to be sanctioned.
- ‘Rejected,’ meaning of.
- Retraction.
- Revision.
- Revisonal jurisdiction by High Court.
- Right of accused.

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on reasonable grounds. *G. A. St. George v. Uma Dutt Sharma*. 40 Cr. L. J. 917 : 184 I. C. 313 : 1939 A. L. J. 574 : 12 R. A. 217 : I. L. R. 1939 All. 851 : A. I. R. 1929 All. 602.

—S. 446—Interpretation.

The 'Magistrate' in S. 446 (1), means a Magistrate having jurisdiction to inquire into the case. S. 446 must be read with S. 20-A of the Code. *G. A. St. George v. Uma Dutt Sharma*. 40 Cr. L. J. 917 : 184 I. C. 313 : 1939 A. L. J. 574 : 12 R. A. 217 : I. L. R. 1939 All. 851 : 1939 A. W. R. 570 : A. I. R. 1939 All. 602.

—S. 446—Jurisdiction—Exercise of—
Legality of—Trial of Indians with European British subjects—Assumption of jurisdiction over Indians by discharging Europeans, legality of.

The provisions of S. 446 are mandatory and a Magistrate after once deciding that a case ought to be tried under the provisions of Chap. XXXIII of the Code, cannot assume jurisdiction over Indians by discharging the European British subject. *Banarsi Das v. Emperor*. 30 Cr. L. J. 218 : 113 I. C. 764 : I. R. 1929 All. 188 : 1929 A. L. J. 188 : 51 All. 483 : A. I. R. 1929 All. 84.

—S. 446—Right to Jury—Amendments—
Effect of—Right claimed during commitment proceedings—Amendment of Code, effect of Right, whether taken away.

The right of a European British subject to be tried by Jury is a substantive right and not a mere matter of procedure. Therefore, a person who was under the unamended Cr. P. C. entitled to be tried by Jury and had claimed the right of such trial before the Committing Magistrate could not by the subsequent amendment of the Code, be deprived of such right. *Emperor v. Fitzmaurice*. 27 Cr. L. J. 421 : 93 I. C. 149 : 6 Lah. 262 : 2 Lah. Cas. 21 : A. I. R. 1925 Lah. 446.

—S. 446—Scope.

By "ordinary course" in S. 446, Cr. P. C. is meant the course which would be followed in the absence of a claim by the accused to be dealt, with under the provisions of Chap. XXXIII of the Code, or in the absence of the notification by the Local Government under the provisions of S. 269 of the Code. *Bray v. Emperor*. 26 Cr. L. J. 540 : 85 I. C. 380 : A. I. R. 1925 Lah. 236 : 5 Lah. 515.

—S. 446—Scope.

S. 446 debars a Magistrate from cancelling a charge framed against a person who has claimed to be tried as a European British subject, and whose claim to be so tried has been upheld by a competent Court under S. 443 of the Code. *K. S. Rashid Ahmad v. Mr. S. F. Rich*. 32 Cr. L. J. 866 : 132 I. C. 332 : 1931 A. L. J. 526 : 53 All. 690 : I. R. 1931 All. 492 : A. I. R. 1931 All. 366.

Cr. P. CODE (1898), S. 449**—S. 446 (2)—Scope.**

S. 446 (2), renders final a decision by a Magistrate that the case is one to which Chap. XXXIII, applies. *A. Armstrong v. Emperor*. 33 Cr. L. J. 529 : 137 I. C. 763 : 33 P. L. R. 578 : I. R. 1932 Lah. 352 : A. I. R. 1932 Lah. 490 (2).

—Ss. 443, 447, 449, 534—Duty of Court to inform—Trial by Jury—Omission of Magistrate to inform accused of his rights under Chap. XXXIII, effect of—Irregularity—Trial under Chap. XXXIII—Appeal, whether lies.

An omission by a Magistrate to inform an accused person of his rights under Ch. XXXIII of the Cr. P. C. as required by S. 447 of the Code is absolutely cured by the provisions of S. 534 of the Code. *Zagriya v. Emperor*. 26 Cr. L. J. 1371 : 89 I. C. 459 : 4 Bur. L. J. 44 : 3 Rang. 220 : A. I. R. 1925 Rang. 239.

—S. 447—Scope.

S. 447 corresponds to S. 347 but it does not override that section, it is merely supplementary to S. 347. *Emperor v. F. M. C. Nully*. 12 Cr. L. J. 436 : 11 I. C. 620 : 7 N. L. R. 93.

—Ss. 446, 449—Transfer to High Court—Resident at Aden—Sessions Court—Transfer of case—High Court—Aden Courts Act (Bom. Act II of 1864), S. 20.

The Resident at Aden, who has a case committed to his Court under S. 447 of the Cr. P. C. is not competent to transfer the case to the High Court of Bombay under S. 449 when he feels that the accused being a European British subject cannot be adequately punished by him. The powers of the Court of Sessions conferred upon the Resident by the Aden Courts Act, 1864, are not merely such as are defined in the Cr. P. C. but such as are provided expressly in the Act itself; and S. 449 of the Cr. P. C. cannot affect those provisions. *Emperor v. Robert Comley*. 2 Cr. L. J. 75 : 7 Bom. L. R. 104 : I. L. R. 29 Bom. 575.

—S. 449

See also (i) See Cr. P. C., Ss. 307, 447.

—S. 449—Appeal against acquittal—Limitation for.

Appeal against acquittal under S. 449 (a) is governed by Art. 157, Limitation Act, *Superintendent and Remembrancer of Legal Affairs, Bengal v. Bagirath Mahito*. 35 Cr. L. J. 1367 : 151 I. C. 662 : 38 C. W. N. 854 : 1934 Cal. 610 : 59 C. L. J. 482 : 61 Cal. 991 : 7 R. C. 147 : A. I. R. 1934 Cal. 610.

—S. 449—Appeal—Limitation for.

Art. 155 of Sch. I of the Limitation Act is not limited in its application to appeals to the High Court from the Sessions Courts in the *moffussil* or from other Courts from which appeals to the High Courts lie direct but

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A sanction to prosecute for perjury granted according to the procedure prescribed by the Cr. P. C., 1898, after its amendment in 1923, prescribing a different procedure, is illegal, and no Court can take cognizance of it. *In re : Gafur Daud Sahab.* 26 Cr. L. J. 448 : 85 I. C. 64 : 26 Bom. L. R. 1235 : A. I. R. 1925 Bom. 151.

—S. 476—Appeal.

An appeal from an order of the Court of Small Causes, Saugor, under S. 476, lies to Additional District Judge, Saugor, and not to the District Judge, Jubbulpore. *Lokman v. Halku.* 36 Cr. L. J. 851 : 155 I. C. 863 : 31 N. L. R. 90 : 7 R. N. 205 : A. I. R. 1934 Nag. 236.

—S. 476—Appeal.

An appeal lies under S. 476-B, Cr. P. C., against an order passed by a Court making a complaint under S. 476, even where the order is passed *suo motu* and not on the application of any person. *Namberumal Chetty v. Nainiappa Mudali.* 32 Cr. L. J. 200 : 128 I. C. 719 : 32 L. W. 813 : 59 M. L. J. 850 : 1930 M. W. N. 991 : I. R. 1931 Mad. 143 : 54 Mad. 331 : A. I. R. 1931 Mad. 16.

—S. 476—Appeal.

An order to prosecute should not be set aside on purely technical grounds if it appears on the fact that the Court below had come to a finding as to the desirability of a prosecution and the only defect was the omission to use the exact words of the section. *Nawalal Jha v. Emperor.* 37 Cr. L. J. 193 : 159 I. C. 817 : 2 B. R. 112 : 8 R. P. 313 : A. I. R. 1936 Pat. 162.

—S. 476—Appeal—Application for prosecution.

In the course of the hearing of a suit, the plaintiffs produced certain rent receipts. Finding them to be forged, the Court dismissed the suit. Plaintiffs appealed to the High Court. In the meanwhile the defendants applied to the trial Court for prosecution of the plaintiffs in respect of the forged documents. On dismissal of the application, they appealed and the Appellate Court ordered the case to go back to the trial Court for re-consideration: *Held*, that in the circumstances what was to be considered was what step was best calculated to assist the cause of justice and that the order of the Appellate Court was proper as the discretion as to stay was with the trial Court and that discretion was not to be interfered with. *Singheshwar Prasad v. Sakhi Chand.* 38 Cr. L. J. 476 : 167 I. C. 895 : 3 B. R. 376 : 9 R. P. 446 : A. I. R. 1937 Pat. 139.

—S. 476—Appeal.

Where an appeal is preferred from an order in connection with which an application is made under S. 476, Cr. P. C., the proper course for the Judge to whom the application is made

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is to wait for the result of the appeal. *Rajani Kaula Kayal v. Bistoononi Dass.*

28 Cr. L. J. 840 :
104 I. C. 456 : 46 C. L. J. 40 :
A. I. R. 1927 Cal. 718.

—S. 476—Appeal, whether lies.

A Sessions Judge has no jurisdiction to deal in appeal with an order of a lower Court passed under S. 476. *Eqbal Khan v. Emperor.*

20 Cr. L. J. 413 (b) :
51 I. C. 173 : A. I. R. 1919 Pat. 319.

—Ss. 476, 476-A, 476-B—Appeal—Subordinate Court, refusal of, to make complaint—Order of Appellate Court making complaint.

S. 476-B, Cr. P. C. gives a right of appeal only when a Court has made or refused to make a complaint under S. 476 or 476-A of the Code and neither of those sections relates to a complaint made by a Court on appeal from an order of a Subordinate Court refusing to make a complaint. From such an order, therefore, no appeal lies. *Mahommed Idris v. Emperor.*

26 Cr. L. J. 1168 :
88 I. C. 528 : 1 Lah. Cas. 480 :
6 Lah. 56 : 7 L. L. J. 584 :
A. I. R. 1925 Lah. 322.

—Ss. 476, 476-A, 476-B—Appeal to High Court—Complaint—Appellate Court, order by—Appeal to High Court, when lies—Discretion of Court—Interference by High Court.

Upon a proper construction of Ss. 476, 476-A and 476-B, Cr. P. C., appeal would lie to the High Court from an order passed by a District Judge in the following cases :—(a) where a Munsif had refused an application made to him under S. 476 to make a complaint, and there has been an appeal to the District Judge and the District Judge, disagreeing with the Munsif, has made a complaint; (b) where under S. 476-A (the Munsif having taken no action *suo motu* and not having been asked to take any action), the District Judge, on application to him makes a complaint or refuses to make a complaint. *Ranjit Narayan Singh v. Ram Bahadur Singh.* 27 Cr. L. J. 641 : 94 I. C. 593 : 7 P. L. T. 114 : 5 Pat. 262 : A. I. R. 1926 Pat. 81.

—S. 476, 476-B—Appeal—Application to prosecute petitioner for forgery, refusal of—Appeal to Collector—Complaint by Collector—Appeal to Commissioner, whether competent.

Petitioner filed an application for the commutation of his rent under S. 40, Bengal Tenancy Act before the Sub-Deputy Collector and filed a *patta* alleged to have been given to him by the opposite party in support of his application. The opposite party contended that the *patta* was a forgery and asked the Court to direct the prosecution of the petitioner for an offence under Ss. 471 and 193, Penal Code, but the Sub-Deputy Collector after inquiry refused the application. The opposite party moved the Collector on appeal and that officer set aside the order of the Sub-Deputy Collector and made a complaint against the petitioner under Ss. 471 and 193, Penal Code. The

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Remembrancer of Legal Affairs, Bengal v. Bagirath Mahto. 35 Cr. L. J. 1367 :

151 I. C. 662 : 38 C. W. N. 854 :

1934 Cal. 610 : 59 C. L. J. 482 :

61 Cal. 991 : 7 R. C. 147 :

A. I. R. 1934 Cal. 610.

—S. 464—Duty of Court.

The examination of the Civil Surgeon is a duty which is placed by Statute upon the Magistrate himself and it is obvious that if one party can produce other evidence, both parties must be allowed to do so. *Emperor v. Sherdil Sher Baz.* 39 Cr. L. J. 737 :

176 I. C. 447 : 11 R. Pesh. 14 :

A. I. R. 1938 Pesh. 24.

—S. 464—Evidence of Civil Surgeon—Nature of.

An enquiry which is contemplated by Cl. (1) of S. 464, is not confined to the examination of the Civil Surgeon alone. *Emperor v. Sherdil Sher Baz.* 39 Cr. L. J. 737 :

176 I. C. 447 : 11 R. Pesh. 14 :

A. I. R. 1938 Pesh. 24.

—S. 464—Evidence of Civil Surgeon—Nature of.

The evidence of a Civil Surgeon under S. 464, taken in order to decide whether the accused is or is not of unsound mind is not evidence produced by the prosecution. *Emperor v. Sherdil Sher Baz.* 39 Cr. L. J. 737 :

176 I. C. 447 : 11 R. Pesh. 14 :

A. I. R. 1938 Pesh. 24.

—S. 464—Evidence of Civil Surgeon—Whether rebuttable.

Accused of unsound mind—Enquiry is not limited to an examination of Civil Surgeon—Opportunity should be given to rebut evidence of Civil Surgeon. *Onkar Dat Nigam v. Emperor.* 34 Cr. L. J. 914 :

144 I. C. 1031 : 10 O. W. N. 719 :

6 R. O. 31 : A. I. R. 1933 Oudh 362.

—S. 464—Medical inquiry—Validity of—Defence of insanity—Magistrate, when bound to order medical enquiry.

There is no provision of law in India making it incumbent upon a Committing Magistrate to order a medical enquiry upon a defence of insanity. It is only in cases where the accused appears to be incapable by reason of mental infirmity of taking his trial that this issue of insanity must be tried before the trial for the offence is proceeded with. Where the Magistrate is of opinion that the accused is sane at the time, he has no alternative but to proceed in accordance with the provisions of S. 469. *Emperor v. Bahadur.* 29 Cr. L. J. 204 :

106 I. C. 796 : 9 Lah. 371 :

A. I. R. 1928 Lah. 796.

—S. 464—Nature of—Examination of accused by Medical Officer.

The provisions of S. 464 require the Magistrate to have the accused examined by the Civil Surgeon or such other Medical Officer as the Local Government directs and to examine

Cr. P. CODE (1898), S. 465

such officer as a witness. *Narain Shanker Kaunchi v. Emperor.* 35 Cr. L. J. 200 :

146 I. C. 850 : 6 R. S. 594 :

A. I. R. 1933 Sind 267.

—S. 464—Unsoundness of mind—Burden of proof.

It is obvious that the burden of proving that the accused is of unsound mind and incapable of making his defence lies upon the accused and it is for him to lead evidence on the point in the first place and such evidence as is led on his behalf can be rebutted by the prosecution. *Emperor v. Sherdil Sher Baz.* 39 Cr. L. J. 737 :

176 I. C. 447 : 11 R. Pesh. 14 :

A. I. R. 1938 Pesh. 24.

—S. 465.

See also Cr. P. C., 1898, Ss. 84, 271.

—S. 465—Applicability.

Where in a case there was merely a verbal application made by the Pleader for the accused for an adjournment in order that the accused may be kept under mental observation and the Judge on that recorded his opinion that there was no reason for thinking that the accused was of unsound mind or incapable of making his defence, and also it was further noted by the Judge that no suggestion had been made before the trial commenced, that the accused was in any way mentally unsound and incapable of taking his trial: *Held*, that the provisions of S. 465, had no application to the case and it was neither necessary nor incumbent upon the Judge to hold enquiry and adjourn the case. *Emperor v. Durga Charan Singh.* 39 Cr. L. J. 308 :

173 I. C. 475 : 41 C. W. N. 1312 :

10 R. C. 524 : A. I. R. 1938 Cal. 6.

—S. 465—Insanity of accused—Determination, necessity of.

If a prisoner committed to a Court of Session appears to the Court to be of unsound mind and consequently incapable of making his defence, the law requires that the Court should try the fact of such unsoundness and incapacity before calling on the prisoner to stand his trial in the first instance, and should not continue trying the fact throughout the trial of the prisoner. *Emperor v. Niaz Ali.* 2 Cr. L. J. 91 :

25 A. W. N. 2.

—S. 465—Insanity of accused, determination of—Necessity.

Where in a case before a Court of Session the attention of the Court is invited to the fact that by reason of unsoundness of mind the accused is incapable of making his defence, the provisions of S. 465 make it obligatory on the Sessions Judge, to try the issue whether or not the accused, as he stands before the Court, is of unsound mind and incapable of making his defence. In the absence of a clear finding on this point, the entire proceedings in the Sessions Court are vitiated. *Jhabbu v. Emperor.* 21 Cr. L. J. 8 :

54 I. C. 483 : 1 U. P. L. R. All. 174 :

18 A. L. J. 53 : 42 All. 137 :

A. I. R. 1920 Cal. 271 :

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———S. 476-B—Appeal.

An appeal under S. 476-C, Cr. P. C. to the High Court from an order making or purporting to make a complaint under S. 476, is an appeal under the Cr. P. C., and not a civil appeal, and is, consequently, governed by Art. 155 of Sch. I of the Limitation Act, and not by Art. 156. *Rajani Kanla Kayal v. Bistloomoni Dassi.* 28 Cr. L. J. 840 :

104 I. C. 456 : 46 C. L. J. 40 :
A. I. R. 1927 Cal. 718.

———S. 476-B—Appeal—Appeal from order making complaint—Party at whose instance complaint was made, whether entitled to notice—Limitation, starting point of.

In an appeal under S. 476-B, Cr. P. C., by a person against whom a complaint has been made, the opposite party entitled to notice is the Crown and not the person on whose application the complaint was made. Starting point of limitation for an appeal from an order making a complaint is the date on which the complaint is filed and not the date on which it is signed. *Labha Mal v. Wasawa Mal.* 29 Cr. L. J. 72 :

106 I. C. 584 : 29 P. L. R. 128.

———S. 476-B—Appeal.

Appellate order making complaint—Appeal to High Court is competent. *Narayan Meher v. Dhana Meher.* 32 Cr. L. J. 1065 :

133 I. C. 683 : 10 Pat. 446 :
12 P. L. T. 633 : I. R. 1931 Pat. 395 :
A. I. R. 1931 Pat. 343.

———S. 476-B—Appeal—Complaint filed and prosecution ordered by trying Magistrate.

An appeal lies under S. 476-B, Cr. P. C., when a complaint has been filed and prosecution has been ordered by the trying Magistrate. *Master Zodpa v. Emperor.* 37 Cr. L. J. 1043 :

164 I. C. 1057 : 38 P. L. R. 16 :
9 R. L. 189 : A. I. R. 1936 Lah. 828.

———S. 476-B—Appeal.

Complaint wrongly signed by Small Cause Judge as Munsif—As a result, appeal misdirected : Held, District Judge alone can entertain appeal. *Ram Sarup v. Emperor.* 36 Cr. L. J. 1302 :

158 I. C. 101 : 1935 A. L. J. 476 :
1935 A. W. R. 386 : 8 R. A. 280 (2) :
A. I. R. 1935 All. 446 (2).

———S. 476-B—Appeal—Court taking action under S. 476 not being moved by any party—Appeal lies under S. 476-B.

Where a Court takes action under S. 476 not being moved by a party, an appeal under S. 476-B lies. The word "such" before the word "complaint" in the third line of the authorized edition of the Code, refers to a complaint "under S. 476 or 476-A." The word "such" has no reference to the case of a complaint being filed at the instance of a party. *Emperor v. Ram Prasad.* 120 I. C. 113 :

I. R. 1930 All. 1 : 1930 A. L. J. 203 :
52 All. 79 : A. I. R. 1929 All. 899 (1).

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———S. 476-B—Appeal.

No appeal lies under the provisions of the Cr. P. C. against an order made under S. 476-B by a Court to which the Court making the complaint is subordinate. *Souabhai Vallabhai v. Aditbhai Parsholtam.* 25 Cr. L. J. 1123 :

81 I. C. 947 : 26 Bom. L. R. 289 :
48 Bom. 401 : A. I. R. 1924 Bom. 347.

———S. 476-B—Appeal—Order passed by Appellate Court—Second appeal, whether lies.

No appeal lies against an order passed by an Appellate Court under S. 476-B, Cr. P. C. *Chnai v. Mukuudram.* 30 Cr. L. J. 1099 :

119 I. C. 703 : 25 N. L. R. 192 :
I. R. 1929 Nag. 335 :
A. I. R. 1929 Nag. 281.

———S. 476-B—Appeal—Order refusing to prosecute—Appeal to District Judge—Transfer of appeal to Sub-Judge—Legality of transfer—Second appeal to Chief Court, whether competent.

A District Judge has no jurisdiction to transfer to a Subordinate Judge an appeal filed before him under S. 476-B, Cr. P. C., from an order by a Munsif refusing to make a complaint. Under S. 476-B where the Court of first instance consents or refuses to prosecute, whether the Appellate Court upholds or reverses its order, there is one appeal only. An appeal can lie to the High Court only where the original order has been passed by a Court from which the appeal ordinarily lies direct to the High Court. *Bismillah Khau v. Shakir Ali.* 30 Cr. L. J. 382 :

114 I. C. 812 : 5 O. W. N. 882 :
I. R. 1929 Oudh 204 : 4 Luck. 155 :
A. I. R. 1928 Oudh 494.

———S. 476-B—Appeal—Order under, by Civil Court—Appeal from, whether should be on Civil or Criminal side of High Court.

Jurisdiction that is exercised by a Court in filing a complaint under S. 476, Cr. P. C., is a jurisdiction exercised under the Cr. P. C., and is, therefore, of a criminal nature. There is no rule that everything done by a Civil Court should be regarded as being of a civil nature. Consequently, appeals under S. 476, Cr. P. C. from orders of Civil Court including revisions preferred from appellate orders made under S. 476-B should be filed on the criminal side of the High Court and not on civil side. *In re : D. S. Raju Gupta.* 41 Cr. L. J. 705 :

189 I. C. 25 : 49 L. W. 330 :
1939 M. W. N. 243 : 1939 I. M. L. J. 480 :
I. L. R. 1939 Mad. 439 : 13 R. M. 228 :
A. I. R. 1939 Mad. 472.

———Ss. 476-B—Appeal.

Small Causes Court directing prosecution—Appeal lies to District Judge and not to Subordinate Judge even though he signs, in disposing of appeal, as Additional Sessions Judge. *Abdul Ghani Khau v. Ram Mohan Lal.* 36 Cr. L. J. 950 :

156 I. C. 593 : 1935 A. L. J. 671 :
8 R. A. 3 : 1935 A. W. R. 690 :
A. I. R. 1935 All. 573.

Cr. P. CODE (1898), S. 471

whether action is required under Sub-s. (2).
Emperor v. Ahmad Ali. 159 I. C. 963 :
 16 P. L. T. 828 : 2 B. R. 129 :
 8 R. P. 319 : A. I. R. 1935 Pat. 501.

———S. 469.

See Penal Code, S. 84.

———S. 470.

See Penal Code, S. 84.

———Ss. 470, 471 (1)—Acquittal of insanity
 —Subsequent sanity—Effect of.

When an accused is acquitted on the ground of lunacy, it is the duty of the Court to decide whether or not, at the time the act constituting the offence was committed, the accused was capable of understanding the nature of his act, and if the Court is satisfied that he was not, an absolute duty is imposed on it to make an order to declare him to be a criminal lunatic, and direct him to be kept in safe custody, even if he is not of unsound mind on the date of his acquittal. *Anandi v. Emperor.*

24 Cr. L. J. 225 :
 71 I. C. 689 : 45 All. 329 :
 A. I. R. 1923 All. 327.

———S. 470 — Procedure — Acquittal on ground of lunacy.

When a Court acquits an accused under S. 470, Cr. P. C., on the ground of his lunacy, it should simultaneously pass orders under S. 471. *Mohammad v. Emperor.*

23 Cr. L. J. 71 :
 65 I. C. 423 : 1922 M. W. N. 10 :
 30 M. L. T. 74 : 42 M. L. J. 72 :
 A. I. R. 1922 Mad. 54.

———S. 471.

See also Penal Code, 1860, Ss. 34, 84.

———S. 471 as amended by Act (X of 1914)
 —Acquittal for insanity—Report to Government—Procedure.

Under S. 471, Cr. P. C., 1898, as amended by Act X of 1914, the Court, in a case where it has been found that an offence has been committed by a lunatic, should confine itself to making an order that he should be kept in safe custody in such place and manner as the Court thinks fit. Then it is for the Government under their own powers to decide the future fate of the person concerned. There is no longer any necessity for a Court which acquits a person on the ground of insanity to report the case for the orders of the Local Government. *Imam Hasan v. Emperor.*

26 Cr. L. J. 348 :
 84 I. C. 652 : 25 Bom. L. R. 286 ;
 A. I. R. 1923 Bom. 261.

———Ss. 471, 474, 475—Power of Court—Criminal lunatic, order as to detention of—Procedure—Local Government, power of, to order confinement in lunatic asylum—Lunacy Act (IV of 1912).

Sub-s. (2) and (3) of S. 471, Cr. P. C. were repealed by the Lunacy Act (IV of 1912) and the last twelve words of Sub-s. (1) of the same section were repealed by Act X

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of 1914. Under S. 471 (1) a Court can order a criminal lunatic to be kept in safe custody in such place and manner as it thinks fit. The subsequent discharge, detention and transfer to any public lunatic asylum referred to in S. 474 and the delivery of the person to a relative under S. 475 are matters for the Local Government, and not for the Court to deal with. The Court cannot exercise the powers conferred on the Local Government under Ss. 474 and 475. *Somya Hirya Mahar v. Emperor.*

19 Cr. L. J. 771 :
 46 I. C. 691 : 20 Bom. L. R. 629 :
 A. I. R. 1918 Bom. 110.

———S. 471—Power of Court to issue direction for detention—Local Government, order of, whether necessary.

S. 471, Cr. P. C. as amended by Act X of 1914, no longer requires a Court to report the case of an accused suffering from mental derangement for the orders of Government. The Court can itself issue a direction for his detention in a lunatic asylum or, if there is no accommodation in it, in jail or some other place of safe custody in British India. *Emperor v. Maiku Ahir.*

21 Cr. L. J. 46 (a) :
 54 I. C. 254 : 22 O. C. 269 :
 2 U. P. L. R. (J. C.) 11 :
 A. I. R. 1919 Oudh 49.

———S. 471—Procedure—Order for safe custody—Delivery of lunatic prisoner to parents, legality of.

S. 471, Cr. P. C., should not be interpreted as compelling a Court to send the accused to a lunatic asylum. All that is necessary is to see that such safeguards are taken as would keep the accused from mischief and it is permissible to order the accused to be kept under the control and custody of his parents. *Mohammad v. Emperor.*

23 Cr. L. J. 71 :
 65 I. C. 423 : 1922 M. W. N. 10 :
 30 M. L. T. 74 : 42 M. L. J. 72 :
 A. I. R. 1922 Mad. 54.

———S. 471—Scope of—Accused guilty under S. 326, Penal Code, but found insane at time of committing offence—Whether can be acquitted under S. 84, Penal Code, and kept under care of relatives on their giving security for his good behaviour—Proper course—Penal Code (Act XLV of 1860), S. 84.

Where a Magistrate finds the accused guilty under S. 326, Penal Code, but acquits him under S. 84, Penal Code, as he is found incapable of understanding the nature of his act due to insanity, and orders him to be handed over to the care of his relatives on their furnishing a security for his good behaviour, the order contravenes S. 471, Cr. P. C. In such a case, the accused should be detained in safe custody in a lunatic asylum. *The King v. Tun Khin.*

39 Cr. L. J. 544 :
 175 I. C. 48 : 10 R. Rang. 460 (1) :
 A. I. R. 1938 Rang. 96.

———S. 471—Scope of.

S. 471 contemplates the committing of a crime by a person who, owing to the state of his mind, cannot be deemed to have known

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Appellate Court under S. 476-B. *Narain Prasad v. Emperor*. 30 Cr. L. J. 1148 : 120 I. C. 110 : I. R. 1930 All. 4 : A. I. R. 1929 All. 898.

—S. 476—Applicability.

In order to bring such a case within the purview of S. 476, Cr. P. C., it is not necessary that proceedings should have been pending from before the time of the production of the document. *Tularam Marwadi v. Emperor*.

28 Cr. L. J. 388 : 100 I. C. 1044 : A. I. R. 1927 Nag. 184.

—S. 476—Applicability—Jurisdiction of Court to investigate offence committed before it after transfer of case.

If a Court is of opinion that there is ground for enquiry into any offence referred to in S. 195 committed before it in the course of a judicial proceeding, it can proceed under S. 476 of the Code even though the case has passed out of its hands and has been decided by another Court which has arrived at a different conclusion on the merits. *Sundar Lal v. Emperor*.

23 Cr. L. J. 603 : 68 I. C. 817 : 20 A. L. J. 666 : 44 All. 642 : A. I. R. 1922 All. 233.

—S. 476—Applicability—Prosecution can't be directed for offences under Ss. 353, 341 and 147.

As regards offences under Ss. 353, 341 and 147, Penal Code, S. 476 does not apply. Order under S. 476 was, therefore, reversed. *Saibeswar Nath v. Emperor*. 39 C. L. J. 33 : A. I. R. 1924 Cal. 501.

—S. 476—Applicability—Qualifications mentioned in S. 195, whether incorporated in S. 476.

S. 476, Cr. P. C., does not apply to an offence committed before a Court in Presidency towns. Consequently it is not competent to the High Court, acting under S. 476, to direct the prosecution of a person for the offence of forgery or abetment of forgery brought to its notice in the course of hearing an appeal in a Probate case. The qualifications mentioned in S. 195, Cr. P. C., are to be treated as incorporated in the provisions of S. 476. *In the matter of : A Fakil*. 19 Cr. L. J. 638 : 45 I. C. 686 : A. I. R. 1918 Cal. 346.

—S. 476—Applicability.

S. 476, Cr. P. C., applies only when a false statement is made in the course of judicial proceedings. *Shafi Mohamed v. Emperor*.

26 Cr. L. J. 1044 : 87 I. C. 964.

—S. 476—Applicability of.

"Inquiry" in S. 476, Cr. P. C., includes any proceedings under Chap. XVI, Cr. P. C. S. 476 is not, therefore, restricted to a warrant case but applies to a summons case also. *Emperor v. Ram Lal Anand*.

41 Cr. L. J. 766 : 189 I. C. 628 : 42 P. L. R. 505 : 13 R. L. 106 : A. I. R. 1940 Lah. 233.

—S. 476—Applicability of.

Person alleged to have given false evidence

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before arbitration—Application under S. 476 is necessary—Whether preliminary enquiry is necessary or not will depend on the circumstances of each case. No notice is necessary to person against whom order is sought. *H. C. Ganti v. F. L. Harcourt*.

32 Cr. L. J. 826 :

132 I. C. 93 : 58 Cal. 215 :

I. R. 1931 Cal. 525 : A. I. R. 1931 Cal. 436.

—S. 476—Applicability of.

S. 476 applies only where complaint by Court is necessary for taking cognizance. *Provat Ranjan Baral v. Ume Sankar Banerjee*.

32 Cr. L. J. 883 :

132 I. C. 241 : 58 Cal. 727 :

35 C. W. N. 98 : I. R. 1931 Cal. 561 :

A. I. R. 1931 Cal. 438.

—S. 476—Applicability of.

S. 476 can only apply to cases where, by reason of a provision in the Code, the Magistrate requires a complaint by Court in order that he may take cognizance of the Charge. *Provat Ranjan Baral v. Ume Sankar Chatterjee*.

32 Cr. L. J. 883 :

132 I. C. 241 : 58 Cal. 727 :

35 C. W. N. 98 : I. R. 1931 Cal. 561 :

A. I. R. 1931 Cal. 438.

—S. 476—Applicability of.

Where it is doubtful which of the two statements is true and where it may be held with some degree of certainty that the subsequent statement is the false one, a complaint for giving false evidence should, as a rule, be made. *Local Government v. Jit Singh*.

36 Cr. L. J. 935 :

156 I. C. 257 : 31 N. L. R. 308 :

7 R. N. 230 : A. I. R. 1935 Nag. 145.

—Ss 476, 195—Applicability of—Forgery not by party to any judicial proceedings—Proceedings, if maintainable.

S. 476, Cr. P. C., applies only where the offences mentioned in S. 195, Cr. P. C., are committed by the person or in the circumstances mentioned therein. Therefore a Munsif has no jurisdiction to take action under S. 476 against the executant and attesters of a document found to be forged who were not parties to any proceeding before the Court. *In re : Kallarn Ramalingam*.

16 Cr. L. J. 797 :

31 I. C. 653 : 18 M. L. T. 488 :

2 L. W. 1135 : A. I. R. 1915 Mad. 1033.

—S. 476—Application for revision—Order under—Application for revision, by whom to be made.

An application under S. 439, Cr. P. C. to interfere in revision with an order passed under S. 476, Cr. P. C., can only be made by a party aggrieved thereby, that is to say, the person whose prosecution has been ordered. *Ramjivan v. Fakira*.

21 Cr. L. J. 846 :

58 I. C. 926 : A. I. R. 1920 Nag. 264.

—S. 476—Application under—Application, when should be made.

Under S. 476 as it now stands, the application need not be made in the course of the proceedings out of which it arises, or immediately

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- Right of appeal.
- Right of complainant.
- Sanction.
- Sanction to prosecute.
- Scope.
- Scope and object.
- Scope of.
- Separate complaint, absence of.
- Stay.
- Stay of complaint.
- Stay of proceedings.
- Stay of prosecution.
- Successor in office — Whether can order.
- ‘Such Court,’ meaning of.
- ‘That Court,’ significance of.
- Want of complaint.
- Witness.
- Wrong pleading, effect of.

-----S. 476.

See also (i) Criminal Court.

- (ii) Cr. P. C., 1898, Ss. 4 (b) 4 (m) 155, 156, 161, 179, 190, 190 (1) (a), 193, 195, 195 (1), 195 (1) (b), 195 (1) (b) and (c), 195 (3), 196 (c), 202, 215, 228, 245, 339, 350, 363, 367, 421, 436, 439, 446, 476.

- (iii) Evidence Act, 1872, Ss. 31, 44.

- (iv) False Evidence.

- (v) Limitation Act, 1908, S. 12.

- (vi) Penal Code, 1860, S. 120-B, 206, 211, 301-A, 500.

- (vii) Provincial Insolvency Act, 1920, Ss. 69, 70.

-----S. 476.

It is doubtful whether investigation under S. 202 is judicial proceeding and may be used for supporting an order under S. 476. *Magbni Ahmad v. Emperor*. 20 Cr. L. J. 815 : 53 I. C. 719 : A. I. R. 1919 Lah. 37.

-----S. 476—Abetment.

A private complaint can be made against a person who abets an offence for which the Court's sanction should in the first place, be obtained under S. 195. *Assudomal Ramamul v. Isardas Kishnomal*. 35 Cr. L. J. 1251 : 151 I. C. 60 (a) : 7 R. S. 41 (1) : A. I. R. 1934 Sind 78 (1).

-----S. 476—Abetment—Abetment of offence committed by party to proceedings—Trial of abettor—Complaint by Court, necessity of.

There is nothing in law to prevent the trial of an abettor of an offence committed by a party to a proceeding in Court without a complaint by the Court concerned under S. 476, Cr. P. C. *Fakir Singh v. Emperor*. 30 Cr. L. J. 485 : 115 I. C. 529 : I. R. 1929 Lah. 401 : 10 Lah. 442 : 30 P. L. R. 517 : A. I. R. 1928 Lah. 787.

-----Ss. 476, 195 and 195 (4)—Abetment—Sanction to prosecute—False information—Indian Penal Code (Act ‘XLI’ of 1860), S. 211—Requisites of sanction.

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A false information was given at the Thana regarding the death of a girl. The informant, the chowkidar, was directed to be prosecuted under Ss. 182 and 211, Penal Code. On an application by the opposite party, the Sessions Judge sanctioned the prosecution of two other persons by the following order :—“There can be no doubt that D. and A. instigated the chowkidar to lodge this information. I direct that they be prosecuted under S. 211 with the chowkidar.” Held, the sanction was without jurisdiction and bad. *Dharamadas Kaur v. Emperor*. 7 Cr. L. J. 340 : 7 C. L. J. 373 : 12 C. W. N. 575.

-----S. 476—Additional evidence—Appellate Court, power of, to take additional evidence, limits of—Evidence improperly admitted.

The legitimate occasion for the use of the power conferred by Order XLI, rule 27, C. P. C., on an Appellate Court is when, on examining the evidence as it stands, some inherent lacuna or defect becomes apparent, not where a discovery is made outside the Court, of fresh evidence and the application is made to import it. Where additional evidence is improperly admitted in appeal, the Court has no jurisdiction to direct the prosecution of a witness on the basis of such evidence and an order made under S. 476, Cr. P. C., in such a case cannot be sustained. *Jagdeo Lal v. Ram Lagan Singh*. 20 Cr. L. J. 826 : 53 I. C. 826 : A. I. R. 1919 Pat. 341.

-----S. 476—Adjournment—Criminal proceedings initiated by Civil Court—Appeal on same facts pending in High Court—Criminal proceedings, whether should be adjourned.

Where criminal proceedings are initiated by a Civil Court under S. 476, Cr. P. C., the fact that an appeal upon the same facts is pending in the High Court cannot be regarded as a valid reason in law for the adjournment of the criminal proceedings till the decision of the civil appeal. *Raj Kunwar Singh v. Emperor*. 22 Cr. L. J. 236 : 60 I. C. 428 : 18 A. L. J. 1011 : 43 All. 180 : A. I. R. 1921 All. 365.

-----S. 476 as amended by (Act XVIII of 1923)—Amendment, effect of.

Where document comes to the notice of the Court in relation to a proceeding before it and it appears to the Court that it is not genuine and that an offence has been committed, the Court is competent to take action. The fact that no action could be taken under S. 476 as it stood prior to amendment, and the proceedings had accordingly to be dropped before inquiry was made, does not preclude action under the section as amended. *Chamari Singh v. Public Prosecutor of Guya*. 26 Cr. L. J. 170 (b) : 83 I. C. 730 : 6 P. L. T. 225 : 4 Pat. 24 : A. I. R. 1925 Pat. 330.

-----S. 476—Amendment, effect of—Sanction to prosecute—Sanction under old procedure, legality of.

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—S. 476—Complaint.

Where an offence has been committed before a Judge and he is transferred, his successor can validly make a complaint under S. 476, Cr. P. C. *Faqir Singh v. Emperor*.

29 Cr. L. J. 1028 :
112 I. C. 356 : A. I. R. 1928 Lah. 759 (b).

—Ss. 476, 403—Complaint—Application under S. 476 for filing complaint rejected—District Judge setting aside order—Case sent back for inquiry—Trial Court, if can file complaint after inquiry.

It is a fundamental principle that a person once acquitted of an offence cannot again be tried for that offence. But dismissal of a complaint or discharge of an accused in a warrant case is no bar to his being there-after tried on the same facts. Where, therefore, the District Judge on appeal sets aside the order of the lower Court rejecting an application under S. 476 asking the Court to file a complaint against a person, and directs the lower Court to hold an inquiry and file complaint, if necessary, the lower Court is not debarred from filing complaint after inquiry, by its previous refusal to do so. *Kunjo Choudhry v. Emperor*.

39 Cr. L. J. 353 :
173 I. C. 742 : 16 Pat. 650 :
19 P. L. T. 21 :
10 R. P. 440 : 4 B. R. 332 :
A. I. R. 1938 Pat. 99.

—S. 476 (1)—Complaint.

S. 476 (1), Cr. P. C., does not authorise a complaint with reference to offences described in S. 195 (1) (a) committed in relation to a proceeding in a Court. The jurisdiction to make a complaint under that sub-section is limited to such cases as are provided for in Sub-s. (1) (b) or Cl. (e) of S. 195 only. *Emperor v. Ram Nath Bux Singh*.

27 Cr. L. J. 1247 :
98 I. C. 63 : 3 O. W. N. 757 :
A. I. R. 1927 Oudh 51.

—S. 476, 476-A—Complaint of perjury—Penal Code (Act XVI of 1860), S. 193—Complaint of perjury—Evidence to show offence committed in relation to proceeding in Court, absence of.

A complaint under S. 476-A, Cr. P. C. for the prosecution of a person for an offence under S. 193, Penal Code, should not be made where there is nothing to suggest that the accused committed the offence complained of in or in relation to a proceeding in any Court. *Baheruddy Sikdar v. Emperor*.

25 Cr. L. J. 1095 :
81 I. C. 919 : 28 C. W. N. 880 :
A. I. R. 1924 Cal. 986.

—S. 476—Complaint, application for making.

Pleader not being properly authorised to make, will not affect validity of proceedings as Court can suo motu make complaint. *Purna Chandra Dutta v. Dhalu*.

32 Cr. L. J. 377 :
129 I. C. 561 : 58 Cal. 374 :
34 C. W. N. 914 : 52 C. L. J. 87 :
I. R. 1931 Cal. 209 : A. I. R. 1930 Cal. 72.

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—S. 476—Complaint—Duty of Court.

Before a complaint for prosecution is made by a Court under S. 476, Cr. P. C., it is necessary that the Court which thinks that an offence mentioned in S. 195, Sub-s. (1), Cl. (b) or Cl. (e) has been committed should record a finding to that effect. The provision is not merely directory but it is mandatory. *Chaduvulu Munuswami Naidu v. Emperor*.

29 Cr. L. J. 732 :
110 I. C. 588 : 1928 M. W. N. 229 :
A. I. R. 1928 Mad. 783.

—S. 476—Complaint, necessity of.

It is not every case of perjury that should form the subject of an inquiry; a complaint should be made only when the interests of justice require that a complaint should be made. *Chaduvulu Munuswami Naidu v. Emperor*.

29 Cr. L. J. 732 :
110 I. C. 588 : 1928 M. W. N. 229 :
A. I. R. 1928 Mad. 783.

—S. 476—Complaint—Particulars of.

Where a complaint is made by a Court under S. 476, Cr. P. C., in respect of an offence under S. 193 of Penal Code, the complaint must contain the particulars of the offence in respect of which it is made. *Kalisadhan Addya v. Nani Lal Hazra*. 26 Cr. L. J. 1307 :
89 I. C. 251 : 52 Cal. 478 :
A. I. R. 1925 Cal. 721.

—S. 476—Complaint by Court—Procedure—Prosecution for false charge, order for—Procedure.

In a case where a Magistrate is considering whether he shall order an individual to be prosecuted upon a charge of bringing a false charge, he should definitely offer to the accused person an opportunity of saying whether he abandons his charge or whether he wishes to support it, and if he wishes to support it, the Magistrate must give him an opportunity of putting forward what he wishes to say in support of his charge, prior to ordering him to be prosecuted for having brought a false charge. *Jadu Dhanuk v. Emperor*.

26 Cr. L. J. 893 :
86 I. C. 829 : A. I. R. 1925 Pat. 708.

—S. 476—Complaint by Court.

The finding of a competent Court that a document produced before it is a forgery or that a witness has committed perjury before it, is sufficient *prima facie* ground for a complaint under S. 476, and no preliminary inquiry is necessary in such a case before making a complaint. *Dwarka Prasad v. Makund Sarup*.

26 Cr. L. J. 1506 :
90 I. C. 290 : 24 A. L. J. 122 :
A. I. R. 1926 All. 21.

—S. 476—Complaint by Court.

Where before the amendment of the Cr. P. C. a subordinate Court granted sanction for the prosecution of a person in respect of an offence mentioned in S. 195 of the Code, but the sanction lapsed owing to the subsequent amendment of the Code : *Held*, that the remedy of the complainant was to move the subordinate Court to make a complaint under the

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petitioner thereupon appealed to the Divisional Commissioner who held that no appeal lay to him and rejected the appeal. On an application for revision being made to the High Court: *Held*, (1) that the Collector was acting as a Revenue Court and was exercising judicial powers in setting aside the order of the Sub-Deputy Collector and was, therefore, subject to the superintendence of the High Court and his order was revisable under S. 115, C. P. C., (2) that the Court also had jurisdiction to interfere under S. 107, Government of India Act; (3) that the Commissioner had jurisdiction to hear the appeal preferred by the petitioner against the order of the Collector and to set aside that order, if necessary. *Fauzdar Rai v. Emperor*.

26 Cr. L. J. 1565 :
99 I. C. 415 : 7 P. L. T. 199 :
A. I. R. 1929 Pat. 25.

———**Ss. 476, 476-B—Appeal—Complaint by Assistant Collector — Appeal to Civil Court, competency of—Additional District Judge, power of, to receive appeals—District Judge, power of, to transfer such appeals to Temporary Judge.**

An appeal lies to the Civil Court from an order under S. 476, Cr. P. C., made by an Assistant Collector in a suit under the Agra Tenancy Act, even though the valuation of the suit is less than Rs. 200 and decree passed in the suit is not appealable to the Civil Court. Where an appeal under S. 476-B, Cr. P. C., has been validly filed in the Court of an Additional District Judge, the District Judge has power under S. 24, C. P. C., to transfer the case to a Temporary Additional District Judge. *Ratan Lal v. Abdul Hai*.

31 Cr. L. J. 898 :
125 I. C. 753 : 1930 A. L. J. 1010 :
A. I. R. 1930 All. 407.

———**Ss. 476, 476-B—Appeal—Complaint by Civil Court—Procedure—Default of appearance—Dismissal of appeal.**

The language of S. 476-B, Cr. P. C., indicates that the Court to which an appeal lies under that section is one to which the Court making or filing the complaint is subordinate. In other words, if it is a Civil Court which has made an order under S. 476, the appeal against such an order must lie to and be heard by the authority or Tribunal to which such Civil Court is subordinate and the procedure governing an appeal of this description is that prescribed by the Cr. P. C. for the hearing of an appeal. Where such an appeal is argued in part by the Counsel for the appellant and is then adjourned but at the adjourned hearing the Counsel for the appellant does not turn up, the Court is entitled to assume that the appeal has been abandoned and to dismiss it. In following this course, the Court cannot be said to commit any illegality or material irregularity within the meaning of S. 115 of the C. P. C. *Nasaruddin Khan v. Emperor*.

28 Cr. L. J. 92 :
99 I. C. 124 : 53 Cal. 827 :
A. I. R. 1927 Cal. 98.

———**Ss. 476, 476-B — Appeal—Complaint**

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by Court suo motu — Appeal under S. 476-B, competency of.

An appeal lies under S. 476-B, Cr. P. C., from an order under S. 476 directing prosecution even if such action is taken by the Court *suo motu* and not on the complaint filed by a private person. *Prabhu Dayal v. Emperor*.

32 Cr. L. J. 20 (a) :
127 I. C. 711 : 31 P. L. R. 153 :
12 L. L. J. 29 : I. R. 1930 Lah. 871.

———**Ss. 476, 476-B—Appeal, forum of—Complaint by Munsif exercising powers of Small Cause Court.**

Where a Munsif invested with Small Cause powers makes a complaint under S. 476, Cr. P. C., for the prosecution of persons in respect of offences under Ss. 476 and 471, Penal Code, an appeal from such an order lies under S. 476-B, Cr. P. C., to the Court of the District Judge and not to the Court of the Subordinate Judge. *Fateh Bahadur v. Abdul Raheem*.

27 Cr. L. J. 83 :
91 I. C. 387 : 2 O. W. N. 845 :
A. I. R. 1925 Oudh 713.

———**S. 476-A—Appeal.**

Munsif deciding prosecution not necessary—Subordinate Judge in appeal is not authorised to order prosecution. *Fauzdar Chamar v. Narendranath Jha*.

35 Cr. L. J. 1061 :
150 I. C. 239 : 15 P. L. T. 303 :
6 R. P. 727 : A. I. R. 1934 Pat. 366.

———**Ss. 476-A, 476-B as amended by Act XVIII of 1923—Appeal against order of trial Court refusing to make complaint under S. 476—Order by Appellate Court making complaint, whether appealable to High Court.**

No appeal lies under S. 476-B, Cr. P. C., to the High Court from an Appellate order of a District Judge making a complaint which the original Court refused to make when an application was made to it under S. 476 of the Code. *Moiden Rowthen v. Miyyassa Pulavar*.

29 Cr. L. J. 786 :
111 I. C. 114 : 28 L. W. 134 :
51 Mad. 777 : 55 M. L. J. 444 :
A. I. R. 1928 Mad. 506.

———**S. 476-B—Appeal.**

An appeal under S. 476-B is an appeal under the Cr. P. C. and has to be governed by the provisions of that Act. But an appeal under S. 476 in a civil matter is not preferred to the Sessions Judge but to the District Judge and power is given to District Judge under the C. P. C. and the Bengal, Agra & Assam Civil Courts Act to regulate the procedure of an appeal. *Lal Mahammad v. D. I. G., C. I. D., Bengal*.

31 Cr. L. J. 921 :
125 I. C. 748 : 34 C. W. N. 80 :
57 Cal. 831 : A. I. R. 1930 Cal. 361.

———**S. 476-B—Appeal.**

An appeal under S. 476-B, Cr. P. C., is governed in matters of procedure by Order XLI, C. P. C., and not by S. 424, Cr. P. C. *Mahendra Nath Das v. Emperor*.

31 Cr. L. J. 750 :
124 I. C. 827 : 49 C. L. J. 374 :
A. I. R. 1929 Cal. 428.

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filed a complaint against the same person for the same offence before a Magistrate and the latter discharged the accused, finding the complaint to be false: *Held*, that the complainant could not be prosecuted for an offence under S. 182, Penal Code, on a complaint by the Police, but could be prosecuted only for an offence under S. 211 of the Code upon a complaint by the Magistrate before whom he laid the charge. *Maung Pe v. Maung Chaw*.

29 Cr. L. J. 1044 :

112 I. C. 468 : A. I. R. 1928 Rang. 243.

———S. 476-B—'Complaint', meaning of.

"Complaint" means complaint under S. 476, or S. 476-A—From order of District Judge, under S. 476-B, no second appeal lies to High Court. *Emperor v. Govind*.

36 Cr. L. J. 981 :

156 I. C. 713 : 59 Bom. 340

37 Bom. L. R. 106 : 8 R. B. 20 :

A. I. R. 1935 Bom. 157.

———S. 476—Complaint under—Complaint for fabricating false evidence, order for, requirements of—Language not clear and precise, effect of.

An order of a Judge that a complaint should be made under S. 476, Cr. P. C. which contains no finding as required by the section that it is expedient in the interests of justice that an enquiry should be made into the alleged offences nor any suggestion of reasons for such a finding is irregular and cannot be sustained. In a complaint under S. 476, Cr. P. C., by a Judge for the offence of giving and fabricating false evidence, it is incumbent on the Judge to make clear and precise allegations in the complaint, inasmuch as in such a case the allegations, if vague, cannot be reduced to precision by oral examination as in an ordinary complaint by a private party, and also because a Magistrate trying the case cannot travel outside the limits of the complaint. Where a Court has properly complained under S. 476 of the offence of fabricating false evidence, there is nothing to prevent the trying Magistrate from framing if the evidence supports it, a charge of forgery in respect of which no sanction or complaint of particular authority or officer is required. *In re : Yerneni Satyanaryana*.

30 Cr. L. J. 370 :

114 I. C. 834 : 28 L. W. 774 :

I. R. 1929 Mad. 354 :

A. I. R. 1929 Mad. 74.

———S. 476—Complaint under, nature of—Penal Code Ss. 463, 467, 471—Forgery of valuable security—Complaint by Court.

It is not necessary that a Court making a complaint under S. 476, Cr. P. C., should state under what particular section the offence complained of falls and a failure to mention the section does not render the complaint or the proceedings taken on it irregular. Where a complaint made under S. 476, Cr. P. C., after narrating the facts mentions Ss. 463 and 471, Penal Code, the complaint must be deemed to cover all forms of forgery which the evidence may show to have been committed. The words "any offence described in S. 463"

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in S. 195 (1) (c), Cr. P. C., must be taken to mean all forms of forgery under whatever section they fall. *N. Ismail Panju v. Emperor*.

26 Cr. L. J. 1115 :

88 I. C. 283 : A. I. R. 1925 Nag. 337.

———S. 476—Complaint under—Penal Code (Act XLV of 1860), S. 411—Complaint, not proved—Sanction to prosecute.

The fact that the complainant fails to prove his case is by itself not sufficient to sanction a prosecution under S. 211, Penal Code. It must be established satisfactorily in the mind of the Judge or the Magistrate that the complaint was made with intent to cause injury or that it was a false complaint made with the knowledge that it was false. *Bhinar Kahar v. Emperor*.

26 Cr. L. J. 141 :

83 I. C. 701 : 6 P. L. T. 365 :

A. I. R. 1925 Pat. 329.

———S. 476—Complaint under—Sanction to prosecute, grant of.

A complaint under S. 476, Cr. P. C., should not be made on grounds which, at their worst, do not amount to more than mere suspicions. *Chandan Lal v. Emperor*.

29 Cr. L. J. 524 :

109 I. C. 358.

———S. 476 Complaint under S. 476, at the instance of private person when to be made.

Proceedings under S. 476, should not be undertaken on the application of private persons unless the prosecution is clearly in the interest of the State and is reasonably certain to result in a conviction. *Shankar Sahni v. Emperor*.

31 Cr. L. J. 938 :

125 I. C. 838 : 7 O. W. N. 638 :

A. I. R. 1930 Oudh 404.

———S. 476—Complaint, what amounts to.

A District Judge, in making a complaint, after giving his reasons for holding that there was a good *prima facie* case ordered as follows:—"I, therefore, direct the prosecution of A. Let a copy of this order be sent along with the records to the proper Magistrate as a complaint": *Held*, that although in some cases a more formal and fuller document may be required, there was a proper complaint in the circumstances of the case. *Ahamadar Rahman v. Dwip Chand*.

29 Cr. L. J. 119 :

106 I. C. 711 : 32 C. W. N. 164 :

55 Cal. 765 : A. I. R. 1928 Cal. 281.

———S. 476—Complaint, when to be made—Offence committed in course of judicial proceeding—Complaint by Court after termination of proceedings, legality of.

The power conferred upon a Court under S. 476, Cr. P. C., to make a complaint to a Magistrate when any of the offences referred to in S. 195, Cls. (b) and (c) appears to have been committed in or in relation to a judicial proceeding before it, is exercisable even after the termination of the proceeding in which the offence complained of is said to have been committed. *Thokala Seshamma v. Tellaturi Venkamma*.

27 Cr. L. J. 280 :

92 I. C. 456 : 22 L. W. 863 :

A. I. R. 1926 Mad. 238.

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—S. 476-B—*Appeal*.

The Appellate Court of inferior jurisdiction, namely the District Judge's Court is to be the Court to which the Court of the Subordinate Judge must be deemed to be subordinate, within the meaning of S. 195; Sub-s. (3). The appeal, therefore, under S. 476-B lies to the District Judge. *Thakur Prasad v. Emperor*.

37 Cr. L. J. 413 :
160 I. C. 20 : 17 P. L. T. 66 :
2 B. R. 312 : 8 R. P. 432 :
A. I. R. 1936 Pat. 122.

—S. 476-B—*Appeal*.

Where an Appellate Court has made a complaint under S. 476-B, Cr. P. C. or refused to make a complaint, no further appeal lies to the High Court. *Hikmat Ullah Khan v. Sakina Begam*.

32 Cr. L. J. 367 :
129 I. C. 264 : 1931 A. L. J. 117 :
I. R. 1931 All. 136 : A. I. R. 1931 All. 305.

—S. 476-B—*Appeal*.

Where complaints under S. 476 are made against several persons, though by a single order, the persons complained against must prefer separate appeals under S. 476-B. *In re : Maramma*.

34 Cr. L. J. 92 :
140 I. C. 756 : 1933 M. W. N. 100 :
I. R. 1933 Mad. 43 : A. I. R. 1933 Mad. 125.

—S. 476-B—*Appeal*.

Where, once the Judge accepts the appeal of the accused under S. 476-B, he is *functus officio*, and his order directing the Magistrate to make a further enquiry into the alleged commission of the offence under S. 193 of the Penal Code is *ultra vires* and absolutely void. *Mendi Lal v. Ram Adhin*.

36 Cr. L. J. 254 :
153 I. C. 104 : 11 O. W. N. 1469 :
7 R. O. 291 : A. I. R. 1935 Oudh 59.

—S. 476-B—*Appeal, competency of—Complaint filed by Court*.

S. 476-B, Cr. P. C., does not give a right of appeal to a person against whom a Court files a complaint at its own instance and not on the application of some other person. *Satto v. Emperor*.

30 Cr. L. J. 163 :
113 I. C. 537 : I. R. 1929 Lah. 185 :
A. I. R. 1929 Lah. 9.

—S. 476-B—*Appeal, forum of—Order passed by District Magistrate under S. 476-A*.

An appeal under S. 476-B will lie to the Court of Session from an order passed by the District Magistrate under S. 476-A. *Pilalal v. Emperor*.

30 Cr. L. J. 550 :
116 I. C. 77 : I. R. 1929 Nag. 195 :
25 N. L. R. 1 : A. I. R. 1929 Nag. 97.

—Ss. 476-B, 195 (3)—*Appeal, forum of—Special Judge making complaint under S. 476 for offence committed in case under U. P. Encumbered Estates Act*.

Where a person commits perjury in the Court of a Special Judge in a case under the U. P. Encumbered Estates Act and the Judge makes a complaint against him under S. 476, Cr. P. C., the Special Judge acts

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only as a Civil Court irrespective of the fact that the Court is further invested with special powers under the Encumbered Estates Act. The Special Judge is primarily Civil Judge and if he takes any action under S. 476, Cr. P. C., in an ordinary civil case, whatever its valuation, his order would be appealable to the District Judge and not to the High Court. *Akbar Husain Khan v. Emperor*.

41 Cr. L. J. 227 :
185 I. C. 700 : 1939 A. L. J. 962 :
1939 All. 975 : 12 R. A. 371 :
A. I. R. 1940 All. 7.

—S. 476-B—*Appeal, hearing of*.

Additional Judge should be regarded as another Officer exercising the functions of the Court of the District Judge in the same manner as an Additional Judge of the High Court exercises the functions of a High Court Judge. *Beyas Narain Singh v. Dasrathi Singh*.

37 Cr. L. J. 838 :
163 I. C. 451 : 17 P. L. T. 276 :
2 B. R. 609 : 9 R. P. 11 :
A. I. R. 1936 Pat. 382.

—S. 476-B—*Appeal, right of—Complaint filed by Court suo motu—Right of appeal by aggrieved party*.

S. 476-B, Cr. P. C., gives a right of appeal to a person against whom a complaint has been made by a Court acting under the provisions of S. 476, or S. 476-A of the Code even when the Court has acted *suo motu* and not on the application of some interested person. *Thiraj v. Emperor*.

30 Cr. L. J. 1019 :
119 I. C. 265 : I. R. 1929 Lah. 857 :
A. I. R. 1929 Lah. 641.

—S. 476-B—*Appeal, right of*.

Right of appeal under—Appeal cannot be, filed until complaint has actually been made. *Balgovind v. Jannabai*.

36 Cr. L. J. 1371 :
158 I. C. 496 : 31 N. L. R. 370 :
8 R. N. 87 : A. I. R. 1935 Nag. 199.

—S. 476-B—*Appeal, to whom lies*.

An appeal under S. 476-B, Cr. P. C. from the sentence of an Assistant Sessions Judge lies to the Court of Session and not to the High Court. *Nagendra Nath v. Emperor*.

34 Cr. L. J. 628 :
143 I. C. 703 : 37 C. W. N. 192 :
60 Cal. 596 : I. R. 1933 Cal. 464 :
A. I. R. 1933 Cal. 192.

—S. 476-B—*Appeal, transfer of*.

It is not open to a District Judge in whose Court an appeal under S. 476-B is pending to transfer that appeal to the Court of a Subordinate Judge. *Manphool v. Budhu*.

36 Cr. L. J. 1231 :
157 I. C. 901 : 57 All. 785 :
1935 A. L. J. 473 : 1935 A. W. R. 385 :
A. I. R. 1935 All. 440.

—S. 476-B—*Appeal, whether lies—Complaint by Appellate Court under S. 476-B—Second appeal to High Court, whether lies—Revision, competency of*.

No appeal lies from a complaint made by an

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———**Ss. 476, 476-B—Death of applicant, effect of—Application for order directing prosecution—Appeal—Right, whether survives.**

Where a private person moves a Court to take action under S. 476, Cr. P. C., but the Court refuses to take such action, and the applicant files an appeal, but dies during the pendency of the appeal the right to carry on the appeal does not survive to his legal representatives or to anybody else. *Nchal Ahmad v. Ramji Das*.

26 Cr. L. J. 1008 :
87 I. C. 608 : 47 All. 359 :
A. I. R. 1925 All. 620.

———**S. 476—Defect in procedure.**

Where there is no doubt as to what is the statement complained of the complaint is not rendered invalid by the mere omission to specify therein the statement complained of. *Dwarka Prasad v. Makund Sarup*.

26 Cr. L. J. 1506 :
90 I. C. 290 : 24 A. L. J. 122 :
A. I. R. 1926 All. 21.

———**S. 476—Delay.**

A Court may well hesitate to give sanction to a private individual to prosecute his adversary for an offence alleged to have been committed during the pendency of a civil litigation. But it is very desirable in the ends of justice that when a competent Court has taken upon itself the responsibility of ordering a prosecution under S. 476, Cr. P. C., that that prosecution should be entertained as speedily as possible while the evidence on both sides is fresh. *Brojobashi Panda v. Emperor*.

11 Cr. L. J. 4 (b) :
4 I. C. 485 : 13 C. W. N. 398.

———**S. 476—Delay—Action under section—When may be taken.**

To justify action under S. 476, it will suffice if it is taken with reasonable promptitude, i. e., so shortly after the conclusion of the proceedings as to make it practically the continuation of the same proceeding. *Pichai Rowthan v. Emperor*.

13 Cr. L. J. 825 :
17 I. C. 569 : 1912 M. W. N. 1206.

———**S. 476—Delay.**

Although there is no time-limit fixed for the making of an order under S. 476, yet where there has been undue delay, the High Court is entitled to set aside the order and arrest further proceedings. *Biran Rai v. Emperor*.

21 Cr. L. J. 549 :
56 I. C. 853 : 1920 Pat. 205 :
1 P. L. T. 331 ; A. I. R. 1920 Pat. 430.

———**S. 476—Delay—Complaint should be made without delay—Delay in filing application to move Court to lay complaint—Application based on evidence of additional facts—Delay, whether defeats application.**

The offences mentioned in Cls. (b) and (c) S. 195, Sub-s. (1), Penal Code, are offences against public justice and relating to documents, and when such offences are committed

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in or in relation to a proceeding in any Court. Before exercising its discretion to lay a complaint, the Court should find, that there is a reasonable probability of a conviction resulting from the complaint. If the application is delayed, and the delay is not satisfactorily explained, evidence called in support thereof naturally comes under suspicion, and the inference arises that the interests of public justice are less likely to be served than the interests of the applicant by the laying of a complaint. Moreover, a party who has been unsuccessful in a case should not remain indefinitely under the threat that an application for his prosecution may be filed, such a weapon is likely to be used for improper purposes. These considerations apply with force when the application is not founded on materials to be found on the record of the trial, but on evidence of additional facts which the applicant alleges to be available. In such cases, strict explanation of the reasons for the delay in making the application is necessary; otherwise, it cannot be held that it is in the interests of justice to make a complaint. *Mohammad Kaka v. District Judge, Bassein*.

38 Cr. L. J. 615 :
168 I. C. 632 : 9 R. Rang. 359 :
1937 Rang. 276 : A. I. R. 1937 Rang. 62.

———**S. 476—Delay.**

In some cases a Court might refuse to take proceedings on the ground that an application was unduly delayed, but this is a matter of discretion. *Banke Lal v. Maiku*.

35 Cr. L. J. 121 :
146 I. C. 638 : 10 O. W. N. 1037 :
6 R. O. 150 (2) : A. I. R. 1933 Oudh 430.

———**S. 476—Delay.**

Mere delay in instituting proceeding under S. 476, Cr. P. C., does not vitiate the proceeding. The guiding principle is whether the presiding Judge at the time of hearing the case had come to any conclusion as to whether the offence was committed or not. *Awadh Behari Lal v. Emperor*.

20 Cr. L. J. 274 :
50 I. C. 162 : A. I. R. 1919 Pat. 78.

———**S. 476—Delay.**

No hard and fast rule can be laid down that in all cases an order for prosecution under S. 476 must be set aside on the ground of delay. *Sajjad Husain v. Emperor*.

36 Cr. L. J. 319 (2) :
153 I. C. 346 : 7 R. O. 324 :
1935 O. W. N. 28 :
A. I. R. 1935 Oudh 113.

———**S. 476—Delay—Steps taken five months after close of trial—Order, without jurisdiction.**

Where a Magistrate acts under S. 476, Cr. P. C., five months after the close of the trial, and there is no explanation for the delay, the Magistrate acts without jurisdiction. *In re : Kshatri Siva Singh*.

15 Cr. L. J. 283 :
23 I. C. 491 : A. I. R. 1914 Mad. 380.

———**S. 476—Delay.**

There is nothing in S. 476, Cr. P. C., either impliedly or expressly limiting the time within

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thereafter. Whether the Court would accede to an application made long after the termination of the proceedings out of which it arise is a matter which would arise upon merits and would no doubt depend upon all the circumstances. *Bhagwandas Naraindas v. D. D. Patel and Co.* 41 Cr. L. J. 526 :

187 I. C. 867 : 42 Bom. L. R. 231 :
I. L. R. 1940 Bom. 403 : 12 R. B. 495 :
A. I. R. 1940 Bom. 131.

—S. 476 A, B—Changes, effect of.

The effect of the changes made in the Cr. P. C., by the introduction of Ss. 476-A and 476-B is no longer to make it necessary that a proceeding under S. 476 should be a part of, or so soon after the termination of the judicial proceeding as to make it a part of the judicial proceeding. *Thokala Sesamma v. Yellaturi Venkamma.*

27 Cr. L. J. 280 :
92 I. C. 456 : 22 L. W. 863 :
A. I. R. 1926 Mad. 238.

—Ss. 476, 369—Competency of Civil Court to pass order of commitment to Sessions Court—Complaint under S. 476, if can be altered or reviewed—Civil Court making complaint under S. 476—Complaint returned to Civil Court asking it to pass order of commitment to Sessions Court.

A complaint cannot be a judgment even when the complaint is made by a Court under S. 476, Cr. P. C. Therefore S. 369 cannot apply to complaint and does not, therefore, amount to a bar against a Court altering or reviewing the complaint under S. 476. The Code does not bar a Court from altering or reviewing its complaint under S. 476. Where, therefore, a Civil Court files complaint under S. 476 and the District Magistrate returns it requesting it to make an order of commitment to the Sessions Court, the Civil Court is competent to pass that order. *Jagat Ram v. Emperor.*

38 Cr. L. J. 318 :
166 I. C. 915 : 9 R. A. 469 :
1936 A. L. J. 1199 :
1937 A. W. R. 1125 :
A. I. R. 1937 All. 76.

—S. 476—Complainant not allowed to produce his evidence—Strong reasons necessary before order under the section.

Where a complainant is not allowed to adduce the whole of his evidence in support of his complaint, exceptionally strong reasons are required to justify an order against him under S. 476. *Maqbul Ahmad v. Emperor.*

20 Cr. L. J. 815 :
53 I. C. 719 : A. I. R. 1919 Lah. 37.

—S. 476—Complaint—Allegation of corruption made against Subordinate Judge prima facie false—Complaint against person making it under S. 193, Penal Code (Act XLV of 1860), is justified.

Where the allegation made about Senior Subordinate Judge practically amounting to an accusation of corruption against him, appears *prima facie* to be false, it is in

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the highest degree expedient in the interests of justice that there should be an enquiry into it. The Court is justified in making a complaint under S. 193, I. P. C., against the person making such allegation. *Jai Ram v. Emperor.* 41 Cr. L. J. 701 :

188 I. C. 863 : 13 R. L. 66 :
42 P. L. R. 40(2) :
A. I. R. 1940 Lah. 203.

—S. 476—Complaint—Complaint before Police followed by complaint in Court—Dismissal of case—Complaint by Court, whether necessary.

Accused made a complaint before the Police charging the petitioner and others with certain offences but the complaint was filed. The petitioner then made a complaint against the accused under S. 211, Penal Code, and the Magistrate issued process against the accused. Thereupon the accused appeared and laid a complaint before the Magistrate against the petitioner upon the same facts which he had alleged before the Police. The Magistrate after taking evidence in the case against the petitioner acquitted him : *Held*, that the case instituted by the accused having been tried by a Magistrate, no prosecution of the accused under S. 211, Penal Code, could be instituted without a complaint being made by the Court which had tried the other case. *Samir v. Sajidar Rahman.*

28 Cr. L. J. 86 :
99 I. C. 118 : 53 Cal. 824 :
A. I. R. 1927 Cal. 95.

—S. 476—Complaint.

Complaint cannot be called in question in appeal from conviction. *Ali Ahmad v. Emperor.*

34 Cr. L. J. 39 (2) :
140 I. C. 544 : 55 C. L. J. 336 :
I. R. 1932 Cal. 11 :
A. I. R. 1932 Cal. 545.

—S. 476—Complaint.

Motive of application for moving Court to complain is immaterial. *Tulsi Ammal v. Danalakshmi Ammal.*

35 Cr. L. J. 780 :
148 I. C. 851 (2) : 39 L. W. 693 :
66 M. L. J. 471 :
57 Mad. 682 : 6 R. M. 550 :
1934 M. W. N. 609 :
A. I. R. 1934 Mad. 316.

—S. 476—Complaint—Offence committed in relation to judicial proceeding—Complaint by Magistrate, form of—Order sanctioning prosecution, whether complaint.

The complaint required by S. 476, Cr. P. C., must be a formal complaint within the meaning of S. 4 (b) of the Code. An order stating merely that sanction is granted for the prosecution of a certain person, who, in the opinion of the Court, has committed a certain offence, cannot be regarded as a complaint as required by S. 476. *Durjodhan Bhat v. Emperor.*

26 Cr. L. J. 1459 :
80 I. C. 1027 : 52 Cal. 666 :
A. I. R. 1925 Cal. 1226.

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The power conferred by S. 476, Cr. P. C., can be exercised by the Court only in the course of the judicial proceedings or at its conclusion or so shortly thereafter as to make it really the continuation of the same proceedings in the course of which the offence was committed. *Cholhu Ram v. Emperor*.

31 Cr. L. J. 1135 :
126 I. C. 794 : A. I. R. 1930 Lah. 316.

————S. 476—Duty of Court—Complaint—
Duty to frame proper charge, etc.

Civil and Criminal Courts when they make a complaint, should devote some thought to the matter, frame a proper charge and state in detail the names of the witnesses who are likely to prove the charge. *Gauri Shankar v. Emperor*.

30 Cr. L. J. 1158 :
120 I. C. 127 : I. R. 1930 All. 15 :
A. I. R. 1929 All 905.

————S. 476—Duty of Court.

Defendant making untrue statement in written statement but not appearing in Court afterwards can be prosecuted—Death of plaintiff—Duty of Court to proceed with application for prosecution for perjury. *Venkatrama Reddi v. Srinivasa Reddi*.

37 Cr. L. J. 557 :
162 I. C. 285 : 1936 M. W. N. 991 :
8 R. M. 975 : A. I. R. 1936 Mad. 350.

————S. 476—Duty of Court—Enquiry or
trial to be held by first class Magistrate.

S. 476, Cr. P. C., requires the Court, after making any preliminary enquiry that may be necessary, to send the case for enquiry or trial to the nearest Magistrate of the first class. *Niyamat Miah v. Emperor*.

2 Cr. L. J. 656 :
1 C. L. J. 630.

————S. 476—Duty of Court—Nature of pro-
ceedings under—Preliminary inquiry—Examina-
tion of accused.

Proceedings in inquiries under S. 476, Cr. P. C., are judicial proceedings and the person against whom they are directed is in the position of an accused person. Therefore, the examination of such a person as a witness in the course of such proceedings is *ultra vires*. He can only be examined under S. 342, Cr. P. C. *Maung Po Nyun v. Mulu Kurpen Chetty*.

17 Cr. L. J. 316 :
35 I. C. 492 : A. I. R. 1917 L. Bur. 137.

————S. 476—Duty of Court—Opportunity to
be given to person against whom enquiry is direct-
ed, to cross-examine witnesses produced by the
applicant.

A Magistrate, when he decides to hold a preliminary enquiry under S. 476, Cr. P. C., should give opportunity to the person against whom the enquiry is directed to cross-examine the witnesses produced by the

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applicant. Where he refuses to allow such person to cross-examine the witnesses, his order cannot be allowed to stand. *U Ba Hla v. Maung Tun Sein*.

40 Cr. L. J. 56 (b) :
178 I. C. 305 : 11 R. Rang. 226 :
A. I. R. 1938 Rang. 297.

————S. 476—Duty of Court—Order of pro-
secution.

It is essential that the Court which passes order under S. 476, Cr. P. C., should apply its mind to the matter upon its merits. When, therefore, a Judge of the High Court in disposing of an appeal considered the defence evidence to be deliberately false and directed the Sessions Judge "to take action under S. 476 and to send the witnesses to the nearest Magistrate to be charged with perjury," and the Sessions Judge ordered their prosecution without applying his mind to the merits of the case: *Held*, that Sessions Judge should himself have taken the initiation of ordering the prosecution and that as he had not done so, the order of prosecution could not stand. *Ghanram Rai v. Emperor*.

26 Cr. L. J. 18 :
83 I. C. 498 : 21 A. L. J. 930 :
A. I. R. 1924 All. 453.

————S. 476—Duty of Court—Order under
—Preliminary inquiry, whether necessary—Pro-
cedure.

Although the holding of an inquiry preliminary to the passing of an order under S. 476, Cr. P. C., is discretionary, yet when such an inquiry is started, whether it be a formal or informal inquiry, the Court should carry the investigation to completion in order that the person affected may have a full opportunity of showing cause why he should not be prosecuted. *Ajodhya Prasad Sahu v. Emperor*.

21 Cr. L. J. 718 :
58 I. C. 62 : 1 P. L. T. 342 :
A. I. R. 1920 Pat. 165.

————S. 476—Duty of Court—Prejudice com-
mitted in judicial proceeding—Order for prosecu-
tion, when can be made—Reasonable probability
of conviction.

Where perjury is alleged to have been committed in the course of a judicial proceeding and is duly brought to the notice of the Court, the Court is justified in taking action under S. 476, Cr. P. C., and order prosecution of the offender. It is not necessary that the Court should form its opinion as to the desirability of prosecuting the offender during the progress of the actual case. It is not fair to allow proceedings for perjury to take their course where the evidence is evenly balanced and there is no reasonable probability of securing a conviction. *Valab Das v. Maung Ba Than*.

26 Cr. L. J. 523 :
85 I. C. 362 : 2 Bur. L. J. 154 :
1 Rang. 372 : A. I. R. 1924 Rang. 54.

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amended S. 476 and not to move a superior Court under S. 476-A to make a complaint. *Pallabi Chetty v. Gopala Chetty*.

26 Cr. L. J. 1125 :

88 I. C. 357 : A. I. R. 1925 Mad. 1181.

————S. 476—*Complaint by Court—Whether invalidates complaint—Defect, whether cured by S. 537.*

Although it is necessary that if the Court decides to make a complaint under S. 476, Cr. P. C., it must record a finding that in its opinion it is expedient in the interests of justice that an enquiry should be made yet the absence from the record of an express finding, or a finding in the exact words of the section, will not invalidate the complaint. S. 537 would, in appropriate cases, apply to the failure to record an express finding under the provisions of S. 476, especially where an objection is taken at so late a stage that it is not possible for Government to find whether among other papers not before the Court, the finding required by S. 476 had not been expressly recorded. *Charandas Kanayalal v. Emperor*.

40 Cr. L. J. 707 :

182 I. C. 914 : 1939 Kar. 28 : 12 R. S. 35 :

A. I. R. 1939 Sind 170.

————S. 476—*Complaint by Court—Procedure.*

It is for the Court, which sends, under S. 476, Cr. P. C., a complaint for prosecution to the Magistrate to decide upon and name the witnesses to be examined by the Magistrate. If no such names are given, the complaint is liable to be dismissed on the ground that there are not witnesses to prove the prosecution case. *Kalyanji v. Ram Deen Lala*.

26 Cr. L. J. 801 :

86 I. C. 449 : 48 M. L. J. 290 :

21 L. W. 664 : 48 Mad. 395 :

A. I. R. 1925 Mad. 609.

————S. 476, 526 (3)—*Complaint by Court—Person on whose motion complaint was made, right of, to apply for transfer.*

The person on whose motion a complaint is made by a Court under S. 476, Cr. P. C., is not an interested party within the meaning of S. 526 (3), and has no *locus standi* to make an application for transfer of the case. *Ram Sarup v. Mohammad Mehr Dil Khan*.

31 Cr. L. J. 1174 :

127 I. C. 152 : A. I. R. 1930 Lah. 873.

————S. 476—*Complaint by successor-in-office of Judge.*

Under S. 476, Cr. P. C. the successor-in-office of a Judge is competent to make a complaint in respect of an offence committed before his predecessor. *Ganda Singh v. Emperor*.

30 Cr. L. J. 862 :

117 I. C. 906 : I. R. 1929 Lah. 730.

————Ss. 476, 476-B—*Complaint for different offence, validity of—Appeal—Alteration of subject-matter of complaint by substitution of another statement.*

A District Magistrate directed the filing of a complaint for perjury in respect of a statement in a certain paragraph of an

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affidavit. The Sessions Judge, on appeal came to the conclusion that the subject-matter of that paragraph was not a fit statement on which the accused should be charged and substituted another statement made in another paragraph of the same affidavit as the subject-matter of the complaint. It was contended that the Sessions Judge had no jurisdiction to alter the subject-matter of the prosecution : *Held*, that the proceedings were not illegal inasmuch as the act of the Sessions Judge amounted to the filing of a complaint for a different offence, though of the same nature, to the offence for which the District Magistrate had filed a complaint. *Nanhu Singh v. Emperor*.

29 Cr. L. J. 794 :

111 I. C. 122 : A. I. R. 1928 All. 706.

————S. 476—*Complaint for false evidence—Penal Code (Act XLV of 1860), S. 193—Contradictory statements—Interests of justice.*

A complaint should be made under S. 476, Cr. P. C., for giving false evidence only where it is expedient in the interests of justice that an enquiry should be made. To prosecute people because they give evidence which is contradictory, merely on the basis of that contradiction is a very doubtful procedure. *Keramat Ali v. Emperor*.

30 Cr. L. J. 221 :

113 I. C. 842 : 55 Cal. 1312 :

I. R. 1929 Cal. 154 : A. I. R. 1928 Cal. 862.

————S. 476—*Complaint, ground of—False evidence—Evidence quite immaterial—Complaint, not advisable.*

When a false statement made by a witness is clearly immaterial and nothing hinges on it, the case is not a fit one for making a complaint under S. 476, Cr. P. C. *Monohar Ali v. Emperor*.

28 Cr. L. J. 310 :

100 I. C. 534 : A. I. R. 1927 Cal. 515.

————S. 476—*Complaint of Court, necessity of—Charge for offence under S. 471—Subsequent suit by accused in Civil Court—Complaint of Court, whether necessary for proceeding with prosecution.*

The accused was charged with an offence under S. 471, Penal Code, for having fraudulently used as genuine a forged document. After the offence had duly been taken cognisance of by the Magistrate, the accused instituted a suit in a Civil Court on the aforesaid document, and after getting the suit dismissed for default, contended that the prosecution could not be proceeded with without a complaint from the Civil Court in which he had filed the suit : *Held*, that prosecution could be proceeded with without a complaint from the Civil Court in which he had filed the suit. *Superintendent and Remembrancer of Legal Affairs, Bengal v. Biswambhar Brahm*.

31 Cr. L. J. 125 :

120 I. C. 449 : 33 C. W. N. 474 : 56 Cal. 1041 :

A. I. R. 1929 Cal. 633.

————S. 476—*Complaint of Magistrate—Necessity of—Penal Code Ss. 182, 211—False information to Police—Subsequent complaint to Magistrate—Prosecution of complainant.*

Where a person lodged an information against another before the Police and subsequently

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—S. 476—Duty of Court.

Where an order under S. 476, Cr. P. C., directing the prosecution of a witness under S. 193, Penal Code, is made upon the very day on which or the day after the cross-examination of the witness is finished upon a clear statement by him, and after an opportunity given to him to explain the inconsistencies in his statements-in-chief and in cross-examination, it is not incumbent upon the Court to institute a fresh enquiry or to give any notice to the accused. A Court directing the prosecution of a witness for perjury under S. 476, Cr. P. C., must specify the statements in respect of which the offence is alleged to have been committed. The object of specifying the offence and the occasion when the offence is committed is to give not only notice to the accused but also to the trying Court of the specific offences against the accused. *Ramdhari Singh v. Emperor*. 19 Cr. L. J. 169 :

43 I. C. 585 : 1918 Pat. 13 : 4 P. L. W. 44 :
A. I. R. 1918 Pat. 448.

—S. 476—Duty of Court making complaint.

A Court taking action under S. 476, Cr. P. C., should record a finding that in the circumstances of the case before it an enquiry into the offences mentioned should be made and the Judge should make a complaint in those terms in writing signed by him. Where a Judge merely endorsed on an application by a party for making a complaint as follows: "Write to the Additional District Magistrate about the matter and ask him to proceed under S. 476, Cr. P. C.": *Held*, that the order was not one passed under S. 476, nor a complaint within the meaning of the Code. *Rajani Kanta Kayal v. Bestoomoni Dossi*. 28 Cr. L. J. 840 :

104 I. C. 456 : 46 C. L. J. 40 :
A. I. R. 1927 Cal. 718.

—Ss. 476, 195—Duty of Court—Court, when entitled to take evidence in party's absence.

If the plaintiff in a suit does not appear on the date to which the case is adjourned for trial, the Court is entitled to take any evidence in the suit, but it is not improper or illegal on its part to take evidence in order to satisfy itself whether or not it is fit for taking action against the plaintiff under S. 476, Cr. P. C. for having instituted a false claim. *In re : Perumalla Venkatasubbiah*. 23 Cr. L. J. 712 :
69 I. C. 440 : 16 L. W. 925 :
1922 M. W. N. 811 : 44 M. L. J. 74.

—S. 476—Duty of District Magistrate.

A District Magistrate when he is making applications or complaints to judicial officers, should confine his statements strictly to matters which are relevant and which are admissible in evidence. *In re : Pampappa Ballalrao Desai*. 27 Cr. L. J. 740 :

95 I. C. 68 : 28 Bom. L. R. 490 :
A. I. R. 1926 Bom. 284.

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—S. 476—Duty of Magistrate—Affidavit, false allegations in—Magistrate's explanation—Statements of persons in support thereof—Presidency Magistrate not a Magistrate of the first class.

Though in showing cause to a Rule why a conviction should not be set aside, it is not open to the Magistrate to submit observations with a view to supplement or add to his judgment, yet there is nothing to prevent him from sending along with his explanation in answer to a Rule for transfer, statements of persons who might be in a position to contradict the allegations of misconduct made against the Magistrate by the petitioner in his application. S. 476, Cr. P. C. empowers a Court to send a case for enquiry or trial to the nearest Magistrate of the first class. The nearest Magistrate, namely the Presidency Magistrate, is not a Magistrate of the first class. *Kedar Nath Kar v. Emperor*. 3 Cr. L. J. 329 :
3 C. L. J. 357.

—Ss. 476, 526—Duty of Magistrate.

Ordering prosecution of a defence witness under S. 476, for an offence under S. 193, Penal Code, at the time his evidence is recorded is bound to strike terror in the heart of defence witnesses and is, therefore, a sufficient ground for transfer of his case. Where the action of the Magistrate is such as to create a reasonable apprehension in the mind of the accused that the Magistrate has made up his mind against him, the case would be transferred even though the Magistrate may have acted with perfect impartiality. *Gopal Singh v. Emperor*. 29 Cr. L. J. 40 :

106 I. C. 456 : A. I. R. 1928 Lah. 180.

—S. 476—Duty of Magistrate—Summary trial—Judgment, contents of.

In a summary trial, the judgment need not be a very long and detailed one but it is the duty of the Magistrate to give a brief summary of the evidence and a concise statement of the reasons if the trial ends in a conviction. *Murli Dhar v. Emperor*. 32 Cr. L. J. 50 :

127 I. C. 849 : 31 P. L. R. 317 & 576 :
I. R. 1930 Lah. 881 : A. I. R. 1930 Lah. 481.

—S. 476—Duty of Magistrate.

Where a Munsif took action and sent to the District Magistrate a case of resistance to the taking of property by the lawful authority of a public servant: *Held*, that the Munsif in initiating the prosecution acted expressly under S. 476, Cr. P. C., and it was incumbent upon the Magistrate under Cl. (2) of that section to proceed with the case according to law as if upon a complaint made and recorded under S. 200 of the Code. *The Deputy Legal Remembrancer v. Arjun Pramanick*. 1 Cr. L. J. 525 :

8 C. W. N. 586 : I. L. R. 31 Cal. 664.

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—S. 476—'Costs'.

Proceedings under S. 476 being of civil nature, Court would have jurisdiction to award costs. 114 Ind. Cas. 741 (24) followed. *Bhagwandas Naraindas v. D. D. Patel & Co.*

41 Cr. L. J. 526 :
187 I. C. 876 : 42 Bom. L. R. 231 :
I. L. R. 1940 Bom. 403 : 12 R. B. 495 :
A. I. R. 1940 Bom. 131.

—S. 476—Court, discretion of.

The question whether a complaint should be made under S. 476, is almost invariably a matter of discretion, and if the trial Court or a Court to which it is subordinate thinks that no complaint should be made, it is not desirable that the High Court should interfere with the order in revision. *Samobhai Vallabh v. Aditbhai Parshottam.*

25 Cr. L. J. 1123 :
81 I. C. 947 : 26 Bom. L. R. 289 :
48 Bom. 401 : A. I. R. 1924 Bom. 347.

—S. 476—'Court,' meaning of—"Court," whether includes successor.

The word "Court" in S. 476, Cr. P. C., includes the successor of a Judge before whom the alleged offence was committed or to whose notice the commission of it was brought in the course of a judicial proceeding. *Khan Muhammad v. Emperor.*

24 Cr. L. J. 180 :
71 I. C. 596 : 4 Lah. 58 :
A. I. R. 1924 Lah. 101.

—S. 476—'Court,' meaning of—"Court," whether includes successor of Judge before whom offence was committed—Revision.

The word "Court" used in S. 476, Cr. P. C., includes the successor of the Judge before whom the alleged offence was committed or to whose notice the commission of the alleged offence was brought in the course of a judicial proceeding. *Daulat v. Emperor.*

18 Cr. L. J. 1015 :
42 I. C. 759 : 14 N. L. R. 6 :
A. I. R. 1917 Nag. 136.

—S. 476—'Court,' meaning of.

Decree sent to Collector for execution under S. 68, C. P. C.—*Mamlatdar* holding sale—Judgment-debtor producing receipt of adjustment of decree and asking for adjournment—Receipt suspected to be forged: Held, that *Mamlatdar* cannot make complaint under S. 476. *In re : Narsappa Naik Narappa Naik.*

36 Cr. L. J. 1005 :
156 I. C. 752 : 37 Bom. L. R. 93 :
59 Bom. 345 : 8 R. B. 24 :
A. I. R. 1935 Bom. 158.

—S. 476—'Court,' meaning of—Officer appointed to record tenants' right, whether Court—Statements, whether evidence—Perjury, offence of, whether committed in making false statements before such officer—*Madras Estates Land Act, Ss. 164, 166.*

An officer charged with the duty of recording tenants' rights under Chap. XI, *Madras Estates Land Act*, is not a "Court" within the meaning of S. 476, Cr. P. C. Therefore statements made before him are not "evidence" and no prose-

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cution for perjury will lie on such statements. *In re : Avasarala Venkata Hanumantha Rao.*

16 Cr. L. J. 241 :
28 I. C. 97 : 28 M. L. J. 123 :
2 L. W. 180 : 1915 M. W. N. 177 :
A. I. R. 1916 Mad. 555.

—S. 476—'Court,' meaning of—Suit heard by one Judge of High Court—Complaint, whether can be made by another Judge.

Where a suit is tried by a Judge of the High Court, the word "Court" in S. 476, Cr. P. C. in respect of proceedings arising out of such suit must be taken to mean the High Court. Any Judge of the High Court can, therefore, dispose of an application under S. 476, whether the matter out of which the application arose was heard by him or some other Judge of the Court. *Bai Kasturbai v. Vanmatidas Lakmidas.*

26 Cr. L. J. 1189 :
88 I. C. 709 : 49 Bom. 710 :
27 Bom. L. R. 616 : A. I. R. 1925 Bom. 436.

—S. 476—'Court,' meaning of.

The expression "Court" in S. 476, Cr. P. C., includes the successor in office. *Muhammad Ibrahim v. Emperor.*

16 Cr. L. J. 97 :
27 I. C. 145 : 12 A. L. J. 1003 :
A. I. R. 1914 All. 537.

—S. 476—'Court,' meaning of.

The word 'Court' in S. 476, Cr. P. C., includes the successor of the Judge before whom the alleged offence was committed. *Nawal Singh v. Emperor.*

13 Cr. L. J. 302 :
14 I. C. 766 : 34 All. 393 :
9 A. L. J. 481.

—S. 476—"Court", meaning of.

There is nothing in either S. 476 or S. 476-A, to warrant the suggestion that where a Subordinate Judge has asked for directions from the District Judge, he becomes *functus officio* and that any complaint subsequently filed by him under S. 476 is prohibited by the Statute. *Moolchand Bachomal v. Emperor.*

34 Cr. L. J. 305 (2) :
142 I. C. 74 : 26 S. L. R. 105 :
I. R. 1933 Sind 82 : A. I. R. 1933 Sind 37.

—Ss. 476, 195—'Court,' meaning of—Complaint required by S. 195—By whom to be filed—Trial in High Court.

The complaint required by S. 195, Cr. P. C., is the complaint of the Court in which the documents were given in evidence and not of the trial Judge, and when a suit is tried by a Judge of the High Court, the term 'Court' occurring in the section must be taken to mean 'the High Court.' The Court may, under S. 476 make the complaint on application made to it or otherwise and it need not hold a preliminary enquiry. Notice to the person proceeded against is not essential. *In re : T. Varadarajulu Naidu.*

38 Cr. L. J. 871 :
170 I. C. 255 : 45 L. W. 257 :
1937 1 M. L. J. 396 : 1937 M. W. N. 330 :
I. L. R. 1937 Mad. 612 : 10 R. M. 163 :
A. I. R. 1937 Mad. 716.

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finding that an offence or offences have been committed by the person against whom the complaint is made, and it is not sufficient to record a finding of two alternative offences which are mutually inconsistent. *Pitambar v. Emperor*. 28 Cr. L. J. 888 :

104 I. C. 904 : A. I. R. 1927 All. 567.

—S. 476—Finding of expediency.

Before making complaints under S. 476, Courts should expressly record a finding that in their opinion a prosecution is expedient in the interests of justice. *In re : Chilukuri Ramayya*. 33 Cr. L. J. 960 :

140 I. C. 323 : 1932 M. W. N. 1081 :

63 M. L. J. 670 : 36 L. W. 636 :

56 Mad. 157 : I. R. 1932 Mad. 851 :

A. I. R. 1933 Mad. 67 (1).

—S. 476—Finding of expediency.

Complaint under S. 476—Court should record finding that it is expedient in interest of justice that enquiry should be made—Absence of such express finding, however, will not necessarily invalidate complaint. *Superintendent and Remembrancer of Legal Affairs, Bengal v. Ijjatulla Paikar*. 32 Cr. L. J. 842 :

132 I. C. 160 : 53 C. L. J. 177 :

35 C. W. N. 400 : 58 Cal. 1117 :

I. R. 1931 Cal. 544 :

A. I. R. 1931 Cal. 190.

—S. 476—Finding of expediency.

Express finding that it was expedient in the interests of justice that an enquiry should be made is essential. *Suraj Lal v. Sheo Shankar Lal*. 35 Cr. L. J. 908 :

149 I. C. 201 : 11 O. W. N. 683 :

6 R. O. 524 : A. I. R. 1934 Oudh 272.

—S. 476—Finding of expediency.

In the case of an order for prosecution under S. 476, the absence of a finding by the lower Court that it is expedient in the interest of justice that an enquiry should be made is not in itself fatal to the proceedings. *Nawalal Jha v. Emperor*. 37 Cr. L. J. 193 :

159 I. C. 817 : 2 B. R. 112 :

8 R. P. 313 : A. I. R. 1936 Pat. 162.

—S. 476—Finding of expediency.

Order making complaint—Finding that prosecution was necessary in interests of justice is necessary. *Satis Chandar Maulik v. Emperor*. 32 Cr. L. J. 237 :

129 I. C. 110 : I. R. 1931 Cal. 126 :

A. I. R. 1930 Cal. 705.

—S. 476—Finding of expediency.

The first question which the officer intending to act under S. 476 should put to himself is the question whether it is expedient in the interests of justice that an enquiry should be made. *Ghanshandas Pursumal v. Emperor*. 35 Cr. L. J. 519 (2) :

147 I. C. 1019 : 6 R. S. 171 :

A. I. R. 1933 Sind 412.

Cr. P. CODE (1898), S. 476**—S. 476—Finding of expediency.**

Where offence is of considerable gravity, expediency though not recorded, must be presumed. *Nawabali Khan v. Chandrakanta Banerji*. 32 Cr. L. J. 1236 :

134 I. C. 914 (b) : 58 Cal. 965 :

I. R. 1931 Cal. 914 (2) :

A. I. R. 1931 Cal. 760.

—S. 476—Grounds of inquiry—Duty of Court.

If a Court believes that a false charge has been made in proceedings before it, and there is a fair possibility that enquiry will lead to the discovery of evidence sufficient to make a conviction highly probable, these are grounds for an enquiry of which S. 476, Cr. P. C., speaks, and the Court fails in its duty if it does not hold an enquiry of its own motion under that section and leaves it to be taken by a party under S. 195, Cr. P. C. *Tulsiram v. Tilokchand*. 23 Cr. L. J. 605 :

68 I. C. 829.

—S. 476—Grounds for interference—Discretion as to making complaint under S. 476 exercised by Single Judge of High Court—Interference with, by Appellate Bench in appeal.

The power to lay a complaint under S. 476, Cr. P. C., is a discretionary power, and an Appellate Bench of the High Court would not interfere with the exercise of his discretion by a single Judge of the Court unless it could be shown that the discretion had been exercised under some misapprehension or error which was plain on the face of the record. *Tan Ba Chang v. Registrar, Original Side, High Court*. 41 Cr. L. J. 515 :

187 I. C. 754 : 1940 Rang. 12 :

12 R. Rang. 354 : A. I. R. 1940 Rang. 104.

—S. 476—Grounds for interference.

The High Court will not interfere with an order under S. 476, if the lower Appellate Court has power to act under that section even if the High Court takes another view of the matter. *Muhammad Sadruddin v. Ahsan Husain*. 37 Cr. L. J. 16 :

158 I. C. 984 : 18 N. L. R. 40 :

8 R. N. 114.

—S. 476—Illegality—Order, declining to proceed—Revision—Subsequent passing of an order.

Where a Magistrate at first declined to pass an order under S. 476, Cr. P. C., in a case, but subsequently on the motion of the opposite party, passed the order: *Held*, that that was quite sufficient to make the later order one passed in review of the earlier order and hence illegal. *Kulandai v. Ramasawmi Chetty*. 12 Cr. L. J. 556 :

12 I. C. 644 : 10 M. L. T. 389 :

1911 2 M. W. N. 431.

—S. 476—Illegality—Order passed before cross-examination of prosecution witnesses—Illegality.

Where a Magistrate passed an order under S. 476, Cr. P. C. before the prosecution witnesses

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which action under the section should be taken. It is desirable, however, where possible, to take steps under the section very soon after the end of the trial or proceedings. *In re: Jethmal Wadhmal.*

15 Cr. L. J. 541 ;
24 I. C. 949 : 7 S. L. R. 187 :
A. I. R. 1914 Sind 129.

-----S. 476—Delay, effect of—Action taken by Munsif on the suggestion of District Judge—Illegality.

Where, in execution proceedings, a District Munsif passed an order under S. 476, Cr. P. C., not of his own motion but on the suggestion of the District Judge, 10 days after the termination of the execution proceedings: *Held*, that the delay in passing the order brought the case within the principle of the rule in *Aiyakannu Pillai v. Emperor*, 32 Mad. 49 : 1 I. C. 597 : 4 M. L. T. 401 : 19 M. L. J. 49 : 9 Cr. L. J. 41, and that as the Munsif did not contemplate taking any action under S. 476 at the termination of the proceedings, the order was illegal and must be set aside. *In re: Ratna Pillai.*

12 Cr. L. J. 496 :
12 I. C. 216 : 10 M. L. T. 333.

-----S. 476—Delay, effect of.

Proceedings under S. 476, Cr. P. C., should not be postponed till after the disposal of the original case. Where, at the request of the petitioner, the Joint Magistrate transferred a criminal case pending against him from the file of the Salur to that of the Bobbili Magistrate, but by an order, under S. 476, deferred taking action against him till the disposal of the case by the Bobbili Magistrate: *Held*, that the delay was fatal to the legality of the order. *Cheduluru Dingaraya v. Emperor.*

12 Cr. L. J. 327 :
10 I. C. 623 : 1911 2 M. W. N. 98.

-----S. 476—Delay—Effect of.

The long pendency of proceedings under the section or unreasonable delay in passing orders will not *per se* render the sanction illegal, but it is open to the party aggrieved to prove that he was prejudiced by the delay and that sanction should be revoked on that ground. *Kurichetti Venkatasubbayya v. Emperor.*

20 Cr. L. J. 172 :
49 I. C. 492 : 25 M. L. T. 18 :
9 L. W. 74 : 1919 M. W. N. 112 :
A. I. R. 1919 Mad. 896.

-----S. 476—Discretion.

Usually it would not be expedient to prosecute a witness who had made contradictory statements in the course of the same deposition, because the presumption is that the witness is trying to correct a false statement by his subsequent statement, and in such cases, *locus poenitentiae* should be given to the witness, but this does not apply where different depositions are recorded after an interval of time. *Local Government v. Jit Singh.*

36 Cr. L. J. 935 :
156 I. C. 257 : 31 N. L. R. 308 :
7 R. N. 230 : A. I. R. 1935 Nag. 145.

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-----S. 476—Duty of Court.

A Civil Court making an enquiry under S. 478, Cr. P. C. should proceed in the same way as a Magistrate would do in enquiring into a case before commitment, i.e., it should take the evidence of the witnesses for the prosecution in presence of the accused and then examine the latter, and having done this, should frame the charge-sheet and after explaining the same to the accused, should record the order of commitment. *Emperor v. Babu Prosad.*

19 Cr. L. J. 40 :
42 I. C. 1000 : 15 A. L. J. 805 :
40 All. 32 : A. I. R. 1918 All. 415.

-----S. 476—Duty of Court.

A Court should ordinarily wait till the whole evidence has been let in before taking proceedings under S. 476, Cr. P. C., though it cannot be laid down as an invariable rule that proceedings should be deferred till the conclusion of the case. A departure from the rule will not sustain an objection of 'illegality' or 'want of jurisdiction' under S. 115, C. P. C. The sending by a Court of a witness to the Magistrate before the judicial proceedings are over, would be acting with impropriety, which means 'irregularity' in all but exceptional cases. There is no objection to Judicial Officers suggesting compromises in suitable cases, though it is possible that a few lazy Judicial Officers might suggest them, not in order to do good to the litigants, but in order to save themselves the trouble of deciding suits in the regular course. If a Court is informed of the possibility of an adjustment of the disputes between the parties, it is its duty to ask the parties and their Pleaders to retire for consultation and then take up other work. *Emperor v. Karri Venkanna Patrudu.*

17 Cr. L. J. 515 :
36 I. C. 483 : 20 M. L. T. 252 :
31 M. L. J. 440 : 4 L. W. 383 :
A. I. R. 1917 Mad. 971.

-----S. 476—Duty of Court—Appeal, pendency of, against findings—Stay of criminal proceedings, expediency of.

Proceedings in Criminal Court initiated as the result of an order by a Court under S. 476, Cr. P. C., should be stayed pending the disposal of an appeal against the order of decree in respect of which the order was passed under the section. The Court to which the application for stay of proceedings is presented, should not prejudice the appeal by making any declaration as to the correctness or otherwise of the order appealed against to determine whether the prosecution should be postponed or not, but should leave it to the Court which has cognizance of the appeal, staying proceedings meantime. *Debi Mahto v. Emperor.*

18 Cr. L. J. 125 :
37 I. C. 477 : 20 C. W. N. 1116 :
A. I. R. 1916 Pat. 7.

-----S. 476—Duty of Court—Complaint by Court—Delay in making complaint, effect of.

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———S. 476—Initiation of proceedings.

A Court has no jurisdiction to make a complaint under S. 476 in respect of an alleged forgery in a document committed after the termination of the proceedings in which it was filed, though the document was still in the custody of the Court. *Subbarayudu v. Gopayya*.

- 33 Cr. L. J. 788 :
139 I. C. 482 : 62 M. L. J. 310 :
1932 M. W. N. 241 :
35 L. W. 319 : 55 Mad. 531 :
I. R. 1932 Mad. 728 :
A. I. R. 1932 Mad. 290.

———S. 476—Initiation of proceedings.

Accused suspected of fabricating evidence in case under S. 4, U. P. Adulteration Act—Direction of proceedings for offence under S. 193, Penal Code, is premature. *Bhagirath Lal v. Emperor*.

- 36 Cr. L. J. 379 :
153 I. C. 619 : 7 R. A. 544 :
1934 A. L. J. 1064 :
4 A. W. R. 535 :
A. I. R. 1934 All. 1017.

———S. 476—Initiation of proceedings.

Application under S. 476 originating in Civil Court should be dealt with according to S. 115, C. P. C., or provisions of Chap. XXXI may apply to such cases where C. P. C., does not apply. *Surendra Nath v. Susil Kumar*.

- 33 Cr. L. J. 38 :
134 I. C. 1063 : 59 Cal. 68 :
35 C. W. N. 775 :
I. R. 1932 Cal. 23 :
A. I. R. 1931 Cal. 604.

———S. 476—Initiation of proceedings.

Complaint by private person under S. 193, Penal Code, is not cognizable, and conviction based on such complaint, is not perfected by Ss. 532 and 527 and should be set aside. *In re : Ravanappa Reddi*.

- 33 Cr. L. J. 361 :
136 I. C. 779 : 35 L. W. 180 :
1931 M. W. N. 1314 :
55 Mad. 343 : 62 M. L. J. 735 :
I. R. 1932 Mad. 315 :
A. I. R. 1932 Mad. 253.

———S. 476—Initiation of proceedings.

Complaint under S. 476—Magistrate legally talking cognizance of complaint can proceed against any one proved to be concerned in offence, whether named in order or not. *Nitai Charan Ghose v. Kshetra Nath Ganguly*.

- 37 Cr. L. J. 521 :
162 I. C. 102 : 40 C. W. N. 573 :
63 Cal. 819 : 8 R. C. 562 :
A. I. R. 1936 Cal. 147.

———S. 476—Initiation of proceedings—
Second application.

Dismissal of an application for making complaint under S. 476 does not bar the second application. *Kalastri Mudali v. Emperor*.

- 33 Cr. L. J. 272 :
136 I. C. 313 : 61 M. L. J. 686 :
1931 M. W. N. 1048 :
34 L. W. 629 : I. R. 1932 Mad. 281 :
A. I. R. 1932 Mad. 130.

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———S. 476—Initiation of proceedings—False complaint to Police and Magistrate—Dismissal by Police, whether sufficient to initiate proceedings for preferring false charge—Sanction of Magistrate, whether necessary.

A person who has preferred a false charge to the Police and has also taken the same facts by way of complaint to a Magistrate, cannot be prosecuted under S. 211, Penal Code, for preferring the false charge, without a complaint of the Magistrate as required by S. 476, Cr. P. C. *Murugan v. Gutha Rami Naidu*.

- 28 Cr. L. J. 849 :
104 I. C. 625 : 36 M. L. T. 103 :
1927 M. W. N. 694 :
26 L. W. 405 : 53 M. L. J. 455 :
A. I. R. 1927 Mad. 851.

———S. 476—Initiation of proceedings.

It is somewhat anomalous that the successor of a Judge, who has believed the evidence of a witness should order the prosecution of that same witness for perjury. *Rahmat Ali v. Emperor*.

- 32 Cr. L. J. 652 :
131 I. C. 95 : I. R. 1931 Lah. 367 :
A. I. R. 1931 Lah. 404.

———S. 476 — Initiation of proceedings—
Offence committed before one Magistrate—Succeeding Magistrate, if can order prosecution—
Jurisdiction.

A Deputy Magistrate, being of opinion that a Police Officer appearing as a witness in a case before him had not told the truth, left him to the mercy of the Superintendent of Police and of the District Magistrate. The District Magistrate remarked that the Magistrate should take proceedings under S. 476, Cr. P. C. The Deputy Magistrate having been transferred, the succeeding Deputy Magistrate ordered the prosecution of the Police Officer under S. 193, Penal Code: *Held*, that the succeeding Deputy Magistrate had no jurisdiction to initiate the proceedings under S. 476 inasmuch as the offence under S. 193, Penal Code, was neither committed before him nor was brought to his notice in the course of any judicial proceeding. *Ajudhia Saran Singh v. Emperor*.

- 17 Cr. L. J. 40 :
32 I. C. 328 : 2 O. L. J. 546 :
A. I. R. 1916 Oudh 125.

———S. 476—Initiation of proceedings.

Offences under Ss. 211 and 193, I. P. C.—Court before whom offence is committed can take action—Complaint not made by such Court—Application to District Magistrate to make complaint—District Magistrate has no jurisdiction—Sessions Court can take action only under S. 476-B. *Wajid Ali v. Emperor*.

- 35 Cr. L. J. 824 :
148 I. C. 1075 : 8 Luck. 638 :
11 O. W. N. 490 : 6 R. O. 495 :
A. I. R. 1934 Oudh 344 (2).

———S. 476—Initiation of proceedings.

Order after enquiry that complaint should be made against applicant—Court not expressing in so many words that a prosecution should

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—S. 476—*Duty of Court—Proceedings under S. 476, when should be started—Preliminary enquiry, whether necessary—Enquiry, nature*

Proceedings under S. 476, Cr. P. C., should not be taken until the very close of the case in which false evidence has been given, inasmuch as if taken earlier, such action is likely to intimidate subsequent witnesses and defeat the object of the trial. As a rule, the Magistrate should not make up his mind to start proceedings under S. 476 against a witness before he has heard all the evidence in the case. The holding of a preliminary enquiry under S. 476 is discretionary, but it should be held, wherever it appears to be necessary to hold it in the interests of justice, and wherever it is held, it must be a real enquiry and not merely a formal one, ample opportunity being given to the accused to show cause why he should not be prosecuted. *Ramoo Singh v. Emperor*. 21 Cr. L. J. 29 : 54 I. C. 173 : 1920 Pat. 61 : A. I. R. 1920 Pat. 225.

—S. 476—*Duty of Court—Prosecution under S. 211, Penal Code.*

Prosecutions under S. 211, Penal Code, are not to be undertaken lightly and although the absence of a finding that the prosecution is necessary in the interest of justice, is not necessarily fatal, it is certainly desirable that Courts dealing with these matters should consider whether an attempt to use the law in aid of a private grudge is being made and whether the Courts should allow themselves to become the instrument of a private grudge and also what facts can be proved and whether these facts are likely to be sufficient to support the conviction. As regards the facts that can be proved, it is obvious that a conviction cannot be based merely on improbability or on what a particular officer suspects. *Bachu Singh v. Tribeni Sah*. 40 Cr. L. J. 157 : 179 I. C. 167 : 11 R. P. 328 : 5 B. R. 203 : A. I. R. 1939 Pat. 178.

—S. 476—*Duty of Court—Sanction to prosecute—Perjury—Forgery—Sanction to private persons.*

It is the duty of every Court to take action of its own motion in every apparent case of forgery or perjury which is committed before it, or is brought to its notice, and to institute proceedings in all such cases if there is a reasonable probability of the prosecution resulting in a conviction. If a Court holds that a case is proper one for prosecution but that a sanction to prosecute should not be granted to a private person, it is its duty to take action under S. 476, Cr. P. C. *Ganga Prasad v. Shayamlal*. 23 Cr. L. J. 509 : 68 I. C. 45 : A. I. R. 1923 Nag. 180.

—S. 476—*Duty of Court.*

The absence of an authority whose duty it is to decide upon and undertake prosecutions

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under S. 211 is a flaw in the Criminal Procedure in this country. There is no higher duty laid upon a Court of Law than that of enforcement of a strict adherence to truth. Where one of two Judges constituting a Bench is clearly of opinion that the case under consideration is a proper one for the institution of further proceedings, it would be improper for his colleague to refuse to concur. *Hansraj Singh v. Bhagwana*. 18 Cr. L. J. 680 : 40 I. C. 328 : A. I. R. 1917 All. 399.

—S. 476—*Duty of Court—Time for making order under the section.*

An order under S. 476, Cr. P. C., should be made either at the close of the proceedings or so shortly thereafter that it may be reasonably said that the order is part of the proceedings. *In re : Rahimatulla*. 7 Cr. L. J. 54 : 3 M. L. T. 79 : 17 M. L. J. 584 : 31 Mad. 140.

—S. 476—*Duty of Court.*

Tribunal making complaint should come to a judicial finding that allegations made before it are *prima facie* false. *Bhawani Sahai v. Emperor*. 33 Cr. L. J. 409 : 137 I. C. 157 : 33 P. L. R. 174 : 13 Lah. 568 : I. R. 1932 Pat. 299 (2) : A. I. R. 1932 Lah. 246.

—S. 476—*Duty of Court.*

Where a Sub-Judge gave notice to the accused to show cause why sanction should not be granted, under S. 195, Cr. P. C., for his prosecution but at the inquiry raised the issue whether sanction ought to be granted or case committed to the Sessions, and finally passed an order of committal : *Held*, that the procedure followed by the Sub-Judge in holding a dual kind of inquiry is not what is contemplated by the Cr. P. C. If he thought that this was a matter in which he ought to pass an order of committal instead of granting a sanction to prosecute, he ought to have proceeded from the beginning under S. 476, Cr. P. C. *In re : Sitaram Shivabhat*. 1 Cr. L. J. 746 : 6 Bom. L. R. 578.

—S. 476—*Duty of Court.*

Where a Subordinate Judge allows proceedings under S. 195 to be dropped without passing any order of rejection, it is open to the Public Prosecutor to move the Sessions Judge to take action under S. 476-A. An appeal from the order of the Subordinate Judge lies to the Sessions Judge. It is for the Court acting under S. 476 to make any inquiry that is necessary and then to make a complaint against the person or persons, who he is satisfied, have committed an offence. *Chamari Singh v. Public Prosecutor of Gaya*. 26 Cr. L. J. 170 (b) : 83 I. C. 730 : 6 P. L. T. 225 : 4 Pat. 24 : A. I. R. 1925 Pat. 330.

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—S. 476—*Irregularity—Fabrication of evidence and forgery committed by a Patwari in Tahsil records—District Judge directing prosecution of Patwari on basis of Departmental enquiry—No inquiry by District Judge.*

A Patwari appeared as a witness in a civil case in the Court of a District Judge. After the decision of the case, the District Magistrate had a Departmental inquiry made which went to show that the Patwari had fabricated false evidence and had also forged a signature in his diary in the Tahsil records. Upon this, the District Magistrate applied to the District Judge for sanction to prosecute the Patwari for the offence of perjury and forgery, and along with his application for sanction, forwarded the record of the Departmental inquiry. The District Judge on appeal of this record issued notice to the Patwari, and after hearing him, directed his prosecution on the basis of the Departmental inquiry: *Held*, (1) that the District Judge had no jurisdiction to order prosecution in respect of matters which had occurred in the Tahsil and not in his Court; (2) that, assuming the matters to have been brought to the notice of the District Judge in the course of a judicial inquiry, as the record of the Departmental inquiry was not evidence in the matter of the sanction applied for by the District Magistrate, the District Judge acted with material irregularity in ordering prosecution without having himself made an enquiry. *Ganesh Pershad v. Emperor.*

13 Cr. L. J. 43 :

13 I. C. 283.

—S. 476—*Irregularity—Trial not by nearest Magistrate, a mere irregularity.*

The provisions of S. 476, Cr. P. C., requiring the offender to be sent to the nearest Magistrate of the First Class are merely directory and not mandatory, and a trial of the offender by a Magistrate of the First Class having local jurisdiction, who is not the nearest Magistrate, is a mere irregularity curable under S. 537 (b), Cr. P. C. *Imperator v. Newand.*

8 Cr. L. J. 209 :

1 S. L. R. 84.

—S. 476—*Irregularity—Successor of trying Judge, whether can order prosecution—Omission to make formal complaint, effect of.*

Under S. 476, Cr. P. C., the power to order prosecution may be exercised by any Judge of the Court concerned and not only by the Judge who tried the case. The fact that instead of making a formal complaint, the Court sanctioning the prosecution merely directs a copy of its order to be sent to the District Magistrate for necessary action does not vitiate the order inasmuch as the defect is merely formal. *Maung Shwe Phwe v. Ma Me Hmoke.*

26 Cr. L. J. 500 :

85 I. C. 244 : 3 Bur. L. J. 344 :

3 Rang. 48 : A. I. R. 1925 Rang. 195.

—Ss. 476, 537—*Irregularity—Enquiry, order directing—Delay—Jurisdiction.*

Accused lodged a complaint against certain

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Police Officers before a Magistrate who, after examining the accused, recorded that the complaint was false and ordered the latter to show cause why he should not be prosecuted under S. 182, Penal Code. The Magistrate was then transferred and his successor sent the case to another Magistrate for enquiry. Subsequently, on 6th December, the complaint was dismissed under S. 203, Cr. P. C. On the 4th of February following, the Magistrate, on the application of a Police Officer, ordered the prosecution of the accused under S. 211, Penal Code: *Held*, (1) that the delay which occurred in making an order under S. 476 did not deprive the Magistrate of his jurisdiction to proceed under the section; (2) that if the procedure adopted by the Magistrate in sending the case to another Magistrate for enquiry and report was irregular, the irregularity was cured under S. 537, Cr. P. C. If in a criminal proceeding an irregularity takes place and is allowed to pass unnoticed, and fresh prosecution and conviction follow founded upon the irregularity, then after conviction the accused party cannot raise the intermediate irregularity in an antecedent proceeding as a ground for challenging the validity of the subsequent conviction. *Baij Nath Singh v. Emperor.*

18 Cr. L. J. 52 :

37 I. C. 36 : 1 P. L. J. 553 :

1918 Pat. 30 : A. I. R. 1917 Pat. 15.

—Ss. 476, 537—*Irregularity—Order directing prosecution—Notice to accused, whether necessary—Preliminary inquiry, failure to make, whether vitiates order.*

Before making an order under S. 476, Cr. P. C., the Court is not bound to issue notice to the accused. Where a Court after very careful consideration arrives at the conclusion that an order under S. 476 is called for, and that no preliminary inquiry is necessary, the omission to make such inquiry is a mere irregularity within S. 537 of the Code. *Ulfat Rai v. Emperor.*

21 Cr. L. J. 276 :

55 I. C. 292 : A. I. R. 1919 All. 15.

—Ss. 476, 537—*Irregularity.*

The Chief Presidency Magistrate, Calcutta, being of opinion that a witness in a trial before him had been guilty of perjury, made a complaint in writing under S. 476, Cr. P. C., and forwarded the same to himself as the Chief Presidency Magistrate and immediately afterwards transferred the same to the Third Presidency Magistrate for disposal, who committed the accused to the High Court Sessions for trial. The accused alleged that the commitment was illegal, but his objection was overruled and he was convicted: *Held*, that although technically the Chief Presidency Magistrate made a mistake, the procedure adopted by him was substantially correct as he made the complaint and received it, and, in the absence of any prejudice caused to the accused, it was nothing worse than an irregularity which could be disregarded. *Colin Mackenzie Mackay v. Emperor.*

27 Cr. L. J. 385 :

93 I. C. 33 : 30 C. W. N. 276 :

43 C. L. J. 310 : 53 Cal. 350 :

A. I. R. 1926 Cal. 470.

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———Ss. 476, 476-B—Duty of Superior Court—Complaint, refusal to make—Superior Court, reversal of order by—Reasons for reversal.

Where a Superior Court reverses an order of a Trial Court refusing to proceed under S. 476, Cr. P. C., sufficient reasons must be given by the former Court as to why it thinks that the discretion was not properly exercised by the Trial Court. *Kalishadhan Addya v. Nani Lal Hazra*. 26 Cr. L. J. 1307 : 89 I. C. 251 : 52 Cal. 478 : A. I. R. 1925 Cal. 721.

———S. 476—Evidence—Applicant, if entitled to adduce evidence outside record of proceedings out of which application arises, to show that evidence, in those proceedings was false.

In deciding whether it is in the interests of justice that an inquiry should be made, the Court is not confined to the record of the proceedings, but is entitled to take into account and consider information otherwise required. The applicant is entitled to adduce evidence outside the record of the proceedings out of which the application arises to show that evidence given in those proceedings was false. *Bhagwandas Nairandas v. D. D. Patel & Co.*

41 Cr. L. J. 526 :
187 I. C. 867 : 42 Bom. L. R. 231 :
I. L. R. 1940 Bom. 403 : 12 R. B. 495 :
A. I. R. 1940 Bom. 131.

———S. 476—Evidence—Order finding complaint based on suspicion, propriety of—Reasonable probability of conviction, whether necessary—Measure of proof in Civil and Criminal Courts, difference between.

Before a Court is justified in making an order under S. 476, Cr. P. C., it ought to have before it direct evidence fixing the offence upon the person whom it is sought to charge ; it is not sufficient that the evidence in the earlier case may induce some kind of suspicion about his guilt. The nature of proof required to establish a case of forgery in a Civil Court is very different from that required in a Criminal Court to secure a conviction for forgery. *Adkibai v. Parbatibai*.

30 Cr. L. J. 407 :
115 I. C. 174 : I. R. 1929 Nag. 110.

———Ss. 476, 476-B—Evidence—Court hearing appeal under S. 476-B—Such Court, if can remand case for further evidence.

A Court hearing an appeal under S. 476-B, Cr. P. C., can take evidence for a proper decision of the appeal before it and it cannot set aside the order of the Court of first instance making a complaint or refusing to make one, and remand the case to the Court for further evidence being taken and the case being decided afresh. An Appellate Court cannot invoke the aid of its inherent jurisdiction in ordering a Subordinate Court to do something

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in a case. In the first place, new categories of inherent jurisdiction should not be invented, particularly if prior to 1923 no appeal was at all permissible. In the second place, the inherent jurisdiction is generally confined to the proceedings before the Appellate Court and does not include an authority to issue orders to the Court below directing it to do something in the case. If such inherent powers were invoked, then the provisions of the Code would become quite unnecessary. *Manni Lal v. Emperor*. (F. B.) 38 Cr. L. 561 : 168 I. C. 434 : 1937 A. L. J. 192 : 9 R. A. 639 : I. L. R. 1937 All. 517 : 1937 A. W. R. 290 : A. I. R. 1937 All. 305.

———S. 476—Exercise of discretion—Order directing prosecution based on inadmissible evidence, legality of.

An order under S. 476, Cr. P. C., directing the prosecution of a person for forgery should not be made on the basis of a piece of evidence which is inadmissible and which cannot be legally regarded as evidence at all, especially when there is positive legal evidence against it. The power conferred by S. 476, Cr. P. C. on Courts should be exercised with great caution and care and with due regard to the evidence on which the order is sought to be based. *Peary Lal v. Emperor*. 24 Cr. L. J. 900 : 75 I. C. 148 : 21 A. L. J. 399 : A. I. R. 1923 All. 601.

———S. 476—Exercise of discretion by High Court.

The only way in which the validity of an order under S. 476 can be challenged is by invoking the revisional jurisdiction of the High Court, but inasmuch as the exercise of that jurisdiction is purely discretionary, such order cannot be challenged as a matter of right. Therefore, a person against whom an order under S. 476 is made is not precluded from challenging the validity of the order in the subsequent trial or in an appeal from the conviction obtained in the subsequent trial. *Ramoo Singh v. Emperor*. 21 Cr. L. J. 29 : 54 I. C. 173 : 1920 Pat. 61 : A. I. R. 1920 Pat. 225.

———S. 476—Expert evidence.

It is not safe to order prosecutions for forgery where there is no other testimony than that of an expert to support it. The same reasons apply to the case of a Court considering the advisability of lodging a complaint as justify the grant or refusal of sanction to prosecute. *Budhabai v. Alibai*.

26 Cr. L. J. 796 (b) :
86 I. C. 428 : A. I. R. 1925 Nag. 358.

———S. 476—Finding of alternative offences—Complaint, legality of—Duty of Judge to record definite finding before making complaint.

Before making a complaint under S. 476, Cr. P. C., the Court should come to a definite

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ment-debtors with several others prevented the attachment, beat the decree-holder, and threatened to beat the peon. The peon reported the matter to the Munsif and the decree-holder also complained before him. Upon this the Munsif enquired into the matter and acting under S. 476, Cr. P. C., directed the offenders to be prosecuted under S. 183, I. P. C. : *Held*, that the Munsif had power to direct the prosecution as he did. He was engaged in a proceeding in an execution case, that such a proceeding was a judicial proceeding; and that the facts had come to his knowledge in the course of such proceeding. *Bhola Nath Dey v. Emperor*.

3 Cr. L. J. 142 :
10 C. W. N. 55.

—————**S. 476—Judicial proceedings—Order directing prosecution, when to be made.**

Where the facts constituting an offence are not brought to the notice of a Magistrate in the course of a judicial proceeding, he has no authority to act under S. 476. *Ladha Singh v. Emperor*.

16 Cr. L. J. 251 :
28 I. C. 107 : 13 P. R. 1915 Cr. :
20 P. W. R. 1915 Cr. : 184 P. L. R. 1915 :
A. I. R. 1915 Lah. 259.

—————**S. 476—Judicial proceedings—Order of prosecution—Penal Code, S. 211—Charge laid before the Police—Police report, directing charge as false.**

A criminal proceeding was instituted by a person before the Police who reported the case to be false, and the matter coming on before a Magistrate empowered to dispose of Police reports, he made an order making over the case to another Magistrate for judicial inquiry. This Magistrate after holding a judicial inquiry as directed submitted a report, upon which the other Magistrate made an order to the following effect, *viz* : "The complainant's charge has been established to be false and hence no process shall be issued against the accused and the complainant shall be proceeded with under S. 211, I. P. C." and upon prosecution of the complainant, she was convicted under S. 211, Penal Code : *Held*, that the offence of instituting a false complaint not having been committed before the Magistrate who ordered the prosecution of the petitioner, or brought to his notice in the course of judicial proceedings, the prosecution of the petitioner was bad and contrary to law and the proceedings must be quashed : *Held*, also, that the proper course, in such a case, should have been to direct the Police to lodge a complaint. *Abdul Rahman v. Emperor*.

7 Cr. L. J. 338 :
7 C. L. J. 371.

—————**S. 476—Judicial proceedings—Proceeding before Deputy Commissioner as Chairman, District Board, whether judicial proceeding.**

A proceeding before a Deputy Commissioner in his capacity as Chairman of a District Board is not a judicial proceeding within the meaning of S. 476, Cr. P. C., consequently an order passed under that section by a Deputy Commissioner as Chairman of a District Board

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directing a prosecution is invalid. *Emperor v. Kunwar Bahadur*. 21 Cr. L. J. 694 (a) :
57 I. C. 934 : 23 O. C. 136 :
2 U. P. L. R. (J. C.) 133 :
A. I. R. 1920 Oudh 199.

—————**S. 476—Judicial proceedings—Proceedings by a Revenue Officer as distinguished from a Revenue Court.**

Where, under orders of the Deputy Commissioner, a Deputy Collector made inquiries, which resulted in the finding that the applicant was in the habit of giving no receipts for rent received and did not record the correct realization in the *Patwari's* papers, and the Deputy Collector thereupon passed an order under S. 476, Cr. P. C., directing that proceedings under S. 177, Penal Code, should be instituted against the applicant : *Held*, that the inquiry was one under S. 46, Land Revenue Act, and the Deputy Collector in making the inquiry was acting merely as a Revenue Officer as defined in S. 4 (9) of U. P. Land Revenue Act, III of 1901, and not as a Revenue Court, nor were his proceedings judicial proceedings within the meaning of S. 476, Cr. P. C. The order passed by the Deputy Collector was, therefore, without jurisdiction and must be set aside. *Prag Tewari v. Emperor*.

11 Cr. L. J. 514 :
7 I. C. 612 : 13 O. C. 198.

—————**S. 476—Judicial proceedings—Prosecution, order for—Cognizance in the course of a judicial proceeding—Execution proceedings.**

The powers conferred by S. 476, Cr. P. C. can only be exercised if the offence in respect of which a prosecution is ordered have come to the cognizance of the Court in a judicial proceeding. Execution proceedings subsequent to the trial of a suit are not judicial proceedings. *Kanto Ram Das v. Gobardhan Das*.

7 Cr. L. J. 159 :
35 Cal. 133.

—————**S. 476—Judicial proceedings—Prosecution, sanction for.**

A Court directed the attachment of certain movable properties in execution of a decree. When the Court Officers went to effect the attachment, they were resisted by the judgment-debtors. The Court thereupon held an enquiry and made an order under S. 476, Cr. P. C., for prosecution of the petitioners under S. 183, Penal Code : *Held*, that the Court was quite competent to make the order, inasmuch as the facts on which it directed the prosecution came to its knowledge while it was engaged in a judicial proceeding. *Dakhineswar Misra v. Haris Chundra*.

10 Cr. L. J. 564 :
4 I. C. 368 : 10 C. L. J. 450.

—————**S. 476—Judicial proceedings—Report to Police—Order directing prosecution, whether can be passed.**

A report was made to Police of an offence, but it was found to be a mere accident. The Sub-Divisional Magistrate called upon the person who made report to show cause why

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were cross-examined and without giving the defence an opportunity of showing that the prosecution evidence was false: *Held*, that the order was illegal and should be set aside. *In re: Kolli Appiah*.

13 Cr. L. J. 144 :
13 I. C. 832 : 11 M. L. T. 191 :
1912 M. W. N. 400.

————S. 476—*Illegality of order—Court incompetent to take action after termination of judicial proceedings.*

During the pendency of an execution case, on the 18th July 1911, it was brought to the notice of the Court that an offence under S. 186, Penal Code, had been committed. The decree-holder, however, applied for grant of sanction to prosecute the opposite party in respect of the alleged offence. The Court, on the 25th November 1911, took action under S. 476 Cr. P. C. : *Held*, that the order under S. 476 was illegal and should be set aside. *Ponnuswami Pillai v. Chokkalingam*.

14 Cr. L. J. 624 :
21 I. C. 672 : 25 M. L. J. 593 :
1913 M. W. N. 1002 : 14 M. L. T. 512.

————S. 476—*Illegality of order—Munsif directing prosecution at the suggestion of District Judge—Offence committed before Munsif and not before District Judge—Order illegal.*

A Munsif made an order under S. 476, Cr. P. C. directing the prosecution of a person for an offence committed before him. The order was not made by himself on his own responsibility but at the suggestion of the District Judge who himself had no jurisdiction to pass such order : *Held*, that the order of the Munsif was illegal inasmuch as it was only nominally his and the "opinion" was the "opinion of the District Judge." *Riazul Hasan v. Emperor*.

10 Cr. L. J. 525 :
4 I. C. 260 : 6 C. L. J. 924.

————S. 476—*Illegality of order—Order directing prosecution of plaintiff and defendant in alternative for forgery, legality of.*

An order by a Civil Court directing the prosecution of both parties to a suit for forgery, without determining which of them is *prima facie* responsible for the forgery, is illegal. *Amar Nath v. Mam Raj*.

22 Cr. L. J. 329 (a) :
61 I. C. 57 : 2 Lah. 63 :
A. I. R. 1921 Lah. 56.

————S. 476—*Illegality of order—Penal Code (Act XLV of 1860), Ss. 114, 421—Insolvency proceedings—Fraudulent transfer by insolvent—District Magistrate, direction by, to prosecute insolvent under S. 421, Penal Code—Order, legality of.*

Upon an examination of the records of an insolvency proceeding, the District Judge discovered that the insolvents and others had been guilty of fraudulent transfers. He brought the matter to the notice of the District Magistrate with a view to the persons being proceeded under S. 421/114, Penal Code. Criminal proceedings were accordingly initiated against them. On revision: *Held*, that the proceedings must be quashed, as there was no authority

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in the C. P. C., for the procedure adopted. *Mahadco Sahu v. Emperor*.

21 Cr. L. J. 56 :
54 I. C. 408 : 1 U. P. R. All. 173 :
18 A. L. J. 50 : A. I. R. 1919 All. 59.

————S. 476—*Illegality of order—Police report recommending prosecution—Accused called on to prove his case—Case not proved.*

Where upon a Police report and in the absence of a complaint, a Magistrate called upon the person who gave information to the Police of the commission of the offence, to prove the case, and upon his failure to do so, sanctioned his prosecution under S. 476, Cr. P. C. : *Held*, that the order was bad in law, inasmuch as an order under S. 476 could only be made after the person to be affected thereby had been called upon to show cause why he should not be prosecuted and an order to prove the case was altogether different from an order to show cause. *Gopal Singh v. Emperor*.

21 Cr. L. J. 381 :
56 I. C. 861 : 1 P. L. T. 135 :
A. I. R. 1920 Pat. 720.

————S. 476—*Illegality of proceedings—Penal Code, S. 193—Examination of accused on oath—Perjury—Sanction to prosecute.*

A complaint was preferred against the petitioners for criminal breach of trust. The Magistrate examined the complainant on oath in support of the allegations made in the plaint. He next examined the petitioners on oath, and being of opinion that they had perjured themselves, he granted, under S. 476, Cr. P. C., a sanction to prosecute the petitioners : *Held*, that the Magistrate was not justified in examining the petitioner on oath and his proceedings were irregular and illegal and his order under S. 476, Cr. P. C., was *ultra vires*. *In re: Trimbak Balaji Mahajan*.

4 Cr. L. J. 165 :
8 Bom. L. R. 587.

————S. 476—*"In relation to," meaning of.*

Statements made during the course of an investigation under S. 161 into an offence of murder must be held to be "in relation to" the trial in that Court within S. 476. *In re: Maromma*.

34 Cr. L. J. 92 :
140 I. C. 756 : 1933 M. W. N. 100 :
I. R. 1933 Mad. 43 :
A. I. R. 1933 Mad. 125.

————S. 476—*'In relation to,' scope of—False charge to Police—Committal of accused—Sessions Court whether competent to complain for false charge.*

A person making a false charge to the Police commits an offence 'in relation to' the proceedings in the Sessions Court to which the accused is subsequently committed for trial and the Sessions Court is, therefore, competent to make complaint in respect of such offence under S. 476. *Nazir Ahmed v. Emperor*.

28 Cr. L. J. 324 :
100 I. C. 708 : A. I. R. 1927 Cal. 478.

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—S. 476—Jurisdiction—District Registrar, whether Court.

A District Registrar, as provided in S. 195, Cr. P. C., is not a "Court" and has, therefore, no jurisdiction to make an order under S. 476. What is declared not to be a "Court" for the purpose of S. 195 is also not a Court for the purpose of S. 476. *In re : Manku Bala Patil.*

16 Cr. L. J. 106 :
27 I. C. 154 : 16 Bom. L. R. 946 :
A. I. R. 1914 Bom. 202.

—S. 476—Jurisdiction—Execution proceedings—Jurisdiction of Court to determine genuineness of decree.

On the prosecution of an application for execution of a decree alleged to have been obtained by the petitioners against the judgment-debtors, the Court has power to enquire into and decide the question of the genuineness of the decree and to order the prosecution of the petitioner if the decree is proved to be a fictitious one. The fact that it is found that there was no such decree in existence does not render the proceedings taken under S. 476, *ab initio* void or legally of non-effect. Before it can be held that an application for execution was beyond the jurisdiction of a Court, it must be proved that amount of the decree sought to be executed exceeded the pecuniary limits of the Court's jurisdiction. *Chanan v. Emperor.*

11 Cr. L. J. 90 :
5 I. C. 257 : 1 P. R. 1910 Cr. :
3 P. W. R. 1910 Cr. : 161 P. L. R. 1910.

—S. 476—Jurisdiction—Inquiry initiated and commenced by the Judge of a Court—Competency of his successor to complete inquiry and direct prosecution.

An inquiry under S. 476, initiated and commenced by the presiding Judge of a Court who, before completion thereof is transferred, cannot be continued, by his successor, as the latter is incompetent to finish the inquiry and direct a prosecution. *Muhammad Munir Khan v. Emperor.*

12 Cr. L. J. 68 :
9 I. C. 389 : 10 C. L. R. 1911 :
4 C. W. N. 1911 Cr.

—S. 476—Jurisdiction—Order under the section must show that it was part of proceedings in the trial—Jurisdiction.

An order passed by a Court under S. 476, Cr. P. C., should show that it was part of the proceedings in the trial in which the alleged offence was committed; otherwise the order should be deemed to have been made without jurisdiction. *In re : Chillashi Nanu Nair.*

10 Cr. L. J. 8 :
2 I. C. 425.

—S. 476—Jurisdiction—Private non-judicial inquiry—Magistrate, whether can give sanction.

Where a private or a personal inquiry was conducted by a Magistrate on non-judicial lines without the recording of any evidence, without cross-examination and based on unrecorded and irregular methods of taking

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testimony, and as a result of such inquiry, the Magistrate passed an order under S. 476, Cr. P. C. for the prosecution of the accused: *Held*, that the Magistrate had no jurisdiction to make the order. *Chote Lal Modi v. Emperor.*

24 Cr. L. J. 806 :
74 I. C. 710 : 1 P. L. R. 137 Cr. :
A. I. R. 1923 Pat. 542.

—S. 476—Jurisdiction—Proceeding under Complaint—Petition by informant impugning Police report and asking for trial of persons accused by him, if complaint—Procedure—Complaint referred to another Magistrate for enquiry and report, legality of.

A petition to a Magistrate by the informant impugning the Police Report on his information and asking that the persons whom he accused should be put on their trial, should always be treated as a complaint and should not be referred to another Magistrate for inquiry and report. If sent to another Magistrate it must be for disposal. An order under S. 476, Cr. P. C. by a Magistrate to whom a complaint has been referred by another Magistrate for enquiry and report is without jurisdiction. *Gangadhar Pradhan v. Emperor.*

17 Cr. L. J. 146 :
33 I. C. 626 : 20 C. W. N. 63 :
43 Cal. 173 : A. I. R. 1916 Cal. 867.

—S. 476—Jurisdiction—Prosecution for offence committed before predecessor-in-office—Practice.

The petitioner swore an affidavit, making certain allegations against a peon, in a suit pending in the Court of the Additional Munsif of R, who ordered an inquiry. On the transfer of that officer, the suit was made over to the 2nd Munsif, and the inquiry was continued by the 1st Munsif of the place who under S. 476, Cr. P. C., ordered the prosecution of the petitioner for making a false affidavit: *Held*, that the affidavit having been filed before the Additional Munsif, the 1st Munsif had no jurisdiction to make the order. *Kartik Ram Bhakat v. Emperor.*

7 Cr. L. J. 134 :
35 Cal. 114.

—S. 476—Jurisdiction—Sanction to prosecute granted by subordinate Court after decision of appeal.

During the course of an execution proceeding pending before a Munsif, the judgment-debtor filed a petition of satisfaction, which was held by the Munsif to be a forgery. The finding of the Munsif was upheld in appeal and the District Judge sent the record back to the Munsif, with the direction that he should take proceedings against the judgment-debtor under S. 476, Cr. P. C. The Munsif called upon the judgment-debtor to show cause why he should not be prosecuted for forgery and eventually directed his prosecution: *Held*, that the Munsif was competent to institute proceedings against the accused under S. 476, Cr. P. C. *Awadh Behari Lal v. Emperor.*

20 Cr. L. J. 274 :
50 I. C. 162 : A. I. R. 1919 Pat. 78.

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follow—Order is not rendered illegal. *Ibu Ali v. Emperor.* 36 Cr. L. J. 781 (1):

155 I. C. 490 : 1935 A. L. J. 395 :
7 R. A. 935 : 1935 A. W. R. 384 :
A. I. R. 1935 All. 608 (1).

—S. 476—Initiation of proceedings, stage for.

Power under S. 476 should be exercised only in course of judicial proceedings or in continuation of proceedings in course of which offence is committed. Delay in starting proceedings should not be encouraged. *Suraj Lal v. Sheo Shankar Lal.* 35 Cr. L. J. 908 :

149 I. C. 201 : 6 R. O. 524 :
11 O. W. N. 683 :
A. I. R. 1934 Oudh 272.

—S. 476—Initiation of proceedings—Private complaint.

Proceedings under S. 476 regarding the institution of a complaint ought not to be undertaken on the application of private persons unless the prosecution was clearly in the interests of the State and was reasonably certain to result in a conviction. *Suraj Lal v. Sheo Shankar Lal.*

35 Cr. L. J. 908 :
149 I. C. 201 : 6 R. O. 524 :
11 O. W. N. 683 :
A. I. R. 1934 Oudh 272.

—S. 476—Initiation of proceedings.

Proceedings under S. 476 should be initiated, if possible, by the Judge in whose presence the offence was committed. *Ghanshamdas Pursomal v. Emperor.* 35 Cr. L. J. 519 (2):

147 I. C. 1019 : 6 R. S. 171 :
A. I. R. 1933 Sind 412.

—S. 476—Initiation of proceedings, when proper.

The Court ought never to file a complaint in respect of the offences under Ss. 200, 467 and 471, Penal Code, when the matter had not been thoroughly sifted by it in the course of a regular judicial inquiry. *Gauri (Gauri Shankar) v. Emperor.*

37 Cr. L. J. 518 :
161 I. C. 602 : 8 R. O. 333 :
1936 O. L. R. 192 :
1936 O. W. N. 268.

—S. 476—Interests of justice—Penal Code (Act XLV of 1860), S. 211—Sanction to prosecute, when to be granted—Prosecutor actuated by enmity—Procedure—Court, duty of.

An application for sanction to prosecute should not be granted where it appears that the object of the applicant is not to vindicate public justice but to satisfy private spite. If in such a case the Court is of opinion that proceedings ought to be instituted in the interests of justice, it should proceed under S. 476. *Shiekh Sanaoo v. Emperor.*

21 Cr. L. J. 64 :
54 I. C. 416 : A. I. R. 1919 All. 78.

—S. 476—Interference by High Court.

The High Court has power to interfere in revision with an order under S. 476, Cr. P. C., if the Magistrate acted on fanciful grounds,

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so that he could not have formed a judicial opinion at all. *Kalu v. Tikaram.*

26 Cr. L. J. 1350 :
89 I. C. 390 : A. I. R. 1925 Nag. 412.

—S. 476—Interference by Appellate Court.

Trial Court rejecting application for prosecuting person committing fraud on Court—This is discretionary and though Appellate Court has power to remand, it should not generally interfere with trial Court's discretion. *Surendra Nath v. Susil Kumar.* 33 Cr. L. J. 38 :

134 I. C. 1063 : 35 C. W. N. 775 :
59 Cal. 68 : I. R. 1932 Cal. 23 :
A. I. R. 1931 Cal. 604.

—Ss. 476, 439—Interference by High Court.

In proceedings under S. 476, Cr. P. C., the Court should record a finding that it is expedient that an inquiry should be made, but the absence of such a finding does not mean that the point has not been considered, and when it is clear that the Court has considered that an inquiry was necessary and that a *prima facie* case had been made out, the High Court should not necessarily interfere in revision because the words of S. 476 have not been copied out. *Dwarkanprasad v. Emperor.*

41 Cr. L. J. 466 :
187 I. C. 521 : 1940 N. L. J. 108 :
12 R. N. 298 : A. I. R. 1940 Nag. 227.

—S. 476-B—Interference by High Court—Appeal.

Ordinarily the High Court will not interfere in appeals under S. 476-B, Cr. P. C., except where there are extraordinary circumstances. *Sudarsan Behara v. Emperor.*

27 Cr. L. J. 1263 :
98 I. C. 111 : 8 P. L. T. 104 :
A. I. R. 1927 Pat. 87.

—S. 476—Interference in revision—Order for prosecution of plaintiff in course of trial, whether justifiable—Interference in revision—Letters Patent (Mad), S. 36.

Where in the course of the trial of a suit, a Court ordered the prosecution of a plaintiff for perjury on the basis of a statement which he made while negotiations were going on for a compromise but which he contradicted when, the negotiations having fallen through, the case was taken up and he was put in the witness-box : *Held*, (per *Abdur Rahim, J.*)—(i) that the proceedings of the Court were highly irregular and a High Court had jurisdiction to interfere under S. 115, C. P. C., as also under S. 15, High Courts Act, as the action of the Court amounted to an abuse of the powers vested in it by law ; (ii) that if the prosecution was for making two contradictory and inconsistent statements, it could not be sustained as the first statement was not made on oath. *By the Court.*—Where the Judges constituting a Division Bench differ in opinion in a matter in which their powers of revision are involved, the proceedings are regulated according to S. 36, Letter Patent, and not S. 98, C. P. C. *In re : Karris Venkanna Patrudu.*

17 Cr. L. J. 42 :
32 I. C. 330 : 18 M. L. T. 591 :
A. I. R. 1915 Mad. 1193.

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conclusion of the proceedings. *Munga Ba Hla v. Emperor*. 18 Cr. L. J. 331 : 38 I. C. 443 : A. I. R. 1917 L. Bur. 86.

———S. 476-A—Jurisdiction of District Magistrate—Penal Code, S. 193—Complaint dismissed by Bench of Magistrates—Perjury.

A complaint was dismissed by a Bench of Honorary Magistrates. The District Magistrate, to whom an appeal would ordinarily lie from the order of the Bench, took up the matter under S. 476-A, Cr. P. C. and ordered the prosecution of the complainant under S. 193 of the Penal Code : *Held*, that the District Magistrate had jurisdiction to make the order which he had passed although the original complaint was not heard by him. *Moti Ram v. Emperor*. 26 Cr. L. J. 566 : 85 I. C. 710 : A. I. R. 1925 All. 410.

———S. 476—Jurisdiction of Magistrate.

A Magistrate has no jurisdiction to stop an impending bigamous marriage. *Shafi Mohammad v. Emperor*. 87 I. C. 96.

———S. 476—Jurisdiction to file complaint—Case filed in one Court—Trial by another.

It is the Court trying the case and not the Court in which the complaint was originally filed that is competent to make a complaint under S. 476, Cr. P. C. *Tarakswar Mukhopadhyay v. Emperor*. 27 Cr. L. J. 648 : 94 I. C. 600 : 30 C. W. N. 504 : 53 Cal. 488 : A. I. R. 1926 Cal. 788.

———Ss. 476, 195 (1) (b)—Jurisdiction to make complaint—Penal Code (Act XLV of 1860), Ss. 109, 211—False charge—Abetment—Complaint against another—Jurisdiction of Court—High Court, power of, to make complaint.

A Court has jurisdiction to make a complaint under S. 476, Cr. P. C., in respect of an offence under S. 211 read with S. 109, Penal Code, against a person who was not himself a party to the proceeding which forms the subject of the complaint. S. 476, Cr. P. C., gives the High Court as a Superior Court full powers to lay a complaint in any or every case in which it appears expedient in the ends of justice to do so, and there is nothing in the Code to justify the contention that that power and jurisdiction is taken away because in case of a complaint or refusal to lay a complaint by some subordinate Court under that section, an appeal is allowed. *Emperor v. Syed Khan*. 27 Cr. L. J. 4 : 91 I. C. 36 : 3 Rang. 303 : A. I. R. 1925 Rang. 321.

———S. 476—Jurisdiction to make complaint under—Accused suborning evidence before Sub-Divisional Magistrate in committal inquiry—Sessions Judge trying case—Sub-Divisional Magistrate, if can file complaint.

The allegations were that the accused attempted to suborn evidence. The alleged attempt was during the commitment inquiry and was with reference to the commitment

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proceeding : *Held*, that the Sub-Divisional Officer who held the commitment inquiry had jurisdiction to make the complaint under S. 476, Cr. P. C. *Nund Kumar Sinha v. Emperor*. 39 Cr. L. J. 103 :

172 I. C. 237 : 4 B. R. 141 : 10 R. P. 316 : A. I. R. 1937 Pat. 534.

———S. 476—Jurisdiction to order prosecution—Offence committed by person not party or witness in case.

It is not necessary under S. 476, Cr. P. C., that the person proceeded against should be a party or a witness in the proceedings before the Court ordering his prosecution. All that is required is that such an offence, as is there referred to, should be either committed before the Court or brought under its notice in the course of judicial proceedings. *In re : Keshav Narayan Manolkar*. 13 Cr. L. J. 848 : 17 I. C. 720 : 14 Bom. L. R. 968.

———S. 476—Jurisdiction to order prosecution—Order to prosecute—Charge to be clearly specified—Power of Magistrate to order prosecution under S. 182, Penal Code.

An order under S. 476, Cr. P. C., should specify clearly the exact charges against the accused. The mere fact that no sanction is necessary for a prosecution under S. 182, Penal Code, does not deprive a Court of jurisdiction to order a prosecution under S. 476, Cr. P. C. *Emperor v. Khubomal*. 16 Cr. L. J. 104 : 27 I. C. 152 : 8 S. L. R. 179 : A. I. R. 1914 Sind 66.

———S. 476—Legality of order—Decree obtained by fraud set aside on suit—Prosecution of decree-holder under S. 210, Penal Code.

A suit instituted by a judgment-debtor to have a decree against him set aside on the ground of fraud was referred to arbitration and a decree, setting aside the previous decree, was passed in accordance with the award. This was followed by proceedings under S. 476, Cr. P. C., resulting in an order directing the prosecution of the accused under S. 210, Penal Code : *Held*, that the order of the Court was not without jurisdiction. *Kamla Prashad v. Emperor*. 12 Cr. L. J. 93 :

9 I. C. 497 : 8 A. L. J. 240 : 33 All. 396.

———S. 476—Legality of order—Dismissal of complaint under S. 202—Further inquiry ordered by Sessions Judge—Sessions Judge's order silent as to order for prosecution by lower Court under S. 476—Whether amounts to a quashing of the order.

Per Sundara Aiyar, J.—Where a Magistrate dismisses a complaint as the result of an inquiry under S. 202 and at the same time orders the prosecution of the complainant under S. 476, and the Sessions Judge in revision directs further inquiry without saying anything as to the order under S. 476, the latter order does

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———Ss. 476, 537 (b)—*Irregularity—Order to prosecute—No order directing accused to be taken to nearest Magistrate.*

An order directing the prosecution of an accused, under S. 476, Cr. P. C., is not illegal but irregular if it does not at once direct the accused to be taken before the nearest First Class Magistrate, and the irregularity is such as is expressly cured by S. 537 (b), Cr. P. C. *In re : Suppaya Tharagan.* 16 Cr. L. J. 39 : 26 I. C. 631 : 37 Mad. 317 : A. I. R. 1915 Mad. 493.

———Ss. 476, 537—*Irregularity, effect of—Sanction to prosecute—Inclusion of order in complaint.*

Failure to record a separate order for sanction to prosecute as contemplated by S. 476, Cr. P. C., and its inclusion in the complaint is a trifling irregularity curable under S. 537, Cr. P. C. *Inayat Ullah v. Emperor.*

28 Cr. L. J. 410 : 101 I. C. 186 : A. I. R. 1927 Lah. 379.

———S. 476—*Judicial enquiry—Jury trial—False statement during enquiry—Complaint under S. 476—Absence of formal statement that complaint was necessary, effect of.*

Whenever the conduct of the Jury is taken exception to during the progress of the trial in the Sessions Court, the Presiding Judge has undoubted jurisdiction to enquire into the same. Such an enquiry is, a judicial enquiry, and the Judge is entitled to call upon persons to appear before him to administer oath to such persons and to require them to give evidence, and proceedings under S. 476, Cr. P. C., can be drawn up in respect of false statements made in the course of such enquiry. Where an order made by a Judge by itself and in view of proceedings started under S. 476, Cr. P. C., carries the implication that the Judge must have felt that the ends of justice required that an enquiry before a Magistrate should take place, the fact that the Judge has not expressly recorded that it is expedient in the ends of justice that a complaint should be made, is quite immaterial. *Bhuban Chandra Prodhan v. Emperor.* 28 Cr. L. J. 783 : 104 I. C. 111 : 31 C. W. N. 828 : 55 Cal. 279 : A. I. R. 1927 Cal. 628.

———S. 476—*Judicial proceeding.*

A Court making an enquiry without jurisdiction is not competent to pass an order under S. 476, Cr. P. C., for the prosecution of a witness for perjury committed during the course of such enquiry, even though the Court honestly believed it had jurisdiction and the parties did not object to it, inasmuch as the proceedings in the enquiry are not 'judicial proceedings'. A proceeding before a Court of Justice acting in the administration of justice is a 'judicial proceeding'. A Court taking evidence in a proceeding of which it is entitled to take cognizance under the Legal Practitioners Act, is a 'Court' within the meaning of S. 476, Cr. P. C., and the pro-

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ceeding is a 'judicial proceeding'. *Nallasivam Pillai v. Ramalingam Pillai.*

18 Cr. L. J. 785 : 41 I. C. 305 : 32 M. L. J. 402 : 1917 M. W. N. 303 : 6 L. W. 364 : A. I. R. 1918 Mad. 398.

———S. 476—*'Judicial proceeding'—Custody of female child—Rival claim of husband and mother.*

An application was made before the District Magistrate on behalf of a mother for the recovery of the custody of a female child from her grandfather G, who was thereupon called upon by a Deputy Magistrate to show cause. G. declared before the Deputy Magistrate that the child had been already married to R. The Deputy Magistrate examined R. and G. and having satisfied himself that the marriage had actually taken place, submitted the case for orders before the District Magistrate, who dismissed the application. The District Magistrate upon a subsequent application in which the story of the marriage was challenged as false, held a local enquiry and came to the conclusion that G. and R. had given false evidence before the Deputy Magistrate and ordered their prosecution for perjury : *Held*, that offence of perjury had not been brought to the notice of District Magistrate in a "judicial proceeding" within the meaning of S. 476, Cr. P. C. and the order for prosecution was made without jurisdiction. *Godai Shaha v. Emperor.* 2 Cr. L. J. 851 : 9 C. W. N. 1030.

———S. 476—*Judicial proceedings—Execution of decree, proceedings in—Jurisdiction of Court.*

Proceedings in execution of a decree are "judicial proceedings" and, therefore, a Court has jurisdiction to pass an order under S. 476, Cr. P. C. with reference to matters which have come to its knowledge in execution proceedings. *Shahamat Khan v. Gulab Khan.*

16 Cr. L. J. 91 : 26 I. C. 1003 : 17 O. C. 309 : 1 O. L. J. 568 : A. I. R. 1914 Oudh 407.

———S. 476—*Judicial proceedings—Information to Police—Inquiry by Magistrate—Order directing prosecution for false charge, legality of.*

An inquiry by a Magistrate before whom a complainant has been asked to prove his case in reference to an information lodged before the Police, is not a judicial proceeding within the meaning of S. 476, Cr. P. C. so as to warrant an order by the Magistrate under that section directing the prosecution of the complainant for an offence under S. 211, Penal Code. *Nand Kishore Lal v. Emperor.*

25 Cr. L. J. 670 : 81 I. C. 158 : 1924 Pat. 124 : 5 P. L. T. 300 : A. I. R. 1924 Pat. 789.

———S. 476—*Judicial proceedings—Obstruction to attachment by peon in pursuance of warrant of attachment—Order of prosecution by Munsif.*

On the application of a decree-holder, a Munsif issued a warrant of attachment. The judg-

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to have been committed by him in the discharge of his duty as such public servant, the sanction of the Local Government is necessary under S. 197, Cr. P. C. *In re: T Sivasankaram Pillai.*

30 Cr. L. J. 164 :
113 I. C. 462 : 28 L. W. 695 :
I. R. 1929 Mad. 142 : 52 Mad. 446 :
56 M. L. J. 157 : A. I. R. 1929 Mad. 83.

—S. 476—*Miscellaneous—Report by Police that case was false—Magistrate asking complainant to prove case—Order made under S. 476, whether competent.*

A lodged an information with the Police who reported the case to be false. The case then came before the Sub-Divisional Magistrate who passed an order to the effect that the complainant A, was to prove his case on the next date. Then the Magistrate made an order under S. 476, Cr. P. C.: *Held*, that the proceedings did not come within any of the provisions of the Cr. P. C. and the order under S. 476 was bad. *Sarba Mahton v. Emperor.*

14 Cr. L. J. 387 :
20 I. C. 211 : 17 C. W. N. 824.

—S. 476—*Miscellaneous.*

Resort to the expedient of an alternative charge is only justified when it is difficult to establish the falsity of one of the two statements. *Bajirao Balwant v. Emperor.*

34 Cr. L. J. 649 (2) :
143 I. C. 747 : I. R. 1933 Nag. 182 :
A. I. R. 1933 Nag. 179.

—S. 476—*Miscellaneous—Sanction to prosecute—False statements—Affidavit sworn by accused.*

No one can be prosecuted in respect of false statements contained in an affidavit sworn by him in a case in which he was an accused person. *Bindseri Singh v. Emperor.*

3 Cr. L. J. 225 :
3 A. L. J. 98 : I. L. R. 1928 Mad. 331 :
25 A. W. N. 42.

—S. 476—*Miscellaneous—Sanctioning prosecution of witness for perjury pending trial, propriety of.*

Although proceedings under S. 476, Cr. P. C., against a witness for giving false evidence ought not to be taken until the close of the trial, as such action is eminently calculated to intimidate subsequent witnesses and defeat the object of the trial, yet this is a consideration which affects the accused under trial, and not a witness. *Nasirshah v. Emperor.*

17 Cr. L. J. 77 (b) :
32 I. C. 669 : 9 S. L. R. 176 :
A. I. R. 1916 Sind 8.

—Ss. 476, 190 (1) (c), 195 (1) (b)—*Miscellaneous—District Judge forwarding complaint under S. 476, to District Magistrate, in circumstances in which S. 476 is inapplicable—Complaint, validity of Magistrate if can proceed under S. 190 (1) (c).*

When a complaint under S. 476, Cr. P. C., is forwarded to the District Magistrate by the District Judge, under circumstances in which S. 476 is inapplicable, the complaint ceases to be a valid complaint. But there is

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nothing to prevent the District Magistrate from proceeding under S. 190 (c) (1), Cr. P. C., as on "information received from any person other than a Police Officer." *Government Advocate, Bihar v. Kumar Singh.*

39 Cr. L. J. 314 :
173 I. C. 432 : 16 Pat. 571 :
19 P. L. T. 51 :
10 R. P. 408 : 4 B. R. 274 :
A. I. R. 1938 Pat. 83.

—Ss. 476, 537—*Miscellaneous.*

The successor-in-office of a Magistrate who has started proceedings under S. 476, cannot be said to be the nearest Magistrate indicated by the section to whom the case might be sent for enquiry or trial. A direct disobedience of an express provision of Cr. P. C., as to a mode of trial cannot be regarded as a mere irregularity, and in a case of this nature, the question of prejudice does not arise. *Ramoo Singh v. Emperor.*

21 Cr. L. J. 29 :
54 I. C. 173 : 1920 Pat. 61 :
A. I. R. 1920 Pat. 225.

—S. 476-A—*Miscellaneous.*

No power-of-attorney is necessary for an appeal from an order on a petition under S. 476-A. *Harcharan Singh v. Kirpa Singh.*

36 Cr. L. J. 1485 :
154 I. C. 1005 : 8 R. L. 334 :
37 P. L. R. 762 :
A. I. R. 1935 Lah. 677.

—S. 476-B—*Miscellaneous.*

There is no provision of law by which the Sessions Judge can direct a District Magistrate to make a complaint under S. 476-B though the Sessions Judge himself may make the complaint. *Kuppuswami Rao v. Sathiapria Rao.*

33 Cr. L. J. 51 (1) :
134 I. C. 1216 : 1931 M. W. N. 713 (2) :
I. R. 1932 Mad. 32 :
A. I. R. 1931 Mad 768.

—S. 476—*Notice.*

It is not necessary that a Court should give notice of its intention to take action under S. 476 against a party to a suit. But a notice is necessary where the person proceeded against had no opportunity to cross-examine the witnesses on whose evidence his prosecution has been ordered, and it is irregular exercise of a Court's jurisdiction to direct such a serious step as a criminal prosecution without giving the person concerned any chance to know and meet the case against him. *In re: Perumalla Venkatasubbiah.*

23 Cr. L. J. 712 :
69 I. C. 440 : 16 L. W. 925 :
1922 M. W. N. 811 :
44 M. L. J. 74.

—S. 476—*Notice—Notice of enquiry to person alleged to have committed offence, whether necessary.*

It is not necessary in an enquiry under S. 476, Cr. P. C., for the Court to issue a

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he should not be prosecuted under S. 211 of the Penal Code, and eventually passed an order under S. 476 of the Cr. P. C. directing his prosecution: *Held*, that the order was bad, inasmuch as there never was a judicial proceeding before the Magistrate within the meaning of S. 476 of the Cr. P. C. *Tiloki Mahlon v. Emperor*.

22 Cr. L. J. 735 :
64 I. C. 47 : 2 P. L. T. 220 :
A. I. R. 1921 Pat. 302.

—S. 476—*Judicial proceedings—Sanction to prosecute—Income Tax Act (II of 1886), Chap. IV, Proceedings under, by Collector—Revenue Court.*

The Collector acting under Chap. IV of the Income Tax Act, is a Revenue Court, and his proceedings are judicial proceedings within the meaning of S. 476, Cr. P. C. *Emperor v. Rup Singh*.

3 Cr. L. J. 128 :
6 P. L. R. 645 : 44 P. R. Cr. 1905.

—S. 476—*Judicial proceeding—Statement made to District Magistrate in his executive capacity, if complaint—Oath, administration of.*

P, a village headman, made a petition to the District Magistrate in which he stated that he wished to resign his post as the headman. On enquiry, he stated that during the course of Police investigation in a dacoity case, the Police were forcing a large number of people to pay money to them. The Magistrate reduced his statement to writing and sent for the persons named by him. The Magistrate recorded the statements of all of them on oath and sent the case to Police Superintendent to take action under Paragraph 283, Police Regulations. The Superintendent reported that the allegations were entirely false. The District Magistrate then ordered the prosecution of P and other persons whom he had examined on oath for giving false evidence: *Held*, that the statement made by P to the District Magistrate was not a complaint, nor the action taken by the Magistrate was in the course of a judicial proceeding, in the course of which he was legally empowered to administer an oath. *Bhole Singh v. Emperor*.

16 Cr. L. J. 807 :
31 I. C. 823 : 13 A. L. J. 1050 :
38 All. 32 : A. I. R. 1915 All. 457.

—S. 476—*Judicial proceedings.*

The test to be applied to a particular proceeding before a Court to determine whether it is or is not a "judicial proceeding," for the purposes of S. 476, is, whether in the course of that proceeding the presiding Judge has the power to legally take evidence on oath, not whether he has actually taken such evidence. Execution proceedings are "judicial proceedings," for the purposes of S. 476. *Chanan v. Emperor*.

11 Cr. L. J. 90 :
5 I. C. 257 : 1 P. R. 1910 Cr. :
3 P. W. R. 1910 Cr. : 161 P. L. R. 1910.

—S. 476—*Judicial proceedings—Transfer application—Examination of witnesses after disposal.*

During the pendency of a case of riot before a Magistrate, some of the accused applied to the Sub-Divisional Magistrate to transfer the

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case on the ground *inter alia* that the Magistrate had received a bribe in the presence of A. and B. The Sub-Divisional Magistrate made an order transferring the case and thereafter recorded the statements of A. and B. on oath. He then made an order under S. 476, Cr. P. C., directing their prosecution for an offence under S. 193, I. P. C.: *Held*, that the proceeding before the Sub-Divisional Magistrate was clearly not a judicial proceeding, as there was no case pending in his Court for he had already disposed of the application for transfer. *Emperor v. Baksho*.

12 Cr. L. J. 326 :
10 I. C. 622.

—Ss. 476, 195, 437—*Judicial proceedings—Penal Code, S. 186—Obstruction to Nazir in delivering possession of immovable property in execution of decree—Jurisdiction.*

In delivering possession of immovable property in execution of a Munsif's decree, the Nazir was resisted by the petitioners. On his reporting the fact to the Munsif, the latter instituted a proceeding under S. 476, Cr. P. C., held an enquiry and directed the petitioners to be sent to the nearest Magistrate to be tried upon a charge under S. 186, Penal Code: *Held*, that the Munsif's action under S. 476 was without jurisdiction. The alleged offence under S. 186, I. P. C., was not brought to his notice in the course of a judicial proceeding inasmuch as the judicial proceeding before him had come to an end with the final decision of the case. The act of the Nazir himself in delivering possession was a purely ministerial act. *Har Charan Mukerjee v. Emperor*.

2 Cr. L. J. 110 :
9 C. W. N. 364 : I. L. R. 32 Cal. 367 :
1 C. L. J. 161.

—Ss. 476 and 195—*Judicial proceedings—Jurisdiction to pass an order under S. 476—Time when order should be passed.*

An order under S. 476, Cr. P. C., should be made either at the close of the judicial proceedings or so shortly thereafter that it may reasonably be said that the order is part of the proceedings, and that an order passed under S. 476 after the termination of the judicial proceedings was passed without jurisdiction. *In re : Aiyakannu Pillai*.

9 Cr. L. J. 41 :
1 I. C. 597 : 4 M. L. T. 404 : 32 Mad. 49 :
19 M. L. J. 42.

—S. 476—*'Judicial proceeding', meaning of.*

The offence for which a prosecution can be ordered, under S. 476, Cr. P. C., must have been either committed before the Court making the order or brought to its notice in the course of a judicial proceeding pending before it. The calling up of a record under S. 476 and the subsequent examination thereof do not constitute a "judicial proceeding" within the meaning of that phrase in the Code. *Gopal v. Emperor*.

16 Cr. L. J. 289 :
28 I. C. 513 : 11 N. L. R. 36 :
A. I. R. 1915 Nag. 58.

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—S. 476—Order directing prosecution—No evidence on which conviction can be based—Order, legality of.

Where there is no evidence on the record to show that an accused person is guilty of the offence with which he is charged, an order for his prosecution under S. 476, Cr. P. C. is bad in law and must be set aside. *Asiruddin v. Emperor*.

20 Cr. L. J. 818 :
53 I. C. 818 : A. I. R. 1919 Pat. 143.

—S. 476—Order directing prosecution, legality of.

Where, the District Judge passed his order in appeal on the 2nd December 1915, and the defendant wrote a petition for sanction to prosecute the plaintiff for forgery on the 15th January 1916, but did not present it till the 24th January, and the District Judge ordered prosecution on the 29th February : *Held*, that this was not in conformity with S. 476 and the order directing prosecution was technically unsound and liable to be set aside. *Ram Nath v. Emperor*.

17 Cr. L. J. 470 :
36 I. C. 150 : 88 P. L. R. 1916 :
53 P. W. R. 1916 Cr. :
A. I. R. 1916 Lah. 259.

—S. 476—Order directing prosecution—Bihar and Orissa Public Demands Recovery Act (IV of 1914)—Certificate Officer, whether Court—Order directing prosecution, legality of.

A Certificate Officer, when acting in the discharge of his duties under the Bihar and Orissa Public Demands Recovery Act, 1914, acts as a Court, and while so acting, he is a Revenue Officer presiding over a Revenue Court, and as such, is competent to make an order under S. 476, Cr. P. C. *Mathura Prasad Singh v. Emperor*.

20 Cr. L. J. 529 (b) :
51 I. C. 769 : 1919 Pat. 325 :
4 P. L. J. 475 : A. I. R. 1919 Pat. 212.

—S. 476—Order for prosecution, if can be made.

An order for prosecution under S. 476, Cr. P. C. cannot be made where the alleged offence under S. 211, Penal Code has been committed not in Court, but in relation to Police investigation and has not been brought to the notice of the Magistrate in the course of a judicial proceeding. *Tayabullah v. Emperor*.

18 Cr. L. J. 13 :
36 I. C. 845 : 24 C. L. J. 134 :
20 C. W. N. 1265 : 43 Cal. 1152 :
A. I. R. 1917 Cal. 593.

—S. 476—Order under S. 476—Judicial proceeding, existence of, whether necessary.

For the purposes of S. 476, it is not necessary that judicial proceedings should be in existence before an order under that section is made ; all that is required is that the order should be passed with respect to an offence which may have been committed before the Court or brought to its notice in the course of a judicial proceeding. *Biran Rai v. Emperor*.

21 Cr. L. J. 549 :
56 I. C. 853 : 1920 Pat. 205 :
1 P. L. T. 331 : A. I. R. 1920 Pat. 430.

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—S. 476—Order under S. 476, whether complaint.

An order under 'S. 476, Cr. P. C., is not a complaint. *Nanakram v. Emperor*.

20 Cr. L. J. 770 (b) :
53 I. C. 610.

—S. 476—Order withdrawing complaint.

Interference in revision is not proper in absence of proof of want of jurisdiction of lower Court having acted in excess of jurisdiction. *Sheopal Singh v. Mahindra Narain Singh*.

35 Cr. L. J. 432 (2) :
147 I. C. 535 : 6 R. P. 360 (2) :
A. I. R. 1934 Pat. 55 (1).

—S. 476—Perjury—Sanction to prosecute.

As a rule, a Court ought not to give sanction to a private individual to prosecute for perjury ; if the Court before whom perjury has been committed is of opinion that it should be tried, it should, under S. 476, Cr. P. C., order the prosecution of the person whom it thinks guilty. A person cannot be convicted of perjury for having acted maliciously or for having failed to make a reasonable inquiry with regard to the acts alleged by him to be true. It must be proved that he made some statement which he knew to be false, or which he did not believe to be true. *Ashulosh Gangoli v. Brij Narain Lal*.

22 Cr. L. J. 393 :
61 I. C. 521.

—S. 476—Perjury, complaint for—Complaint containing matter extraneous to real subject-matter, effect of—Delay in filing complaint, effect of.

Where a complaint for perjury under S. 476, Cr. P. C., contains not only the sentence but also further extracts from the deposition of the accused which are not intended to be made matter of charge, it is permissible for the High Court without directing the withdrawal of the complaint to make it clear that the charge in the trial is restricted to the statement which was the real subject-matter of the complaint. Where there is some delay in filing the complaint which, however, is not shown to be avoidable, the mere fact that subsequent to the trial in which the alleged perjury was committed and before the complaint a relevant witness likely to give evidence for the accused died is not a ground for not sanctioning prosecution. *In re : Guruvappu Naicker*.

30 Cr. L. J. 866 :
118 I. C. 112 : I. R. 1929 Mad. 752 :
A. I. R. 1929 Mad. 510.

—S. 476—Perjury, prosecution for—Acquittal under S. 211, Penal Code—Subsequent sanction for prosecution under S. 193, Penal Code.

Where a person having been charged by a Joint Magistrate with the offence of bringing a false case, had been tried and acquitted : *Held*, that an order for his prosecution for perjury in the same case by the same Magistrate in the capacity of a District Magistrate

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—S. 476—*Jurisdiction—Sanction to prosecute—Refusal by Subordinate Judge—District Judge can direct prosecution under S. 476, on appeal—Procedure.*

Where a Subordinate Judge refuses to grant a sanction under S. 195 of the Cr. P. C., a District Judge has, on appeal, jurisdiction to pass an order under S. 476 of the Code; but in doing so, he should himself proceed according to S. 195, Cl. (b), read with S. 476 of the Code. *In re: Lakshmidas Lalji.*

7 Cr. L. J. 35 :
10 Bom. L. R. 28 : 32 Bom. 184 :
3 M. L. T. 146.

—S. 476—*Jurisdiction.*

When a charge is made by the complainant to the Police against more than one individual and the Police while charging before the Court one or more individuals with the offence complained of, do not charge them all, the Court has no jurisdiction to take action under S. 476 against those not charged. *Registrar, High Court, Madras v. Kodangi. (F. B.)*

137 I. C. 312 : 62 M. L. J. 425 :
35 L. W. 481 : A. I. R. 1932 Mad. 363.

—S. 476—*Jurisdiction.*

Where a Munsif refused to grant sanction to prosecute and the District Judge also refused it on appeal under S. 195 (6) but acting under S. 476 ordered prosecution himself; held that the District Judge's order was without jurisdiction inasmuch as neither the offence was committed before him nor was it brought to his notice in the course of a judicial proceeding. *Shiam Lal v. Chuni Lal.*

9 Cr. L. J. 181 :
1 I. C. 220.

—S. 476—*Jurisdiction.*

Where an application for the return of a document is made after the suit in which the document was filed has been finally disposed of and there is nothing pending before the Court, the latter has no jurisdiction to take action under S. 476, if the signatures on the application turn out to be forged. *Girija Nanda Kali Mitter v. Emperor.*

24 Cr. L. J. 202 :
71 I. C. 666 : 26 C. W. N. 660 :
A. I. R. 1921 Cal. 433.

—S. 476—*Jurisdiction of Civil Court—Supurddar refusing to deliver up property to Civil Court.*

The offence under S. 409, Penal Code, is not one of the offences referred to in S. 195 or S. 476, Cr. P. C., and so a Civil Court has no jurisdiction to take proceedings under S. 476, Cr. P. C., in respect of such an offence. Where, a *supurddar* refuses to deliver up property to Civil Court for sale when called upon to do so, the Civil Court acts illegally in taking proceedings against him under S. 476, Cr. P. C., and committing him under S. 409, Penal Code. *Indarjit Singh v. Emperor.*

27 Cr. L. J. 974 :
96 I. C. 526 : 3 O. W. N. 618 :
13 O. L. J. 653.

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—S. 476—*Jurisdiction of Court to proceed under.*

Petitioner instituted a suit at Bilaspur against a resident of Arrah and obtaining a decree, sought to execute it at Arrah by means of a transfer. The judgment-debtor then instituted a suit at Arrah to have the decree of the Bilaspur Court set aside, on the ground that it had been obtained by fraud. The suit was decreed, and petitioner's appeal to the District Judge, Arrah, was dismissed. The District Judge, finding that the petitioner had brought a false suit and had obtained a decree by fraud and by tampering with the service of summonses, etc., directed his prosecution under Ss. 209, 210, Penal Code: Held, that the District Judge had jurisdiction to take action against petitioner under S. 476, as the offences alleged to have been committed by him were brought to the notice of the District Judge in the course of a judicial proceedings. *Rajkumar Singh v. Emperor.* 18 Cr. L. J. 135 :
37 I. C. 487 : 1 P. L. J. 298 :
3 P. L. W. 83 : A. I. R. 1916 Pat. 97.

—Ss. 476, 195—*Jurisdiction of Deputy Collector—Mutation application—False claim—Succeeding Deputy Collector, whether competent to sanction prosecution for offence under Penal Code, S. 209.*

One R. applied to a Land Registration Deputy Collector for mutation of his name in the place of one S. whom he alleged to be dead, but an application purporting to be on behalf of S. was also made to the Deputy Collector stating that she was alive. The mutation application of R. was dismissed on 16th December 1916, in the absence of both R. and S. On 16th March 1916, an application purporting to be on behalf of S. was made to the successor of the Deputy Collector by whom the mutation application was dismissed, praying for sanction to prosecute R. for an offence under S. 209, Penal Code, and he recorded an order under S. 476, Cr. P. C., directing the prosecution of R.: Held, (1) that the Deputy Collector had no jurisdiction to make the order as he had no judicial proceeding pending before him in the course of which the offence under S. 209, could be said to have been brought to his notice: (2) that the proper course would have been to give sanction under S. 195, Cr. P. C. *Ram Nigah Singh v. Emperor.*

18 Cr. L. J. 895 :
41 I. C. 1007 : 1 P. L. W. 772 :
1918 Pat. 64 : A. I. R. 1917 Pat. 35.

—S. 476—*Jurisdiction of District Magistrate to order prosecution on letter of Police Officer—Order, when should be made.*

A District Magistrate has no jurisdiction to take action under S. 476, Cr. P. C., in respect of an offence which is brought to his notice by a Police Officer, and not in the course of a judicial proceeding. Ordinarily an order under S. 476 should be made during or on or shortly after the

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those which are expressly excluded. *Kunjo Chaudhry v. Emperor*. 39 Cr. L. J. 353 :

173 I. C. 742 : 16 Pat. 650 :

19 P. L. T. 21 : 10 R. P. 440 : 4 B. R. 332 :

A. I. R. 1938 Pat. 99.

———S. 476-B—Powers of Appellate Court—Remand and Summary dismissal.

In the case of complaints made under S. 476, the Appellate Court has power of remand and also of summary dismissal in such cases. *In re : A, T. Krishnamachari*. 35 Cr. L. J. 503 :

147 I. C. 794 : 1933 M. W. N. 902 :

38 L. W. 564 : 65 M. L. J. 534 :

6 R. M. 392 : A. I. R. 1933 Mad. 767.

———S. 476—Power of Appellate Court to direct withdrawal of complaint—Prosecution directed by trial Court—Interference by High Court under S. 115, C. P. C.—Propriety of.

When the trial Court has directed prosecution of a party to a suit under S. 476, Cr. P. C., for using a forged document in evidence in appeal, the Appellate Court has jurisdiction to direct withdrawal of the complaint if it is not satisfied with the case for the prosecution ; and it would not be proper for the High Court to interfere with this order under S. 115, C. P. C. *Beyas Narain Singh v. Dasratha Singh*. 37 Cr. L. J. 838 :

163 I. C. 451 : 17 P. L. T. 276 :

2 B. R. 609 : 9 R. P. 11 :

A. I. R. 1936 Pat. 382.

———Ss. 476, 476-A—Power of Appellate Court to make complaint—Penal Code, S. 211—Trying Magistrate, failure of, to make complaint.

A Deputy Magistrate dismissed a complaint under S. 203, Cr. P. C., on the ground that it was false but made no order against the complainant. On the case being brought to the notice of the District Magistrate, the latter sent instructions to the Deputy Magistrate that a prosecution under S. 211, Penal Code, should be instituted against the complainant. The Deputy Magistrate thereupon passed an order under S. 476, Cr. P. C., directing the prosecution of the complainant under S. 211, Penal Code. On an appeal to the Sessions Judge, the latter held that the order for prosecution was really passed by the District Magistrate, who had no jurisdiction to pass it, but being of opinion that the complainant ought to be prosecuted, the Sessions Judge himself made a complaint under the powers conferred on him by S. 476-A, C. P. C. : *Held*, (1) that if the complaint made by the Deputy Magistrate was valid, it should have been and would have been upheld by the learned Sessions Judge and the order of the learned Sessions Judge was, therefore, substantially correct; (2) that if the complaint made by the Deputy Magistrate was invalid and *ultra vires* as the Sessions Judge found, then there was no complaint recognizable by law, and that as the matter had come before the Sessions Judge in appeal, it was within his jurisdiction to make a complaint himself under S. 476-A, Cr. P. C. *Gulab v. Emperor*.

26 Cr. L. J. 923 :

86 I. C. 987 : A. I. R. 1925 All. 667.

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———Ss. 476, 476-A, 476-B—Power of Appellate Court to make complaint—Application to make complaint—Transfer of case—Revision of application by successor for want of jurisdiction—Appeal—Second appeal—Revision.

Before an application to make a complaint under S. 476, Cr. P. C., could be disposed of, the Munsif to whom the application was made was transferred, and the case was transferred by the District Judge to another Munsif. The latter rejected the application holding that he had no jurisdiction to make a complaint under S. 476. The applicant appealed to the District Judge who, without deciding whether the Munsif to whom the case was transferred had jurisdiction directed that a complaint should be made. On second appeal : *Held*, (1) that no second appeal lay as the order made by the District Judge was an appellate order under S. 476-B ; (2) that the District Judge acted with material irregularity in making a complaint in the exercise of his appellate powers without deciding whether the Court whose decision was appealed from had jurisdiction to make a complaint, and that the order could, therefore, be set aside under S. 115, C. P. C. *Kanai Lal Saha v. Makhan Lal Saha*.

29 Cr. L. J. 483 :

109 I. C. 211 : 47 C. L. J. 277 :

55 Cal. 836 : A. I. R. 1928 Cal. 237.

———S. 476-B—Power of Appellate Court to remand—Appellate Court, if can remand case under S. 476-B to lower Court for purpose of filing complaint.

Where a Court refuses to file a complaint under S. 476, and an appeal is filed under S. 476-B against this order, the Appellate Court can, under S. 476-B, remand the case to the lower Court for the purpose of filing a complaint. *Vithoo v. Emperor*.

40 Cr. L. J. 388 :

180 I. C. 577 : 1938 N. L. J. 285 :

11 R. N. 373 : I. L. R. 1939 Nag. 338 :

A. I. R. 1938 Nag. 487.

———Ss. 476, 4, 190, 192, 195—Power of Assistant Collector.

An Assistant Collector being of opinion that the petitioner—Plaintiff in a rent suit—had told a lie, submitted the record of the case to the Collector with the request that proceedings under S. 193, Penal Code, be taken against him. Accordingly, on receipt of the record the Collector directed the initiation of proceedings : *Held*, that the Assistant Collector's order could not be regarded as an order under S. 476, Cr. P. C. but it being an allegation in writing to the Collector of the District with a view to his taking action under the Cr. P. C., the Collector, had power as Magistrate to take action upon the allegation and to pass the order as he did. *Emperor v. Sunder Sarup*.

1 Cr. L. J. 335 :

24 A. W. N. 90 : I. L. R. 26 All. 514.

———S. 476—Power of Chief Court to interfere—Civil Court ordering enquiry by Magistrate—Revision.

Where the District Judge, being of opinion

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not cease to be operative without being quashed. *In re : Kachi Madar Labhai.*

12 Cr. L. J. 323 :
10 I. C. 619 : 10 M. L. T. 47 :
21 M. L. J. 795 : 1911 2 M. W. N. 9.

———S. 476—*Legality of order—Prosecution ordered under S. 476 on evidence taken under S. 202—Whether valid.*

Per *Sundara Aiyar, J. (Ailing, J. dissenting)*:—An order passed under S. 476, based on evidence taken under S. 202 which is not legal evidence, is illegal. *Contra*, if the order was passed on the sworn statement of the complainant alone. Per *Ailing, J.*—An order may be passed under S. 476 as the result of an inquiry under S. 202. The wording of S. 476 is wide enough to cover the consideration of other than strictly legal evidence. *In re : Kachi Madar Labhai.*

12 Cr. L. J. 323 :
10 I. C. 619 : 10 M. L. T. 47 :
21 M. L. J. 795 : 1911 2 M. W. N. 9.

———S. 476-B—*Limitation, extension of.*

It is not proper to extend the time allowed for an appeal under S. 476-B, Cr. P. C., even if the delay arises in consequence of any genuine mistake which could have been averted by a proper inquiry. Nor can such an appeal filed beyond time be treated as revisional application and the revisional jurisdiction so far as Criminal Procedure goes, be invoked. *Gerimal v. Shewaram.*

27 Cr. L. J. 780 :
95 I. C. 316 : 20 S. L. R. 93 :
A. I. R. 1926 Sind 215.

———Ss. 476, 476-B—*Limitation for appeal—Complaint by Single Judge of High Court—Appeal to Division Bench.*

An order made by a single Judge of a High Court on the original side, making a complaint under S. 476, Cr. P. C., is appealable to a Division Bench of the High Court under S. 476-B of the said Code. Limitation for preferring an appeal from such an order runs from the date of the actual complaint and not from the date of the order directing that a complaint should be made. *Ramjan Ali v. Moolji Seeka & Co.*

30 Cr. L. J. 974 :
118 I. C. 889 : 33 C. W. N. 329 :
I. R. 1929 Cal. 697 : 56 Cal. 932 :
A. I. R. 1929 Cal. 521.

———S. 476-B—*Limitation for appeal, as amended by Act (XVIII of 1923)—Appal against order making complaint—Limitation, starting point of.*

Limitation for an appeal against an order under S. 476-B, Cr. P. C., directing a complaint to be made, commences from the date when the complaint is made and not from the date when the order to make a complaint is made. *Fitzholmes v. Emperor.*

27 Cr. L. J. 1321 :
98 I. C. 393 : 7 Lah. 77 :
A. I. R. 1927 Lah. 54.

———Ss. 476 (1), 476-A, 476-B—*Limitation for appeal—Limitation Act, Sch. I, Art. 154—Appal from Criminal Court's order rejecting application for making complaint.*

If a Subordinate Court neither makes a complaint nor rejects an application for the making of a complaint, the superior Court may

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take action and may make a complaint under S. 476-A, but where an application made to a subordinate Court for making a complaint is rejected, then the procedure is by way of appeal is 30 days under Art. 154 of Sch. I, Limitation Act. *Chandra Kumar Sen v. Mathuriya Debba.*

26 Cr. L. J. 1569 :
90 I. C. 529 : 26 C. W. N. 1035 :
42 C. L. J. 120 : 52 Cal. 1009 :
A. I. R. 1925 Cal. 1228.

———S. 476—*Miscellaneous.*

Order refusing to take action against witness under S. 476—Magistrate is not bound for ever for not taking action at instance of another person or *suo motu*. *Nanbat Khan v. Emperor.*

36 Cr. L. J. 470 :
153 I. C. 947 : 7 R. Pesh. 79 :
A. I. R. 1935 Pesh. 1.

———S. 476—*Miscellaneous—Penal Code (Act XLV of 1860), Section 193—Propriety of taking proceedings under S. 476, until final orders are passed.*

Proceedings under S. 476, Cr. P. C. should not be taken against a person for giving false evidence or fabricating false document under S. 133, Penal Code, until the case in which the said evidence was given or such document was used has been finally decided. *Gendan Singh v. Emperor.*

3 Cr. L. J. 303 :
3 C. L. J. 302.

———S. 476—*Miscellaneous—Person against whom complaint is made not availing of remedies open to him to get order set aside before trial—Whether can contend after trial that Court has no jurisdiction to make complaint.*

Where a person against whom a complaint under S. 476, Cr. P. C., is made, failed to avail himself of the remedies which were open to him before his trial began, he is not entitled, when once the Magistrate has tried the case, to argue that the complaint was not a valid complaint and that there was a lack of jurisdiction by reason of the incompetence of the Judge to make it. *Vithoo v. Emperor.*

40 Cr. L. J. 388 :
180 I. C. 577 : 1938 N. L. J. 285 : 11 R. N. 373 :
I. L. R. 1939 Nag. 338 : A. I. R. 1938 Nag. 487.

———S. 476—*Miscellaneous—Prosecution for giving false evidence, six weeks after the alleged commission of the offence—Legality thereof.*

The decision of the Full Bench reported in 3 Mad. L. T. R. 79; 7 Cr. L. J., 54, that an order under S. 476 should be made either at the close of the proceedings or so shortly thereafter that it may be reasonably said that the order is part of the proceedings considered and doubted. *In re : Ramiah Naik.*

8 Cr. L. J. 403 :
4 M. L. J. 269.

———S. 476—*Miscellaneous—Prosecution of President for offence alleged to have been committed in discharge of public duty, whether requires sanction of Government.*

The President of a Taluk Board is a public servant under S. 21 of the Penal Code, and to prosecute him in respect of an offence alleged

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direct prosecution. The contradictory statements must be sufficiently specified in complaint. But it is neither necessary for Committing Magistrate also to direct prosecution. *In re: Athi Ambalagaran.*

33 Cr. L. J. 519 :
137 I. C. 761 : 62 M. L. J. 717 :
55 Mad. 536 : 35 L. W. 803 :
1932 M. W. N. 724 : I. R. 1932 Mad. 451 :
A. I. R. 1932 Mad. 494.

———Ss. 476, 439—*Powers of Court—Bailliff, assault on, in execution of decree—Decree-holder, locus standi of, to move for disciplinary action.*

Where a bailliff, who went to attach property in execution of a decree, reported that the judgment-debtor and two of her relatives had forcibly removed the attached property from his possession, and the Judge on receiving this report, did not consider it necessary to take any notice against the judgment-debtor or her relatives: *Held*, (1) that it was within the discretion of the Judge what action he should or should not take and the High Court would not interfere with the exercise of that discretion; (2) that the decree-holder had no *locus standi* to question the order of the Judge refusing to initiate criminal proceedings against the judgment-debtor or her relatives. *Theodore v. Miss A. Des Brosses.*

18 Cr. L. J. 3 :
36 I. C. 835 : 19 O. C. 91 :
A. I. R. 1916 Oudh 121.

———Ss. 476, 476-B—*Powers of Court—Complaint by Special Magistrate for offence under S. 211, Penal Code—District Magistrate's power to withdraw—Review, legality of.*

A District Magistrate cannot order the withdrawal of a complaint made by a Special Magistrate under S. 476, Cr. P. C. in respect of an offence falling under S. 211, Penal Code, as such a complaint is not referred to in S. 195 (5), Cr. P. C. which gives the Magistrate the power of withdrawal. Under the present law, a Court must make a complaint and cannot directly order prosecution. That complaint must set forth the offence, the precise facts on which it is based and the evidence available for proving it. It is not desirable that a Court should review its order refusing to make a complaint under S. 476 inasmuch as an appeal is allowed under S. 476-B and the Code generally has made no provision for review. *Ram Prasad v. Emperor.*

28 Cr. L. J. 543 :
102 I. C. 351 : 25 A. L. J. 639 :
49 All. 752 : A. I. R. 1927 All. 571.

———Ss. 476, 482, 480—*Contempt of Court—S. 482, when can be employed—Option to proceed either under S. 480, or under S. 476—S. 482, if takes away that option.*

The provisions of S. 482, Cr. P. C. can only be employed where cognizance has already been taken under S. 480. The section is in no way independent of S. 480. Therefore in the case of a contempt committed *coram iudice* and punishable under S. 228, I. P. C., a Court has the option of proceeding either under Ss. 480 to 482, Cr. P. C., or under S. 476, and the existence of S. 482, does not

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operate so as to take away this option. *Emperor v. Ram Lal Anand.*

41 Cr. L. J. 766 :
189 I. C. 628 : 42 P. L. R. 505 :
13 R. L. 106 : A. I. R. 1940 Lah. 233.

———S. 476—*Power of Court to accord sanction—Sanction for prosecution—Proceedings after ex parte decree set aside, whether continuation of earlier proceedings.*

The trial of a suit, after an *ex parte* decree against the defendant is set aside, must be regarded as the continuation of the trial which ended in the *ex parte* decree for the plaintiff and it is competent to the Court at the time of the final disposal of the suit to accord sanction under S. 476, Cr. P. C. for the prosecution of a witness who gave evidence before the *ex parte* decree was passed for offences under Ss. 193 and 196, Penal Code. *In re: Arumugam Pillai.*

25 Cr. L. J. 731 :
81 I. C. 219 : 18 L. W. 133 :
A. I. R. 1924 Mad. 86.

———S. 476—*Power of Court to act suo motu.*

Where a Magistrate, of his own motion, directs the prosecution of a witness for perjury, he acts under S. 476. *Emperor v. Barkat Ram.*

12 Cr. L. J. 216 :
10 I. C. 121 : 158 P. L. R. 1911 :
38 P. W. R. 1911 Cr.

———S. 476, 476-B—*Power of Court to lay complaint—Petition that Court should lay complaint refused—Court, if can subsequently grant it.*

A Court, after having declined to accede to a petition that it should lay a complaint, is not debarred from laying one *suo motu* if, on a further consideration, it finds, whether such conclusion is reached on a further study of the facts or on an elucidation by a higher Tribunal, that there is really a case for making a complaint. *Vithoo v. Emperor.*

40 Cr. L. J. 388 :
180 I. C. 577 : 1938 N. L. J. 285 :
11 R. N. 373 : I. L. R. 1939 Nag. 338 :
A. I. R. 1938 Nag. 487.

———S. 476—*Power of Court to make complaint—Order refusing to make complaint—Appeal.*

An Additional Judge to whom an appeal against an order refusing to make a complaint is transferred by the District Judge, is competent to make a complaint. *Narain Das v. Emperor.*

28 Cr. L. J. 549 :
102 I. C. 485 : 25 A. L. J. 559 :
49 All. 792 : A. I. R. 1927 All. 555.

———S. 476—*Power of Court to make complaint—Transfer of case—Transferee Court, whether can make complaint in respect of document filed in original Court.*

Where a case has been transferred for trial, the Court to which the case has been transferred, can make a complaint under S. 476, Cr. P. C., in respect of a forged document filed in the original Court. The offence is a continuing one and any Court seized of the

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notice to a person alleged to have committed an offence. *Nazar Mohammad v. Harnam Singh*.

40 Cr. L. J. 140 :

178 I. C. 795 : I. L. R. 1938 Lah. 188 :

40 P. L. R. 951 : 11 R. L. 502 :

A. I. R. 1938 Lah. 691.

———S. 476—Notice—Order directing prosecution.

In a suit upon a hand-note executed by R. for himself and his brother L., R. appeared and resisted the claim and the plaintiff gave up his claim against him; L. did not appear and the Court, finding the claim true, passed an *ex parte* decree against him. After this upon an application by R. it was found that the paper on which the note was written was issued on a date subsequent to the date of the note, whereupon R. applied for sanction to prosecute the plaintiff; the Court granted the application without notice to the plaintiff and at the same time called upon him to show cause why the *ex parte* decree should not be vacated. Plaintiff moved the High Court to quash the order directing his prosecution : *Held*, that, in the face of the finding that the claim on the hand-note was true, the order directing the prosecution of the plaintiff without deciding the genuineness or otherwise of the document in presence of the plaintiff and R., the order was wholly illegal and without jurisdiction, and that, although no notice is essential in a proceeding under S. 476, Cr. P. C., yet, in the circumstances of the present case, notice was necessary, and the order having been passed without notice, it was wholly invalid. *Dakhal Mohan Roy v. Emperor*.

22 Cr. L. J. 233 :

60 I. C. 425 : A. I. R. 1920 Pat. 778.

———S. 476—Notice—Order directing prosecution—Notice, whether necessary.

Where a Court proposes to order a prosecution under S. 476, Cr. P. C., on the evidence of witnesses whom the accused has had no opportunity to cross-examine and whose evidence has not been tested, it should not pass an order without giving notice to the accused person and giving him an opportunity to meet the case made against him. *Amar Nath v. Emperor*.

28 Cr. L. J. 227 :

99 I. C. 1027 : A. I. R. 1927 Lah. 173.

———S. 476—Notice—Proceeding under—Notice to accused, whether necessary.

In order to validate proceedings under S. 476, Cr. P. C., notice is not legally necessary to the accused, but it is desirable that such notice should be given more specially where the matter has not been already judicially dealt with. *Puran Singh v. Emperor*.

20 Cr. L. J. 777 (b) :

53 I. C. 617 : A. I. R. 1918 Nag. 61.

———S. 476,—Notice—Proceeding under—Notice to accused, whether necessary—Failure to give notice, effect of.

Although notice to the person immediately concerned is not essential in a proceeding under S. 476, Cr. P. C., yet an order passed without such notice, particularly where there is no evidence one way or the other to show

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a dishonest motive, will not be upheld. *Brindaban v. Emperor*.

20 Cr. L. J. 791 :

53 I. C. 695 : 6 O. L. J. 457 :

A. I. R. 1919 Oudh 348.

———S. 476—Notice—Proceeding under—Notice, whether necessary.

In a proceeding under S. 476, Cr. P. C., it is not invariably necessary that the person to be proceeded against should receive notice to show cause against the proposed action against him. *Gura v. District Judge, Aktyab*.

24 Cr. L. J. 736 :

73 I. C. 976 : A. I. R. 1923 L. Bur. 79.

———S. 476, Notice—Proceeding under—Notice, whether necessary.

In a proceeding under S. 476, Cr. P. C., notice to the accused is not absolutely necessary, but the High Court looks with disfavour upon an order passed under that section without such notice, and it is highly desirable, though not essential that such notice should be given. *Imam Ali v. Emperor*.

25 Cr. L. J. 488 :

77 I. C. 888 : A. I. R. 1924 All. 435.

———S. 476—Notice.

Where an application is made under S. 476 before a Judge who has not heard the case, it would be a good exercise of discretion to issue notices upon the opposite parties and pass orders after hearing them. *Rajani Kanta Kayal v. Bistoomoni Dassi*.

28 Cr. L. J. 840 :

104 I. C. 456 : 46 C. L. J. 40 :

A. I. R. 1927 Cal. 718.

———S. 476—Notice.

Where an order was impugned on the ground mainly that the lower Court had not given notice to the applicant or held a preliminary inquiry before passing orders : *Held*, that no notice was necessary under the section, nor in the circumstances of the case, was it desirable that any special notice should be given or a preliminary inquiry held. *U. Po Geik v. U. Po Kyin*.

12 Cr. L. J. 85 :

8 I. C. 1167 : 3 Bur. L. T. 101.

———Ss. 476, 537—Notice—Want of notice, an irregularity—Revision—Grounds for reversal.

The High Court would not approve of an order under S. 476, Cr. P. C., if made without notice to the persons immediately concerned. At the same time, any irregularity in the proceedings taken under S. 476 is not sufficient ground for either reversing or altering an order passed by a Court of competent jurisdiction. *Ram Pari Rai v. Emperor*.

13 Cr. L. J. 707 :

16 I. C. 515 : 10 A. L. J. 247.

———S. 476—Opportunity to cross-examine—Order directing prosecution—Evidence recorded in absence of accused—Order, whether justified.

An order under S. 476, Cr. P. C., directing the prosecution of a person upon evidence recorded in his absence, and without affording him an opportunity to cross-examine the witness cannot be justified. *Lal Lokpal Singh v. Emperor*.

22 Cr. L. J. 143 :

59 I. C. 655 : 19 A. L. J. 56 :

A. I. R. 1921 All. 98.

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attachment in execution of a decree is offered in the course of a judicial proceeding pending before the executing Court, and the latter is competent to sanction a prosecution in respect thereof under S. 476. *Barhamdeo Singh v. Emperor.*

19 Cr. L. J. 153 :
43 I. C. 441 : A. I. R. 1917 Pat. 101.

—S. 476—Powers of High Court.

An order passed by a Revenue or Civil Court under S. 476, cannot be revised under S. 439, but the High Court can, in such a case, exercise the powers vested in it by S. 115, C. P. C. or S. 107, Government of India Act. *Jagannath v. Rajagopalachari.*

33 Cr. L. J. 147 :
135 I. C. 513 : 12 P. L. T. 671 :
I. R. 1932 Pat. 33 : A. I. R. 1931 Pat. 411.

—S. 476—Powers of High Court.

In the course of a conversation as to an intended compromise in Court, in which the Munsif took part, the plaintiff said that a certain Cheruvu was traceable in the plan filed. The compromise having fallen through, the trial of the case was resumed and the plaintiff, having been put into the witness-box, denied the existence of the Cheruvu. The Munsif, without waiting for the completion of the trial, instituted proceedings against the plaintiff under S. 476, Cr. P. C., examined on oath the Plenders of the parties who were present when the conversation took place and sent the plaintiff to the nearest Magistrate: *Held, per curiam*, that the High Court had power to interfere, in revision only under S. 115, C. P. C., with the order passed by the Munsif under S. 476, Cr. P. C. *Emperor v. Karriyankanna Patrudu.*

17 Cr. L. J. 515 :
36 I. C. 483 : 20 M. L. T. 252 : 31 M. L. J. 440 :
4 L. W. 383 : A. I. R. 1917 Mad. 971.

—S. 476-B—Powers of High Court—District Judge overlooking right of appeal under S. 476-B—Revision by High Court—If can make complaint.

When a Court of District and Sessions Judge has overlooked the alternative of an appeal before him under S. 476-B, Cr. P. C., it would be quite within the powers of the High Court to revise the order of such a Court on the ground that he had refused to exercise the jurisdiction which was vested in him by law, and the High Court can then make a complaint itself, or send to the Sessions Judge for disposal of the appeal. *Behari Lal v. Abdul Qadir Hamyari.*

41 Cr. L. J. 843 :
190 I. C. 178 : 13 R. L. 140 :
A. I. R. 1940 Lah. 292.

—S. 476—Powers of High Court.

Per Stanley, C. J. and Blair, J.—The High Court has no power in the exercise of its criminal revisional jurisdiction, to revise an order passed under S. 476, Cr. P. C. by a Civil Court. *Per Banerji, J. (dissenting)*—The High Court has power under S. 439 to interfere in the exercise of its criminal revisional jurisdiction, when a subordinate Court, whether Civil, Revenue or Criminal has taken proceedings under S. 476 of that Code. *In the matter of the Petition of Bhup Kunwar. (F. B.)*

1 Cr. L. J. 73 :
24 A. W. N. 15 : 26 All. 249.

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—S. 476-B—Power of High Court to correct erroneous form of orders—Court sanctioning prosecution instead of lodging complaint—Error—Revision.

If a Court purporting to act under S. 476-B, Cr. P. C., sanctions the prosecution and directs the case being sent to a Magistrate having jurisdiction, it should be deemed to have made the complaint as required by the section. The High Court, as a Court of Revision, has power to correct the erroneous form of such orders. *Hub Lal v. Emperor.*

27 Cr. L. J. 523 :
93 I. C. 987 : A. I. R. 1926 All. 402.

—S. 476—Power of High Court to interfere—Board of Revenue.

The High Court has no power to interfere on revision with an order passed by a Collector under S. 476, Cr. P. C. but an application for revision should be filed before the Board of Revenue. *Abdul Rauf v. Emperor.*

6 Cr. L. J. 350 :
4 A. L. J. 701 : 27 A. W. N. 277.

—S. 476—Power of High Court to interfere order under—Complaint.

A District Judge concluded an order under S. 476 charging certain persons with various offences thus: "A copy of this order will be sent to the District Magistrate with a request that he will cause proceedings to be instituted against the other three persons.....If the District Magistrate decides to institute proceedings he should inform the C. I. D. who investigated the matter"; *Held*, that the order was not in the terms of S. 476, but that it amounted to a complaint, and that it was in the discretion of the Magistrate to take such proceedings as he was advised. *Simeon v. Emperor.*

23 Cr. L. J. 291 :
66 I. C. 515 : A. I. R. 1922 All. 438.

—S. 476—Power of High Court to interfere—Revenue Summonses Act, Madras (III of 1899)—Departmental inquiry not a Judicial proceeding—Illegal order of prosecution.

One B. R., on being convicted and sentenced to pay a fine on a charge of theft, by a Sub-Magistrate, paid the fine, but preferred an appeal to the Deputy Magistrate, who sent back the case to the Sub-Magistrate for recording further evidence. While the matter was thus pending, B. R. made a complaint of bribery against the Sub-Magistrate. The Deputy Magistrate who proceeded to inquire departmentally into the said complaint summoned B. R. to appear before him on a certain day but he did not appear, whereupon a warrant for his arrest was issued, but it was returned unexecuted with the report that B. R. was not forthcoming. On a subsequent date when B. R. came to the Court of the Deputy Magistrate on some other business, the Deputy Magistrate directed him to execute two recognizances—one for appearing before the Sub-Magistrate and the other for appearance before himself, and pending their execution, he was detained by the Deputy Magistrate's peon. B. R. refused to execute these recognizances and in support of his

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was bad, and should be set aside as calculated to bring the administration of justice into contempt. *Mallu Khan v. Emperor*.

1 Cr. L. J. 692 :
1 A. L. J. 388.

—————**S. 476—Perjury, prosecution for.**

An order directing a prosecution for perjury merely upon materials arising out of cross-examination is very unsafe proceeding, especially where the cross-examination has been protracted. *Raktoo Rai v. Emperor*.

18 Cr. L. J. 727 :
40 I. C. 727 : 2 P. L. W. 99 :
A. I. R. 1917 Pat. 329.

—————**S. 476—Perjury, prosecution for.**

As it is not incumbent on a Small Cause Court Judge to read over to witnesses the depositions recorded by him, owing to O. XVIII, rr. 5 to 12, C. P. C., having no application to Courts constituted under the Provincial Small Cause Courts Act, or to Courts exercising the jurisdiction of a Court of Small Causes, and the depositions so recorded are admissible in evidence against those witnesses in the event of their prosecution for perjury. *Kalu v. Tikarani*.

26 Cr. L. J. 1350 :
89 I. C. 390 : A. I. R. 1925 Nag. 412.

—————**S. 476—Perjury, prosecution for—Conviction should appear certain before starting prosecution.**

Every case of perjury need not necessarily result in the prosecution of the person who is guilty of the offence. It is the policy of the law, as appears from the amendment of the relevant sections of Cr. P. C., whereby such prosecutions have not now been left to private prosecutors but their conduct has been entrusted to the Courts, that in dealing with such matters the Court should see that the prosecution is undertaken in the interests of justice. Ordinarily the High Court is reluctant to interfere with orders in perjury cases where the Courts below, after a consideration of the entire material on the record, have come to the conclusion that an offence has been committed, which, it is desirable, in the interest of justice, to send for enquiry to a Magistrate; *Held*, that under the circumstances of the case, it was necessary for the Court to find that the conviction of the witnesses for perjury was paretically certain before directing his prosecution. *Nand Lal v. Emperor*.

39 Cr. L. J. 237 :
172 I. C. 942 : 39 P. L. R. 812 :
10 R. L. 381 : A. I. R. 1937 Lah. 867.

—————**S. 476—Perjury, prosecution for—Enquiry by Court without jurisdiction, effect of.**

A charge of unprofessional conduct in the discharge of professional duty made against a Pleader can be enquired into only by presiding officer of the Court in which the Pleader practises. Where a District Judge in an enquiry into the conduct of a second grade Pleader in the matter of an execution proceeding in a Subordinate Judge's Court, sent a witness to a Magistrate under S. 476, Cr. P. C., to be prosecuted for perjury: *Held*, that the proceeding was *ultra vires* as the District

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Court had no jurisdiction to enquire into the Pleader's conduct. *Nallasivan Pillai v. Ramalingam Pillai*.

18 Cr. L. J. 785 :
41 I. C. 305 : 32 M. L. J. 402 :
1917 M. W. N. 303 : 6 L. W. 364 :
A. I. R. 1918 Mad. 398.

—————**S. 476—Perjury, prosecution for.**

It would almost be a judicial scandal if a witness whose evidence was accepted by the Appellate Court is prosecuted by the trial Court for perjury on the strength of the very testimony which had been disbelieved by the Appellate Court. Such a prosecution, in the interest of justice, cannot be allowed. *In re : Appaji Gonndan*.

40 Cr. L. J. 890 :
184 I. C. 188 : 1938 M. W. N. 471 :
12 R. M. 419 : A. I. R. 1939 Mad. 779.

—————**S. 476—Perjury, prosecution for.**

On the motion of A, two persons B and C were prosecuted for falsification of accounts. The Magistrate acquitted B and C and complained against A for perjury. In the trial for perjury, A was found to be innocent and acquitted. A then applied for prosecution of B and C for perjury in connection with the trial of A for perjury: *Held*, that it was not desirable to continue a cycle of prosecutions for perjury in such cases, and that complaint should not be made against B and C. *Debi Datt Tewari v. Emperor*.

29 Cr. L. J. 784 :
110 I. C. 816 : 26 A. L. J. 1327 :
A. I. R. 1928 All. 548.

—————**S. 476—Perjury, prosecution for—Order for prosecution without preliminary inquiry—No prima facie case on record—Order set aside on revision.**

Where the Court orders a prosecution of perjury without any *prima facie* case appearing upon the record and thus commits a material irregularity in not making the necessary preliminary inquiry, the order will be set aside on revision. *In re : Jethmal Wadhawal*.

15 Cr. L. J. 541 :
24 I. C. 949 : 7 S. L. R. 187 :
A. I. R. 1914 Sind 129.

—————**S. 476-B—Power of Appellate Court.**

In an appeal under S. 476-B, Cr. P. C. in a civil proceeding, the Appellate Court has power to remand the matter back to the lower Court for disposal. *Janaradana Rao v. Lakshmi Narasamma*. (F. B.).

35 Cr. L. J. 392 :
147 I. C. 351 : 38 L. W. 940 :
1933 M. W. N. 1476 : 65 M. L. J. 873 :
57 Mad. 177 : 6 R. M. 330 :
A. I. R. 1934 Mad. 52.

—————**Ss. 476-B, 476, 439—Powers of Appellate Court.**

The Appellate Court can, under S. 476-B, remand a case to the lower Court for purposes of inquiry. The powers of the Appellate Court under S. 476-B, Cr. P. C., are not exhaustive and the Appellate Court can exercise all the powers contemplated by the Cr. P. C., except

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—S. 476—*Power of High Court to stay proceedings—Civil Procedure Code, S. 194—Forgery—Finding by Trial Court—Appeal pending in High Court—Stay of proceedings—Inherent power of Court.*

Petitioners, defendants in a civil suit, for the recovery of money, pleaded payment and produced a receipt which was held by the Trial Court to be a forgery. The suit was decreed and the Court issued a notice to the petitioners to show cause why they should not be prosecuted for producing a forged document in evidence. Petitioners lodged an appeal to the High Court against the decree and the appeal was admitted. They then made an application under S. 151, Cr. P. C., to High Court to stay the proceedings pending in the Trial Court under S. 476 of the Cr. P. C.: *Held*, (1) that inasmuch as the question whether the receipt was a forged one or not had to be finally decided by the High Court, it was not proper that proceedings under S. 476, Cr. P. C. should be taken against the petitioners before the decision of the appeal: (2) that as the proceedings under S. 476 were pending in a Civil Court, the High Court had jurisdiction in the exercise of its inherent power under S. 151 of the Cr. P. C. to stay the proceedings. *Harnam Singh v. Atri*.

26 Cr. L. J. 1166 :
88 I. C. 526 : 7 L. L. J. 73 :
A. I. R. 1925 Lah. 323.

—S. 476—*Power of Magistrate—Complaint under S. 476 for prosecution of complainant—Fresh opportunity to show cause against prosecution, whether should be given.*

Before ordering a prosecution under S. 211, Penal Code, the complainant, if his complaint is pending, should, as a rule, be given an opportunity of proving his case. But where the complaint has been dismissed by the Magistrate as groundless under S. 253, Cr. P. C. and the Magistrate has before him the report of the Police in support of his view, it is not necessary that he should again ask the complainant to prove his case which Magistrate has disbelieved even before he examines the complainant and his witnesses. *Fazlar Rahman v. Emperor*.

31 Cr. L. J. 1055 :
126 I. C. 553 : A. I. R. 1930 Cal. 515.

—S. 476—*Power of Magistrate—Magistrate passing order refusing to start proceedings for perjury under S. 476—Whether can act on subsequent application moving him to the same effect.*

A Magistrate who has passed an order refusing to start proceedings for perjury under S. 476, Cr. P. C. can act on a second application moving him to the same effect. Ordinarily, however, it would be undesirable to do so unless some fresh facts had emerged showing that the previous order was clearly wrong: *Held*, on merits the Magistrate was justified in refusing to prosecute, and interference in revision was not necessary. *Bhagwandas v. Mathura*.

37 Cr. L. J. 977 :
164 I. C. 713 (2) : 9 R. N. 26 (1) :
A. I. R. 1936 Nag. 156.

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—S. 476—*Power of Magistrate.*

Magistrate, who after trying a case, has been transferred from the charge of the particular Court in which the case was tried to some other duty in the same district, is not competent to make an order under S. 476, Cr. P. C. in respect of a case which he tried as presiding officer of such Court. *Chuni Lal v. Harbans Rai*.

1 Cr. L. J. 596 :
1 A. L. J. 315.

—S. 476—*Powers of Magistrate—Penal Code, S. 132—False complaint of dacoity—Trial for another offence—Acquittal.*

The accused made a false report of a dacoity at a Police Station. The Police did not proceed on his complaint of dacoity but prosecuted certain persons under S. 324, I. P. C. That offence also was not brought home to them and the Police made a complaint requesting the prosecution of the accused under S. 182, I. P. C., for making a false report of dacoity and he was convicted: *Held*, that as the Magistrate had not tried any case of dacoity, the trial of the accused without a complaint by the Magistrate was not illegal. *Ganga Prasad v. Emperor*.

32 Cr. L. J. 128 (a) :
128 I. C. 284 : 7 O. W. N. 756 :
I. R. 1931 Oudh 44 : A. I. R. 1930 Oudh 414.

—S. 476, 4 (m)—*Power of Magistrate—Power of Magistrate holding enquiry to proceed under S. 476.*

Where a case was sent by one Magistrate to another for enquiry prior to the issue of process against the accused, and the latter Magistrate made the enquiry, in the course of which he examined witnesses and recorded evidence, and came to the conclusion that the case was false and, therefore, took proceedings under S. 476 and committed the complainant for trial under S. 211, I. P. C.: *Held*, that the proceedings conducted by him fell within the description of judicial proceedings, given in S. 4, cl. (m) and that he had power to take proceedings under S. 476. *Kanchan Garhi v. Ram Kishun Mundul*.

9 Cr. L. J. 295 :
1 I. C. 203 : 13 C. W. N. 122 :
36 Cal. 72.

—Ss. 476, 195—*Power of Magistrate—Person not named in sanction, whether can be proceeded against.*

S. 195, Cr. P. C., operates as a bar to the trial of certain offences and the test of the necessity for the grant of sanction is the character of the offence and not of the offender; once the bar imposed by S. 195 to the trial of the offence has been removed, the Magistrate before whom the trial takes place is not barred from issuing process against and trying persons who have not been specifically named in such a sanction under S. 195 or in an order under S. 476, Cr. P. C., as the case may be. *Ajaib Singh v. Emperor*.

18 Cr. L. J. 893 :
41 I. C. 1005 : 34 P. R. 1917 Cr. :
45 P. W. R. 1917 Cr. :
A. I. R. 1917 Lah. 267.

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that forgery of a document on the record of a civil case before him was committed either by the plaintiff or the defendant, passed an order under S. 476, Cr. P. C., requiring both the parties to furnish bail and sent them to the Magistrate for enquiry with a view to prosecution of the guilty person and the case was submitted for revision by the Sessions Judge to the Chief Court under S. 438, Cr. P. C. : *Held*, that the order was illegal and must be set aside on revision. That the Chief Court is competent to interfere in revision with the order of a Civil Court passed under. S. 476. *Emperor v. Pirbhu Dyal*.

3 Cr. L. J. 73 :
6 P. L. R. 571.

—S. 476—Powers of Court.

A Court is competent to exercise powers conferred upon it by S. 476, Cr. P. C., in respect of an offence committed before it in the course of a judicial proceeding, although the fact that the offence had been committed did not come to the knowledge of the Court until long after the close of the proceeding. *Sarat Chandra Sen v. Emperor*.

20 Cr. L. J. 184 :
49 I. C. 600 : A. I. R. 1919 Cal. 391.

—S. 476—Powers of Court.

A Court is not warranted in taking action under S. 476 before the case is closed, though it cannot be said to be acting without jurisdiction in so acting; (3) A Court would be acting both illegally and with material irregularity if it imports into the consideration, of the question, whether proceedings should be started under S. 476, its knowledge of the preliminary conversation between the parties in attempted negotiations for a compromise. *Emperor v. Karivenkanna Patrudu*.

17 Cr. L. J. 515 :
36 I. C. 483 : 20 M. L. T. 252 :
31 M. L. J. 440 : 4 L. W. 383 :
A. I. R. 1917 Mad. 971.

—S. 476—Powers of Court—Forgery—Suit dismissed—Decree affirmed on appeal—Jurisdiction of first Court and of Appellate Court to institute proceedings under S. 476, Cr. P. C.

Where the decree of a civil suit has been confirmed on appeal, it is competent to the Court of first instance, as also to the Court of Appeal, to take action under S. 476, Cr. P. C., against the plaintiff for forgery committed in a document filed by him in the first Court. *Lachman Ojha v. Anup Rai*.

14 Cr. L. J. 32 :
18 I. C. 176 : 16 C. L. J. 569.

—S. 476—Powers of Court.

Munsif directing after enquiry that complaint be lodged before District Magistrate—Direction does not amount to decree—Power of District Judge to transfer is governed by Cr. P. C., and by any civil enactment. *Mehdi Hasan v. Emperor*. 36 Cr. L. J. 1253 :

157 I. C. 990 : 1935 A. L. J. 66 :
57 All. 687 : 1935 A. W. R. 62.
A. I. R. 1935 All. 212.

—S. 476—Powers of Court—Offence com-**Cr. P. CODE (1898), S. 476**

mitted before one Magistrate—Whether a successor can take action.

Only the Judge or Magistrate who actually tried the case in the course of which the offence was committed, can take action under S. 476, Cr. P. C. *Emperor v. Dauli*.

10 Cr. L. J. 158 :
2 I. C. 812 : 6 P. R. 1909 Cr. :
12 P. W. R. 1909 Cr.

—S. 476—Powers of Court.

The Court to which an appeal against an order refusing or granting a sanction for prosecution is transferred, is invested with all the powers of the ordinary Court of Appeal or Revision for hearing the particular appeal or revision against the order under S. 195 of the Code, and is entitled to grant or to refuse the sanction, or to institute criminal proceedings under S. 476 of the Code. *Budhabai v. Alibai*.

26 Cr. L. J. 796 (b) :
86 I. C. 428 : A. I. R. 1925 Nag. 358.

—S. 476—Powers of Court.

The Sessions Judge can make a complaint even after the expiry of six months after the conclusion of the trial, when the sanction is applied for by the Public Prosecutor and not by a private person. *In re: Maromma*.

34 Cr. L. J. 92 :
140 I. C. 756 : 1933 M. W. N. 100 :
I. R. 1933 Mad. 43 : A. I. R. 1933 Mad. 125.

—S. 476—Powers of Court.

A Special Tribunal has jurisdiction under S. 476, to hold an inquiry, record a finding, and make a complaint both as regards the statement in its own Court and the statement before the Magistrate under S. 164, Cr. P. C. *Brahm Dall v. Emperor*.

36 Cr. L. J. 402 :
153 I. C. 547 : 16 Lah. 153 :
37 P. L. R. 534 : 7 R. L. 446 :
A. I. R. 1934 Lah. 981.

—S. 476—Powers of Court.

The Court has no power under S. 476 to complain against witnesses for abetting forgery. *Sengoda Goundan v. Vayyapuri Goundan*.

33 Cr. L. J. 218 (1) :
136 I. C. 48 : 61 M. L. J. 684 :
1931 M. W. N. 1047 : 34 L. W. 841 :
I. R. 1932 Mad. 256 : A. I. R. 1932 Mad. 129.

—S. 476—Powers of Court under—Offence brought to notice of Court in subsequent judicial proceeding, effect of—Court, power of, to enquire into commission of offence, exercise of, time of.

The powers conferred by S. 476, Cr. P. C. can be exercised at any time when an offence is committed before a Court in a judicial proceeding, or when the commission of it is brought to its notice in the course of that judicial proceeding or any other. *Ram Anuj v. Emperor*.

19 Cr. L. J. 981-B :
48 I. C. 161 : 5 O. L. J. 622 :
A. I. R. 1918 Oudh 407.

—S. 476—Powers of Court.

When statements in Committing and Sessions Courts are contradictory, Session Judge can

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satisfied that there is a *prima facie* case merely because an order was previously passed dismissing for non-prosecution, the application of a particular party under S. 476. A Court which has once dropped a complaint may change its mind and make a complaint on proper materials being placed before it. As it is not a case of any final order, no question of the absence of any provision in the Cr. P. C., for review would arise in such a case. *Harekrishna Parida v. Emperor*.

31 Cr. L. J. 143 :
120 I. C. 629 : 8 Pat. 736 : 11 P. L. T. 75 :
A. I. R. 1929 Pat. 242.

—S. 476—Powers under—Complaint for forgery against person not party to proceedings, legality of.

A Court has no power to take proceedings under S. 476, Cr. P. C., in respect of an offence under S. 468, Penal Code, against a person who is not a party to the proceedings on the basis of which action is sought to be taken. *Shankar Sahai v. Emperor*.

31 Cr. L. J. 938 :
125 I. C. 838 : 7 O. W. N. 63 :
A. I. R. 1930 Oudh 404.

—S. 476—Power under, exercise of.

The only Court which can exercise the power conferred under S. 476, Cr. P. C., is the Court which has jurisdiction over the suit in which the alleged offence has been committed, whether such suit was instituted in such Court or came to its file by transfer from any other Court or otherwise. *Gerimal v. Shevaram*.

27 Cr. L. J. 780 :
95 I. C. 316 : 20 S. L. R. 93 :
A. I. R. 1926 Sind 215.

—S. 476—Practice — Complaint by Court, when to be made—Principles—Oath against oath.

Before a Judge complains against a person under S. 476, Cr. P. C., he must be convinced in his own mind that the trial will end in a conviction. It is not a proper practice to adopt to prosecute persons under S. 476, Cr. P. C., in mere matters of oath against oath. *In re : Venkataswami Chetti*.

28 Cr. L. J. 1007 (a) :
105 I. C. 831 : A. I. R. 1928 Mad. 207.

—S. 476—Preliminary enquiry.

A Court acts without jurisdiction under S. 476, Cr. P. C., in sending a person to take his trial for an alleged offence, without making a preliminary enquiry as to the circumstances constituting the alleged offence. Where the incidents constituting the alleged offence took place outside the Court as to which the Judge himself has no knowledge, it is incumbent on the Court to make an enquiry preliminary to passing orders under the section. *Taru Babu v. Emperor*.

18 Cr. L. J. 117 :
37 I. C. 469 : 21 C. W. N. 125 :
A. I. R. 1918 Cal. 967.

—S. 476—Preliminary enquiry.

A preliminary inquiry under S. 476 is not

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necessary, where a *prima facie* case is made out. *Jamuna Singh v. Laldhari Singh*.

36 Cr. L. J. 26 :
152 I. C. 228 : 15 P. L. T. 694 :
7 R. P. 150 : A. I. R. 1934 Pat. 526.

—S. 476—Preliminary enquiry—Additional evidence should be recorded in presence of accused who should be given opportunity to cross-examine witnesses.

When any order depends upon matters already on record, no preliminary inquiry is necessary; but when it depends upon evidence of other facts which are not to be found on the record, in fairness to the person accused, a preliminary inquiry must be held, and in that preliminary inquiry, he must be made aware of the allegations which are made against him and of the materials upon which those allegations are based. If the order is to depend upon additional evidence, then he must be made aware of what that additional evidence is. When the additional evidence is procured as a result of an application by a private party, it is essential that, if justice is to be done, the evidence should be recorded in his presence and he should be given an opportunity of cross-examining the witnesses: otherwise he cannot be in a position to rebut the allegations which are made against him in the application. *Mohammad Kaka v. District Judge, Bassein*.

38 Cr. L. J. 615 :
168 I. C. 632 : 9 R. Rang. 359 :
1937 Rang. 276 : A. I. R. 1937 Rang. 62.

—S. 476—Preliminary enquiry—As amended by Act (XVIII of 1923)—Sanction to prosecute—Decision on merits, whether proper.

What a Court has to decide under S. 476, Cr. P. C., is first, whether an offence of the kind contemplated appears to have been committed, and secondly, whether it is expedient in the interests of justice that it should be further inquired into. In order to arrive at a decision, the Court may, if it thinks fit, hold such preliminary inquiry as it considers necessary, the nature, method and extent thereof being entirely at its discretion. *In re : Raja Rao*.

27 Or. L. J. 1149 :
97 I. C. 669 : 24 L. W. 295 :
51 M. L. J. 331 : 1927 M. W. N. 63 :
A. I. R. 1926 Mad. 1008.

—S. 476—Preliminary enquiry.

Court thinking preliminary inquiry necessary must make enquiry itself with ordinary procedure—Nature, method and extent of it are in Court's discretion. *Provat Ranjan Barai v. Uma Sankar Chatterjee*.

32 Cr. L. J. 883 :
132 I. C. 241 : 58 Cal. 727 :
35 C. W. N. 98 : I. R. 1931 Cal. 561 :
A. I. R. 1931 Cal. 438.

—S. 476—Preliminary enquiry—Evidence as to commission of offence, absence of—Order sanctioning prosecution, whether maintainable.

Before a Court is justified in making an order under S. 476, Cr. P. C. directing the prosecution of any person, it ought to have before it direct evidence fixing the offence upon the persons whom it is sought to charge, either in the course of the preliminary enquiry referred

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case can complain. *Pidugu Mattayya v. Emperor.*

31 Cr. L. J. 986 :

126 I. C. 112 : 34 L. W. 384 :

1930 M. W. N. 76 : A. I. R. 1930 Mad. 192.

—S. 476—*Power of Court to order prosecution—Complaint under S. 476, against person not party to the judicial proceedings, competency of.*

Where a Court is satisfied that an offence enumerated in S. 195 (1) (b), Cr. P. C., has been committed before it in relation to a judicial proceeding, it can lodge a complaint under S. 476 of the Code against the person who has committed the offence, even though he was not a party to the judicial proceeding. A Court can, therefore, order the prosecution of a person who causes a false complaint to be lodged before it by another. *Fazlar Rahman v. Emperor.*

31 Cr. L. J. 1055 :

126 I. C. 553 : A. I. R. 1930 Cal. 515.

—Ss. 476, 439, 195—*Power of Criminal Bench of High Court to revise—Prosecution directed by a Munsif—Revision of Munsif's order.*

Application for revision having been made under S. 439, Cr. P. C., and not under S. 622, Cr. P. C. the Criminal Bench has no authority to interfere with the proceedings of a Munsiff taken under S. 476, Cr. P. C. *Kali Prasad Chatterji v. Bhuban Mohini Dasi.*

1 Cr. L. J. 21 :

8 C. W. N. 73.

—S. 476-A—*Power of Deputy Commissioner.*

Offence committed in course of mutation proceedings in *Tahsildar's Court*—Deputy Commissioner can direct complaint being made in respect of it. *Sajjad Hussain v. Emperor.*

36 Cr. L. J. 319 (2) :

153 I. C. 346 : 1935 O. W. N. 28 :

7 R. O. 324 : A. I. R. 1935 Oudh 113.

—S. 476—*Power of District Judge.*

A District Judge has power to convert proceedings to obtain or to revoke sanction, refused or granted in a lower court under S. 195, Cr. P. C., into proceedings under S. 476. *Ambica Prasad v. Emperor.*

18 Cr. L. J. 300 :

38 I. C. 332 : 1 P. L. J. 607 :

2 P. L. W. 388 : A. I. R. 1916 Pat. 86.

—S. 476—*Power of District Judge—District Judge acting as persona designata under particular Act cannot proceed under S. 476.*

The District Judge acting not as a Court but as a *persona designata* under a particular Act is not entitled to proceed under S. 476, Cr. P. C., and is not entitled to lay a complaint in pursuance of an order passed in the proceedings purporting to have been taken under that section. *U Aung Myin U v. District and Sessions Judge, Henzada.*

41 Cr. L. J. 687 :

188 I. C. 795 : 13 R. Rang. 19 :

A. I. R. 1940 Rang. 148.

—Ss. 476, 476-A—*Power of District Judge—Application for making complaint under S. 476, dismissed for default—No steps to set aside*

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dismissal—Superior Court, if can entertain another application and make complaint.

An application to a Court to make a complaint under S. 476, Cr. P. C. was dismissed for default. Instead of doing anything he put in an application before the District Judge. This application was not within limitation for an appeal. Notwithstanding the fact that the lower Court's order of dismissal was still in force, the District Judge accepted the application and made a complaint : *Held*, that the order of the District Judge was without jurisdiction. Under the provisions of S. 476-A, he could take action only if the lower Court had neither made a complaint itself, nor rejected an application for the making of one. The District Judge entertained this application on the ground that the dismissal in default was not a rejection of the application. He was not concerned with the reasons for which the application was dismissed (so long as the procedure was regular) and had it been the intention of the legislation that 'rejection' in S. 476-A should not include rejection on the ground that the complainant did not appear to prosecute the application as he ought to have done, it would presumably have made this clear. *Jahan Khan v. Emperor.*

39 Cr. L. J. 698 :

176 I. C. 116 : 40 P. L. R. 136 :

11 R. L. 164 : A. I. R. 1938 Lah. 429.

—Ss. 476, 476-B—*Power of District Judge to transfer appeal—Additional District Judge, whether competent to make complaint.*

A District Judge to whom an appeal is preferred under S. 476-B, Cr. P. C., has power to transfer the appeal for disposal to an Additional District Judge and the Additional District Judge to whom the case is transferred is competent to make a complaint under S. 476-B. *Lal Muhammad v. D. I. G., C. I. D., Bengal.*

31 Cr. L. J. 921 :

125 I. C. 748 : 34 C. W. N. 80 :

57 Cal. 831 : A. I. R. 1930 Cal. 361.

—S. 476—*Power of District Magistrate acting in executive capacity—Order for prosecution, whether legal sanction or order under S. 476.*

A Commissioner having received a complaint against a *Patwari* sent it to the Collector and District Magistrate for disposal. The latter sent the file to his subordinate and asked him to take evidence and report whether there was a *prima facie* case against the *Patwari*. The subordinate reported that there was nothing in the complaint, whereupon, the District Magistrate allowed it to be dropped, and ordered the prosecution of the complainant under S. 182, Penal Code : *Held*, that the District Magistrate was not acting in his judicial capacity and that his order was neither a legal sanction nor a valid order under S. 476. *Babu Ram v. Emperor.*

18 Cr. L. J. 942 :

42 I. C. 174 : 15 A. L. J. 654 :

A. I. R. 1917 All. 41.

—S. 476—*Power of executive Court to sanction prosecution—Attachment, resistance offered during course of.*

Resistance offered during the course of an

Cr. P. CODE (1898), S. 476———S. 476—*Preliminary enquiry.*

Though S. 476 does not require a notice being given to the accused, yet it makes provision for a preliminary inquiry. The making of this preliminary inquiry or the extent of it has been left entirely to the discretion of the Court, Nor is it essential that the preliminary inquiry, if any, must be made in the presence of the accused or after giving notice to him. *Sajjad Husain v. Emperor.*

36 Cr. L. J. 319 (2) :
153 I. C. 346 : 7 R. O. 324 :
1935 O. W. N. 28 :
A. I. R. 1935 Oudh 113.

———S. 476—*Preliminary enquiry.*

Where offence has been committed outside Court, it should be held. *Purna Chandra Dutta v. Dhalu.*

32 Cr. L. J. 377 :
129 I. C. 561 : 58 Cal. 374 :
34 C. W. N. 914 : 52 C. L. J. 87 :
I. R. 1931 Cal. 209 : A. I. R. 1930 Cal. 72.

———Ss. 476, 195—*Preliminary enquiry—High Court, if can direct preliminary inquiry.*

Under S. 476, Cr. P. C., the High Court can direct a preliminary enquiry on an application made to it under S. 476 read with S. 195. *Gopaldas Khetriya v. Jncndra Nath Dawn.*

40 Cr. L. J. 450 :
180 I. C. 586 : 11 R. C. 702 :
A. I. R. 1938 Cal. 677.

———Ss. 476, 476-B—*Preliminary inquiry—Complaint of offence—Appellate Court, interference by.*

The grant of a right of appeal against an order making a complaint under S. 476, Cr. P. C., has not conferred any new right upon the person against whom a complaint is made and the extent of the preliminary inquiry to be made under S. 476 is still left to the discretion of the Court. *Chamari Singh v. Public Prosecutor.*

27 Cr. L. J. 371 :
92 I. C. 883 : 4 Pat. 484 :
7 P. L. T. 372 : A. I. R. 1925 Pat. 677.

———Ss. 476, 476-B, 537—*Preliminary enquiry—Complaint by Court—Court, whether bound to record finding that further enquiry is necessary.*

The Court is not bound to make a preliminary inquiry before making a complaint under S. 476, Cr. P. C., nor is it bound to record a finding that it is expedient in the interests of justice that further enquiry should be made. An appeal may be preferred under S. 476-B, Cr. P. C., from an order making a complaint even though no finding has been recorded by the officer making the complaint that an enquiry is necessary in the interests of justice. *K. C. V. Reddy v. Emperor.*

31 Cr. L. J. 793 :
125 I. C. 266 : 8 Rang. 25 :
A. I. R. 1930 Rang. 201.

———S. 476—*Preliminary enquiry, necessity of.*

When a Magistrate takes action under S. 476, Cr. P. C., it is not necessary to the validity of his order that he should hold a preliminary inquiry, and, therefore, if the Magistrate refuses to give the accused an opportunity to cross-

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examine the witnesses, he does not act in the exercise of his jurisdiction illegally or with material irregularity. *Abdul Ghafoor v. Raza Husain.*

13 Cr. L. J. 141 :
13 I. C. 829 : 9 A. L. J. 231 :
34 All. 267.

———S. 476—*Preliminary enquiry, necessity of—Sanction—Preliminary inquiry—Notice—Materials, which authority granting sanction may consider—Revision—Grounds on which High Court should interfere.*

The words of S. 476, Cr. P. C., "After making any preliminary inquiry that may be necessary" show that a preliminary inquiry is not essential in all cases when a Court takes action under that section. *In re : Narayana Nadan.*

15 Cr. L. J. 271 :
23 I. C. 479 : 1 L. W. 381 :
26 M. L. J. 486 : A. I. R. 1915 Mad. 229.

———S. 476—*Probability of conviction.*

It will rarely be in the interests of justice that a Judge should prefer a charge which is not likely to succeed. *Ghanshamdas Parsumal v. Emperor.*

35 Cr. L. J. 519 (2) :
147 I. C. 1019 : 6 R. S. 171 :
A. I. R. 1933 Sind 412.

———S. 476—*Probability of condition—Order for prosecution.*

An order under S. 476, Cr. P. C. should not be passed unless there is a reasonable probability of conviction. *Mandar v. Emperor.*

24 Cr. L. J. 823 :
74 I. C. 855 : A. I. R. 1924 Pat. 436.

———S. 476—*Probability of conviction.*

Proceedings under S. 476, Cr. P. C., for the institution of a prosecution for perjury should not be taken until the case in which the alleged false evidence was given, has been finally disposed of. The main question which the Magistrate should consider in starting such proceedings is whether there is a reasonable probability of conviction, and his conclusion should be based on judicial grounds after a careful consideration of the evidence on record and the circumstances of the case. *Kalu v. Tikaram.*

26 Cr. L. J. 1350 :
89 I. C. 390 : A. I. R. 1925 Nag. 412.

———S. 476—*Probability of conviction.*

Prosecutions under S. 476 and sanctions ought not to be indulged in without coming to the conclusion that there are *prima facie* grounds to sustain a conviction. It is not consolation to the accused that he may be acquitted, if the evidence is insufficient. Before a person is asked to stand his trial, it must be fairly clear to the sanctioning authority that there is a probability of a conviction being had. *Emperor v. Karri Venkanna Patrudu.*

17 Cr. L. J. 515 :
36 I. C. 483 : 20 M. L. T. 252 :
31 M. L. J. 440 : 4 L. W. 383 :
A. I. R. 1917 Mad. 971.

———S. 476—*Probability of conviction—Prosecution under, when can be directed.*

The terms of S. 476, Cr. P. C., indicate that the desirability of prosecuting the offender

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objection, got two pleaders to present a petition for his release without recognizance. As in spite of this petition the recognizances were insisted upon, B. R. executed them, but got the same pleaders to present another petition praying for cancellation of the recognizance. In this petition, improper motives were attributed to the Deputy Magistrate, who purporting to act under S. 476, Cr. P. C., directed prosecution of the two pleaders under S. 228, I. P. C., and of B. R. for abetting the offence: *Held*, that the High Court has power to interfere on revision as the Deputy Magistrate had acted entirely without jurisdiction in the matter. That in the matter of recording further evidence, it was not competent to the Deputy Magistrate to compel the attendance of B. R. either before the Sub-Magistrate, or before himself. The pendency of B. R.'s appeal would not give any Court power to arrest him as there was no question of enhancement, but only of the reversal or confirmation of sentence. *Suryanarayana Row and Bala Ramayya v. Emperor*, 3 Cr. L. J. 376 : I. L. R. 29 Mad. 100.

-----S. 476—Power of High Court to interfere.

When a criminal offence is alleged to have been committed in the course of a revenue or civil proceeding, the rule is that the facts upon which the criminal offence is founded should be finally determined in the Civil or Revenue Court before a prosecution in respect of the criminal offence is commenced. The refusal of the Revenue or Civil Court to try out the proceedings in which the criminal offence is alleged to have been committed, materially affects the criminal proceedings and amounts to a denial of the right of fair trial. In such a case the High Court is competent to interfere with the order directing the institution of criminal proceeding under S. 107, Government of India Act. *Faujdar Rai v. Emperor*, 26 Cr. L. J. 1565 : 99 I. C. 415 : 7 P. L. T. 199 : A. I. R. 1920 Pat. 25.

-----Ss. 476, 423 (d), 561-A—Power of High Court to make complaint—High Court in revision calling for proceedings.

Sitting in revision the High Court has jurisdiction to inquire under S. 476, Cr. P. C. and to make complaint if they think it is expedient in the interest of justice. They have the power, if they do not wish to enquire to order the trial Court to enquire either under the provisions of S. 423 (d), Cr. P. C., as an 'incidental order' under S. 561-A of the Code. The objection that S. 195, no longer finds a place in S. 439 of the Code, has no force. *Emperor v. Ivor Henry Bridgnell*, 38 Cr. L. J. 1002 : 170 I. C. 891 : 10 R. S. 81 : A. I. R. 1937 Sind 193.

-----S. 476—Power of High Court to order proceedings under—Suit on pro-note—Promisor producing receipts to prove re-payment—Court holding them to be forged—Promisor relying on receipts.

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Where in suit on pro-note to support his contention, the promisor produces two receipts to prove re-payments, but on the report of the handwriting expert, the trial Court holds these to be forgeries, and against this order, the promisor files a revision in the High Court relying on these receipts, the High Court on further consideration of evidence can direct the Registrar to make a complaint under S. 476, Cr. P. C. for offence under Ss. 193 and 471, Penal Code, for these offences are also committed in the High Court, inasmuch as the promisor relied on the forged receipts in revision. Under S. 476, the High Court has jurisdiction to order proceedings thereunder when the application in revision comes before it. *Shankar Lal v. Emperor*, 38 Cr. L. J. 1080 : 171 I. C. 525 : 1937 A. L. J. 820 : 10 R. A. 279 : I. L. R. 1937 All. 774 : 13 A. W. R. 690 : A. I. R. 1937 All. 681.

-----S. 476—Power of High Court to quash proceedings—Complaint—Prima facie case not made out—Discretion.

A complaint under S. 476, Cr. P. C., may be quashed by the High Court where it is satisfied that no, *prima facie* case has been made out and there is no likelihood that if the proceedings go on they will end in conviction. *Rameshwar Marwari v. Emperor*, 27 Cr. L. J. 1240 : 98 I. C. 56 : A. I. R. 1927 Pat. 47.

-----S. 476—Power of High Court to revise—Civil Procedure Code Act (V of 1908), S. 70—Collector acting as Revenue Court under S. 70—False statement made before Collector—Sanction to prosecute—Revision—High Court, power of.

A Collector or his subordinate acting in pursuance of the powers conferred upon him by S. 70, C. P. C. is a Revenue Court, and as such, has power under S. 476, Cr. P. C. to order the prosecution of a person making false statements before him. The High Court will not, in revision, interfere with such order. *Asharfi Lal v. Emperor*, 18 Cr. L. J. 307 : 38 I. C. 419 : 14 A. L. J. 1077 : A. I. R. 1917 All. 59.

-----S. 476—Power of High Court to set aside sanction—Direction for prosecution under S. 199, Penal Code—Assignments of perjury, whether necessary—Sanction to prosecute—Revision.

An order directing, under S. 476, Cr. P. C., the prosecution of a person under S. 199, I. P. C., is bad if it does not contain the assignments of perjury, inasmuch as the accused is entitled to know the exact words which are alleged to have been used by him and which are sought to be made the subject of the charge under S. 199, I. P. C. If on the facts of a case the High Court is of opinion that a prosecution for perjury shall be infructuous, it may, in exercise of its revisional jurisdiction, set aside the order sanctioning or directing prosecution. *Abdul Wahid Khan v. Abdullah Khan*, 24 Cr. L. J. 197 : 71 I. C. 661 : 24 A. L. J. 211 : A. I. R. 1923 All. 325.

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———S. 476—*Procedure—Order under S. 476, when to be made.*

An order under S. 476, Cr. P. C., should be made at, or soon after, the conclusion of the judicial proceedings referred to in the section. *Nga San Myin v. Emperor.*

13 Cr. L. J. 569 :
15 I. C. 985 : U. B. R. 1912 I, 123.

———S. 476—*Procedure—Perjury—Contradictory statements by witness—Prosecution, desirability of.*

Whether a complaint made by the Court under S. 476, before an opportunity was given to the accused to offer sufficient explanation of his contradictory statements has vitiated the trial is a question which cannot be argued after conviction. In every case of contradictory statements, it is not desirable to prosecute a witness. In such cases, prosecution should be undertaken when it appears to the Court that the contradiction cannot be otherwise explained and that a prosecution of the witness is expedient in the ends of justice. *Kamini Kumar Chuckerbutty v. Emperor.*

31 Cr. L. J. 373 :
122 I. C. 209 : 53 C. W. N. 664 :
A. I. R. 1929 Cal. 390.

———S. 476-B—*Procedure.*

In appeal under S. 476-B, Appellate Court cannot either make remand to trial Court or take additional evidence under S. 428. *Dhanpat Rai v. Balak Ram.* (F. B.)

33 Cr. L. J. 178 :
135 I. C. 594 : 33 P. L. R. 558 :
13 Lah. 342 : I. R. 1932 Lah. 130 :
A. I. R. 1931 Lah. 761.

———Ss. 476, 190, 195—*Procedure—Presidency Magistrate—Magistrate, First Class.*

A Presidency Magistrate does not fall within the definition of a Magistrate of the First Class as used in S. 476, Cr. P. C. Where, therefore, a Presidency Magistrate has ground for inquiring into any offence referred to in S. 195 and committed before him or brought under his notice in the course of a judicial proceeding, the only course which he can adopt is either to commit the case to the Sessions or have the complaint filed under S. 190 read with the provisions of S. 195, Cr. P. C. *Emperor v. Aditram.*

6 Cr. L. J. 326 :
9 Bom. L. R. 1160.

———S. 476—*Procedure, illegality of.*

A Munsif came to the conclusion that a receipt filed before him was forged. He accordingly took action under S. 476, and after giving notice to the accused and receiving their written statements, decided to commit the accused under S. 478. On the date fixed for enquiry under that section, the Munsif framed charge-sheets and after recording very brief statements of the accused, committed them for trial: *Held*, that the procedure adopted by the Munsif was irregular and illegal. *Emperor v. Babu Prasad.*

19 Cr. L. J. 40 :
42 I. C. 1000 : 15 A. L. J. 805 :
40 All. 32 : A. I. R. 1918 All. 415.

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———S. 476—*Procedure in making complaint.*

In making a complaint under S. 476, Cr. P. C., it is desirable to make a separate order setting out in detail the specific matters extracted from the proceedings and directing a complaint to be made in respect thereof and to follow this by a complaint which conforms to the terms of the previous order. *Ramjan Ali v. Moolji Seeka & Co.*

30 Cr. L. J. 974 :
118 I. C. 889 : 33 C. W. N. 329 :
I. R. 1929 Cal. 697 : 56 Cal. 932 :
A. I. R. 1929 Cal. 521.

———S. 476—*Procedure, legality of—Tampering with document filed in Civil Court.*

Where certain documents were tampered with after they were produced in a Civil Court, and a complaint was made against a party on the basis of certain statements made in the course of a confidential inquiry held by the Judge without giving that party an opportunity to criticise them: *Held*, that the procedure was improper and the party should have been given an opportunity to produce evidence in rebuttal of the statement made against him in the confidential enquiry. *Lorind Singh v. Emperor.*

31 Cr. L. J. 1053 :
126 I. C. 523 : A. I. R. 1930 Lah. 802.

———S. 476—*Procedure, legality of—Warrant of attachment signed "By order" by Serishtadar—Warrant addressed to Nazir—Nazir, power of, to delegate it to peon.*

A warrant for the attachment of property in execution of a decree was signed by the *Serishtadar* of the Court "By order" and was addressed to the Bailiff *Nazir* of the Court, the warrant was delegated to a peon and the accused resisted him in executing the warrant, the Court directed the prosecution of the accused, under S. 476, Cr. P. C., for offences under Ss. 183 and 186, Penal Code, and that order was attacked in revision on the ground that the warrant was neither legally made and signed, nor legally made over to the peon: *Held*, that there was no illegality in the warrant, as the words "by order" showed that the Court had authorised the *Serishtadar* to sign it, and the *Nazir* had power to delegate it to a peon. *Wali Mohammad v. Emperor.*

22 Cr. L. J. 300 :
60 I. C. 796 : 3 U. P. L. R. Pat. 41.

———S. 476—"Proceedings according to law," meaning of.

The expression "proceed according to law" in Sub-s. 2, S. 476, Cr. P. C., requires the Magistrate receiving the reference to proceed under Chapters XVIII to XXI of the Code according to the nature of the offence supposed to have been committed. *Devidin v. Narayanrao.*

21 Cr. L. J. 310 :
55 I. C. 470 : A. I. R. 1920 Nag. 64.

———S. 476—*Proceedings under—C. P. C. O. XVI, r. 7—Order to produce document—Whether person can be compelled to produce document.*

The petitioner was present in a Court, but he was no party to any case. In the early

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—S. 476—Power of Sessions Judge.

There is nothing in S. 476 which requires the Court to take action, if at all, immediately after the conclusion of the case in which the offences are said to have been committed or within any fixed time thereafter. The evidence of a witness taken before the Committing Magistrate, which is read out as evidence in the Sessions Court, is brought under the notice of that Court in the course of a judicial proceeding within the meaning of S. 476, Cr. P. C., and the Sessions Judge is competent to make an order for the prosecution of the witness for giving false evidence. *Attar Singh v. Emperor*.

18 Cr. L. J. 337 :
38 I. C. 721 : 19 P. R. 1916 Cr. :
A. I. R. 1917 Lah. 303.

—Ss. 476, 556—Power of Sessions Judge to revise order of discharge—Complaint by Sessions Judge—Sessions Judge, whether 'a party' to proceedings—Discharge of accused—Criminal Procedure Code (Amendment) Act (XVIII of 1923), effect of.

A Sessions Judge who makes a complaint under S. 476, Cr. P. C., is a party to the proceedings initiated in pursuance of his complaint within the meaning of S. 556, Cr. P. C., and is, therefore, disqualified from hearing an application to revise an order discharging the persons complained against. *In re : Mudkaya Andanaya Hiramatha*.

28 Cr. L. J. 53 :
99 I. C. 85 : 28 Bom. L. R. 1302 :
A. I. R. 1927 Bom. 35.

—S. 476—Power of Sessions Judge to take action under—Sessions Judge, whether competent to take action when evidence given before his predecessor—Sessions Court, whether permanent Court.

There is a permanent Court of District and Sessions Judge with successive incumbents in office of the Judge. Therefore, a Sessions Judge can take action under S. 476, Cr. P. C., even where the alleged false evidence was given before his predecessor. *Barkat Ali v. Ghulam Hussain*.

27 Cr. L. J. 527 :
93 I. C. 991 : A. I. R. 1926 Lah. 394.

—S. 476—Power of successors in office of Judge.

The successors of the Senior Subordinate Judge are competent to deal with the proceeding under S. 476, Cr. P. C., and order or not order, a complaint as they think fit. *Behari Lal v. Abdul Qadir Hamyari*.

41 Cr. L. J. 843 :
190 I. C. 78 : 13 R. L. 140 :
A. I. R. 1940 Lah. 292.

—S. 476—Powers of Superior Court.

It is no doubt objectionable that a Judge of the High Court should have to direct the filing of and sign a complaint under S. 476 after hearing the appeal, but the law has to be administered and he may do so. *Harcharan Singh v. Kirpa Singh*.

36 Cr. L. J. 1485 :
158 I. C. 1005 : 8 R. L. 334 :
37 P. L. R. 762 :
A. I. R. 1935 Lah. 677.

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—S. 476—Power to direct prosecution—Enquiry by one Magistrate.

A Magistrate trying a case can himself, after the necessary notice and enquiry, direct, under S. 476, Cr. P. C., the prosecution for perjury of a witness who has appeared before him and the Court hearing an appeal in the case has the same power. But it is irregular for the Appellate Court to direct the trial Magistrate to make an enquiry and then on the report of the trial Magistrate itself to pass the order directing the prosecution of a witness. The enquiry must be made and the order passed by the same Court. *Emperor v. Wazir Beg*.

22 Cr. L. J. 751 :
64 I. C. 143 : 24 O. C. 258 :
8 O. L. J. 634 :
A. I. R. 1921 Oudh 159.

—S. 476—Powers to direct prosecution—Institution of proceedings de novo, legality of.

S. 476, Cr. P. C., does not limit the power to direct prosecution to the officer who disposes of a case. His successor-in-office can continue the proceedings and direct prosecution under the section. *Kurichetty Venkatasubbayya v. Emperor*.

20 Cr. L. J. 172 :
49 I. C. 492 : 25 M. L. T. 18 :
9 L. W. 74 : 1919 M. W. N. 112 :
A. I. R. 1919 Mad. 896.

—S. 476—Power to direct prosecution—The power to direct prosecution given to Court not to the same Magistrate who tried the case—Jurisdiction of the Court not barred by the complaint being rejected as not properly stamped.

The power to direct prosecution under S. 476, Cr. P. C., is given to the Court and not to the same Magistrate who tried the case. The jurisdiction of the Court is not in any way barred by the complaint of the party being rejected as not properly stamped. *Ruuga Ayyar v. Emperor*.

4 Cr. L. J. 175 :
I. L. R. 29 Mad. 331.

—S. 476—Power to make complaint—Offence committed before Judge of a particular Sessions Division—New Sessions Court constituted for portion of Original Division—Jurisdiction of latter Court to make complaint—New Court whether successor of Original Sessions Court.

The circumstance that a District is taken out from a particular Sessions Division and constituted a new Sessions Division under the provisions of the Cr. P. C., does not give the new Sessions Court power to make a complaint relating to an offence committed at a trial before a Sessions Judge of the Original Sessions Division. *In re : Maneklal Garbadas*.

28 Cr. L. J. 49 :
99 I. C. 81 : 28 Bom. L. R. 1296 :
A. I. R. 1927 Bom. 47.

—S. 476—Power to review orders—Application for complaint dismissed for non-prosecution—Order for complaint on fresh application, legality of—Power to review orders.

A Judge acting under S. 476, Cr. P. C., is not debarred from making a complaint if

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The petitioner laid an information before the Police to the effect that there had been a burglary in his house. The Magistrate directed a judicial enquiry by a Deputy Magistrate who came to the conclusion that the report of burglary was false, and submitted his report to the Magistrate who ordered the prosecution of the petitioner under S. 211, Penal Code. That order was set aside by the High Court, as being made without jurisdiction, and the record was returned to the Deputy Magistrate who again enquired into the matter and ordered the prosecution of the petitioner under Ss. 182 and 211, Penal Code: *Held*, that this order is legal under 476, Cr. P. C. *Brojobashi Panda v. Emperor*. 11 Cr. L. J. 4 (b): 4 I. C. 485 : 13 C. W. N. 398.

———S. 476—Prosecution under S. 211, Penal Code—Person giving information whether institutes proceedings.

The petitioner petitioned the Collector in his revenue capacity for a refund of the money which he alleged a Reddi had collected from him and misappropriated. The Collector directed the prosecution of the Reddi under S. 409, Penal Code. The Reddi was tried, acquitted and the Magistrate ordered the prosecution of the petitioner under S. 476, Cr. P. C., for an offence under S. 211, Penal Code: *Held*, that as the petitioner did not institute or cause to be instituted criminal proceedings, he could not be prosecuted under S. 211. *Dappile Chenchugari Ranga Reddy v. Emperor*. 16 Cr. L. J. 252 : 28 I. C. 108 : 1915 M. W. N. 253 : A. I. R. 1915 Mad. 1120.

———S. 476—Prosecution under S. 211, Penal Code—Principles to be borne in mind—Ingredients of S. 211, Penal Code.

Undoubtedly it is necessary, in considering an application for an order to prosecute under S. 476, Cr. P. C., to bear in mind that whereas had the original complainant gone to trial, the entire burden of proof would have lain on the complainant, the opposite party will have to carry the whole burden should the complainant be prosecuted under S. 211, Penal Code, and the ingredients of S. 211, go a good deal further than the mere absence of proof of the guilt of the person said to have been falsely charged with an offence. The complainant must have falsely charged such person with having committed an offence, that is to say, the person must be innocent. The complainant must have known that there is no just or lawful ground for the proceeding or charge. Thirdly, there must have been an intention to cause injury to the person. *Bachu Singh v. Tribeni Sah*. 40 Cr. L. J. 157 : 179 I. C. 167 : 11 R. P. 328 : 5 B. R. 203 : A. I. R. 1939 Pat. 178.

———S. 476—Prosecution when to be sanctioned.

Prosecution should not be sanctioned under S. 476, Cr. P. C., where it is bound to end in failure. *Sube Khan v. Emperor*.

28 Cr. L. J. 293 : 100 I. C. 373 : A. I. R. 1927 Lah. 352.

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———S. 476-A—'Rejected,' meaning of—Application for making complaint withdrawn—Application whether 'rejected'—Superior Court, jurisdiction of.

The word "rejected" in S. 476-A, Cr. P. C., means rejected after consideration on the merits, and therefore, when the lower Court has only allowed an application to be withdrawn without consideration of its merits, it cannot be said to be 'rejected' for purposes of S. 476-A, and the Superior Court has jurisdiction to deal with it. *Vasudevmal v. Emperor*. 29 Cr. L. J. 1051 : 112 I. C. 475 : 23 S. L. R. 37 : A. I. R. 1929 Sind 50.

———S. 476—Retraction.

It is not necessary to prosecute a witness merely because he gave false evidence before the Committing Magistrate if he has retracted it and given true evidence before the Sessions Court. *Bajirao Balwant v. Emperor*.

34 Cr. L. J. 649 (2) : 143 I. C. 747 : I. R. 1933 Nag. 182 : A. I. R. 1933 Nag. 179.

———S. 476—Revision.

A High Court can deal with order passed under S. 476, Cr. P. C. in revision for good cause shown. *U. Po Yelik v. U. Po Kyin*.

12 Cr. L. J. 85 : 8 I. C. 1197 : 3 Bur. L. T. 101.

———S. 476—Revision.

High Court ought to be very reluctant to interfere with discretion of Court in making complaint under S. 476. *Purna Chandra Dutta v. Dhalu*.

32 Cr. L. J. 377 : 129 I. C. 561 : 58 Cal. 374 : 34 C. W. N. 914 : 52 C. L. J. 87 : I. R. 1931 Cal. 209 : A. I. R. 1930 Cal. 721 (2).

———S. 476—Revision—Order by a Criminal Court.

An order under S. 476, Cr. P. C. made by a Criminal Court is open to revision by the High Court. *Mata Ratau v. Mahabir Misser*.

7 Cr. L. J. 1 : 4 A. L. J. 803 : 28 A. W. N. 27 : 2 M. L. T. 512.

———S. 476—Revision—Order of Sessions Judge upon application under Ss. 476, ordering prosecution under S. 211, Penal Code—No appeal but revision lies.

No appeal but only revision lies from an order of Sessions Judge upon an application under S. 476, Cr. P. C., ordering prosecution under S. 211, Penal Code. *Bachu Singh v. Tribeni Sah*.

40 Cr. L. J. 157 : 179 I. C. 167 : 11 R. P. 328 : 5 B. R. 203 : A. I. R. 1939 Pat. 178.

———S. 476—Revision.

Proceedings of District Court will not be set aside merely for reason of absence of exact words of section in the order. *Bankey Lall v. Rampadarath Singh*.

35 Cr. L. J. 459 : 147 I. C. 712 (2) : 14 P. L. T. 635 : 6 R. P. 370 : A. I. R. 1933 Pat. 713.

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to in that section or in the earlier proceedings out of which the inquiry arises. *Ganda Mal v. Emperor*.

21 Cr. L. J. 601 (b) :
57 I. C. 169 : A. I. R. 1920 Lah. 215.

—————**S. 476—Preliminary enquiry.**

Expediency in interest of justice is necessary—Contradictory or false statement not shown to Court—No *prima facie* case—Inquiry cannot be ordered. *In re : Chatur Jathaji*.

34 Cr. L. J. 33 :
140 I. C. 619 : 34 Bom. L. R. 1247 :
I. R. 1933 Bom. 1 : A. I. R. 1932 Bom. 551.

—————**S. 476—Preliminary enquiry.**

It cannot be laid down that in every case it should be held before making complaint. Court has to decide in each individual case if it is necessary. *Purna Chandra Dutta v. Dhalu*.

32 Cr. L. J. 377 :
129 I. C. 561 : 58 Cal. 374 :
34 C. W. N. 914 : 52 C. L. J. 87 :
I. R. 1931 Cal. 209 : A. I. R. 1930 Cal. 72.

—————**S. 476—Preliminary enquiry.**

It is not necessary, having regard to the terms of S. 476, Cr. P. C., that any preliminary enquiry that may be deemed necessary should be of an exhaustive nature. *Bhuban Chandra Prodhan v. Emperor*.

28 Cr. L. J. 783 :
104 I. C. 111 : 31 C. W. N. 828 :
55 Cal. 279 : A. I. R. 1927 Cal. 628.

—————**S. 476—Preliminary enquiry.**

It is within the discretion of a Court proceeding under S. 476, to hold a preliminary inquiry or not to hold such inquiry. *Kewal Ram v. Emperor*.

36 Cr. L. J. 1354 :
158 I. C. 324 : 15 Pat. 69 :
1 B. R. 872 : 16 P. L. T. 693 :
8 R. P. 187 : A. I. R. 1935 Pat. 515.

—————**S. 476—Preliminary enquiry—Need not be conducted by Court itself.**

The preliminary enquiry contemplated by S. 476, Cr. P. C., may be conducted by the Court making the complaint by itself or by any other method available, e. g., by the Criminal Intelligence Department. *Fazla Rahman v. Emperor*.

31 Cr. L. J. 1055 :
126 I. C. 553 : A. I. R. 1930 Cal. 515.

—————**S. 476—Preliminary enquiry—Order for prosecution.**

The phraseology of S. 476, Cr. P. C., shows that a preliminary inquiry is not obligatory. An order under that section may be made by a Judge who had not heard the evidence at the original trial, and without an independent investigation, as the power to direct prosecution is conferred on the Court and not on the individual officer who fills the judicial office at a particular time. Whether the person against whom an order under S. 476 has been made without a preliminary investigation, has been prejudiced by reason of the omission to make such investigation, is a matter which may be considered by the High Court when

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the propriety of the order is called in question. *Darpa Narayan Bera v. Bipin Bhari Mitra*.

12 Cr. L. J. 209 :
10 I. C. 66 : 15 C. W. N. 691 :
14 C. L. J. 123.

—————**S. 476—Preliminary enquiry—Proceedings under S. 476—Notice to accused, if required.**

The wording of S. 476 does not make it incumbent on the Court to hold any preliminary inquiry or to give accused notice, and if an inquiry is held, its nature, method and extent are entirely within the discretion of the Court. *Nand Kumar Sinha v. Emperor*.

39 Cr. L. J. 103 :
172 I. C. 237 : 4 B. R. 141 :
10 R. P. 316 : A. I. R. 1937 Pat. 534.

—————**S. 476—Preliminary enquiry—Sanction for prosecution for forgery.**

The language of S. 476, Cr. P. C., is by no means imperative in regard to preliminary enquiries ; where the record of the judicial proceedings in the course of which an offence has been committed or brought to notice itself, contains sufficient material for thinking that a *prima facie* case exists against the accused, no preliminary enquiry is necessary. *H. V. Subba Rao v. Government of Mysore*.

9 Cr. L. J. 319 :
12 M. C. C. R. 66.

—————**S. 476—Preliminary enquiry—Sanction to prosecute—Affidavit, false, filed before munsarim.**

An affidavit, written in English, was presented to the munsarim of the Court. It purported to be signed by the deponent in Urdu. It was not proved that it was read or explained to the latter. The Judge held the statements contained in the affidavit to be false and exaggerated and gave sanction under S. 476, Cr. P. C. for the prosecution of the deponent : *Held*, (1) that the case was one in which a preliminary enquiry should have been made before an order was passed under S. 476 : (2) that inasmuch as the matters contained in the affidavit had not taken place before the Judge, the affidavit should have been rejected on the spot. *Mathura Prasad v. Emperor*.

18 Cr. L. J. 883 :
41 I. C. 995 : 15 A. L. J. 517 :
A. I. R. 1917 All. 132.

—————**S. 476—Preliminary enquiry.**

The scope of the enquiry under S. 476 depends on the discretion of the Court. It is optional to the Court to make a preliminary enquiry, and the nature of that enquiry must be determined with reference to the circumstances of each case. If a witness be examined in the course of such enquiry, it cannot be said that it is the right of the person against whom the enquiry is being made to cross-examine the witness. There is nothing either in S. 476 or S. 477 to suggest that the person concerned has any such right. *Bakir Saheb Amir Saheb v. Emperor*.

17 Cr. L. J. 249 :
34 I. C. 969 : 18 Bom. L. R. 284 :
A. I. R. 1916 Bom. 218.

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to be set aside in revision. *Ganeswar Paharaj v. Emperor.*

22 Cr. L. J. 458 :
61 I. C. 842 : 6 P. L. J. 146 :
1921 Pat. 176 : 2 P. L. T. 552 :
A. I. R. 1921 Pat. 121.

—————S. 476—*Rights of accused.*

If the accused desires to raise at any stage the contention that no finding has been recorded under S. 476 or that the finding is not a proper one, it is for him to prove the contention in the trial Court. *Moolchand Bachomal v. Emperor.*

34 Cr. L. J. 305 (2) :
142 I. C. 74 : 26 S. L. R. 105 :
I. R. 1933 Sind 82 :
A. I. R. 1933 Sind 37.

—————Ss. 476, 476-B—*Right of accused—Complaint under S. 476—No appeal—Complaint, if can be challenged before Magistrate.*

Where a Court makes a complaint under S. 476, Cr. P. C., and no appeal is filed against it under S. 476-B, the accused cannot challenge the complaint itself before the Magistrate. *Emperor v. U Kadoo.*

37 Cr. L. J. 1008 :
164 I. C. 769 : 9 Rang. 139 :
A. I. R. 1936 Rang. 369.

—————Ss. 476, 537—*Right of accused—Objection to initiation of proceedings for want of jurisdiction—Objection after commitment—Legality of.*

In a case triable by the Sessions Court and initiated by a complaint by the Magistrate under S. 476, Cr. P. C., once a commitment is made, it is too late for the accused to take objection against the initiation of proceedings for want of jurisdiction in the Magistrate. The intention of the Legislature is to prevent innocent persons being put on trial at the instance of persons likely to be moved by motives of revenge, and not protect guilty persons from the penalty of their crimes. *Jugeshwar Singh v. Emperor.*

37 Cr. L. J. 893 :
164 I. C. 86 : 15 Pat. 26 :
17 P. L. T. 234 : 2 B. R. 702 : 9 R. P. 84 :
A. I. R. 1936 Pat. 346.

—————S. 476-B—*Right of appeal.*

S. 476-B, Cr. P. C., contemplates that if an Appellate Court sets aside the order of the Original Court, the party prejudicially affected by the order of the Appellate Court has a right of appeal to the Court to which appeals from such Appellate Court ordinarily lie. *Faujdar Rai v. Emperor.*

26 Cr. L. J. 1565 :
90 I. C. 445 : 7 P. L. T. 199 :
A. I. R. 1926 Pat. 25.

—————Ss. 476, 476-B—*Right of appeal—Sub-Deputy Magistrate refusing to direct prosecution under S. 476—On appeal, District Magistrate directing prosecution—Appeal from his order, if maintainable.*

Where the Sub-Deputy Magistrate refuses to direct prosecution of a witness under S. 476, Cr. P. C., for an offence under S. 193, Penal Code, but the District Magistrate under S. 476-B, directs the prosecution, there is no

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right of appeal against this order. *Kesharinandan Ramani v. Emperor.* (F. B.)

39 Cr. L. J. 181 :
172 I. C. 899 : 18 P. L. T. 917 :
4 B. R. 186 : 10 R. P. 370 : 17 Pat. 9 :
A. I. R. 1938 Pat. 19.

—————S. 476—*Right of appeal, effect of failure to exercise—Complaint—Failure to appeal from order making complaint—Objection to validity of complaint at trial, competency of.*

It is not open to a person who has not exercised his right of appeal from an order making a complaint against him under S. 476, Cr. P. C., to contend before the Magistrate or Sessions Judge before whom he is placed for trial, that the plaint is not a good complaint or that it is not made by a proper officer. *Jabbar Ali v. Emperor.*

30 Cr. L. J. 656 :
116 I. C. 632 : 49 C. L. J. 193 :
I. R. 1929 Cal. 488 :
A. I. R. 1929 Cal. 203.

—————S. 476—*Right of complainant.*

When upon the facts the commission of several offences is disclosed, some of which require sanction and others do not, it is open to the complainant, if he so wishes, to proceed in respect of those only which do not require sanction. *Superintendent and Remembrancer, Legal Affairs, Bengal v. Biswambhar Brahmin.*

31 Cr. L. J. 125 :
120 I. C. 449 : 33 C. W. N. 474 :
56 Cal. 1041 : A. I. R. 1929 Cal. 633.

—————S. 476—*Sanction, granting, revoking or refusing to grant—Judicial proceeding—Competency of order under S. 476 while hearing appeal under S. 195 (6)—Sanction to stranger to suit.*

The grant of sanction to prosecute, the revocation of sanction already granted, and the refusal of an application to grant sanction, are all judicial acts. A District Judge in an appeal under S. 195 (6), Cr. P. C., affirmed the order of a Munsif and refused to grant sanction to a stranger to a suit, and at the same time made an order under S. 476 : *Held*, that it was perfectly open to the Judge to take proceedings under S. 476, as the fact of the commission of an offence had been brought to his notice in the course of a judicial proceeding under S. 195 (6) : *Held*, also, that the Judge acted properly in refusing to grant sanction to a stranger to the suit. *Bala Pasban Kuldip Lal v. Gurwar Misser.*

13 Cr. L. J. 1 :
13 I. C. 111.

—————S. 476—*Sanction to prosecute—False complaint—Motion by opposite party.*

It is inadvisable to give sanction to one party to prosecute another for offence under Ss. 163 and 211 of the Penal Code, where there is a dispute over property causing breach of the peace. If the Court thinks that prosecution is in the interest of public welfare, it may take action under S. 476, Cr. P. C. *Bhagwati Misir v. Ram Dayal.*

14 Cr. L. J. 127 :
18 I. C. 687 : 11 A. L. J. 113.

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should be present in the mind of the Court during the proceedings in the course of which the offence was committed or brought to its notice. No prosecution ought to be directed unless there is a reasonable probability of conviction. It is not the intention that when the proceedings had terminated, the attention of the Court should be subsequently drawn by some private person to the fact that in those proceedings there had been committed some offence in contempt of the Court's authority or against public justice which deserved punishment. *Po Thcin v. Buta Khan*. 38 Cr. L. J. 226 :

166 I. C. 489 : 9 R. Rang. 262 :
A. I. R. 1936 Rang. 473.

-----S. 476—Probability of conviction.

Suit on pro-note—Judge suspecting pro-note to be forgery—No ground showing that prosecution would be in interest of public justice. Prosecution should not be launched. *Kishin Dutt v. Emperor*. 35 Cr. L. J. 1271 :

151 I. C. 290 (b) : 1934 O. L. R. 707 :
11 O. W. N. 1058 : 7 R. O. 107 :
A. I. R. 1934 Oudh 377.

-----Ss. 476, 195—Probability of conviction
—Person making contradictory statement in case
—Necessary ingredients for taking action.

In an application made under S. 476 read with S. 195, Cr. P. C., to the High Court for action against a person for having made contradictory statements in a case, every allowance should be made for forgetfulness and for confusion, but in a proper case, the Court should take action. *Gopaldas Khatriya v. Jnanendra Nath Dawn*. 40 Cr. L. J. 450 :

180 I. C. 586 : 11 R. C. 702 :
A. I. R. 1938 Cal. 677.

-----S. 476—Procedure—Abettors to offence committed by party, prosecution of.

If a Judge desires to take action against alleged accomplices in an offence committed by a party to the proceeding, he should make a proper enquiry himself or through Police or some subordinate Court and after considering the report of such enquiry, he should record a finding separately in the case of every person that it is necessary in the interest of justice that enquiry should be made into a particular offence with respect to that person by a Magistrate. *Shabbir Hasan v. Emperor*.

28 Cr. L. J. 986 :
105 I. C. 810 : 26 A. L. J. 46 :
I. L. T. 40 All. 26 :
A. I. R. 1928 All. 21.

-----S. 476—Procedure—Complaint before Magistrate—Inquiry—Offence disclosed not triable by Magistrate—Order directing prosecution.

A complaint was filed in the Court of a Magistrate of the Second Class stating that the accused was attempting to cheat the complainant and requesting that he should be punished. The Magistrate held a judicial inquiry and discovering *prima facie* grounds, he made an order under S. 476, Cr. P. C. directing the prosecution of the accused under Ss. 467 and 473, Penal Code. The accused was, therefore, tried and

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convicted of offences under those sections by a competent Magistrate: *Held*, that the procedure followed by the Second Class Magistrate was perfectly correct. *Abdul Kaiyum Khan v. Emperor*. 25 Cr. L. J. 628 :

81 I. C. 116 : A. I. R. 1925 All. 99.

-----S. 476—Procedure—Complaint by Civil Court—Civil Court's duty to record findings against each accused.

Under S. 476 of the Cr. P. C., the preliminary inquiry has to be made by the Civil Court itself. If it so desires, an enquiry may be ordered by the Police, but in such a case, the Civil Court has to determine whether it is necessary to take action against particular persons under S. 476 and should record a finding to that effect against each individual complained against. *Shabir Hasan v. Emperor*.

28 Cr. L. J. 986 :
105 I. C. 810 : 26 A. L. J. 46 :
I. L. T. 40 All. 26 :
A. I. R. 1928 All. 21.

-----S. 476—Procedure.

During the pendency of a complaint implicating certain person on charges of rioting, house-tresspass and hurt, a complaint was filed by a relation of the accused in the Court of another Magistrate, against the complainants in the first case, of offences punishable under Ss. 161 and 193 read with S. 116, I. P. C., alleging that on a day previous to filing of the first complaint they offered bribe to the Medical Officer in order to obtain a false certificate about their injuries: *Held*, the complaint of the Magistrate trying the first case was necessary in respect of the offence alleged under S. 193, I. P. C., and as the two offences were part and parcel of the same transaction, the other Magistrate had no jurisdiction to entertain the complaint. The proper procedure was to apply to the first Magistrate under S. 476. *Dharumal Teumal v. Teumal Lekhranj*. 41 Cr. L. J. 821 :

190 I. C. 119 : 1940 Kar. 500 :
13 R. S. 52 : A. I. R. 1940 Sind 133.

-----S. 476—Procedure—Duty of officer making complaint to state evidence on which he relies.

When a complaint is made under S. 476, the officer making the complaint must state the evidence on which he relies, so that the Magistrate to whom the case is referred, may be able to ascertain what the evidence is on which the prosecution case is based. *Shankar Sahai v. Emperor*. 31 Cr. L. J. 938 :

125 I. C. 838 : 7 O. W. N. 638 :
A. I. R. 1930 Oudh 404.

-----S. 476—Procedure.

In a Criminal Proceeding an accused person ought to be distinctly made to understand from the beginning what the Court is about, and no laxity ought to be allowed in the procedure prescribed by the Legislature. Accordingly the order of committal was quashed and the Sub-Judge was directed to proceed under S. 476, Cr. P. C. *In re : Sitaram Shivrabhat*.

1 Cr. L. J. 746 :
6 Bom. L. R. 578.

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this. Proceedings under S. 476 are not invalidated by the mere fact that the accused was neither a party nor a witness in the original suit. If an offence is brought to the notice of a Court in the course of a judicial proceeding, it has jurisdiction to proceed under S. 476, it being immaterial whether the persons concerned appeared before the Court or not. Where a Judge entertains a suspicion that an attempt is being made to use as genuine a forged document, there is nothing to preclude him from proceeding against the persons concerned with regard to the forgery itself. *Narayan Shaligram v. Emperor*. 20 Cr. L. J. 426 : 51 I. C. 202 : A. I. R. 1919 Nag. 89.

———S. 476—Scope.

S. 476, Cr. P. C., has to be read with S. 195, and the restrictions mentioned in the latter section are to be treated as incorporated in the former. Therefore, no order for prosecution can be made under S. 476 when the alleged offence under S. 211, I. P. C., has been committed in the course of a police investigation and not in relation to proceeding in a Court. But when the police reported the complaint to be false and the petitioner insisted upon a judicial investigation, the position is entirely different, and he must be taken to have preferred a complaint to the Magistrate; and if that complaint is found false, he may be proceeded against under S. 476. *Jadunandan Singh v. Emperor*. 11 Cr. L. J. 37 : 4 I. C. 710 : 20 C. L. J. 564.

———S. 476—Scope.

S. 476 is so worded as to make it clear that the procedure therein provided is intended to deal primarily with offences, but with offenders also if they are known and available. *Fateh Muhammad v. Emperor*. 41 Cr. L. J. 750 : 189 I. C. 586 : 1940 Kar. 287 : 13 R. S. 33 : A. I. R. 1940 Sind 97.

———S. 476—Scope.

S. 476, Cr. P. C., must be read with S. 195 and is consequently restricted by the limitations contained in Cl. (b) of that section. *Tayabullah v. Emperor*. 18 Cr. L. J. 13 : 36 I. C. 845 : 24 C. L. J. 134 : 20 C. W. N. 1265 : 43 Cal. 1152 : A. I. R. 1917 Cal. 593.

———S. 476—Scope.

S. 476, while it authorises the sending of accused for trial by a Civil, Criminal or Revenue Court of its own motion, it gives no authority to a Deputy Commissioner. *Nga Kyaw Zan v. Nga Kyi Dan*. 17 Cr. L. J. 59 : 32 I. C. 651 : U. B. R. 1915 II, 91 : A. I. R. 1916 U. Bur. 15.

———S. 476—Scope.

The section is wide enough to cover the considerations of other than legal evidence and a prosecution can legally be directed upon evidence recorded under S. 202. *Bansidhar Marwari v. Emperor*. 24 Cr. L. J. 862 : 74 I. C. 1054 : A. I. R. 1924 Pat. 138.

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———S. 476—Scope.

The power to make a complaint under S. 476, is not confined only to the officer who takes cognizance of the case. *Amanat Ali v. Emperor*. 31 Cr. L. J. 430 : 122 I. C. 627 : 33 C. W. N. 1058 : A. I. R. 1929 Cal. 724.

———S. 476—Scope.

The reference in S. 476 to offences referred to in S. 195 is not merely to offences under certain sections, but to such offences when committed by a party to the proceeding. *Guruswamy v. Ebrahim*. 26 Cr. L. J. 295 : 84 I. C. 439 : 2 Rang. 374 : A. I. R. 1925 Rang. 28.

———S. 476—Scope.

Where a complaint was made to a First Class Magistrate, but the District Magistrate transferred the case to his own file and sent the case for an enquiry and report to another Magistrate, and the District Magistrate on a consideration of the report, dismissed the complaint : *Held*, that the District Magistrate was competent to make a complaint under S. 476, against the complainant. *Amanat Ali v. Emperor*. 31 Cr. L. J. 430 : 122 I. C. 627 : 33 C. W. N. 1058 : A. I. R. 1929 Cal. 724.

———S. 476—Scope.

Where a Magistrate on receiving an alleged false statement made a note "M has given a false affidavit. His allegations are denied by the Sub-Magistrate and by the sworn affidavit of G. Separate action will be taken against him : " *Held*, that this was not a sufficient compliance with the provisions of S. 476, Cr. P. C. *Chaduvu M. Munuswami Naidu v. Emperor*. 29 Cr. L. J. 732 : 110 I. C. 588 : 1928 M. W. N. 229 : A. I. R. 1928 Mad. 783.

———S. 476—Scope.

Where an application for revision was made against an order of a Court directing prosecution of a person under the provisions of S. 476, Cr. P. C. (for offences under Ss. 191, 196, I. P. C.) : *Held*, that no such application could lie against such order, the direction of the Court being equivalent to a complaint under S. 476 (2), Cr. P. C. *Soni Lakhu Hamir v. Azam Bhima Wala's Estate*. 7 Cr. L. J. 143.

———S. 476-A—Scope.

S. 476-A of the Cr. P. C. does not empower a superior Court to do what a subordinate Court had no power to do. *Pattabi Chetty v. Gopala Chetty*. 26 Cr. L. J. 1125 : 88 I. C. 357 : A. I. R. 1925 Mad. 1181.

———Ss. 476, 195—Scope.

S. 476 must be read with S. 195 and the Courts can exercise the powers conferred by S. 476 with regard to an offence referred to in S. 195 (1) (c) only if it is committed by parties to the proceedings in such Courts. *Emperor v. Rahim Dino*. 28 Cr. L. J. 978 : 105 I. C. 802 : A. I. R. 1928 Sind 69.

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part of the day he had with him a document of trial. Later on, the Court called upon him, under rule 7 of Order XVI, C. P. C., to produce the document. He stated that he had not the document with him at that time, but offered to produce it the next day. The Court at once drew up proceedings under S. 476 and directed his prosecution for offences under Ss. 175, 187 and 204, Penal Code: *Held*, that the proceedings under S. 476 could not be justified: *Held* further, that before any proceedings could be taken against the petitioner, it ought to have been determined whether the document in question was one which he could be compelled to produce. *Bhagabat Prasad Singh v. Emperor*.

12 Cr. L. J. 450 :

11 I. C. 794 : 14 C. L. J. 120.

—Ss. 476, 195—Proceedings under.

Proceedings under S. 195 are distinct from those under S. 476 of the Code. The former are of a summary character, and a Court proceeding under that section is not bound to hold an inquiry. In the case of the latter, the inquiry has to be as nearly as possible under Chapter XVIII of the Code. *In re: Sitaram Shivrabhat*.

1 Cr. L. J. 746 :

6 Bom. L. R. 578.

—S. 476—Proof.

Where the trial Court believes the statements of a witness but the Appellate Court disbelieves them, in considering the question of prosecuting the witness for perjury, the fact that the trial Judge has believed him should be taken in his favour. *Yar Mohammad v. Bansil Singh*.

34 Cr. L. J. 105 :

141 I. C. 146 (2) : I. R. 1933 All. 51 :

A. I. R. 1932 All. 674.

—S. 476—Proper Court—Case instituted before one Court and tried by another Court—Proper Court to make complaint.

Where a case is instituted before one Court and tried on the merits by another Court, the latter is the proper Court to make a complaint under S. 476. *Amanat Ali v. Emperor*.

31 Cr. L. J. 430 :

122 I. C. 627 : 33 C. W. N. 1058 :

A. I. R. 1929 Cal. 724.

—S. 476—Prosecution for false evidence.

Mere contradiction alone will not justify a prosecution for giving false evidence. An order under S. 476 should only be made if it is expedient in the interests of justice. *Jani v. Emperor*.

36 Cr. L. J. 10 :

152 I. C. 254 : 7 R. S. 78 :

A. I. R. 1934 Sind 155.

—S. 476—Prosecution for perjury—Issue of notice, necessity of—Factors to be taken into consideration before ordering prosecution.

In ordering prosecution for perjury, the nature of the statement said to be false must be taken into consideration, i. e., the statement must be of such a nature that it may directly or indirectly affect the decision of the case. Two other essential factors which should also be

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taken into consideration are : (1) a reasonable prospect of success in the prosecution, and (2) the expediency of such prosecution in the interests of public justice. Under S. 476, Cr. P. C., issue of notice to the party to be prosecuted is discretionary with the Court. *Jagat Singh v. Emperor*.

31 Cr. L. J. 179 :

120 I. C. 687 : A. I. R. 1930 Lah. 55.

—S. 476—Prosecution for perjury—Priority of order for, by the Appellate Court.

It is an unusual and not a proper procedure for an Appellate Court which did not hear the evidence, to order the prosecution for perjury of a witness for making false statements in his deposition in the lower Court on materials in support of the prosecution which were not before the lower Court and which the witness had no opportunity of explaining while in the box. *Loke Nath Sahi v. Emperor*.

4 Cr. L. J. 219 :

10 C. W. N. 1091.

—S. 476—Prosecution for perjury—Statements in examination-in-chief corrected in cross-examination.

It is not desirable or reasonable to prosecute a witness either for perjury or for an attempt to commit the offence, if he corrects in his cross-examination a statement made by him in his examination-in-chief, on his being confronted with an earlier statement made by him some time previously, as the very gist of an offence of perjury is the fact that it amounts to an attempt to mislead and deceive the Court and the offence cannot be said to be complete if the deponent corrects himself before leaving the Court. It is not advisable to order prosecution for an offence of perjury if it is of a most technical nature and there is no large degree of certitude of conviction. *Tarachand Marwadi v. Emperor*.

30 Cr. L. J. 724 :

117 I. C. 210 : I. R. 1929 Nag. 194 :

A. I. R. 1929 Nag. 279.

—S. 476—Prosecution for perjury, legality of.

Where the deposition of a witness has not been read over to him but has been signed by him after reading it over to himself, the witness cannot be prosecuted for perjury. *Kesar Singh v. Sultan-ul-Mulk*.

28 Cr. L. J. 651 (a) :

103 I. C. 107 (1).

—Ss. 476, 195—Prosecution of complainant—Sanction, form of.

Where the prosecution of a complainant is justifiable in the general public interest, it should be carefully guarded against becoming a means of oppression or revenge in the hands of individuals. Therefore, under such circumstances an order under S. 476, Cr. P. C., is more appropriate than an order for sanction under S. 195, Cr. P. C. *Hansraj Singh v. Bhagwana*.

18 Cr. L. J. 680 :

40 I. C. 328 : A. I. R. 1917 All. 399.

—S. 476—Prosecution under Ss. 182, 211, Penal Code—Report to Police of theft when no theft took place—Suspicion against opposite party.

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and that a complaint should be made against that party under S. 476 of the Cr. P. C. Where an order under S. 476, Cr. P. C., is passed by a Civil Appellate Court, no revision lies to the High Court under S. 439, Cr. P. C. *Emperor v. Ram Narain*. 27 Cr. L. J. 1021 : 96 I. C. 877 : A. I. R. 1926 All. 577.

—S. 476—Scope of—Civil Court—Mamlatdar's Court—Mamlatdar's Courts Act (Bom. Act II of 1906).

A Mamlatdar's Court, constituted under Bombay Act II of 1906, is a Civil Court within the meaning of S. 476, Cr. P. C. *Emperor v. Bhavdu Dhondu*. 14 Cr. L. J. 80 : 18 I. C. 416 : 15 Bom. L. R. 53.

—S. 476—Scope of—Court—Income-tax Collector.

The Income-tax Collector is not a Court within the meaning of S. 476, Cr. P. C. *In re : Kalidas Rewadas*. 4 Cr. L. J. 34 : 8 Bom. L. R. 477.

—S. 476—Scope of—"Court", meaning of—Judicial proceeding—Whether execution proceeding is judicial proceeding.

There is nothing in S. 476, Cr. P. C., to warrant withholding from the word "Court", its natural meaning with the sense of continuity. This implies, notwithstanding any change of officers. An execution proceeding is a judicial proceeding within the meaning of S. 476, Cr. P. C. *Shaikh Bahadur v. Shaikh Eradatullah*. (F. B.) 11 Cr. L. J. 407 : 6 I. C. 801.

—S. 476—Scope of—Defamatory statements in affidavit in course of judicial proceedings—Facts, whether constitute offence relating to administration of justice, doubtful—Complaint under S. 500, Penal Code.

Where defamatory statements are made in an affidavit in the course of judicial proceedings, it cannot be said that no complaint of defamation relating to them can be made without complaint of the Court. Where it is a matter of doubt, whether the facts complained of do constitute one of the offences, as provided in S. 193, Penal Code, relating to the administration of justice, it cannot be said that the complainant is thereby debarred from placing his complaint under S. 500, Penal Code. *Kahmal Motiram v. Mulchand Kimatrai*. 39 Cr. L. J. 736 : 176 I. C. 365 : 11 R. S. 1 : A. I. R. 1938 Sind 129.

—S. 476—Scope of.

Every irregularity or illegality does not *ipso facto* vitiate a trial. *Moolchand Bachomal v. Emperor*. 34 Cr. L. J. 305 (2) : 142 I. C. 74 : 26 S. L. R. 105 : I. R. 1933 Sind 82 : A. I. R. 1933 Sind 37.

—S. 476—Scope of.

For the purposes of an action for malicious prosecution, proceedings under S. 476, although they are in a Civil Court, are to be deemed criminal proceedings. *Nagarmull v. Jhabarmull*. 35 Cr. L. J. 925 : 148 I. C. 1129 : 60 Cal. 1022 : 6 R. C. 490 : A. I. R. 1933 Cal. 909.

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—S. 476—Scope of.

In proceedings under S. 476, Cr. P. C., the person against whom the proceedings are instituted is not an accused person. *Damri Ram v. Emperor*. 19 Cr. L. J. 217 : 43 I. C. 793 : 4 P. L. W. 65 : A. I. R. 1918 Pat. 590.

—S. 476—Scope of.

It is only when a Court is expressly of opinion that it is expedient in the interests of justice that an inquiry should be made that an order under S. 476, can be made. *Nabani Nath Mukherjee v. Emperor*. 34 Cr. L. J. 684 (1) : 144 I. C. 88 : I. R. 1933 Cal. 501 : A. I. R. 1933 Cal. 147.

—S. 476—Scope of.

It is open to a Court to make an order under S. 476, Cr. P. C., without taking any evidence at all. If it chooses to take evidence, it is entirely within its discretion to say when and where that evidence should stop. The section gives the widest discretionary power to a Criminal Court and deliberately refrains from imposing any special formalities to hamper the discretion of the Court. *Bokir Saheb Amir Saheb v. Emperor*. 17 Cr. L. J. 249 : 34 I. C. 969 : 18 Bom. L. R. 284 : A. I. R. 1916 Bom. 218.

—S. 476—Scope of—Jurisdiction Magistrate, jurisdiction of, to take cognizance of case—Debt.

All that S. 476, Cr. P. C., requires is that an offence mentioned or referred to in S. 195 should have been brought to the notice of the Court in the course of a judicial proceeding. S. 476 vests jurisdiction in a Magistrate to try a case if one is sent to him for trial by a Court mentioned in that section. All that is required to give jurisdiction to the Magistrate to try the case is that he should have been the nearest Magistrate. The section has nothing to do with local or territorial jurisdiction at all. *Rup Narain Singh v. Emperor*. 20 Cr. L. J. 202 : 49 I. C. 650 : A. I. R. 1919 Pat. 189.

—S. 476—Scope of—Jurisdiction of Court to make complaint of abetment of offence under S. 205, Penal Code.

A complaint of abetment of forgery is a complaint of an offence punishable under one of the sections of the Code named in S. 195 (1) (b), namely S. 205, I. P. C. Moreover, the phrase in S. 476, Cr. P. C., "any offence referred to in S. 195, Sub-s. (1), cl. (b)" must mean any offence to which S. 195, Sub-s. (1), cl. (b), has reference. The Court, therefore, has jurisdiction to make a complaint of abetment of an offence under S. 205, I. P. C. *Tan Ba Cheng v. Registrar, Original Side, High Court*. 41 Cr. L. J. 515 : 187 I. C. 754 : 1940 Rang. 12 : 12 R. Rang. 354 : A. I. R. 1940 Rang. 104.

—S. 476—Scope of—Legal Practitioners Act (XVIII of 1879), S. 23—Magistrate holding inquiry—Whether a Court.

For the purposes of S. 476, Cr. P. C., a

Cr. P. CODE (1898), S. 476**—S. 476—Revision.**

The High Court should not exercise its power of revising an order under S. 476, Cr. P. C. where the Court below has arrived at a judicial opinion on evidence that there is ground for enquiring into an offence referred to in S. 195, merely because the High Court might disagree with that opinion. *Doulal v. Emperor*.

18 Cr. L. J. 1015 :
42 I. C. 759 : 14 N. L. R. 6 :
A. I. R. 1917 Nag. 136.

—S. 476—Revision.

Where a Civil Court exercises the special jurisdiction granted by Ss. 476, 476-A or 476-B, it does so as a Civil Court and not as a Criminal Court. Consequently a petition in revision against an order in such proceedings lies to the Civil Court and not to a Criminal Court and can be brought only under S. 34 of the N.-W. F. P. Courts Regulation. *Tek Chand v. Harnam Singh*.

161 I. C. 270 : 8 R. Pesh. 168 :
A. I. R. 1936 Pesh. 87.

—S. 476—Revision.

Where a Criminal Court takes proceedings under S. 476, the appellate order of the Sessions Judge can only be revised by the High Court under the provisions of S. 439. *Mandi Lal v. Ram Adhin*.

36 Cr. L. J. 254 :
153 I. C. 104 : 11 O. W. N. 1469 : 7 R. O. 291 :
10 Luck. 334 : A. I. R. 1935 Oudh 59.

—Ss. 476, 476-B—Revision—Civil Procedure Code (Act V of 1908), S. 115—Complaint, refusal to make, by Civil Court—Appeal—Order directing complaint to be made—Revision, whether competent.

Where a Civil Court refuses to make a complaint under S. 476, Cr. P. C. but on appeal the Appellate Court directs the complaint to be made, an application in revision against the order of the Appellate Court can only be maintained if it falls within the purview of S. 115, C. P. C. *Abdul Haq v. Sheo Ram*.

28 Cr. L. J. 296 :
100 I. C. 376 : 25 A. L. J. 569 :
49 All. 536 : A. I. R. 1927 All. 334.

—Ss. 476-B, 439—Revision—Order under S. 476-B by Civil Court—Procedure to be followed by High Court, whether should be one under S. 439 or S. 115, Civil Procedure Code.

Applications in revision from an order under S. 476-B, Cr. P. C. by a Civil Court to the High Court should be heard and decided in accordance with the provisions of S. 439, Cr. P. C. It is certainly a Court which is exercising jurisdiction in a criminal matter, and orders passed by it can be revised by the High Court under S. 439. Not only does the procedure relating to criminal appeals apply to a proceeding under S. 476-B, but any order made under that section can be revised by the High Court under S. 439, and the provisions of S. 115, C. P. C., do not apply to such a case. *Emperor v. Bhatu Sadu Mali*. (F. B.)

39 Cr. L. J. 495 :
174 I. C. 780 : 40 Bom. L. R. 297 :
10 R. B. 495 : I. L. R. 1938 Bom. 331 :
A. I. R. 1938 Bom. 225.

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—S. 476—Revision, ground for—Civil Procedure Code, S. 115—Whether expediency is a good ground for revision.

Whether an order is expedient or not is not a good ground on which the High Court can interfere under S. 115, C. P. C. *Nawal Singh v. Emperor*.

13 Cr. L. J. 302 :
14 I. C. 766 : 34 All. 393 : 9 A. L. J. 481.

—Ss. 476, 476-B, 339—Revision, nature of—Civil Procedure Code Act (V of 1908), S. 115—Order by Civil Court making or refusing to make complaint—Appeal.

A petition for revision of an order passed by a superior Court under S. 476-B, Cr. P. C., on appeal from an order of a Civil Court making or refusing to make a complaint, must be dealt with under S. 115, C. P. C., and not under S. 439, Cr. P. C. *Banwari Lal v. Jhunka*.

27 Cr. L. J. 278 :
92 I. C. 454 : 24 A. L. J. 217 :
A. I. R. 1926 All. 229.

—S. 476-B—Revision—Procedure.

High Court can revise proceedings under S. 476-B or under S. 115, C. P. C. But procedure is not that allowed by the C. P. C.; proceedings under S. 476-B are more of criminal than civil nature. *Janardana Rao v. Lakshmi Narasamma*. (F. B.).

35 Cr. L. J. 392 :
147 I. C. 351 : 38 L. W. 940 :
1933 M. W. N. 1476 : 65 M. L. J. 873 :
57 Mad. 177 : 6 R. M. 330 :
A. I. R. 1934 Mad. 52.

—S. 476—Revisional jurisdiction by High Court—Stay of criminal proceedings, pending civil appeal, not justifiable.

In a Probate Case the District Judge acting under S. 476, Cr. P. C., directed prosecution of petitioners for perjury. An appeal was filed against order in the Probate Case, and at the same time a civil revision was filed praying that criminal prosecution for perjury may be stayed till decision of appeal in the Probate Case : *Held*, assuming, without deciding, that the High Court has power to stay criminal proceedings either under S. 15 of the Charter Act of 1861 or under the Cr. P. C., it is not desirable that the proceedings should be stayed. On the contrary, it is expedient for the ends of justice that the trial of the petitioners be held with all possible despatch, while the facts deposed to by witnesses on both sides are fresh in their memory. *Hem Chandra Ray v. Atal Behari Ray*.

8 Cr. L. J. 435 :
35 Cal. 909.

—S. 476—Right of accused—Accused whether entitled to cross-examine witnesses.

A person who is called upon to show cause under S. 476, Cr. P. C. has a right to place his case before the Court either by offering evidence on his own behalf or by cross-examining the witnesses on behalf of the opposite party. Where a Court conducting an enquiry under S. 476, Cr. P. C. refuses to allow the accused to cross-examine the witnesses examined on behalf of the opposite party, its order is liable

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a person who is not a party to the civil suit, c. g. a witness. *Ejaz Ali Khan v. Emperor*.

23 Cr. L. J. 228 :
66 I. C. 68 : 24 O. C. 367 :
A. I. R. 1922 Oudh 220.

———S. 476—Scope of—Penal Code (*Act XLY of 1860*), S. 193—Prosecution, when can be ordered.

A prosecution under S. 193, Penal Code, cannot be ordered under such circumstances as cannot be shown to be a continuation of the proceedings in which the evidence was given. *Aiyakannu Pillay v. Emperor*. 32 M. 49 : 4 M. L. T. 404 : 19 M. L. J. 42 : 9 Cr. L. J. 41 : 1 I. C. 597, followed. *In re : Ramakrishnanma*.

11 Cr. L. J. 479 :
7 I. C. 398 : 8 M. L. T. 81.

———S. 476—Scope of—Perjury, committed before Munsif—Order for prosecution by his successor-in-office—Legality.

An order for prosecution passed by a Munsif, when the alleged offence of perjury was committed before his predecessor-in-office, does not fall within S. 476, Cr. P. C. *In re : Krishna Gobinda Dutt*.

4 Cr. L. J. 209 :
9 C. W. N. 859.

———S. 476—Scope of—Person not party to proceeding nor examined as witness, whether can be sent to nearest Magistrate.

A Magistrate has no jurisdiction to send a person, who has not been a party to any proceedings before him and who has not been examined as a witness in a case, to the nearest Magistrate under S. 476, Cr. P. C. Nor can he direct an enquiry under that section into an offence under S. 161, Penal Code, as that section is not mentioned in S. 195, Cr. P. C. *In re : Katari Veranna*.

17 Cr. L. J. 388 :
35 I. C. 820 : A. I. R. 1917 Mad. 666.

———S. 476—Scope of—Proceedings based on occurrence in other Court, validity of.

J and F lodged counter-complaints against each other before a Sub-Divisional Officer, who retained the complaint of J on his own file, while that of F was made over to a Deputy Magistrate who convicted J., holding that neither side had given a fully correct version of the occurrence. On the conviction being confirmed by the Sessions Judge on appeal, the Sub-Divisional Officer directed the prosecution of J under S. 476 : *Held*, that the order was bad inasmuch as it was based upon what had occurred in another Court. *Jugdeep Singh v. Emperor*.

18 Cr. L. J. 640 :
39 I. C. 1008 : 1 P. L. W. 580 :
A. I. R. 1917 Pat. 339.

———S. 476—Scope of—S. 476 contemplates Court itself and not the personality of Magistrate.

S. 476, Cr. P. C., refers not to the "Magistrate" but to the "Court." What the section contemplates is the Court itself and not the personality of the trying Magistrate. Hence a request made for the transfer of proceedings under S. 476 to the file of the Magistrate before whom the alleged offence was committed on the ground that he is the proper Magistrate to appreciate, whether the complaint under

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S. 476 should or should not be made, although otherwise very reasonable, cannot be granted by reason of the words of S. 476. *Jethanand Hemandas v. Emperor*.

40 Cr. L. J. 750 :
183 I. C. 195 : 12 R. S. 47 :
A. I. R. 1939 Sind 181.

———S. 476—Scope of.

S. 476, Cr. P. C., is self-contained and does not stand in need of being supplemented by other provisions of Cr. P. C. It is open to the Appellate Court when it finds that the Subordinate Court has not made a proper enquiry to report the matter to the High Court on its revisional side, and in such special cases, the High Court can pass any orders that it considers just and fit. *Manni Lal v. Emperor*. (F. B.)

38 Cr. L. J. 561 :
168 I. C. 434 : 1937 A. L. J. 192 :
1937 A. W. R. 290 : 9 R. A. 639 :
I. L. R. 1937 All. 517 : A. I. R. 1937 All. 305.

———S. 476—Scope of.

S. 476 is a corollary of S. 195. Powers conferred by S. 476 are not limited by S. 195. *Balgatanda Ramganda v. Emperor*.

32 Cr. L. J. 1017 :
133 I. C. 269 : 35 Bom. 461 :
33 Bom. L. R. 296 : I. R. 1931 Bom. 381 :
A. I. R. 1931 Bom. 305.

———S. 476—Scope of.

S. 476 only requires that there must be a reasonable prospect of a conviction. It is not necessary for the Magistrate, before ordering prosecution, to try the whole case and be absolutely satisfied that the accused cannot, by any possibility, escape a conviction. *Abdul Husen v. Emperor*.

15 Cr. L. J. 33 :
22 I. C. 177 : 9 N. L. R. 184 :
A. I. R. 1914 Nag. 1.

———S. 476—Scope of—Successor of Judge, whether can take action for offence committed before or brought to notice of his predecessor.

The word "Court" in S. 476, Cr. P. C., includes the successor of the Judge before whom the alleged offence was committed or to whose notice the commission of it was brought in the course of a judicial proceeding. Therefore, the successor of a Judge is justified in taking action under S. 476 in continuation of the order passed by his predecessor. *Badri Singh v. Emperor*.

22 Cr. L. J. 680 :
63 I. C. 616 : 19 A. L. J. 819 :
3 U. P.-L. R. All. 204 : A. I. R. 1921 All. 210.

———S. 476—Scope of.

Ss. 476 and 195 are intended really to prevent indiscriminate prosecutions under the various sections mentioned therein. If a complaint is filed under S. 471, Penal Code, and it appears that some other offence also has been committed, it is not necessary to have a fresh complaint. *Jamuna Singh v. Laldhari Singh*.

36 Cr. L. J. 26 :
152 I. C. 228 : 15 P. L. T. 694 :
7 R. P. 150 : A. I. R. 1934 Pat. 526.

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—Ss. 476, 195—Sanction to prosecute—*Indian Penal Code, S. 191—Giving false evidence—Affidavit.*

A witness, who had given evidence in a criminal case (for offences under Ss. 457, 380 and 511) before a Magistrate, subsequently learning that his deposition had been recorded incorrectly, filed an affidavit challenging the record before the District Magistrate who however directed his prosecution under S. 191, I. P. C., for making statements at variance with each other. *Held* (in revision) that whether the affidavit was a complaint or a miscellaneous protest against the Magistrate's conduct or a preliminary attempt to shake the prosecution case in appeal, the sanction could not possibly stand, for there were no contradictory statements at all, the witness having endeavoured to reconcile the two contradictions between what he said and what the Magistrate recorded; and that the form of charge was thus obviously incorrect: *Held* also that no sanction could be given without holding an enquiry under S. 476, Cr. P. C., and without taking the witness's explanation and calling any evidence that might be necessary. *In re: Jhala Nayabhai Banasang.*

7 Cr. L. J. 65.

—S. 476—Scope.

A proceeding within the meaning of S. 476 of the Cr. P. C. need not be between two parties before the Court but includes a proceeding under Guardians and Wards Act for the appointment of guardian. *Tularam Marwadi v. Emperor.*

28 Cr. L. J. 388:

100 I. C. 1044: A. I. R. 1927 Nag. 184.

—S. 476-B—Scope.

An order by an Appellate Court making a complaint under S. 476-B is not appealable. *Mohim Chandra Nath v. Emperor.*

30 Cr. L. J. 658:

116 I. C. 638: 33 C. W. N. 285:

49 C. L. J. 342: 56 Cal. 824:

I. R. 1929 Cal. 494:

A. I. R. 1929 Cal. 172.

—S. 476—Scope.

An order for prosecution under S. 476, cannot make up for the absence of a formal complaint if there is no statement in the order for prosecution that the accused has committed the offence for which he is to be prosecuted. *Sathi Reddy v. Emperor.*

31 Cr. L. J. 1060:

126 I. C. 530: A. I. R. 1930 Rang. 153.

—S. 476—Scope.

An order granting sanction to prosecute should be an order either under S. 195 or S. 476, Cr. P. C. A Magistrate passing such order should not mix up the two sections, but choosing either, should follow the procedure laid down in the section adopted. *Jiwan Mal v. Beli Ram.*

18 Cr. L. J. 298:

38 I. C. 330: 11 P. R. 1917 Cr.:

10 P. W. R. 1917 Cr.:

A. I. R. 1917 Lah. 91.

—S. 476—Scope—Court sanctioning prosecution under S. 195—Sanction subsequently altered to order under S. 476, legality of.

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Where a Court sanctions a prosecution under S. 195 and is subsequently directed by the Appellate Court to which it is subordinate, to draw up a proceeding under S. 476 as being more appropriate, a compliance with such a direction is not fatal to the proceedings, as the granting of sanction to prosecute at an earlier stage of proceedings was present in the mind of the Court. *Biran Rai v. Emperor.*

21 Cr. L. J. 549:

56 I. C. 853: 1920 Pat. 205:

1 P. L. T. 331: A. I. R. 1920 Pat. 430.

—S. 476—Scope—District Registrar whether can take action under S. 476.

A District Registrar, not being a Civil, Criminal or Revenue Court, within the meaning of S. 476, Cr. P. C., has no jurisdiction to take action under that section. *Cheta Mahto v. Emperor.*

26 Cr. L. J. 1482:

89 I. C. 1050.

—S. 476—Scope—Forgery committed by person not party to proceedings—Court, whether can proceed under S. 476—Penal Code: (Act XLV of 1860), S. 193.

An offence like forgery, committed in reference to and to support any party in civil or criminal proceedings, is really an offence against public justice. It is fabricating false evidence, and would, in any case, be punishable under S. 193, Penal Code, and the Court can proceed against the person responsible under S. 476. *Josaballi v. Ayib Karim Kachhi.*

28 Cr. L. J. 305:

100 I. C. 529: 10 N. L. J. 70:

A. I. R. 1927 Nag. 14.

—S. 476—Scope.

In S. 476, the words "any offence referred to in S. 195," means the offences covered by the sections of the Penal Code mentioned in S. 195 and committed under the qualifying circumstances described in that section. *Emperor v. Jiwan Mal.*

18 Cr. L. J. 544:

39 I. C. 688: 10 P. R. 1917 Cr.:

A. I. R. 1917 Lah. 333.

—S. 476—Scope.

In the absence of an application for sanction, the Court may order prosecution under S. 476. *Emperor v. Nathu.*

15 Cr. L. J. 662 (a):

25 I. C. 990: 8 S. L. R. 21:

A. I. R. 1914 Sind 159.

—S. 476—Scope.

It is not open to a Court to make a complaint under S. 476 of an offence referred to in S. 195 (1) (c) of the Code, in respect of any person other than persons who were parties to the proceeding before it. *Guruswamy v. Ebrahim.*

26 Cr. L. J. 295:

84 I. C. 439: 2 Rang. 374:

A. I. R. 1925 Rang. 28.

—S. 476—"Referred to in S. 195," meaning of.

The words "referred to in S. 195," and S. 476, Cr. P. C. are merely descriptive of the class of offences with which a particular Court can deal. They do not mean that S. 195 governs S. 476 to any extent other than

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———Ss. 476, 195—*Scope of.*

S. 476, Cr. P. C. does not appear to restrict the action of the Court to offences committed within its own jurisdiction or even within the province in which the Court is situated. *Rajkumar Singh v. Emperor.*

18 Cr. L. J. 135 :

37 I. C. 487 : 1 P. L. J. 298 : 3 P. L. W. 33 :

A. I. R. 1916 Pat. 97.

———Ss. 476, 195—*Scope of.*

The provisions of S. 476, Cr. P. C., are complete as they stand, and it is sufficient to bring those provisions into operation if the offence in question be one of the kind referred to in S. 195, and if it be either committed before the Court which takes action under S. 476 or brought under the notice of that Court in the course of a judicial proceeding. *Ganga Ram v. Emperor.*

19 Cr. L. J. 15 :

42 I. C. 927 : 15 A. L. J. 817 : 40 All. 24 :

A. I. R. 1918 All. 382.

———Ss. 476, 195 (1) (c)—*Scope of—Courts mentioned in S. 476, if can make complaint in respect of offences of forgery against persons, who are not parties to proceedings before it.*

S. 476, Cr. P. C., does not inhibit the classes of Courts mentioned therein from making a complaint in respect of any of the offences specified in S. 195 (1) (c), against persons not parties to a proceeding before it, in which or in relation to which the offence was committed. *Abdul Rahim Khan v. Pusiabai.*

40 Cr. L. J. 572 :

181 I. C. 751 : 1938 N. L. J. 348 : 11 R. N. 484 :

A. I. R. 1939 Nag. 85.

———Ss. 476, 478—*Scope of—False suits—Fraudulent decrees.*

Accused *R.* obtained *ex parte* decree from Munsif's Court at Hathras and got it executed against the judgment-debtor, in the Court of Munsif of Haveli. During execution proceedings of another decree-holder against the same judgment-debtor *N.*, it was brought to the notice of the Munsif of Haveli, that the suit by *R.* and the other suit were false suits brought at the instigation of *G.* The Munsif, accordingly, committed both *R.* and *G.* to the Court of Session for trial under Ss. 210-109, 467-109, 471-109 and 466 of the Penal Code: *Held*, that the Munsif was within his jurisdiction in committing the accused under S. 478 of the Cr. P. C. The words "brought under its notice," in S. 476 and 478 of the Code, were wide enough to cover an offence which might have been committed in another form and on some previous occasion, but it must be an offence brought under the notice of the Court enquiring and making an order under S. 476. *Girwar Prashad v. Emperor.*

9 Cr. L. J. 219 :

1 I. C. 306 : 6 A. L. J. 392.

———Ss. 476, 478, 195—*Scope of—Offence committed in another Province, brought to notice of Court—Commitment of accused, power to order—Jurisdiction.*

The words "referred to in S. 195", which have found a place in S. 476, Cr. P. C., are merely words descriptive of the class of

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offences with which a Court can deal. They do not mean that S. 195 governs S. 476 in any other respect. S. 476 contemplates not merely offences committed before a Court but also offences brought under the notice of a Court in the course of a judicial proceeding. Where, therefore, offences under Ss. 476, 471, 193, 209 and 210, Penal Code, committed in Bengal were brought to the notice of a Munsif in Agra in the course of a judicial proceeding: *Held*, that the Munsif had jurisdiction to proceed under S. 478, Cr. P. C., and commit the accused for trial before the Agra Court of Session. *Emperor v. Khushali Ram.*

19 Cr. L. J. 148 :

43 I. C. 436 : 15 A. L. J. 912 :

40 All. 116 : A. I. R. 1918 All. 129.

———S. 476—*Separate complaint, absence of.*

Where a Judge sets forth the particulars in respect of which he considers that the false evidence was given and the nature of the evidence going to prove that that evidence was false, these particulars serve the double purpose of a finding and a complaint under S. 476, and the proceedings cannot be challenged merely because there was no separate complaint. *Namberumal Chetty v. Nainiappa Mudali.*

32 Cr. L. J. 200 :

128 I. C. 719 : 32 L. W. 513 :

59 M. L. J. 850 : 1930 M. W. N. 991 :

I. R. 1931 Mad. 143 : 54 Mad. 331 :

A. I. R. 1931 Mad. 16.

———S. 476—*Stay.*

No hard and fast rule can be laid down to the effect that a Criminal trial or enquiry should, of necessity, be stayed simply because a Civil suit has been instituted between the parties in which some or all the matters materially in issue in the Criminal case would have to be determined, until the Civil litigation was finally decided. *Brojobashi Panda v. Emperor.*

11 Cr. L. J. 4 (b) :

4 I. C. 485 : 13 C. W. N. 398.

———S. 476—*Stay.*

Whether a Deputy Commissioner acts in his Revenue or Magisterial capacity, S. 476-B, Cr. P. C., only empowers him as a superior Court to direct the withdrawal of a complaint or, as the case may be, itself make the complaint which the Subordinate Court might have made under S. 476. He has no power to stay criminal proceedings until the disposal of a civil suit. *Jagannath v. Rajogopalachari.*

33 Cr. L. J. 147 :

135 I. C. 513 : 12 P. L. T. 671 :

I. R. 1932 Pat. 33 : A. I. R. 1931 Pat. 411.

———S. 476—*Stay of complaint—Civil Procedure Code, S. 115—Order refusing stay of complaint till disposal of appeal—Filing of appeal, whether ground for staying making of complaint.*

An order refusing to stay the making of a complaint under S. 476, Cr. P. C., till the disposal of an appeal from the proceedings in which the offence was committed, is not a matter which comes under S. 115, C. P. C. When the Court has found a forged document used

Cr. P. CODE (1898), S. 476**—S. 476—Scope and object of.**

Object of S. 476 is to secure against reckless prosecution. Reasonable hope of accused being convicted is not necessary—Person to be prosecuted must be given opportunity. *Surendra Nath v. Emperor*.

35 Cr. L. J. 785 :
148 I. C. 866 : 1933 A. L. J. 1623 :
6 R. A. 785 : 4 A. W. R. 284 :
A. I. R. 1934 All. 385.

—S. 476-B—Scope and object of—Appellate order directing complaint to be made, whether appealable to High Court.

No appeal lies from an order passed by an Appellate Court under S. 476-B, Cr. P. C., directing a complaint to be made. The policy of the law as laid down in S. 476-B, Cr. P. C., is this that whenever there is a decision by a Court upon an application that a complaint shall be made—there is one appeal from it. If any particular person is for the first time ordered to be prosecuted by the superior Court, his remedy after that is to take his defence before a Jury or a Magistrate according to the nature of the case. Two Courts and only two are to deal with this preliminary question as to whether a person shall be prosecuted or not. *Ahamadar Rahawan v. Dwip Chand*.

29 Cr. L. J. 119 :
106 I. C. 711 : 32 C. W. N. 164 :
55 Cal. 765 : A. I. R. 1928 Cal. 281.

—S. 476—Scope of.

A complaint for an offence under Ss. 476 and 114 of the Penal Code, cannot be made under S. 476, against a person who was not a party to the proceedings. *In re : Mahalinga Nadar*.

37 Cr. L. J. 15 :
158 I. C. 1040 : 69 M. L. J. 783 :
1935 M. W. N. 945 : 42 L. W. 653 :
8 R. M. 416 : A. I. R. 1935 Mad. 1014.

—S. 476—Scope of.

A complaint, outside the provisions of S. 476, cannot be filed by any Court under its inherent jurisdiction. *Emperor v. Kushal Pal Singh*.

32 Cr. L. J. 1105 :
134 I. C. 225 : 53 All. 804 :
1931 A. L. J. 697 : I. R. 1931 All. 801 :
A. I. R. 1931 All. 443.

—S. 476—Scope of.

A document which is not addressed to a person other than the writer is not a complaint either in the ordinary sense or in the sense in which the word is used in S. 476, Cr. P. C. The meaning of S. 476 is that a Judicial Officer minded to initiate proceedings for offences therein described must initiate them before another person who is a Magistrate of the First Class having jurisdiction and must do so by making and forwarding a complaint to him. *Colin Mackenzie Mackay v. Emperor*.

27 Cr. L. J. 385 :
93 I. C. 33 : 30 C. W. N. 276 :
43 C. L. J. 310 : 53 Cal. 350 :
A. I. R. 1926 Cal. 470.

—S. 476—Scope of—Action under S. 476, if should be taken before close or within any particular time after termination of proceedings where alleged perjury is committed.

Cr. P. CODE (1898), S. 476

Obiter.—While, no doubt, a Court may properly hesitate to make a complaint on an application which is presented long after proceedings have ended and which is obviously not prompted by any other motive than personal grudge, there is nothing in the Statute warranting the proposition that action under S. 476 is only to be taken before the close of the proceedings in which the perjury is alleged to have been committed, or in strict continuation of them, or within any particular time after their termination. Nor is there justification for the view that only applications prompted by high motives are to be entertained. *Jahan Khan v. Emperor*.

39 Cr. L. J. 698 :
176 I. C. 116 : 40 P. L. R. 136 : 11 R. L. 164 :
A. I. R. 1938 Lah. 429.

—S. 476—Scope of.

An order under S. 476, Cr. P. C., directing the prosecution of a person under S. 211, Penal Code, can only be passed where the offence was committed in or in relation to any proceeding in any Court. *Nand Kishore Lal v. Emperor*.

25 Cr. L. J. 670 :
81 I. C. 158 : 1924 Pat. 124 : 5 P. L. T. 300 :
A. I. R. 1924 Pat. 789.

—S. 476—Scope of—Application, if necessary to move Court to take action under S. 476.

It must be borne in mind that under S. 476, there is no necessity for an application and the Court can be moved otherwise to take action under S. 476, Cr. P. C. *Bhatri Lal v. Abdul Qadir Hamyari*.

41 Cr. L. J. 843 :
190 I. C. 178 : 13 R. L. 140 :
A. I. R. 1940 Lah. 292.

—S. 476 (as amended in 1923)—Scope of.

S. 476, Cr. P. C., as amended, contains words which were not present in the former section, namely "whether on application made to it in this behalf or otherwise." Therefore it is open to the Court to entertain an application under S. 476 at the instance of a stranger to the proceedings out of which the application arises and in the course of which the offence is alleged to have been committed. *Bhagwan-das Narandas v. D. D. Patel & Co*.

41 Cr. L. J. 526 :
187 I. C. 867 : 42 Bom. L. R. 231 :
I. L. R. 1940 Bom. 403 : 12 R. B. 495 :
A. I. R. 1940 Bom. 131.

—S. 476—Scope of.

Equally applies to the Appellate Court when acting under S. 476-B. *Ramchand v. Lilaram*.

33 Cr. L. J. 43 :
134 I. C. 1007 : 25 S. L. R. 68 :
I. R. 1931 Sind 159 : A. I. R. 1931 Sind 115.

—S. 476—Scope of—Case decided on oath—Complaint, whether can be made—Order passed by Civil Court—Revision, whether lies.

The mere fact that a case is decided on the oath of one of the parties is not a sufficient ground for refusing that party an opportunity to prove to the satisfaction of the Court that the claim made by the other party was false.

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conclusion of the trial in taking proceedings against the witness. *Raktoo Rai v. Emperor*.

18 Cr. L. J. 626 :
39 I. C. 994 : 1 P. L. W. 545 :
A. I. R. 1917 Pat. 661.

-----Ss. 476, 526—Witness—Prosecution of witness for perjury.

The proper time for taking action against a witness under S. 476, Cr. P. C., is the time of delivering the judgment in the case. *Gopal Singh v. Emperor*. 29 Cr. L. J. 40 :
106 I. C. 456 : A. I. R. 1928 Lah. 180.

-----S. 476-B—Wrong pleading, effect of.

Held, mistake in heading did not vitiate proceedings. *Hikmat Ullah Khan v. Sakina Begam*. 32 Cr. L. J. 367 :

129 I. C. 264 : 1931 A. L. J. 117 :
I. R. 1931 All. 136 : A. I. R. 1931 All. 305.

-----S. 476-B—Delay in appeal, effect of—Charge against complainant under S. 211, Penal Code.

A charge was made against a complainant under S. 211, Penal Code, without opportunity of showing cause why the complaint should not be made. Till the time he received summons, he did not know anything about the matter. Soon after he knew of this, he applied for a copy of the order of the Magistrate and by that time more than thirty days having elapsed : *Held*, that the delay must be condoned. *Radhakrishin G. Keswani v. Emperor*. 40 Cr. L. J. 449 :

180 I. C. 436 : 11 R. S. 178 :
1939 Kar. 648 : A. I. R. 1939 Sind 78.

-----S. 476-B—Duty of Appellate Court—Appeal under S. 476-B.

In an appeal under S. 476-B, Cr. P. C., the Appellate Court must re-consider the entire case on the merits. *Jagabandhu v. Abdul Subhan*. 31 Cr. L. J. 612 :

124 I. C. 68 : 33 C. W. N. 945 :
57 Cal. 500 : A. I. R. 1929 Cal. 480.

-----S. 476-B—Duty of Appellate Court—Order directing complaint to be made—Appeal—Appellate Court, power of.

The intention of the Legislator is that in cases of appeals under S. 476-B, Cr. P. C., the Appellate Court should re-consider the entire matter on the merits, and while allowing reasonable weight to the opinion of the Court below, should nevertheless re-consider the question of the propriety of the order appealed against upon a complete review of the entire facts. If the Appellate Court is not satisfied that a *prima facie* case has been made out, the order appealed against must be set aside. *Ram Churam Das v. Emperor*.

26 Cr. L. J. 1126 :
88 I. C. 358 : 23 A. L. J. 515 :
A. I. R. 1925 All. 544.

-----S. 476-B—Jurisdiction to take evidence.

A Court acting under S. 476-B, has jurisdiction to take additional evidence. *Ramchand v. Lilaram*. 33 Cr. L. J. 43 :

134 I. C. 1007 : 25 S. L. R. 68 :
I. R. 1931 Sind 159 : A. I. R. 1931 Sind 115.

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-----S. 477.

See Coroners Act.

-----S. 477—Scope of.

A sanction for the prosecution of the petitioner for the offence of making a false claim in a Small Cause Court was obtained by the District Magistrate from that Court under S. 195 (1), (b), Cr. P. C. The sanction was revoked by the District Judge, but he himself directed the petitioner's prosecution under S. 479 of the Code : *Held*, that neither the District Judge nor the High Court could take action in the matter under S. 477, Cr. P. C. *Ram Prosad Malla v. Raghubar Malla*. 10 Cr. L. J. 454 :
4 I. C. 6 : 13 C. W. N. 1038.

-----S. 478.

See also Cr. P. C. 1898, Ss. 4 (m),
190, 195 (1) (c), 476, 478.

-----S. 478-B—Appeal—Jurisdiction—of District Judge to entertain.

Order by Collector directing complaints to be filed—Case of arrears of rent. *Amanul Haq v. Girdhar Gopal*. 35 Cr. L. J. 1136 :

150 I. C. 775 : 1934 A. L. J. 867 :
18 R. D. 409 : 4 A. W. R. 244 :
7 R. A. 36 : A. I. R. 1934 All. 886.

-----S. 478—Legality of commitment.

An Assistant Collector while purporting to act under S. 478, Cr. P. C., framed no charge at all, made an inquiry of a perfunctory nature and committed the accused to the Court of Session on a charge of forgery. There was practically no record on which the commitment was based. The accused was tried and convicted by the Sessions Judge : *Held*, that there having been no proper proceeding before the Committing Magistrate, the trial was irregular and must be set aside. *Basha Nund v. Emperor*.

25 Cr. L. J. 483 :
77 I. C. 883 : A. I. R. 1923 All. 610.

-----S. 478—Power of District Magistrate to interfere in revision—Refusal to commit to Sessions.

Where a Revenue Officer passes no order under S. 476, Cr. P. C., either making a complaint or refusing to make a complaint but merely refuses to commit a person to the Sessions under S. 478, Cr. P. C., the District Magistrate has no jurisdiction to revise his order and commit the person to the Sessions. *Lachman Prasad Joshi v. Emperor*.

31 Cr. L. J. 679 :
124 I. C. 364 : 6 O. W. N. 953 :
5 Luck. 435 : A. I. R. 1930 Oudh 78.

-----S. 478—Powers of High Court to quash commitment—Commitment, quashing of.

Under S. 215, Cr. P. C., commitment once made under S. 213 of the Code by a competent Magistrate or by a civil or revenue Court under S. 478 of the Code, can be quashed by the High Court and only on a point of law. When there is no point of law involved, the reference must be rejected. *Emperor v. Unnai*.

148 I. C. 653 (1) : 6 R. O. 392 (2) :
1934 O. L. R. 328 : 11 O. W. N. 556 :
A. I. R. 1934 Oudh 185 (2).

Cr. P. CODE (1898), S. 476

Magistrate holding an inquiry under S. 23 of the Legal Practitioners Act is a Court. *Gauri Shankar v. Emperor*. 13 Cr. L. J. 190 :

13 I. C. 1006 : 9 A. L. J. 156.

———**S. 476—Scope of—Magistrate making enquiry requiring help of Police—Reference to District Magistrate, legality of—Delay in instituting proceedings, effect of.**

A case came before an Assistant Collector on appeal against the decision of the Revenue Court of a *Mamlatdar*; the Assistant Collector being suspicious that a forged *kabuliyat* had been used by the plaintiff, an *Inamdar* called on him for an explanation, which he received along with a report by the *Mamlatdar*. The Assistant Collector then applied for the assistance of the Criminal Investigation Department from the District Magistrate, and a full report was submitted to him by the Deputy Superintendent of Police. He then referred the matter for inquiry to the nearest First Class Magistrate, which resulted in both the *Inamdar* and the *Mamlatdar* being committed to the Court of Sessions where they were convicted, the former under S. 209, 470, 219 and 109, Penal Code, and the latter under Ss. 466 and 219. On appeal to the High Court, it was objected—(a) that even if the offence was brought under notice in judicial proceedings of the Assistant Collector as regards the *Inamdar*, it was not so brought to notice as regards the *Mamlatdar*; (b) that the whole of the preliminary inquiry should have been made by the Assistant Collector, who, after his reference to the District Magistrate, was *functus officio* and consequently his order under S. 476, Cr. P. C., was without jurisdiction; (c) that there was delay in proceeding under S. 476 and the delay was fatal: *Held*, (1) that under S. 476 it was the case which was to be sent for inquiry to the nearest Magistrate, and not necessarily all the offenders who might be concerned in the commission of the offence, the subsequent clause of the section referring only to such offender or offenders as might at that time be known and be within the grasp of the inquiring officer; (2) that the reference to the District Magistrate did not deprive the Assistant Collector of jurisdiction, as the reference was made merely to that officer as the executive controller of the Police and not to him in his judicial capacity as the District Magistrate; (3) that there was nothing in the section itself or in the reasons for its enactment to hold that officers acting under it were bound to make their inquiry in the actual course of the judicial proceeding, or so shortly thereafter as to make it a continuation of those proceedings. *Waman Dinkar v. Emperor*. 20 Cr. L. J. 433 :

51 I. C. 257 : 20 Bom. L. R. 998 :

43 Bom. 300 : A. I. R. 1919 Bom. 103.

———**S. 476—Scope of.**

Matter in dispute, one in which it is difficult to arrive at certainty—Criminal prosecutions should be discouraged. *Narwalal Jha v. Emperor*. 37 Cr. L. J. 193 :

159 I. C. 817 : 2 B. R. 112 :

8 R. P. 313 : A. I. R. 1936 Pat. 162.

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———**S. 476—Scope of.**

One essential ingredient for the exercise of powers under S. 476 by any Court is that the offence should have been committed in or in relation to proceedings in that Court. *Ramjilal v. Emperor*. 33 Cr. L. J. 160 :

135 I. C. 377 : 8 O. W. N. 1086 :

I. R. 1932 Oudh 25 :

A. I. R. 1931 Oudh 417.

———**S. 476—Scope of—Order granting sanction, whether must give reasons.**

Though it is desirable that an order passed under the provisions of S. 476, Cr. P. C., should state the grounds for giving sanction, yet inasmuch as the section itself only requires that the Judge should record his finding and does not require that the finding should be supported by reason or that it should contain issues for decision, an order under the section is not invalid on the ground that no reasons are recorded. *Lakshmichand Gandamal v. Emperor*. 27 Cr. L. J. 1249 :

98 I. C. 97 : A. I. R. 1927 Sind 89.

———**S. 476—Scope of—Order making complaint—Omission to state expressly that prosecution was expedient in the interests of justice, effect of.**

It is not necessary that the Court should state expressly that it was expedient in the interests of justice to prosecute the accused. *Naurang Rai v. Emperor*. 32 Cr. L. J. 60 :

127 I. C. 859 : I. R. 1930 Lah. 891 :

A. I. R. 1930 Lah. 347.

———**S. 476—Scope of—Order under S. 476 made without taking evidence, legality of—Court, power of, to order prosecution of person not party to proceedings.**

A Court, while proceeding under S. 476, Cr. P. C., is required to arrive at findings upon some evidence before it. If there is no evidence on the record and the Court proceeds to order the prosecution of a person for forgery in relation to a proceeding before it, the discretion vested in the Court under the section is illegally exercised and the order is liable to be set aside. S. 476 confers jurisdiction upon an executing Court to order the prosecution of a person for forgery, even though not a party to the execution proceedings, if the offence is brought to the notice of the Court in the course of the proceedings. *Abdul Sattar v. Emperor*. 20 Cr. L. J. 94 :

48 I. C. 894 : 1918 Pat. 352.

———**S. 476—Scope of—Order under, whether open to revision—Order against witness, whether can be passed—Penal Code Act (XLV of 1860), Ss. 195, 465.**

An order passed under S. 476, Cr. P. C., by a Civil Court is not appealable and is not open to revision under Ss. 435, 438, Cr. P. C. No revision lies against an order of a Civil Court directing a prosecution for an offence under S. 195, Penal Code. An order under S. 476 for prosecution for an offence under S. 465, Penal Code, can be passed also against

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himself under S. 480, Cr. P. C. *Chedi Lal v. Emperor*.
25 Cr. L. J. 1127 :

81 I. C. 951 : 11 O. L. J. 358 :
A. I. R. 1924 Oudh 402.

—S. 480—Procedure.

A Court proceeding under S. 480 of the Cr. P. C., must, in addition to other particulars, record the nature of the interruption or insult attributed to the accused. When the guilt or innocence of a person depends upon the exact words used by him, it is obviously the duty of the Magistrate to record them with a reasonable degree of precision. *Dalip Singh v. Emperor*.

32 Cr. L. J. 9 :
64 I. C. 377 : 2 Lah 308 :
4 U. P. L. R. Lah. 9 :
24 P. L. R. 1922.

—Ss. 480, 482, 483—Proper Procedure—Penal Code, S. 228—Complaint by Sub-Registrar—Issue of process by Magistrate under S. 228, legality of.

Where the Local Government has made no direction as regards the Registrar or Sub-Registrar being a Civil Court within the meaning of Ss. 480 and 482, Cr. P. C., an offence under S. 228, Penal Code, if committed before a Sub-Registrar, cannot be dealt with under Ss. 480 and 482, that is to say, in the first instance, by the Court in which the offence is committed; nor can the offence be dealt with outside the provision made in Ss. 480 and 482. *Prabhat Chandra Adhikary v. Emperor*.

31 Cr. L. J. 942 :
125 I. C. 853 : 57 Cal. 1007 :
34 C. W. N. 56 :
A. I. R. 1930 Cal. 366.

—S. 480—Scope of—Debt Conciliation Board constituted under Punjab Relief of Indebtedness Act (VII of 1934), whether Court—Such Board, if can take action for contempt of Court committed before it.

Under S. 16, Punjab Relief of Indebtedness Act, the Conciliation Board has the powers of a Civil Court with reference to the examination of the parties and witnesses and their proceedings are judicial proceedings. A body so empowered must be a Court and its proceedings are judicial proceedings. The Board, therefore, has jurisdiction to take action against a party appearing before it for contempt of Court under S. 480, Cr. P. C., and fine him under S. 228, Penal Code. *Budhu v. Emperor*.

39 Cr. L. J. 658 :
175 I. C. 797 : 40 P. L. R. 218 :
11 R. L. 147 : A. I. R. 1938 Lah. 366.

—S. 480—Scope of—Contempt of Court—Duty of Judge—Mere talking outside Court and refusing to come up when called, whether contempt.

In proceedings under S. 480, Cr. P. C., it is necessary that the record must show the nature and stage of the judicial proceeding in which the Court interrupted or insulted was sitting and the nature of the interruption or insult. Talking outside Court in

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the verandah and refusing to come before the Court when ordered by the Court by a *chaprasi* does not necessarily amount to an offence under S. 480, Cr. P. C. Where the record of certain proceedings under S. 480 merely showed that the accused was called upon to show cause why he should not be punished under S. 480 for talking outside the Court in the verandah and refusing to come before the Court when summoned by a *chaprasi*: Held, that the proceedings were irregular and the conviction of the accused could not be maintained. *Arumugam Chettyar v. Emperor*.
30 Cr. L. J. 118 :
113 I. C. 278 : I. R. 1929 Rang. 32 :
A. I. R. 1928 Rang. 280.

—S. 481.

See also (i) Cr. P. C., 1898, S. 369.
(ii) Penal Code, 1860, S. 228.

—S. 481—Nature of—Non-compliance—Effect.

The directions contained in S. 481 are mandatory and the omission to record the particulars mentioned in that section in any proceedings taken under S. 480, is fatal to such proceedings. *In re: Surendra Nath Banerjee*.
4 Cr. L. J. 210 :
10 C. W. N. 1062 : 4 C. L. J. 415.

—S. 481—Statement of accused—Court's duty to give opportunity.

The expression "statement (if any) of the offender" in S. 481 indicates that the Court cannot compel the accused to make a statement; but it does not mean that the Court should not give him an opportunity of making the statement. *Krishna Chandra Bhowmick v. Emperor*.
24 Cr. L. J. 798 :
74 I. C. 542 : 37 C. L. J. 535 :
A. I. R. 1923 Cal. 562.

—S. 481—Statement of accused—Duty of Court.

A conviction under S. 228, Penal Code, without giving the accused person an opportunity of making a statement as required by S. 481, is illegal. *Krishna Chandra Bhowmick v. Emperor*.

24 Cr. L. J. 798 :
74 I. C. 542 : 37 C. L. J. 535 :
A. I. R. 1923 Cal. 562.

—S. 481—Statement of accused—Failure to record.

No person can be punished for contempt of Court, unless the specific offence charged against him is specifically stated and an opportunity is given him of answering it. *Krishna Chandra Bhowmick v. Emperor*.

24 Cr. L. J. 798 :
74 I. C. 542 : 37 C. L. J. 535 :
A. I. R. 1923 Cal. 562.

—S. 481 (2)—Scope—Record, particulars of.

Where a person making a noise in Court is charged with an offence under S. 228, Penal Code, the record convicting him must show the stage of judicial proceeding interrupted and the evidence must establish that

Cr. P. CODE (1898), S. 476**—S. 476—Scope of.**

Ss. 476, 476-A, 476-B, are not self-contained and the provisions of Chap. XXXI can be applied to the hearing of an appeal under S. 476-B. *Janardana Rao v. Lakshmi Narasamma*. (F. B.)

35 Cr. L. J. 392 :
147 I. C. 351 : 38 L. W. 940 :
1933 M. W. N. 1476 : 65 M. L. J. 873 :
57 Mad. 177 : 6 R. M. 130 :
A. I. R. 1934 Mad. 52.

—S. 476—Scope of.

The expression 'Court' in S. 476, Cr. P. C., means the particular Judge who heard the case, and does not include his successor-in-office. S. 476 contemplates that the officer before whom the alleged offence takes place, should make up his mind then and there to order a prosecution. It would not matter if the actual order be passed by his successor-in-office, if the previous officer had left some indication of his opinion to order a prosecution. An order under the section would be bad if it were passed after a long time, even if the presiding officer had remained the same. *Begu Singh v. Emperor*.

5 Cr. L. J. 398 :
11 C. W. N. 568 : 5 C. L. J. 508 :
I. L. R. 34 Cal. 551 : 2 M. L. T. 298.

—S. 476-B—Scope of.

The jurisdiction of the Court of Session only arises under S. 476-B when a Court subordinate to it has directed the filing of a complaint or refused to make a complaint under S. 476 or 476-A. *Wajid Ali v. Emperor*.

35 Cr. L. J. 824 :
148 I. C. 1075 : 8 Luck. 638 :
11 O. W. N. 490 : 6 R. O. 495 :
A. I. R. 1934 Oudh 344 (2).

—S. 476—Scope of.

The words "offence which appears to have been committed" in S. 476, Cr. P. C., mean that the facts before the Court unless rebutted show that an offence has been committed. *Ram Charan Dass v. Emperor*.

26 Cr. L. J. 1126 :
88 I. C. 358 : 23 A. L. J. 515 :
A. I. R. 1925 All. 544.

—S. 476—Scope of.

There is nothing in S. 476, Cr. P. C., to suggest that a Court making a complaint can only act on statements made on oath before it. All that S. 476 lays down is that it should "appear" to the Court that an offence has been committed, and if a responsible officer in the position of a Senior Subordinate Judge makes a report that certain statements made on oath are false, it would be sufficient to make it "appear" for the purposes of this section that an offence of perjury has been committed. *Jai Ram v. Emperor*.

41 Cr. L. J. 701 :
188 I. C. 863 : 42 P. L. R. 40 (2) :
13 R. L. 66 : A. I. R. 1940 Lah. 203.

—S. 476—Scope of—Time within which proceeding should be taken—Limitation.

There is nothing in S. 476, Cr. P. C., which requires a Court to take action, if at all, immediately after the conclusion of the case in

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which the offences are said to have been committed or within any fixed time thereafter. *Tilak Pandey v. Emperor*. 16 Cr. L. J. 465 :
29 I. C. 97 : 13 A. L. J. 466 :
37 All. 344 : A. I. R. 1915 All. 135.

—S. 476—Scope of.

Where a Magistrate acting under S. 476, Cr. P. C., considers that a complaint should be made, it would be open to him to include in that complaint not merely offences which are referred to in S. 195, Cr. P. C., but also other offences such as one under S. 101, I. P. C. S. 476, Cr. P. C., is an enabling section and does not debar a Magistrate from including in his complaint other sections of the I. P. C. Nor would it debar the Magistrate to whom the complaint was presented from issuing process under other sections of the I. P. C., if from the facts alleged, offences under other sections appeared to have been committed. *Dharmumal Teumal v. Teumal Lekhray*.

41 Cr. L. J. 821 :
190 I. C. 119 : 1940 Kar. 500 :
13 R. S. 52 : A. I. R. 1940 Sind 133.

—S. 476—Scope of.

Where offences under Ss. 193, 405, 471 were alleged to be committed before Assistant Collector and the District Magistrate directed the prosecution regarding the offences, held that the District Magistrate's order was without jurisdiction and could not be justified either under S. 195 or S. 476, Cr. P. C. *Tota Ram v. Emperor*.

9 Cr. L. J. 180 :
1 I. C. 220.

—S. 476-B—Scope of—Appellate order under S. 476-B—Second appeal to High Court, whether maintainable.

S. 476-B, Cr. P. C., contemplates an appeal from an order by the original Court under S. 476, or from an order by a superior Court to which that Court is subordinate under S. 476, but it does not provide for a second appeal to the High Court from an appellate order passed by a lower Court under S. 476-B. *Ma On Khin v. N. K. M. Firm*.

28 Cr. L. J. 937 :
105 I. C. 457 : 5 Rang. 523 :
A. I. R. 1927 Rang. 313.

—S. 476-B—Scope of.

S. 476-B is not exhaustive. *Surendra Nath v. Susil Kamar*.

33 Cr. L. J. 38 :
134 I. C. 1063 : 35 C. W. N. 775 : 59 Cal. 68 :
I. R. 1932 Cal. 23 : A. I. R. 1931 Cal. 604.

—Ss. 476, 195—Scope of—Entry must have been fabricated for purposes of being used in proceedings though actual user is not necessary.

Before action can be taken on an application under S. 476, read with S. 195, against a person for having fabricated evidence by making false entry, there must be some satisfactory evidence that the entry was fabricated for the purpose of being used in proceedings though the actual use is not necessary. *Gopaldas Khetriya v. Jnanendra Nath Dawn*.

40 Cr. L. J. 450 :
180 I. C. 586 : 11 R. C. 702 :
A. I. R. 1938 Cal. 677.

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- Refusal to live with husband.
- Refusal to maintain.
- Residence.
- Restitution of conjugal rights.
- Review.
- Revision.
- Scope.
- Scope of.
- Second application.
- Separate maintenance.
- Stay.
- Subsequent civil suit, maintainability of.
- "Sufficient cause" meaning of.
- Sufficient means.
- Unable to maintain.
- Variation of order.
- Wife—Ill-treatment—Separate maintenance.
- Wife's right of maintenance.

S. 488.

See also (i) Burmese Buddhist Law.

(ii) Cr. P. C. 1898, Ss. 4 (b and c), 135, 335, 342, 355, 403, 528.

S. 488—Adultery, as ground for refusing maintenance.

A Court may refuse to make an order for maintenance of a wife where she had deserted her husband improperly and had committed adultery, although at the time of making the application, she was not living in adultery, or where she had been expelled from caste on account of adultery and had thereby made it impossible for her husband to keep her with him without himself losing the society of his fellow castemen. *Ram Autar v. Raghurai*.

27 Cr. L. J. 1190 :

97 I. C. 950 : 3 O. W. N. 717 :

A. I. R. 1926 Oudh 604.

S. 488—Adultery, charge of—Procedure.

In a case of maintenance, the respondent who puts forward a charge of "living in adultery" against the petitioner as his only defence to the claim for maintenance ought to begin his case and the petitioner against whom this charge is made, ought to have an opportunity of adducing rebutting evidence. *Kista Pillai v. Amirthammal*.

39 Cr. L. J. 951 :

177 I. C. 819 : 1938 N. L. J. 299 : 11 R. N. 174 :

A. I. R. 1938 Nag. 529.

S. 488—Adultery—Meaning of.

A solitary act of adultery on the part of the wife will not entitle the husband to discontinue a maintenance allowance already fixed by the Court under S. 488. *Gopaldeo v. Ratni*.

30 Cr. L. J. 403 :

115 I. C. 161 : I. R. 1929 Nag. 97 :

A. I. R. 1929 Nag. 238.

S. 488—Adultery—Meaning of.

"Living in adultery" means something quite different from living an unchaste life. The principle is that a husband is absolved from the obligation to maintain his wife when his wife has a *de facto* protector with whom she lives and by whom she is being maintained as if she were his wife. The obligation of a

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husband to maintain his wife arises from the anxiety of the Legislature to protect deserted wives from the bitter necessity of earning a living by trading on their sex. It obviously is not the law that a man may desert and neglect his wife and thus tempt her to unchastity and then resist her claim to be maintained by him on the ground that she is unchaste. *A. T. Lakshmi Ambalam v. Andiammal*.

39 Cr. L. J. 228 :

172 I. C. 811 : 1937 M. W. N. 1131 :

1937 2 M. L. J. 885 : 46 L. W. 766 :

10 R. M. 497 : A. I. R. 1938 Mad. 66.

S. 488—Adultery—Meaning of.

The clear implication from the words "living in adultery" in S. 488, Cr. P. C., is that, unless the wife is actually living in adultery at or about the time of the application, she is not disentitled to obtain maintenance. Continued adulterous conduct is what is meant by "living in adultery". The question, therefore, for the Magistrate to decide in such a case is whether there had been such adulterous conduct on the part of the wife at or about the time of the application, that is to say, shortly before or shortly after the application was made, interpreting the word shortly in a reasonable manner. *Kista Pillai v. Amirthammal*.

39 Cr. L. J. 951 :

177 I. C. 819 : 1938 N. L. J. 299 :

11 R. N. 174 : A. I. R. 1938 Nag. 529.

S. 488—Adultery—Meaning of.

The expression "living in adultery" in S. 488 (5) points to a continuous course of conduct and not merely to isolated acts of immorality. Therefore, although a woman has given birth to an illegitimate child, it is open to a Magistrate, to find that apart from that circumstance, she is not "living in adultery". *Jatindra Mohun Banerji v. Gouri Bala Debi*.

26 Cr. L. J. 1184 :

88 I. C. 608 : 29 C. W. N. 647 :

A. I. R. 1925 Cal. 794.

S. 488—Amount of maintenance.

A Magistrate has no jurisdiction under S. 488, to make an order for payment of maintenance at a rate exceeding Rs. 100 per month. *Palmerino v. Palmerino*.

28 Cr. L. J. 51 :

99 I. C. 83 : 28 Bom. L. R. 1299 :

A. I. R. 1927 Bom. 46.

S. 488—Amount of maintenance—Burmese Buddhist.

Under Burmese Buddhist Law the wife has one-third share if not one-half in what the husband earns; one-fifth of the salary of the husband (i.e. Rs. 30) was therefore granted as maintenance. *Ma Pwawyin v. Mamy Ba Thin*.

1 Bur. L. J. 124 : A. I. R. 1923 Rang. 100.

S. 488—Amount of maintenance—Considerations.

While fixing maintenance under S. 488, some reference should be had to the means of the person required to maintain the wife. The section does not contemplate a mere mainten-

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by a party before it, it is entitled to make a complaint and there is no reason why the complaint should be stayed till the final disposal of the appeal which may pass through more Courts than one. *Nagendra Nath Chakravarty v. Emperor*. 31 Cr. L. J. 1154 : 127 I. C. 64 : A. I. R. 1930 Cal. 578.

—S. 476—Stay of proceedings.

The mere pendency of a civil appeal is not in itself sufficient ground for staying criminal proceedings under S. 476, Cr. P. C. *In re : Keshav Narayan Manolkar*. 13 Cr. L. J. 848 : 17 I. C. 720 : 14 Bom. L. R. 968.

—S. 476—Stay of proceedings.

Where a document produced is found by the trial Court to be a forged one and a complaint is made under S. 476, the question whether his prosecution should be stayed or not till the disposal of an appeal from the decision of the Court of first instance, depends on the balance of convenience in the circumstances of each particular case. *Sochet Singh v. Emperor*. 32 Cr. L. J. 584 : 130 I. C. 651 : 32 P. L. R. 303 : I. R. 1931 Lah. 331 : A. I. R. 1931 Lah. 49.

—Ss. 476, 561-A—Stay of proceedings—Offence committed in course of suit—Complaint by Civil Court—Appeal from decree.

Interests of justice require that a Criminal Court trying a case against a person in respect of an offence committed by him in a civil case, on a complaint made under S. 476, Cr. P. C., should stay pronouncing its judgment, where an appeal has been preferred from the civil case and the subject-matter of inquiry in the criminal trial is also in issue in the appeal. *Kalu Mal v. Emperor*. 28 Cr. L. J. 778 : 104 I. C. 106 : A. I. R. 1927 Lah. 669.

—S. 476—Stay of prosecution, pending civil appeal—Finding of Criminal Court—Effect in civil appeal.

Where a Subordinate Judge, District Judge or Sessions Judge of experience makes an order that a party or witness in a civil case shall stand his trial under S. 476, Cr. P. C., the prosecution should not be stayed because of an appeal pending against the civil case, if the appeal is not likely to be decided soon. At the same time, the decision arrived at by the Magistrate should not have any effect upon the Court which may hear the civil appeal, rather the decision of the Magistrate in that matter is not relevant evidence to produce and bring before the Appellate Court. *Anrudh Kumar v. Emperor*. 23 Cr. L. J. 84 : 65 I. C. 436.

—S. 476—Successor-in-office—Whether can order.

A Magistrate who succeeds another may, in pronouncing judgment in a case heard partly by himself and partly by his predecessor, order the prosecution of a witness for having given false evidence before his predecessor; as, though the perjury is not actually committed in his presence, yet it is committed in a case

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he has been trying and has been brought under his notice in the course of a judicial proceeding. *Ma Ma v. Emperor*.

12 Cr. L. J. 521 : 12 I. C. 289 : 4 Bur. L. T. 246.

—S. 476—‘Such Court’, meaning of—Court of Subordinate Judge, whether permanent Court.

The use of the words “such Court” in S. 476, Cr. P. C., makes it clear that the Court empowered to take action under that section is the same Court before which the offence has been committed or under whose notice the offence has been brought in the course of judicial proceedings. Subordinate Judge is competent to continue an enquiry under S. 476 begun by his predecessor. *Tara Chand v. Emperor*. 23 Cr. L. J. 451 : 67 I. C. 723 : 65 P. L. R. 1922 : A. I. R. 1922 Lah. 479.

—S. 476—‘That Court’, significance of.

Although the words ‘that Court’ in S. 476, Cr. P. C., relate back to the Civil, Revenue or Criminal Court mentioned at the beginning of the section, once proceedings have been called for by a High Court in revision, and it is apparent that an offence referred to in S. 195, Sub-s. (1), Cl. (b) or Cl. (c), Cr. P. C., has been committed in relation to the proceedings then before it, the High Court as a Criminal Court has power to make a complaint though the offence complained of was not committed in the course of proceedings in the High Court. *Emperor v. Ivor Henry Bridgnell*. 38 Cr. L. J. 1002 : 170 I. C. 891 : 10 R. S. 81 : A. I. R. 1937 Sind 193.

—S. 476—Want of complaint—Illegality of.

The absence of a complaint in writing as required by S. 476, Cr. P. C., is an illegality which vitiates the trial. *Tularm Marwadi v. Emperor*. 28 Cr. L. J. 388 : 100 I. C. 1044 : A. I. R. 1927 Nag. 184.

—S. 476—Witness.

Even where no oath is administered to a witness in a judicial proceeding in a Court of Justice, the witness is bound to state the truth, and if he fails to do so, he is guilty of an offence under S. 193 of the Penal Code. *Moti Ram v. Emperor*. 26 Cr. L. J. 566 : 85 I. C. 710 : A. I. R. 1925 All. 410.

—S. 476—Witness, prosecution of—Penal Code, S. 193—Sanction to prosecute for perjury before conclusion of trial.

Where a witness made a statement in his examination which he was not expected to make by the prosecution, whereupon he was declared hostile and subjected to cross-examination, and upon the conclusion of his deposition, the Magistrate directed his prosecution in respect of certain statements made by him in the course of his deposition under S. 193, Penal Code, the Magistrate presumably acting under S. 476, Cr. P. C. : *Held*, that the Magistrate was not justified before the

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moved to set aside order—Court cannot refuse to collect on ground of illegality of order. *Hakim Devi v. Sham Singh*.

32 Cr. L. J. 993 :
132 I. C. 854 : I. R. 1931 Lah. 694.

—S. 488—*Arrears of maintenance, recovery of.*

Proviso 2 to Sub-cl. (3) of S. 488 only means that a person in whose favour an order for maintenance has been made must, to enable her to recover arrears of maintenance, apply to the Court to recover such arrears within one year from the date the arrears became due. She cannot allow arrears to accumulate indefinitely and apply for the recovery of those arrears for the first time after several years. *Chetibai v. Naroomal Sheboomal*.

39 Cr. L. J. 847 :
176 I. C. 863 : 11 R. S. 42 :
A. I. R. 1938 Sind 151.

—S. 488—*Arrears of maintenance—Right to recover.*

The Magistrate should ascertain in each case under what circumstances the arrears came to accumulate, and if there was no good reason why the application for recovery should not have been made with greater promptitude, whether it would be equitable and in accordance with the spirit of the Cr. P. C., to enforce payment of the accumulation. The Magistrate should also consider whether he should enforce payment of any part of the arrears where, in his opinion, it is not proper to enforce payment of the whole of the arrears. *Mi Mya v. Nga Padon*.

11 Cr. L. J. 79 (b) :
4 I. C. 900 : U. B. R. 1907—9, II, Cr. P. 21.

—S. 488—*Arrears, nature of.*

It is doubtful whether a person arrested in pursuance of an order for maintenance under S. 488 (3) can be said to be arrested in execution of a decree of any Court. *Mariam Bi Bi v. A. F. Motala*. 33 Cr. L. J. 435 :
137 I. C. 36 : 10 Rang. 71 :

I. R. 1932 Rang. 90 : A. I. R. 1932 Rang. 51.

—S. 488—*Buddhist Law—Divorce, what is.*

Although a divorce can be effected by mutual consent, without the intervention of a Court and without a formal document, there must be some formal and mutual agreement. *Maung Tinsaw v. Mi Thein Mya*.

1 Cr. L. J. 995 :
10 Bur. L. R. 255.

—S. 488—*Buddhist Law—Husband's liability for separate maintenance of wife.*

A wife who is driven away from her husband by his cruelty, cannot be said to have "left the house not having affection for the husband" within the meaning of the Dhammathats. A wife who refuses to rejoin her husband without sufficient reason or who is living apart from her husband by mutual consent is not entitled to maintenance; but a husband under Burmese Buddhist Law, who is bound to maintain his wife, cannot evade that liability by declaring that the marriage has been dissolved by reason of

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the wife's absence from him. *Thein Me v. Po Gywe*.

18 Cr. L. J. 767 :
41 I. C. 143 : 9 L. B. R. 44 :
10 Bur. L. T. 212 : A. I. R. 1918 L. Bur. 121.

—S. 488—*Buddhist Law, valid marriage, what is.*

Under Burmese Buddhist Law, there is nothing to prevent a boy of the age of 16 from contracting a valid marriage without the consent of his parents or guardians. In the case of a virgin under 20 years of age, the consent of her parents or guardians is necessary to constitute a valid marriage, but the consent may be implied from their conduct and the consent, though subsequently given or implied, would convert the connection into a valid marriage which the Courts would recognize with effect from the date of the inception of the connection. A boy of 17 years of age, eloped with a girl of the same age with the intention of marrying her and cohabited with her, without any objection from the girl's relatives: *Held*, that there was a valid marriage and the boy was liable to pay maintenance to the girl under the provision of this section of the Cr. P. C. *Ma E Sein v. Maung Hla Min*.

27 Cr. L. J. 725 :
95 I. C. 53 : 4 Bur. L. J. 258 :
A. I. R. 1926 Rang. 88.

—S. 488—*Buddhist Law—Valid marriage.*

Where it is sought to establish a marriage between a Chinese Buddhist and a Burmese Buddhist woman, it must be shown that the practices the husband followed differ from those followed by the Chinese Buddhists and are the peculiar characteristics of Burmese Buddhists. No presumption as to his being a Burmese Buddhist can be drawn from the fact that he bears a Burmese name. *Maung Tun Tha v. Ma Pu*.

11 Cr. L. J. 654 :
8 I. C. 452 : 3 Bur. L. T. 67.

—S. 488—*Buddhist monk—Liability to support child.*

Under Cr. P. C. a father cannot get rid of his statutory obligation to support his child, on the plea that he is a Buddhist monk. The Cr. P. C. overrides the personal law whenever it conflicts with it. *U Thiri v. Ma Pwa Yi*.

24 Cr. L. J. 368 :
72 I. C. 368 : 4 U. B. R. 1922 138 :
A. I. R. 1923 Rang. 131.

—S. 488—*Cancellation of order—Daughter becoming able to maintain herself—Maintenance order in favour of daughters—Daughters able to maintain themselves—Cancellation of order.*

Where a father is ordered to make an allowance for the maintenance of the daughters, but it is subsequently found that the daughters have become qualified to maintain themselves, the order may be discharged notwithstanding that the daughters are desirous of continuing their education or are reluctant to work for their living. *Ma Yu v. G. D. F. Colquhoun*.

19 Cr. L. J. 160 :
43 I. C. 448 : A. I. R. 1918 L. Bur. 28.

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———S. 478—*Power of Revenue or Civil Court to commit offender to Sessions.*

A Civil or Revenue Court has jurisdiction to take action under S. 478, Cr. P. C., when an offence is committed before it in any proceedings though when the offence is only brought to its notice; the Court has only jurisdiction when it is brought under its notice in the course of judicial proceedings. *Lachhman Prasad Joshi v. Emperor.*

31 Cr. L. J. 679 :
124 I. C. 364 : 6 O. W. N. 953 :
5 Luck. 435 : A. I. R. 1930 Oudh 78.

———S. 478—*Power to commit offender to Sessions—U. P. Land Revenue Act (III of 1901) Ss. 40, 48—Mutation proceedings—Offence committed before Revenue Officer—Power of Officer to commit offender to Sessions.*

A Revenue Officer conducting mutation proceedings on a disputed succession under the provisions of S., 40, U. P. Land Revenue Act, 1901, acts as a Revenue Court within the meaning of S. 48 of the said Act and has power under S. 478, Cr. P. C., to commit to Sessions a person who has committed an offence before him in the course of such proceedings. *Lachhman Prasad Joshi v. Emperor.*

31 Cr. L. J. 679 :
124 I. C. 364 : 6 O. W. N. 953 :
5 Luck. 435 : A. I. R. 1930 Oudh 78.

———S. 478—*Scope — Proceedings under S. 476—Power of Civil Court to commit to Sessions Court.*

A Civil Court which has started proceedings under S. 476 of the Cr. P. C., has an option under S. 478 of the Code, where it finds that an offence triable exclusively by a Court of Session has been committed, either to send a case to a Magistrate or to commit it to the Court of Session, and is not debarred from exercising that option because by passing an order under S. 478, the accused is deprived of a right of appeal. *Rameshwar Lal v. Emperor.*

103 I. C. 204 :
25 A. L. J. 555 : 49 All. 898 :
A. I. R. 1927 All. 571.

———S. 478—*Scope of.*

The existence of a previous sanction, granted to a private individual under S. 195, Cr. P. C., upon which no action has been taken, is no bar to the institution of proceedings by the Civil Court under S. 478 through its Karkun. *Emperor v. Nagji Chelabhai.*

10 Cr. L. J. 431 :
3 I. C. 962 : 11 Bom. L. R. 855 : 34 Bom. 88.

———S. 480.

See also (i) Contempt of Court.
(ii) Cr. P. C., 1898, Ss. 234,
369, 476.

———Ss. 480, 482—*Drawing up proceedings on same day that offence is committed.* S. 482 does not require the Magistrate to draw up proceedings on the same day that the offence is committed. The section need not be read along with S. 480, Cr. P. C. *Bepin Chandra Pal v. Emperor.*

7 Cr. L. J. 95 :
7 C. L. J. 63 : 35 Cal. 161.

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———Ss. 480, 481, 482—*Duty of Magistrate.*

The accused insulted a Sub-Registrar and caused obstruction while he was discharging his duties. The Sub-Registrar complained to the District Registrar who was also the District Magistrate for prosecuting the accused under S. 228. The District Registrar sent the case to Sub-Divisional Magistrate and the latter issued process under S. 228, Penal Code. On an application to the High Court for quashing the proceedings: *Held*, that the proceedings under S. 228 could not be continued but the proceedings could not be quashed as it was open to the Magistrate to find, that the accused was guilty of any other offence triable as a summons case. *Prabhat Chandra Adhikary v. Emperor.*

31 Cr. L. J. 942 :
125 I. C. 853 : 34 C. W. N. 56 :
57 Cal. 1007 : A. I. R. 1930 Cal. 366.

———S. 480—*Power of Court to proceed under—Penal Code, Ss. 179, 193—Witness, prosecution of—False answer to question—Refusal to answer question.*

Where a witness on being asked the name of his paternal grandfather, replies that he does not remember it, it is not a refusal to answer the question and the witness cannot be proceeded against under S. 179, Penal Code, read with S. 480, Cr. P. C., although if the answer is false, the witness could be prosecuted under S. 193, Penal Code. *Kallu v. Emperor.*

27 Cr. L. J. 252 :
92 I. C. 523 : A. I. R. 1926 Lah. 240.

———S. 480—*Power of Court to punish—Contempt—Walking with creaking shoes near the Court room.*

A Court can punish a person under S. 480, Cr. P. C., only in respect of the offences enumerated therein. The mere fact that a person walked with creaking shoes on his feet near the Court room is not a wilful act of contempt so as to be punishable under the section. *In re : Devaluri Virayya.*

9 Cr. L. J. 309 :
1 I. C. 560 : 5 M. L. T. 286.

———S. 480—*Power of Sessions Judge—Penal Code, S. 179—Witness refusing to answer irrelevant question—Procedure.*

During the course of cross-examination as a witness in the Sessions Court, the applicant refused to disclose what an assessor acting in the case had said in answer to a question put by the applicant. The Sessions Judge, thereupon, acting under S. 482, Cr. P. C., forwarded the case to the District Magistrate to try the applicant on a charge under S. 179, Penal Code: *Held*, (1) that the action taken by the Sessions Judge was injudicious, as the question which the applicant had refused to answer had no bearing on the facts of the case which was being tried; (2) that even if the applicant was technically guilty of an offence under S. 179, Penal Code, he could have been dealt with by the Sessions Judge

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———S. 488—"Child", meaning of—Child attaining majority—Right to maintenance.

The word "child" in S. 488 means a person who has not attained the age of majority. Under S. 488 a child who has attained majority, is not entitled to claim maintenance from his father as he is capable of earning his own livelihood. *Gangaramsa v. Vishnusa*. 23 Cr. L. J. 167 :

65 I. C. 631 : A. I. R. 1922 Nag. 249.

———S. 488—Child, meaning of—Right to maintenance on attaining majority.

The word 'child' in S. 488 merely expresses a relationship which may exist whether the child is under the age of majority or over the age of majority. A child which has reached majority may, for some reason, be unable to maintain itself, in which case the parent will, under S. 488, be liable to maintain it. *Ma E. Mya v. U. Ko Ko Gyi*.

39 Cr. L. J. 14 :

171 I. C. 800 : 10 R. Rang. 192 :

A. I. R. 1937 Rang. 370.

———S. 488—"Child", meaning of—Right to maintenance on attaining majority.

The word "child," in S. 488 simply means son or daughter, and reference to age is purposely omitted therein. Therefore, any son or daughter is entitled to claim maintenance, whatever his or her age may be, so long as he or she is unable to maintain himself or herself. *Bhagat Singh v. Emperor*.

11 Cr. L. J. 427 :

6 I. C. 960 : 28 P. W. R. 1910 Cr.

———S. 488—Child, meaning of.

The word child in S. 488 means one who has not attained the age of majority. *Krishnasamy Iyer v. Chaudravadhana*.

14 Cr. L. J. 525 :

20 I. C. 1005 : 1913 M. W. N. 695 :

14 M. L. T. 224 : 25 M. L. J. 349.

———S. 488—Child—Neglects to maintain, what is.

Under S. 488 the neglect or refusal may be by words or by conduct. It may be express or implied, and when the opponent has denied the paternity of a child, that is a fact from which Court may infer neglect to maintain. Where the paternity and the neglect are established a maintenance order should be made. *Mst. Hidayat Khatun v. Mahomed Hayat*.

14 Cr. L. J. 303 :

19 I. C. 959 : 6 S. L. R. 208.

———S. 488—Child—Offer to maintain—Maintenance for son—Past neglect, effect of—Magistrate, duty of.

When an application is made under S. 488 by a child, it is the duty of the Magistrate to enquire, first, as to whether the child is unable to maintain itself; secondly, if the father is in a position to support his child, and thirdly, whether the father is neglecting to maintain his child. Past neglect of his duty to support his child may be a cogent factor in coming to a finding that at the

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time of the application the father is neglecting or refusing to support his offspring. If a father offers to maintain his son on condition that he lives with him, the Magistrate should refrain from passing an order against the father until he has had an opportunity at least of proving that the offer is made in good faith. *Sardar Muhammad v. Nur Muhammad*.

18 Cr. L. J. 811 :

41 I. C. 331 : 22 P. R. 1917 Cr. :

16 P. W. R. 1917 Cr. :

A. I. R. 1917 Lah. 213.

———S. 488—Child—Offer to maintain.

When a child is in the custody of his mother, and the father has not, before the receipt of the summons, either asked for the custody of the child or offered to provide for him in any way, he must be held to have neglected to maintain the child; and an offer made in Court to maintain the child on condition that it lives with him will not take away the Magistrate's jurisdiction to order the father to pay for the child's maintenance. *Mi Gauk v. Nga Po Hmi*.

2 Cr. L. J. 830 :

U. B. R. 1905 Cr. P. C. 39 :

12 Bur. L. R. 33.

———S. 488—Child—Offspring of Sambandham—Maintenance.

The offspring of a *Sambandham* are entitled to maintenance from their mother and not from their father provided the mother has sufficient means to maintain them. But if the mother is not in a position to maintain them without an allowance from the father, the latter is liable to pay the allowance. *In re : Bharata Ayyar*.

25 Cr. L. J. 370 :

77 I. C. 418 : 19 L. W. 275 :

46 M. L. J. 324 : 1924 M. W. N. 305 :

34 M. L. T. 167 : A. I. R. 1924 Mad. 549.

———S. 488—Child—Refusal to maintain, what is.

In the case of a minor child living with its guardian, the condition imposed by the father that he would maintain it only if the child went to reside with him is tantamount to a refusal to maintain the child. *Zakira Bi v. Muhammad Yusuf*.

32 Cr. L. J. 247 :

129 I. C. 216 (2) : 32 P. L. R. 143 :

I. R. 1931 Lah. 152 :

A. I. R. 1930 Lah. 1043.

———S. 488—Child—Right of maintenance.

Where a father is willing to keep and maintain his children, the mere fact that they are of tender years is no ground for withholding them from his custody and ordering their maintenance under S. 488. *Sultan v. Mahlab Bibi*.

27 Cr. L. J. 1319 :

98 I. C. 391 : 27 P. L. R. 233 :

A. I. R. 1926 Lah. 536.

———S. 488—Child—Right to maintenance.

An order under S. 488 for maintenance of a child cannot be passed against a father unless it is proved that he has neglected or refused to maintain it. *Jagan Nath v. Koshalia Devi*.

28 Cr. L. J. 415 :

101 I. C. 191 : A. I. R. 1927 Lah. 430.

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such interruption was intentional as such vital irregularities in procedure are not enured by S. 537. *In re : Kukati Narasa Reddi*.

15 Cr. L. J. 621 :

25 I. C. 629 : A. I. R. 1915 Mad. 330.

-----S. 482.

See also (i) Calcutta Municipal Act, 1899, S. 449.

(ii) Cr. P. C., 1898, Ss. 234, 476.

-----S. 482—Scope—Order—Delay—Effect.

Under S. 482 the Court does not dispose of the offence, but it merely makes a complaint. There is no reason why the Legislature should desire to limit the right of a Court to make a complaint by the extraordinary provision that unlike a private complainant a Court should only be allowed to complain on the day on which the offence takes place. An order under S. 482 passed subsequently is not, therefore, invalid. *Emperor v. Malkhan Singh*.

38 Cr. L. J. 55 :

165 I. C. 698 : 1936 A. L. J. 1056 :

9 R. A. 311 : 1936 A. W. R. 879 :

A. I. R. 1936 All. 762.

-----Ss. 482, 476—Application of.

An application under S. 476 was made to the Subordinate Judge to file a complaint against the defendants for an offence under S. 175, I. P. C. The Court was abolished and the application was transferred to the District Court and it was dismissed on the ground that S. 476 was not applicable. But a complaint was made under S. 482: *Held*, that the complaint was not competent as the District Court did not order the production of any document, nor could the alleged offence under S. 175, I. P. C., be said to have been committed in the view or presence of the District Court. *Emperor v. Ayancheri Kovilagath Sankara Varma Rajah*.

41 Cr. L. J. 465 :

187 I. C. 470 : 1940 1 M. L. J. 272 :

51 L. W. 230 : 1940 M. W. N. 240 (1) :

12 R. M. 738.

-----S. 486.

See Penal Code, S. 228.

-----S. 487.

See also Cr. P. C., 1898, Ss. 144, 195 (1) (b).

-----S. 487—Interpretation—Try, meaning.

The word "try" as used in S. 487 includes the hearing of an appeal. *Krishnappa v. Emperor*.

25 Cr. L. J. 713 :

81 I. C. 201 : A. I. R. 1924 Nag. 51.

-----S. 487—Prohibition.

By virtue of S. 487, the Tahsildar has no jurisdiction to complain to himself against and try a person for, an offence referred to in S. 195 (1) (a), Cr. P. C., which has been committed before himself or in contempt of his authority. *Phalwan Singh v. Emperor*. 27 Cr. L. J. 1314 :

98 I. C. 416.

-----S. 487—Prohibition—Presidency Magistrate—Power to try case of disobedience of his own order.

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A Presidency Magistrate has no jurisdiction to try a case under S. 133, Penal Code, when the order which is alleged to have been disobeyed was an order which he had himself passed. *Leakut Hossain v. Emperor*.

7 Cr. L. J. 103 :

7 C. L. J. 70 : 3 M. L. T. 154.

-----S. 487—Prohibition—Sanction by Sessions Judge—Jurisdiction to hear appeal.

The provisions of S. 487 are mandatory and a Sessions Judge who grants sanction for the prosecution has no jurisdiction to hear an appeal against the conviction for the offence in respect of which sanction was granted. *Krishnappa v. Emperor*.

25 Cr. L. J. 713 :

81 I. C. 201 : A. I. R. 1924 Nag. 51.

-----S. 488.

-----Adultery.

-----Amount of maintenance.

-----Appeal.

-----Application.

-----Arrears of maintenance.

-----Arrest, nature of.

-----Buddhist Law.

-----Buddhist Monk.

-----Cancellation of order.

-----Child.

-----Chinese Customary Law.

-----Civil Court decree.

-----Compromise.

-----Conditional order.

-----Consent order.

-----Costs.

-----Discretion.

-----Divorec.

-----Enforceability of order.

-----Evidence.

-----Execution of order.

-----Ex parte order.

-----Ex parte proceedings.

-----Further inquiry.

-----Hindu Law.

-----Husband and wife.

-----Illegitimate child.

-----Imprisonment.

-----Jurisdiction.

-----Living separate by consent.

-----Living separate by mutual consent.

-----Living separate with consent.

-----Maintenance.

-----Maintenance of minor.

-----Maintenance proceedings.

-----Maintenance to children.

-----Maintenance to co-wife.

-----Marriage.

-----"Means," meaning of.

-----Means and inability.

-----Miscellaneous.

-----Neglect and refusal.

-----Neglect or refusal to maintain.

-----Neglect "refuses to maintain," meaning of.

-----Object.

-----Offer to maintain.

-----Order for maintenance.

-----Procedure.

-----Prohibition.

-----Reference.

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means, (2) whether he neglects or refuses to maintain his wife. The language of the section is inconsistent with the capacity of a wife to make a contract absolving her husband from his statutory liability. Where a settlement has been made, whether intended to be final or not, the question for determination is whether that settlement now furnishes sufficient means of support. *Mi Le v. Nga Paw Din*.

3 Cr. L. J. 428 :
U. B. R. Cr. 1905.

—S. 488—Compromise—Effect on liability to maintain.

Where in proceedings under S. 488 a compromise is effected fixing a maintenance allowance, the section ceases to have any application and an order by the Court allowing maintenance in accordance with that compromise during the proceedings is without jurisdiction and cannot be enforced by a criminal Court. The proper remedy of the party entitled to maintenance is to enforce the compromise through a Civil Court. *Budhu Ram v. Khem Devi*.

27 Cr. L. J. 779 :
95 I. C. 315 : A. I. R. 1926 Lah. 469.

—S. 488—Compromise—Effect.

Where an order for maintenance is passed on a compromise, the provisions of S. 488 do not cease to be applicable and the wife should not be directed to the Civil Court as her proper remedy. *Mr. L. C. Birch v. Mrs. Birch*.

34 Cr. L. J. 238 :
141 I. C. 805 : 9 O. W. N. 1189 :
I. R. 1933 Oudh 87 :
A. I. R. 1933 Oudh 122.

—S. 488—Compromise.

Enforcement of compromise is within jurisdiction of Civil Court. *S. W. Colbert v. Mrs. H. Colbert*.

35 Cr. L. J. 501 :
147 I. C. 914 : 6 R. C. 379 :
37 C. W. N. 736 :
A. I. R. 1933 Cal. 776 (2).

—S. 488—Compromise in maintenance proceedings—Procedure.

Where the parties to an application for maintenance under S. 488 compromise the matter, the Magistrate should dismiss the application leaving the parties to enforce the compromise in the Civil Courts. An order of maintenance passed in accordance with a compromise cannot be enforced by Criminal Courts. *Sham Singh v. Hakam Devi*.

31 Cr. L. J. 1179 :
127 I. C. 13 : A. I. R. 1930 Lah. 524.

—S. 488—Compromise, order based on, legality of.

Compromise between husband and wife that they will live apart as before—Order under S. 488 based on compromise is legal—(M. C. Ghose, J. *Contra*). *Nirmala Bala Devi v. Bejay Pada Ganguly*.

35 Cr. L. J. 606 :
148 I. C. 151 : 37 C. W. N. 538 :
6 R. C. 439 : A. I. R. 1933 Cal. 675.

—S. 488—Compromise—Order by Court.**Cr. P. CODE (1898), S. 488**

It is only where the compromise between the husband and wife does not cover matters outside the purview of S. 488, that an order for maintenance can properly be passed by a criminal Court. *Ram Saran Das v. Damodar*.

36 Cr. L. J. 193 :
152 I. C. 946 : 7 R. L. 346 :
36 P. L. R. 153 : 16 Lah. 420 :
A. I. R. 1934 Lah. 864.

—S. 488—Compromise—Order.

Where such an order ran "the child is to have Rs. 3 per month for its own maintenance until it attains puberty. The parties consent to this": *Held*, that the order did not embody the term of any compromise on the question of the liability of the father to maintain his daughter and was enforceable. *Latifannessa Bibi v. Nannu*.

41 Cr. L. J. 789 :
189 I. C. 691 : 44 C. W. N. 734 :
13 R. C. 132 : A. I. R. 1940 Cal. 398.

—S. 488—Compromise—Procedure—Order.

Application under S. 488—Compromise contemplating the passing of an order by Court—Order under section by Court is valid. *Mr. S. F. Lee v. Mrs. M. Lee*.

34 Cr. L. J. 744 :
144 I. C. 51 : 10 O. W. N. 374 :
I. R. 1933 Oudh 226 :
A. I. R. 1933 Oudh 119.

—S. 488—Compromise—Procedure.

When in proceedings for maintenance under S. 488, the parties enter into a compromise, the enforcement of the compromise comes within the jurisdiction of a Civil Court and not of a Criminal Court. *Raham Ali v. Mst. Fateh Bibi*.

2 Cr. L. J. 690 :
6 P. L. R. 421 : 39 P. R. Cr. 1905.

—S. 488—Compromise—Procedure.

Where the parties to a proceeding under S. 488 settle the matter without any reference to the Court, there is no necessity for the Court to pass any order under S. 488. But if the passing of an order under S. 488 is an essential part of the compromise, the Court cannot refuse to enforce the order merely because it was based on a compromise. *Mangayamma v. Appalaswami*.

32 Cr. L. J. 688 :
131 I. C. 173 : 60 M. L. J. 213 :
33 L. W. 405 : 1931 M. W. N. 327 :
4 Mad. Cr. Cas. 101 :
I. R. 1931 Mad. 509 :
A. I. R. 1931 Mad. 185.

—S. 488—Compromise, regarding amount, maintenance—Court's order.

In a proceeding under S. 488 by a wife against her husband, if the husband and wife agree as to the rate of maintenance without adding conditions which cannot form part of an order under S. 488, the Magistrate can pass an order under the said section in terms of the compromise and the order can be enforced by him. *Pal Singh v. Nihal Kaur*.

33 Cr. L. J. 488 :
137 I. C. 364 : 33 P. L. R. 292 :
I. R. 1932 Lah. 339 (2) :
A. I. R. 1932 Lah. 349 (2).

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ance for food, clothing and lodging. In awarding maintenance, Magistrates must award a reasonable amount. Where the allowance is obviously grossly inadequate, the High Court will interfere. *Ma E Mya v. U Ko Ko Gyi*.

39 Cr. L. J. 14 :

171 I. C. 800 : 10 R. Rang. 192 :

A. I. R. 1937 Rang. 370.

-----S. 488—Amount of maintenance.

In fixing the amount of maintenance, no luxury should be allowed and necessities of life should be considered according to the station in life of the applicant and the means of the respondent. *Dragon v. Emelie Mi Taiik Dragon*.

13 Cr. L. J. 55 :

13 I. C. 391 : 4 Bur. L. T. 269.

-----S. 488—Amount of maintenance.

Parties cannot contract themselves out of the Statutory obligation to maintain children under Cr. P. C. The mere fact that S. 488, Sub-s. (1), refers to monthly allowances merely shows that the Court has taken the month as a convenient unit whereby to calculate allowances. It does not show that independently of an order of the Court, lump sums cannot be paid for the maintenance of a child. Of course this lump sum is not a complete answer to future applications by the woman. *Maung Tin U v. Ma Hla Kyi*.

38 Cr. L. J. 913 :

170 I. C. 13 : 10 R. Rang. 79 :

A. I. R. 1937 Rang. 246.

-----S. 488—Amount of maintenance—Separate for wife and children, legality of.

An order awarding a monthly allowance of Rs. 100 for the maintenance of the wife and a monthly allowance of Rs. 30 in respect of each of five minor children, is a proper order. *Tulsi Das v. Saraju Dei Devi*.

34 Cr. L. J. 590 :

143 I. C. 296 : 37 C. W. N. 655 :

I. R. 1933 Cal. 398 : A. I. R. 1933 Cal. 406.

-----S. 488—Amount of maintenance.

Under S. 488 every wife and every legitimate child and every illegitimate child can be awarded up to Rs. 100 provided the husband or the father has the means to pay the amount. The words "Rs. 100 in the whole" in the section do not mean that a Magistrate cannot award more than Rs. 100 in all for the support of the wife and the children whatever their number. What the words mean is that only a sum of money not exceeding Rs. 100 should be ordered to be paid and no other payment either in the shape of fees or medical expenses, etc., should be ordered to be paid. *Kent v. Kent*.

26 Cr. L. J. 1597 :

90 I. C. 669 : 49 M. L. J. 335 :

A. I. R. 1926 Mad. 59.

-----S. 488—Amount of maintenance.

Where a wife applied for maintenance for herself and her 4 children and the Magistrate ordered the husband to pay Rs. 50 for the maintenance of the wife and Rs. 10 for each child every month : *Held*, that the order was legal. *Clement v. Florence*.

12 Cr. L. J. 583 :

12 I. C. 847 : 4 Bur. L. T. 139.

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-----S. 488—Appeal.

An order awarding maintenance under S. 488 is an order passed in a criminal trial and is not appealable. *Rajana Appadu v. Rajana Appamma*.

16 Cr. L. J. 326 :

28 I. C. 662 : 28 M. L. J. 483 :

17 M. L. T. 330 : A. I. R. 1916 Mad. 632.

-----S. 488—Application, whether a complaint.

An application under S. 488 is not a complaint as defined in the Code and hence cannot be sent under S. 202 for report. *Makhan Singh v. Harnamo*.

29 Cr. L. J. 909 :

111 I. C. 669.

-----S. 488—Arrears of maintenance, award of.

A Magistrate acting under S. 488 may, in the exercise of his discretion, refuse to recover accumulated arrears, but he should not refuse to enforce payment from the time of the new application, as the order of maintenance deserves to be enforced as long as it holds good. *Mi Thaing v. Nga Po Min*.

11 Cr. L. J. 79 (a) :

4 I. C. 899 : U. B. R. 1907—9. III Cr. P. C. 19.

-----S. 488—Arrears of maintenance—Magistrate competent to award.

An order for the recovery of arrears of maintenance may be made either by the Magistrate who passed the original order or by a Magistrate having jurisdiction in the district where the person ordered to pay maintenance has gone to reside. *Ma Thaw v. Emperor*.

15 Cr. L. J. 701 :

26 I. C. 149 : 7 L. B. R. 116 :

A. I. R. 1914 L. Bur. 88.

-----S. 488—Arrears of maintenance—Conditional decree for custody of wife—Condition not fulfilled—Right to recover arrears.

Where a decree for custody of wife, subject to certain conditions, has been passed subsequent to a maintenance order under S. 488, the husband is bound to comply with the conditions of the decree, and failure to comply, would justify the wife's action in leaving his custody, while other cause of justification may be established by her, and revive the right to arrears of maintenance. *Devi Ditta v. Ganga Devi*.

4 Cr. L. J. 73 :

4 P. R. Cr. 1906 : 115 P. L. R. 1907.

-----S. 488—Arrears of maintenance—Debt provable in insolvency.

Arrears of maintenance ordered to be paid to a wife under S. 488 are a debt provable in the insolvency of the husband in respect of which a valid protection order may be granted. *Yasia v. Amaturrub Ghousunnissa Begum*.

37 Cr. L. J. 1129 :

165 I. C. 297 : 44 L. W. 292 :

71 M. L. J. 430 : 1936 M. W. N. 1024 :

9 R. M. 227 : A. I. R. 1936 Mad. 793.

-----S. 488—Arrears of maintenance, recovery of—Illegal meanings, plea of, as bar.

Wife collecting arrears of maintenance through Court for long time—Hasband not having

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divoree of his wife by the husband that order became *functus officio*. *Emperor v. Jadi*.

15 Cr. L. J. 646 :
25 I. C. 846 : 17 O. C. 260 :
A. I. R. 1914 Oudh 367.

-----S. 488—Divorce—Maintenance.

A Muhammadan wife is entitled to maintenance during the period of *iddat* but not after that period has expired. *Mariam v. Kadir Bakhsh*.

31 Cr. L. J. 478 :
123 I. C. 221 : 6 O. W. N. 942 :
5 Luck. 442 : A. I. R. 1929 Oudh 527.

-----S. 488—Divorce—Right of husband to plead.

The question of divorce can, however, be raised by the husband whenever he is called upon to show why he has failed to comply with the order to pay his wife maintenance under Sub-s. (6) of S. 488. *In re : Punjalal Chunilal*.

29 Cr. L. J. 908 :
111 I. C. 668 : 30 Bom. L. R. 617 :
A. I. R. 1928 Bom. 224.

-----S. 488—Divorce—Right of maintenance.

A *Talaq-ahsan* amongst Muhammadans is accomplished by a single pronouncement during the *tahr* of the wife and by the abstention of connubial intercourse for the period of three *tahrs*. The wife must be paid maintenance money until the period of *iddat* elapses. *Maung Ba Shwe v. Ma Nyun*.

12 Cr. L. J. 82 :
9 I. C. 457 : 4 Bur. L. R. 13.

-----S. 488—Divorce—Wife's right of maintenance.

A *talaq* when it becomes irrevocable puts an end to conjugal relationship which had subsisted between the parties, and the divorced wife would not be entitled to claim maintenance from her husband beyond the period of *iddat* from the date of such irrevocable divorce. S. 488 has, in no manner, abrogated this rule of Muhammadan Law. *In re : Shekhanmian Jehangirmian*. 31 Cr. L. J. 1110 :

126 I. C. 893 : 32 Bom. L. R. 582 :
A. I. R. 1930 Bom. 178.

-----S. 488—Enforceability of order after death.

An order of a Magistrate passed under S. 488 for maintenance is not enforceable, after the death of the person against whom the order was passed, against his estate. *End Ali v. Lal Bibi*.

14 Cr. L. J. 378 :
20 I. C. 138 : 17 C. W. N. 1130 :
41 Cal. 88.

-----S. 488—Enforceability of order.

An order for maintenance under S. 488, against a husband can be enforced by the Court which has passed the order even where the husband lives outside its jurisdiction at the time when the order is sought to be enforced. *In re : Gnanambalammal*.

29 Cr. L. J. 932 :
111 I. C. 852 : 55 M. L. J. 516 :
28 L. W. 421 : 1928 M. W. N. 837 :
52 Mad. 77 : A. I. R. 1928 Mad. 1171.

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-----S. 488—Enforceability of order—Charge on husband's property—Procedure.

Where the amount of maintenance awarded under S. 488 is made a charge on the joint estate of his husband and his brothers, the order can be enforced by attachment and sale of the husband's share in movable property owned jointly by the husband and his brothers. *Shiva Lingappa Nijappa Tubeek v. Gurlingava*.

27 Cr. L. J. 652 :
94 I. C. 604 : 27 Bom. L. R. 1363 :
49 Bom. 906 : A. I. R. 1926 Bom. 103.

-----S. 488—Enforceability of order passed with consent.

There is nothing in the provisions of S. 488, which would lead to the conclusion that an order for maintenance passed by a Magistrate with the consent of a husband and a wife cannot afterwards be enforced. Where the Magistrate passes an order for maintenance with the consent of the wife and husband, the order can afterwards be enforced. *Ram Saran Das v. Ram Piari*.

38 Cr. L. J. 312 :
166 I. C. 894 : 1936 A. L. J. 1379 :
I. L. R. 1937 All. 430 : 9 R. A. 458 :
1936 A. W. R. 1268 : A. I. R. 1937 All. 115.

-----S. 488—Enforceability of order.

Where a Magistrate passes an order under S. 488, granting maintenance, his successor cannot refuse to enforce that order on the ground that it was improper. *Latifannessa Bibi v. Namu*.

41 Cr. L. J. 789 :
189 I. C. 691 : 44 C. W. N. 734 :
13 R. C. 132 : A. I. R. 1940 Cal. 398.

-----S. 488—Evidence—Mode of recording.

In application for maintenance before Presidency Magistrate, he should record memorandum of evidence in cases likely to be adjourned. *In re : Hanifabai*. 32 Cr. L. J. 276 :

129 I. C. 339 : 32 Bom. L. R. 1499 :
I. R. 1931 Bom. 147 : A. I. R. 1931 Bom. 142.

-----S. 483—Evidence—Wife's statement, whether enough.

In the case of an application for maintenance by wife under S. 488, the Court is entitled to act if it thought fit upon the evidence of the wife. The law does not require corroboration in cases of this kind, though, of course, such corroboration is always desirable. *Bathulu Bhagirathi v. Bathulu Lakshmi Devi*.

41 Cr. L. J. 718 :
189 I. C. 105 : 6 B. R. 760 :
21 P. L. T. 824 : 13 R. P. 71 :
A. I. R. 1940 Pat. 242.

-----S. 483—Execution of order.

Default in paying maintenance—Imprisonment for period for which allowance is outstanding—Such person, if not a civil debtor—Such person's expenses in jail cannot be ordered against opposite party. *Emperor v. Sardar Muhammad*.

37 Cr. L. J. 207 :
159 I. C. 939 : 36 P. L. R. 191 :
8 R. L. 437 : A. I. R. 1935 Lah. 758.

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———S. 488—*Cancellation of order—Gift of property.*

Subsequent to an order of maintenance of a child against its father, the latter made a gift of his half share in a house to the child, the other half share of which was held by the mother. The mother was living in the house up to the time of the execution of the deed of gift. The order of maintenance was sought to be cancelled: *Held*, that the child's income from its half share was not an income which was sure by any means and hence the order could not be cancelled completely, but in view of the fact that the house had now become the sole property of mother and child and thus caused a change in the child's circumstances, the effect of which it was difficult to assess, the amount might be reduced. *Maung Din v. Ma Dwe.*

38 Cr. L. J. 910 (a):
170 I. C. 285 : 10 R. Rang. 75:
A. I. R. 1937 Rang. 239.

———S. 488—*Cancellation of order, grounds for.*

S. 488 (5) provides for the cancellation of the order. The reasons given therein for cancellation are not exhaustive *Pearey Lal v. Naraini.*

37 Cr. L. J. 62 :
159 I. C. 308 (b) : 1935 A. L. J. 1186 :
1935 A. W. R. 1133 : 8 R. A. 426 :
A. I. R. 1935 All. 977.

———S. 488—*Cancellation of order, on ground of divorce.*

Where a husband applies for the cancellation of an order of maintenance passed in favour of his wife on the ground that he has been divorced from her, it is the duty of the Magistrate to entertain such plea and give it consideration. *Hasan Chanea v. Mi Sin.*

16 Cr. L. J. 531 :
29 I. C. 659 : U. B. R. 1915 II, 53 :
A. I. R. 1915 U. Bur. 8.

———S. 488—*Cancellation of order on ground of adultery.*

Under S. 488 (5), the Magistrate is entitled to cancel the previous orders of maintenance and render them of no effect for the future on a finding that the applicant in whose favour the order had been made was "living in adultery". Under sub-cl. (4) the Magistrate is entitled to refuse to enforce the maintenance orders on a finding, that during the period in respect of which maintenance was sought to be recovered, the applicant was "living in adultery". *Chetibai v. Naroomal Shehoomal.*

39 Cr. L. J. 847 :
176 I. C. 863 : 11 R. S. 42 :
A. I. R. 1938 Sind 151.

———S. 488—*Cancellation of order on ground of illegal marriage.*

A husband applied for cancellation of an order for maintenance passed against him in favour of his wife on the ground that their marriage was null and void as his wife was not a widow at the time of the marriage as she had represented herself to be. This plea was not set up as a defence in the application by the wife for maintenance: *Held*, that the

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proper remedy of the applicant under the circumstances was to apply to the Court having matrimonial jurisdiction in the matter to have the marriage declared null and void. *Palmerino v. Palmerino.*

28 Cr. L. J. 51 :
99 I. C. 83 : 28 Bom. L. R. 1299 :
A. I. R. 1927 Bom. 46.

———S. 488—*Cancellation of order—Return of wife.*

The mere fact, that a wife has returned to live with her husband, will not bring the order to an end automatically, though it may have the effect of suspending the order for the period the woman lives with her husband; and on her separating from him again, she can enforce it. *Pearey Lal v. Narain.*

37 Cr. L. J. 62 :
159 I. C. 308 (b) : 1935 A. L. J. 1186 :
1935 A. W. R. 1133 : 8 R. A. 426 :
A. I. R. 1935 All. 977.

———S. 488—*Cancellation of order—Return of wife to husband.*

If after an order of maintenance has been made for a wife and child, the wife returns with the child, and lives with the husband who maintains them in his own house, the order of maintenance becomes ineffectual and incapable of being enforced. *Ma Tin v. Maung An Gye.*

1 Cr. L. J. 870 :
4 B. R. 1904 : 2nd Qr. Cr. P. C. 23.

———S. 488—*Cancellation of order—Re-union of couple.*

It is always open for the husband to apply to have the original order cancelled on good cause being shown. Re-union does not automatically vacate the previous order. The length of time during which re-union lasts is hardly relevant. The parties may contemplate permanent re-union and yet quarrel and separate again after a short interval. *John P. E. Coelho v. Mrs. Blanche.*

38 Cr. L. J. 170 :
166 I. C. 27 : 9 R. N. 116 :
I. L. R. 1937 Nag. 230 :
A. I. R. 1936 Nag. 228.

———S. 488—*Cancellation of order—Re-union of couple—Maintenance—Husband and wife, re-union of—Effect on maintenance order.*

A re-union of husband and wife vacates an order of maintenance under S. 488. *U Po Shein v. Ma Sein Mya.*

32 Cr. L. J. 114 :
129 I. C. 353 : 8 Rang. 460 :
I. R. 1931 Rang. 1 :
A. I. R. 1931 Rang. 89.

———S. 488—*Child, age of—Ability to maintain.*

There is no limit of age placed by S. 488 for the maintenance allowance to be awarded to a child, such maintenance, should be directed to be paid until the child can maintain itself. It is a question of fact in each case as to whether a child can maintain itself or not. *Khedani Rajwarin v. Lagan Singh.*

22 Cr. L. J. 336 :
61 I. C. 64 : 2 P. L. T. 109 :
A. I. R. 1921 Pat. 379.

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———S. 488—*Husband and wife—Husband offering to maintain wife—Willingness of wife to live with husband—Order.*

In a case for maintenance, when the husband offers to maintain the wife, on condition of her living with him, and the wife states that she is willing to live with him, the Magistrate cannot make an order under S. 488, unless the petitioner satisfies him that, notwithstanding such offer, there is just ground for making such order. *Hakimi Jan Bibi v. Mouze Ali.*

2 Cr. L. J. 213 :
1 C. L. J. 214.

———S. 488—*Husband and wife—Ill-treatment of 1st wife—Second marriage—Separate maintenance—Refusal to live with husband.*

Whether a wife has been ill-treated by her husband and turned out of the house, a refusal on her part to live with him does not disentitle her to maintenance. Mere second marriage on the part of husband does not justify first wife's refusal to live with him. But where a first wife has been turned out after continued ill-treatment, a half-hearted attempt to induce her to come back before second marriage must be regarded merely an excuse for the contracting of a second marriage and she is not bound to go back to her husband, nor her refusal to do so will disentitle her to maintenance. *Pritam Singh v. Basant Kaur.*

27 Cr. L. J. 507 :
93 I. C. 791 : A. I. R. 1926 Lah. 353.

———S. 488—*Husband and wife—Offer to maintain—Cruelty to wife—Refusal by wife.*

In a claim for maintenance, it is no defence for a husband to say that he is prepared to take his wife back, if the facts show that the wife has reasonable cause for fearing to return to the husband's home. If a wife has been ill-treated and there is ground for believing that if she returns, the ill-treatment will continue, then the wife is entitled to live apart from her husband. In such a case, the husband, who is the guilty party, must maintain his wife. Causing a wife to leave the protection of the husband by ill-treatment is tantamount to driving the wife deliberately from the home. In such a case, the wife is justified in refusing to return to her husband. *Bathulu Bhagirathi v. Bathulu Lakshmi Devi.*

41 Cr. L. J. 718 :
189 I. C. 105 : 6 B. R. 760 : 21 P. L. T. 824 :
13 R. P. 71 : A. I. R. 1940 Pat. 242.

———S. 488—*Husband and wife—Offer to maintain—Enquiry.*

Husband's offer to maintain—*Bona fides* of offer and sufficiency of reasons for refusal to go back to husband should be considered before making order. *Nur Muhammad v. Hajran.*

36 Cr. L. J. 792 :
155 I. C. 609 : 36 P. L. R. 181 : 7 R. L. 743 :
A. I. R. 1934 Lah. 946.

———S. 488—*Husband and wife—Offer to maintain.*

In a proceeding under S. 488 against a husband, it is incumbent on the Magistrate if the husband offers to maintain the appli-

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cant on condition of her living with him, to ask her whether she is willing to return to the husband, before passing an order for maintenance. *Budhwa v. Kirpi.* 31 Cr. L. J. 896 :
125 I. C. 637 : A. I. R. 1930 Lah. 665.

———S. 488—*Husband and wife—Offer to maintain—Meaning of.*

Where a husband agrees to protect and maintain his wife in a manner suitable to her condition in life, it is a sufficient offer under S. 488 and the mere fact that he refuses to co-habit with her is not a ground for granting her separate maintenance. *Jaggarapu Basawamma v. Jaggarapu Seetareddi.*

23 Cr. L. J. 336 :
66 I. C. 832 : 15 L. W. 535 :
30 M. L. T. 315 : 42 M. L. J. 566 :
1922 M. W. N. 265 : A. I. R. 1922 Mad. 209.

———S. 488—*Husband and wife—Offer to maintain.*

When a husband offers to receive his wife to live with him, an order for maintenance cannot be made except on proof of adultery or cruelty. *Makhan Singh v. Harnamo.*

29 Cr. L. J. 909 :
111 I. C. 669.

———S. 488—*Husband and wife—Offer to maintain.*

Where in a proceeding under S. 488 the husband offers to take back his Christian wife and maintain her but refuses to give up his mistress and it is found that the husband never insulted his wife as to compel her to live in the same house as his mistress nor was it likely that he should adopt this course of conduct, the wife is not entitled to a separate maintenance. She cannot also exact from the husband a promise of sexual fidelity before she returns to live with him. S. 488 has nothing to do with conjugal rights. *P. Amaldoss v. Mrs. Kamala Amaldoss.*

39 Cr. L. J. 24 :
171 I. C. 914 : 46 L. W. 324 :
214 L. J. 488 : 1937 M. W. N. 1197 :
10 R. M. 413 (1) : A. I. R. 1937 Mad. 794.

———S. 488—*Husband and wife—Offer to maintain.*

Where in an inquiry under S. 488, the husband offers to maintain his wife, it is the duty of the Magistrate to ask the wife if she is willing to live with her husband and to consider the grounds of her refusal, if any, and any order allowing maintenance to the wife without consideration of the said circumstance, is illegal. *Pandula Subbaya v. Pandula Ambamma.*

9 Cr. L. J. 501 :
2 I. C. 155.

———S. 488—*Husband and wife—Offer to maintain.*

Where in the proceedings under S. 488 it appears that the husband had turned his wife out of his house, he cannot escape liability for giving maintenance to her merely by saying in Court that he will keep her in his house, a promise which he might break as soon as he gets home. *Aishan v. Sher Muhammad.*

22 Cr. L. J. 149 :
59 I. C. 853.

Cr. P. CODE (1898), S. 488**—S. 488—Child—Right of main'enance—Offer to maintain.**

What gives jurisdiction to the Magistrate to give, and entitles children to get maintenance under S. 488, is not merely a formal refusal of the father to maintain but also his neglect to do so. A mere offer to give maintenance at the time of trial is not a justification to reject an application under S. 488. If a father takes no steps to look after the boarding and lodging of his children and does not take them into the custody, they should be awarded maintenance under S. 488. *Kambo Ammal v. Ranganatham*.

25 Cr. L. J. 94 :

76 I. C. 30 : 19 L. W. 530 :

1924 M. W. N. 465 : A. I. R. 1924 Mad. 624.

—S. 488—Child, what is—Adoptive child.

An adopted child does not fall within the phrase 'his legitimate or illegitimate child' in S. 488, Cr. P. C., and an adoptive father is not liable under the section to pay maintenance to his adopted child. *Nanu Nair v. Puthan Vettil Kathayayini Amma*.

38 Cr. L. J. 602 (a) :

168 I. C. 782 : 45 L. W. 431 :

- 1937 M. W. N. 464 : 1937 I. M. L. J. 618 :

9 R. M. 648 : I. L. R. 1937 Mad. 775 :

A. I. R. 1937 Mad. 547.

—S. 488—Child, what is.

It cannot be said that a child, as contemplated by S. 488, is an infant who has not yet attained puberty. *Hemanta Kumar Banerjee v. Monorama Debi*.

36 Cr. L. J. 1114 :

157 I. C. 365 : 61 C. L. J. 141 :

39 C. W. N. 432 : 62 Cal. 639 :

8 R. C. 105 : A. I. R. 1935 Cal. 488.

—S. 488—Child, whether includes adopted one.

An adopted child is not a child within the meaning of S. 488, Cr. P. C., and is not entitled to maintenance under S. 488. *Ma E Mya v. U. Ko Ko Gyi*.

39 Cr. L. J. 14 :

171 I. C. 800 : 10 R. Rang. 192 :

A. I. R. 1937 Rang. 370.

—S. 488—Chinese Customary Law—Valid marriage.

For the purpose of determining, in a proceeding under S. 488, whether a valid marriage exists between a Burmese woman and a Chinese half-caste who claims to be a Confucian, the Court must find whether the requirements of the Chinese Customary Law have been fulfilled. Under that Law, a marriage must be preceded by a betrothal contract and the usual ceremonies and festivities must be performed and celebrated. The Court may, however, draw a presumption of marriage from the intention of the parties' long cohabitation, habit and repute. *Ma U v. Mg Kyin Htal*.

27 Cr. L. J. 656 :

94 I. C. 608 : 4 Bur. L. J. 225 :

A. I. R. 1926 Rang. 82.

—S. 488—Civil Court decree, effect of.

Where after an order under S. 488 a decree for restitution of conjugal rights has been

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passed by a competent Civil Court, the Magistrate should consider the effect of this decree under S. 489 (2). *Maung Chit Tun v. Ma Pwa Sein*.

35 Cr. L. J. 813 :

148 I. C. 908 (2) : 6 R. Rang. 259 :

A. I. R. 1934 Rang. 39.

—S. 488—Civil Court decree, effect of.

Where the husband had obtained a decree for restitution of conjugal rights and while the decree was in full force, the wife applied for maintenance. *Nga Po Saw v. Mi Thei*.

11 Cr. L. J. 662 :

8 I. C. 479 : 1910 I. U. B. R. 34.

—S. 488—Civil Court decree—Effect on maintenance order.

The jurisdiction conferred by S. 488 is auxiliary to that possessed by the Civil Courts, and before enforcing an order for maintenance made under that section, a Magistrate is bound to take into consideration any subsequent order of a Civil Court which would disentitle a wife to maintenance. A Magistrate ought to refuse to enforce an order or maintenance of a child made under S. 488 if after the passing of the order, a Civil Court decides that the respondent is not the father of the child. *Bo Gyi v. Ma Nyein*.

22 Cr. L. J. 127 :

59 I. C. 559 (2) : 13 Bur. L. T. 104.

—S. 488—Civil Court decree—Effect on order.

A Magistrate ought to treat an order of maintenance made by him as determined, if the wife fails to comply with a decree for restitution of conjugal rights obtained by the husband and refuses to live with him. *Maung Tha U. v. Ma Mya Khin*.

17 Cr. L. J. 412 :

35 I. C. 972 : 9 Bur. L. T. 162 :

A. I. R. 1916 L. Bur. 17.

—S. 488—Compromise—After order for maintenance—Effect.

Criminal Court cannot take cognizance of compromise by parties entered into after passing of order under S. 488 without intervention of Court, and refuse to enforce the order made by it. *Fazal Din v. Emperor*.

33 Cr. L. J. 121 :

135 I. C. 198 : I. R. 1932 Lah. 70 :

A. I. R. 1932 Lah. 115.

—S. 488—Compromise as to amount of maintenance—Order.

Compromise as to amount of maintenance—No terms imposed in compromise—Order can be enforced by taking proceedings under S. 488. *Bhagwati Devi v. Gajadhar Prasad*.

37 Cr. L. J. 9 (1) :

158 I. C. 1123 : 8 R. A. 372 :

1935 A. L. R. 1055 : 1938 A. W. R. 195 :

A. I. R. 1935 All. 294.

—S. 488—Compromise—Effect on husband's liability to maintain wife.

The primary questions to be decided in reference to the claims of a wife for maintenance are : (1) whether the husband has sufficient

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-----S. 488—*Husband and wife—Wife's right.*

Excommunication of wife from caste is not sufficient reason to refuse maintenance. *Yrsu-bai v. Parasram.*

34 Cr. L. J. 140 :
141 I. C. 348 : 34 Bom. L. R. 1449 :
I. R. 1933 Bom. 77 (2) :
A. I. R. 1933 Bom. 21.

-----S. 488—*Husband and wife—Wife's right.*

The proposition that a wife, who has ample means of her own, is not entitled to maintenance is not correct. It is obvious that the words "unable to support itself" in S. 488, Sub-s. (1) of the Code refer to a child and not to a wife. *Moung Son v. Ma The Nu.*

1 Cr. L. J. 883 :
10 Bur. L. R. 166.

-----S. 488—*Illegitimate child—Paternity, proof of.*

Where, in an application under S. 488, for maintenance of an illegitimate child, the question at issue is, whether the respondent is the father of the child, it is *prima facie* improper to accept the mere statement on oath of the mother who asserts the paternity, which cannot but be highly interested, without some independent corroboration of it such as will satisfy the Court that her claim is true. *Vedanthachari v. Marie.*

27 Cr. L. J. 1095 :
97 I. C. 359 : 24 L. W. 409 :
A. I. R. 1926 Mad. 1130.

-----S. 488—*Imprisonment—Insolvency, effect of.*

It is not possible for a Magistrate who has passed a sentence of imprisonment under S. 488 (3) to cancel the sentence merely because the Insolvency Court has issued an order of protection. The sentence of imprisonment is a punishment inflicted for breach of the order. *Penubala Muni Krishnayya v. Penubala Akkulamma.*

41 Cr. L. J. 785 :
189 I. C. 692 : 1940 M. W. N. 237 :
1940 1 M. L. J. 868 : 51 L. W. 718 :
I. L. R. 1940 Mad. 692 :
13 R. M. 339 : A. I. R. 1940 Mad. 697.

-----S. 488—*Imprisonment—Maximum sentence.*

When a Magistrate issues a warrant for arrears of maintenance for more than one month and when the allowance for more than one month remains unpaid after the execution of the warrant, he is not competent to pass a sentence of imprisonment exceeding one month. *Zaw Ta v. Emperor.*

15 Cr. L. J. 434 :
24 I. C. 170 : 7 Bur. L. T. 225 :
A. I. R. 1914 L. Bur. 163.

-----S. 488—*Jurisdiction.*

Agreement regarding rate of maintenance does not deprive jurisdiction under S. 488. *Hakim Devi v. Sham Singh.*

32 Cr. L. J. 993 :
132 I. C. 854 : I. R. 1931 Lah. 694.

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-----S. 488—*Jurisdiction.*

Court, in the place where parties have permanent residence, has jurisdiction. *Mr. S. F. Lee v. Mrs. M. Lee.*

34 Cr. L. J. 744 :
144 I. C. 51 : 10 O. W. N. 374 :
I. R. 1933 Oudh 226 :
A. I. R. 1933 Oudh 119.

-----S. 488—*Jurisdiction—Agreement between couple, effect of.*

*The mere existence of an agreement between husband and wife, which is not acted upon, does not oust jurisdiction of Criminal Courts to order maintenance under S. 488. *Saraswati Debi v. Narayan Das Chatterjee.*

33 Cr. L. J. 634 :
138 I. C. 613 (1) : 36 C. W. N. 571 :
55 C. L. J. 341 : I. R. 1932 Cal. 471 :
59 Cal. 1229 : A. I. R. 1932 Cal. 698.

-----S. 488—*Jurisdiction.*

Even temporary residence of the husband at a place confers jurisdiction on the Court there to entertain an application for maintenance. *Emperor v. Janki.*

34 Cr. L. J. 32 (2) :
140 I. C. 394 : 15 M. L. J. 24 :
I. R. 1932 Nag. 146 :
A. I. R. 1932 Nag. 85 (2),

-----S. 488—*Jurisdiction—Last resided, meaning of—Temporary sojourn.*

The words 'last resided' in S. 488, do not contemplate a mere casual residence in a place for a temporary purpose. Therefore, where a husband is employed as a carpenter in the Railway Workshops in Lahore and has been residing there continuously for 11 years, a temporary sojourn in Lucknow by him with his wife will not confer on Lucknow Court jurisdiction to entertain an application by the wife for maintenance under that section. *Ramdei v. Jhunni Lal.*

27 Cr. L. J. 820 :
95 I. C. 596 : 3 O. W. N. 231 :
13 O. L. J. 597 : A. I. R. 1926 Oudh 268.

-----S. 488—*Jurisdiction.*

Occasional visits of a husband to a wife who lives apart from him do not give jurisdiction to a Magistrate in the District in which the wife resides, within the meaning of S. 488 (9). *Maung Waing v. Ma Chil*

1 Cr. L. J. 545 :
U. B. R. 1904 Cr. Pro. 10 : 10 Bur. L. R. 319.

-----S. 488—*Jurisdiction—Ouster by order for alimony by English Divorce Court.*

The existence of an order for alimony by the English Divorce Court is not sufficient to oust the jurisdiction of a Magistrate under S. 488, since a mere order for maintenance is equivalent to maintaining the wife. *Kent v. Kent.*

26 Cr. L. J. 1597 :
90 I. C. 669 : 49 M. L. J. 335 :
A. I. R. 1926 Mad. 59.

-----S. 488—*Jurisdiction, ouster of by Civil Court decree—Proper order.*

In a proper case the jurisdiction of the Magistrate to make an order under S. 488, is not ousted by the mere existence of a decree of a Civil Court directing a certain sum to be paid as maintenance. Of course the existence of a

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———S. 488—Conditional order, based on compromise.

Magistrate is not entitled to pass an order under S. 488 in terms of a compromise which contains such conditions or amounts to an agreement to live separate by mutual consent, or to enforce the same if such an order has been passed. *Pal Singh v. Nihal Kaur*.

33 Cr. L. J. 488 :
137 I. C. 364 : 33 P. L. R. 292 :
I. R. 1932 Lah. 339 (2) :
A. I. R. 1932 Lah. 349 (2).

———S. 488—Conditional order, legality of.

An order directing the husband to take away his wife with him and maintain her, and in the event of his failing to do so or turning her out, to pay a fixed sum to her for maintenance, being conditional, is not in accordance with law and hence is liable to be set aside in revision. *Natha Singh v. Harnam Kaur*.

27 Cr. L. J. 556 :
93 I. C. 1052 : 7 Lah. 313 : 27 P. L. R. 462 :
A. I. R. 1926 Lah. 480.

———S. 488—Conditional order.

An order for the maintenance of a wife passed on condition that she resides in her husband's house is illegal. *Emperor v. Jamiat Singh*.

18 Cr. L. J. 528 :
39 I. C. 496 : 14 P. R. 1917 Cr. :
A. I. R. 1917 Lah. 259.

———S. 488—Conditional order, legality of.

An order granting maintenance with a proviso that if the husband lives with the complainant, the latter would not be entitled to any maintenance is not contemplated by law. *Ramzan v. Sahib Bibi*.

29 Cr. L. J. 895 :
111 I. C. 575 : A. I. R. 1929 Lah. 56.

———S. 488—Conditional order, legality of.

In granting maintenance to a wife, a Magistrate cannot impose a condition that the wife should reside in the village of the husband. *Basant Kaur v. Hari Singh*.

30 Cr. L. J. 51 :
113 I. C. 67 : I. R. 1929 Lah. 133 :
A. I. R. 1929 Lah. 210.

———S. 488—Consent order—Bar to suit for restitution of conjugal rights.

Although an order under S. 488 has been passed with the consent of both the parties, it cannot operate as a bar to a civil suit for restitution of conjugal rights unless it is expressed in the consent given that the consenting party agreed, that in all circumstances, the wife should live apart from the husband and be entitled to the maintenance agreed upon. *Guruvappa Chetty v. Thayarammal*.

131 I. C. 463 :
54 Mad. 558 : 60 M. L. J. 433 :
33 L. W. 423 : 1931 M. W. N. 364 :
I. R. 1931 Mad. 527 : A. I. R. 1931 Mad. 482.

———S. 488—Costs.

Under S. 488, Sub-s. (7) the Court may make orders as to costs in favour of the wife where

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the husband has failed in an action for maintenance. *Yesubai v. Parasram*.

34 Cr. L. J. 140 :
141 I. C. 348 : 34 Bom. L. R. 1449 :
I. R. 1933 Bom. 77 (2) :
A. I. R. 1933 Bom. 21.

———S. 488—Discretion.

The use of the word "may" in S. 488, Cr. P. C., shows that a Magistrate has a discretion to decide in what cases the award of maintenance may properly be made, though the discretion must be exercised judicially and reasonably and not capriciously. The refusal to make an order for maintenance against the husband on the ground of the woman living in adultery with a low-caste man, was a proper exercise of the discretion vested in the Magistrate. *Ponnayee v. Periya Mooppan*.

7 Cr. L. J. 346 :
18 M. L. J. 150 : 3 M. L. T. 269 :
31 Mad. 185.

———S. 488—Divorce, effect of.

An irrevocable divorce, under Muhammadan Law, does not completely destroy the relationship of husband and wife, until after the expiry of the period of *iddat*, and, therefore, a wife in that position is entitled, during *iddat*, to an order for maintenance under S. 488. Also any such order already existing in favour of the wife can be enforced by the Magistrate during the period of her *iddat*. *Syed Saib v. Meeran Bee*.

10 Cr. L. J. 502 :
4 I. C. 140.

———S. 488—Divorce, effect of.

The fact that husband had given *talaq* to his wife should be considered before passing order. *Ahmad Kasim Molla v. Khatun Bibi*.

141 I. C. 689 :
59 Cal. 833 : I. R. 1933 Cal. 165 :
A. I. R. 1933 Cal. 27.

———S. 488—Divorce, effect of on maintenance.

Where there has been a divorce by mutual consent, an order of maintenance passed in the wife's favour cannot stand. *Maung Tin U v. Ma Hla Kyi*.

38 Cr. L. J. 913 :
170 I. C. 13 : 10 R. Rang. 79 :
A. I. R. 1937 Rang. 246.

———S. 488—Divorce—Effective maintenance.

The order of maintenance becomes inoperative on the expiration of the divorced wife's *iddat*, and that period should not be deemed to have expired until the expiry of three months from the date on which she is made cognisant of the divorce. *Mahomed Hussain v. Ma Pwa Hnit*.

21 Cr. L. J. 503 :
56 I. C. 663 : 10 L. B. R. 104 :
13 Bur. L. T. 43 : A. I. R. 1920 L. Bur. 54.

———S. 488—Divorce—Effect on order for maintenance.

Where a Magistrate made an order under S. 488 directing a Muhammadan to pay a certain monthly allowance towards the maintenance of his wife: *Held*, that on subsequent

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order for maintenance. *Manickam v. Poongavanammal*. 35 Cr. L. J. 852 :

148 I. C. 921 : 39 L. W. 439 :
1934 M. W. N. 185 : 66 M. L. J. 543 :
6 R. M. 555 : A. I. R. 1934 Mad. 323.

—S. 488—Maintenance—Desertion of wife.

The fact that the husband has deserted the wife is not a ground for dismissing the application, but is on the other hand, a reason for allowing it. *Mangli v. Ganda Singh*.

33 Cr. L. J. 447 :
137 I. C. 30 (1) : 33 P. L. R. 230 :
I. R. 1932 Lah. 312 : A. I. R. 1932 Lah. 301.

—S. 488—Maintenance, form of.

An order for maintenance based on an agreement by the husband to pay to the wife some cash allowance together with something in kind is not a proper order under S. 488. *Masta v. Emperor*.

21 Cr. L. J. 612 :
57 I. C. 276 : A. I. R. 1920 Lah. 223.

—S. 488—Maintenance, form of.

An order, under S. 488, for maintenance must be for a sum of money payable as a monthly allowance, at a rate not exceeding Rs. 50 a month. The section does not warrant an order that the allowance be paid wholly or partially in grain or the like. *Emperor v. Dilsukh*.

13 Cr. L. J. 188 :
13 I. C. 1004 : 19 P. R. 1911 Cr.

—S. 488—Maintenance, form of—Maintenance—Mixed basis of cash and grain—Legality.

An order under S. 488, fixing maintenance on a mixed basis of cash and grain, is a bad one. The section contemplates an allowance to be made in cash only. *Kaluram v. Chinto*.

34 Cr. L. J. 123 :
141 I. C. 115 : 28 N. L. R. 284 :
I. R. 1933 Nag. 35 (1) :
A. I. R. 1932 Nag. 183 and
A. I. R. 1933 Nag. 3.

—S. 488—Maintenance, form of.

S. 488 only permits of the Court directing a monthly payment of money. An order directing an annual mixed payment in kind and in cash is contrary to the terms of the section and cannot be upheld. *Mukta v. Dattu Mahadev*.

25 Cr. L. J. 965 :
81 I. C. 613 : 26 Bom. L. R. 186 :
A. I. R. 1924 Bom. 332.

—S. 488—Maintenance, form of.

Under S. 488 a Magistrate is not allowed to make any other order except a monthly cash allowance. An order directing the husband to give his wife 12 maunds of grain each harvest and to provide her with a separate house is illegal. *Atru v. Mahon*.

25 Cr. L. J. 1271 :
82 I. C. 279 : A. I. R. 1925 Lah. 142 (1).

—S. 488—Maintenance, ground for allowing.

All that has to be proved in order to give jurisdiction to a Magistrate under S. 488,

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is that the child is unable to maintain itself and that the father neglected or refused to maintain it, and in the case of the wife, that the husband refused or neglected to maintain her. Even a grown-up child, if unable to maintain itself, is entitled to get maintenance from the father if he has the means. *Kent v. Kent*.

26 Cr. L. J. 1597 :
90 I. C. 669 : 49 M. L. J. 335 :
A. I. R. 1926 Mad. 59.

—S. 488—Maintenance—Ground for refusal.

A wife's refusal to attend a Panchayat convened to consider a charge of adultery against her, is no reason for rejecting an application for maintenance made by her under S. 488. *Dasappa Chetty v. Chikathayee*.

15 Cr. L. J. 52 :
22 I. C. 324 : 1 L. W. 156 :
A. I. R. 1914 Mad. 137.

—S. 488—Maintenance—Husband offering to keep wife—Duty of Court.

Where in proceedings under S. 488, the husband offers to maintain his wife, the Magistrate must comply with the requirements of the first proviso to Sub-s. 3 of the section. *Usman v. Jatti*.

27 Cr. L. J. 938 :
96 I. C. 394.

—S. 488—Maintenance—Joint maintenance to child and mother—Considerations depriving mother of her right, effect of—On Child.

Where the maintenance allowance under S. 488, are in favour jointly of the mother and her minor son, considerations which would deprive the mother of her right to the allowance would not prevent the child from asking and recovering it. *Chetibai v. Nuroomal Sheboomal*.

39 Cr. L. J. 847 :
176 I. C. 863 : 11 R. S. 42 :
A. I. R. 1938 Sind 151.

—S. 488—Maintenance—Meaning of.

The meaning of "maintenance" as used in S. 488, includes the education of children, that is to say, the minimum amount of education which the conventions of the country call for. The mere maintenance of the body is not sufficient; provision has to be made for the child's developing mind and conscience. *Maung Shwe Ba v. Ma Tecin Nya*.

40 Cr. L. J. 440 :
180 I. C. 584 : 1938 Rang. 673 :
11 R. Rang. 423 : A. I. R. 1939 Rang. 95.

—S. 488—Maintenance, meaning of.

The word "maintenance" in S. 488, does not include ordinary conjugal rights; it is confined to appropriate food, clothing and lodging. *Arunachala Asari v. Anandayammal*.

34 Cr. L. J. 950 (1) :
145 I. C. 378 (1) : 38 L. W. 392 :
65 M. L. J. 386 : 1933 M. W. N. 1029 :
56 Mad. 913 : 6 R. M. 55 (1) :
A. I. R. 1933 Mad. 688 (1).

—S. 488—Maintenance—Nature of.

A Court has no power to award anything

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————S. 488—*Execution of order.*

First application within four months—Application dismissed as husband not traceable—Subsequent application after fifteen months for arrears of fifteen months—Held, warrant could be issued. *U. H. Puy Lall v. Ma Po Byu.*

37 Cr. L. J. 91 (2) :
159 I. C. 289 : 13 Rang. 289 : 8 R. Rang. 265 :
A. I. R. 1935 Rang. 407.

————S. 488—*Execution of order—Imprisonment.*

Under S. 488 (3), a person who has undergone a sentence of imprisonment for a default in payment of arrears of maintenance, cannot be sentenced a second time to imprisonment for the same default. *In re : Maung Kyi Pe v. Ma Htwin.* 33 Cr. L. J. 554 :

137 I. C. 673 : 10 Rang. 176 :
I. R. 1922 Rang. 154 : A. I. R. 1932 ang. 93.

————S. 488—*Execution of order—Separate maintenance.*

Where the original order made no specific allotment for the wife separately, it is not competent for a Magistrate to do so in enforcement of an order under S. 489. *Thumhuswamy Pillay v. Ma Lone.*

18 Cr. L. J. 103 :
37 I. C. 311 : 9 L. B. R. 49 :
10 Bur. L. T. 209 : A. I. R. 1917 L. Bur. 84.

————S. 488—*Ex parte order, when made.*

An *ex parte* order under S. 488, Cr. P. C., cannot be made against a party who is present in Court along with his Pleader, without hearing him. *Sham Singh v. Hakam Devi.*

31 Cr. L. J. 1179 :
127 I. C. 13 : A. I. R. 1930 Lah. 524.

————S. 488—*Ex parte proceedings, when allowed.*

Proceedings against a person for maintenance on the ground that he is the father of an illegitimate child should not be conducted *ex parte*. Evidence in such proceedings ought to be taken in the presence of such person or his pleader unless he is wilfully avoiding service of summons or neglecting to attend the Court. *Ajoy Chandra Das v. Duli Bewah.*

2 Cr. L. J. 159 :
1 C. L. J. 102.

————S. 488—*Further inquiry—Legality of.*

When an order for maintenance is refused by a Magistrate under S. 488, the District Magistrate is not empowered to make a further inquiry under S. 437. *Mt. Parbati v. Choley.*

1 Cr. L. J. 864 :
17 C. P. L. R. 127.

————S. 488—*Hindu Law—Husband's liability to maintain wife, nature of.*

The duty of a husband to maintain his wife under the Hindu Law is absolute, and under the Cr. P. C. it is subject only to the wife's chastity. When a Hindu wife, therefore, leaves her husband's house without good cause, her right of maintenance is only suspended and she has the right to return to her husband's

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house at any time and claim to be maintained by him. *Jankibai v. Shivram Babaji.*

20 Cr. L. J. 98 :
48 I. C. 978 : 12 S. L. R. 90 :
A. I. R. 1918 Sind 25.

————S. 488—*Hindu Law—Marriage—Husband's liability for maintenance.*

Where the wife of a Hindu *kahar* contracts a *sagai* with another person but is not living with him, nor the dissolution of her marriage has been effected or recognized by the caste *panchayat*, her husband cannot be absolved from his liability to pay her maintenance. *Babu Nandan v. Punia.*

27 Cr. L. J. 550 :
93 I. C. 1046 : A. I. R. 1926 All. 426.

————S. 488—*Husband and wife—Apostacy of wife amongst Mohammadans—Maintenance.*

The apostacy of a Muhammadan wife *ipso facto* dissolves the marriage, and the wife is not thereafter entitled to receive maintenance from her husband. *Sona Ullah v. Ma Kin.*

19 Cr. L. J. 799 (b) :
46 I. C. 719 : 9 L. B. R. 206 :
A. I. R. 1919 L. Bur. 150.

————S. 488—*Husband and wife—Bona fide offer to maintain, what is.*

In a complaint under S. 488, the evidence having shown that the husband had not only beaten the wife and taken away her ornaments; but also not supported her for years, and that, though he had since married again, refused to grant divorce and declined to abide by the decision of the caste, apparently with the view of extorting money from his father-in-law: *Held* (in revision) that the husband's present offer to keep her in his house was evidently not a *bona fide* one; and that the case was one where she should be given maintenance. *Kadia Kalian Pitamber v. Kadiani Shamoo Ramji.*

2 Cr. L. J. 49.

————S. 488—*Husband and wife—Desertion of wife.*

A husband deserted his wife and went away to live elsewhere owing to the constant quarrels between them and made no attempt to maintain her. She instituted a suit for judicial separation but was unsuccessful. Subsequently, there was an attempt on the part of the neighbours to bring about a compromise which also failed as the husband told them that he could not compromise. The wife then applied for maintenance under S. 488. The husband, as a defence, offered to maintain his wife if she lived with him. The Magistrate refused to believe the husband and passed maintenance order: *Held*, that the Magistrate rightly refused to believe that the belated offer of the husband to maintain his wife was made *bona fide*. The suit by wife for judicial separation and her failure in it did not alter the fact that the husband had deserted his wife and failed to maintain her. *Bibian Ludwig DeCruz v. Alice Winifred DeCruz.*

39 Cr. L. J. 287 :
173 I. C. 21 : 210 R. Rang. 322 :
A. I. R. 1938 Rang. 25.

Cr. P. CODE (1898), S. 488**—S. 488—Maintenance to children.**

Application of mistress for maintenance dismissed—No revision against order—Subsequent application for maintenance of herself and child born subsequently: *Held*, maintenance of child alone could be considered. *Ma Saw May v. U Aung Thein*. 36 Cr. L. J. 1391 : 158 I. C. 641 : 8 R. Rang. 198 : A. I. R. 1935 Rang. 277.

—S. 488—Maintenance to children.

Boy below 18 is child—College boy unable to maintain himself is entitled to maintenance from parent. *Shauno Devi v. Daya Ram*. 35 Cr. L. J. 473 : 147 I. C. 719 : 35 P. L. R. 320 : 6 R. L. 433 (2) : A. I. R. 1933 Lah. 1026.

—S. 488—Maintenance to children—Buddhist priest, liability of.

S. 488 applies to the case of a father who has sufficient means to maintain his child but neglects to do so. A member of the Buddhist priesthood dies a civil death when he enters the priesthood, and the presumption is undoubtedly that he does not possess any property, except such as is necessary for his religious life and which is held under conditions which do not make it available for other purposes; for instance, maintenance of a child. *Ma E Shi v. U Aditsa*. 24 Cr. L. J. 510 : 72 I. C. 974 : A. I. R. 1922 U. Bur. 15.

—S. 488—Maintenance to children, extent of.

Under the provisions of the section, a father is bound to maintain his child, if the latter is not able to maintain himself. But where he is able to maintain himself, but wants to prosecute his studies in order to better his prospects, he has no right to force his father to comply with his wishes. *Abdul Rahim v. Ma Shwe May*. 24 Cr. L. J. 590 : 73 I. C. 334 : A. I. R. 1923 Rang. 45.

—S. 488—Maintenance to children—Father's liability.

Under S. 488 a father cannot justly refuse to maintain his children on the plea that they will not live with him. *Mi Saw v. S—*. 11 Cr. L. J. 488 : 7 I. C. 460 : U. B. R. 1910 Cr. P. C. 1.

—S. 488—Maintenance to children—Father's liability, nature of.

A father cannot refuse to maintain his children on the ground that they are living with their mother, if they are unable to maintain themselves. If he wants to have them in his custody, he must enforce his rights, if any, in a Civil Court. *Murgesan Mudaliar v. Sodiamma*. 16 Cr. L. J. 656 : 30 I. C. 480 : 8 Bur. L. T. 134 : A. I. R. 1915 L. Bur. 109.

—S. 488—Maintenance to children—Father's liability, nature of.

A Muhammadan woman made an application for maintenance under S. 488 against her husband for maintenance of herself and two

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children, a boy aged four years and a girl aged one and a half years. The husband contended that he would maintain the son if he were given into his custody: *Held*, that as an inquiry into the Muhammadan Law as to custody was not made necessary by Cr. P. C., which governed the proceedings, the mother was the proper person to have the custody of the son aged four and the father must maintain that child. *Akhitari Begam v. Abdul Rashid*. 38 Cr. L. J. 672 : 168 I. C. 896 : 38 P. L. R. 1117 : 9 R. L. 699 : A. I. R. 1937 Lah. 236.

—S. 488—Maintenance to children—Father's liability, nature of.

The fact that the child is living with its mother who refuses to return to her husband under a decree for restitution of conjugal rights, does not absolve the father from his duty of maintaining the child. It is open to the father to apply to the Court for the custody of the child. *Maung San Pe v. Ma Lai Mai*. 33 Cr. L. J. 918 : 140 I. C. 150 (1) : 10 Rang. 486 : I. R. 1932 Rang. 217 : A. I. R. 1932 Rang. 183.

—S. 488—Maintenance to children—Father's liability, nature of.

The father's willingness to take the boy and maintain him has nothing to do with his liability to give the boy maintenance when the boy is living in the custody of his natural guardian. *In re: Parathy Valappil Moideen*. 14 Cr. L. J. 597 : 11 I. C. 469 : 14 M. L. T. 223 : 25 M. L. J. 355 : 1913 M. W. N. 997.

—S. 488—Maintenance to children—Father's liability, nature of.

Where a father has custody of his minor children and is maintaining them properly, the mere fact that they go and live with their mother would not make him liable to be charged for maintenance under S. 488, though he refuses to maintain them unless they return to his custody. *Ma Shwe Hmyin v. Po Mg. Chat*. 16 Cr. L. J. 217 : 27 I. C. 841 : 8 L. B. R. 105 : A. I. R. 1915 L. Bur. 133.

—S. 488—Maintenance to children—Father's liability, nature of.

Where in an application by a wife for maintenance for herself and her minor son, a boy of four years, it was found that the husband had deserted the wife, but there was nothing to show that he had neglected or refused to maintain the son; *Held*, that an order for separate maintenance of the son could not be passed on the mere ground that it was best in the interest of the minor that he should remain with the mother till the father was able to get his custody from the Civil Court. *Sita Devi v. Har Narain*. 32 Cr. L. J. 196 : 129 I. C. 17 : 31 P. L. R. 876 : I. R. 1931 Lah. 97 : A. I. R. 1930 Lah. 886.

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—S. 488—Husband and wife—Order—Grounds for.

The mere fact that the husband has contracted a second marriage and therefore his first wife declined to live with him does not justify an order under S. 488. *Emperor v. Waryam Singh*. 15 Cr. L. J. 577 :

25 I. C. 329 : 12 P. R. 1914 Cr. :
245 P. L. R. 1914 : A. I. R. 1914 Lah. 339.

—S. 488—Husband and wife—Order against husband's father.

An order of maintenance of a wife under S. 488 cannot be passed against the father of the husband. *Ghulam Muhammad v. Ghulam Fatima*. 30 Cr. L. J. 135 :

115 I. C. 327 : I. R. 1929 Lah. 162.

—S. 488—Husband and wife—Order against husband's father.

S. 488 does not contemplate an order making the father of the husband jointly liable for the maintenance of the wife. *Emperor v. Waryam Singh*. 15 Cr. L. J. 577 :

25 I. C. 329 : 12 P. R. 1914 Cr. :
245 P. L. R. 1914 : A. I. R. 1914 Lah. 339.

—S. 488—Husband and wife—Order against husband's father.

Where the husband quarrels with and ill-treats his wife, she is entitled to live apart and claim maintenance, but her husband's father cannot be made liable for it. *Ralla v. Musammal Atti*. 15 Cr. L. J. 529 :

24 I. C. 841 : 21 P. W. R. 1914 Cr. :
115 P. L. R. 1914 : A. I. R. 1914 Lah. 417.

—S. 488—Husband and wife—Order against third person.

Order under S. 488 against husband—Husband's default—Order can be passed against third person whom husband has mortgaged certain properties. *Lalitmohan Saha v. Sarojini Dasi*. 33 Cr. L. J. 93 :

134 I. C. 1199 : 35 C. W. N. 692 :
I. R. 1932 Cal. 79 : A. I. R. 1931 Cal. 644.

—S. 488—Husband and wife—Order against third person.

S. 488 does not empower a Magistrate to make an order of maintenance against any one but the woman's husband. *Emperor v. Miran*. 1 Cr. L. J. 110 :

5 P. L. R. 86 : 26 P. R. Cr. of 1903.

—S. 488—Husband and wife—Order against third party.

Under S. 488 only a husband can be ordered to make a monthly allowance for the maintenance of the wife. Such an order cannot be passed against the husband's father. *Sohan Singh v. Kartar Kaur*. 32 Cr. L. J. 1175 (1) :

134 I. C. 488 : 32 P. L. R. 346 :
I. R. 1931 Lah. 936 : A. I. R. 1931 Lah. 532.

—S. 488—Husband and wife—Order—Civil Court's order subsequent—Effect of.

A subsequent decree of a Civil Court supercedes any order for maintenance that may have been previously passed by a Criminal Court under S. 488, but such a decree is no

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answer to an application for enforcement of an order previously obtained by the wife under S. 488 for her maintenance, without proof by the husband that the conditions of the decree for custody had been duly complied with, and that without any sufficient reason, she has left his custody. *Ramdheyan Ram v. Ram Dularia*. 23 Cr. L. J. 144 :

65 I. C. 576 : 3 P. L. T. 51 :
A. I. R. 1923 Pat. 153.

—S. 488—Husband and wife—Wife living with husband for short time, effect of.

Where the husband has neglected his wife for a number of years and the fact that he has succeeded by means of a subterfuge in making her live in his house for a short while during the pendency of an application for maintenance by her, should not be allowed to affect the decision of the application presented by her for maintenance. *Ghulam Mohammad v. Mst. Allah Rakhi*. 41 Cr. L. J. 107 :

185 I. C. 69 : 41 P. L. R. 605 :
12 R. L. 273 (1) : A. I. R. 1939 Lah. 533.

—S. 488—Husband and wife—Wife refusing to live with husband.

An order for maintenance of a wife should not be passed against the husband where the wife refuses to live with him and there is no sufficient reason for permitting her to do so. *Sultan v. Mahtab Bibi*. 27 Cr. L. J. 1319 :

98 I. C. 391 : 27 P. L. R. 233 :
A. I. R. 1926 Lah. 536.

—S. 488—Husband and wife—Wife's right.

An order for separate maintenance cannot be made in favour of a wife where the husband has offered to give his wife maintenance in his house but he wants her to live in a separate room and not to associate with the other members of his family and she has refused the offer. *Arunachala Asari v. Anandayammal*. 34 Cr. L. J. 950 (1) :

145 I. C. 378 (1) : 38 L. W. 392 :
65 M. L. J. 386 : 1933 M. W. N. 1029 :
56 Mad. 913 : 6 R. M. 55 (1) :
A. I. R. 1933 Mad. 688 (1).

—S. 488—Husband and wife—Wife's right.

Civil suit for restitution of conjugal rights—Application for maintenance within a month—*Ex parte* decree in civil suit—Want of bona fides for wife's petition—Maintenance order should not be passed. *Emperor v. Sherda Prasad*. 34 Cr. L. J. 188 :

141 I. C. 610 : 1932 A. L. J. 766 :
I. R. 1933 All. 79 : A. I. R. 1932 All. 583.

—S. 488—Husband and wife—Wife's right.

Decree for restitution of conjugal rights against wife—Allegations as to adultery of wife by husband—Wife living apart—Trial Court finding her to be entitled to maintenance; High Court will not interfere. *Sher Khan v. Bakhat Bhari*. 33 Cr. L. J. 748 :

139 I. C. 123 (1) : 33 P. L. R. 554 :
I. R. 1932 Lah. 566 (1),

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has become 'spent' owing to the child for whom the maintenance was ordered having attained the age of majority and being able to maintain itself. *U. Ba Thaug v. Ma Aye.*

33 Cr. L. J. 495 ;

137 I. C. 439 : 10 Rang. 194 :

I. R. 1932 Rang. 130 : A. I. R. 1932 Rang. 94.

—————**S. 488—Maintenance to children.**

When the father is willing to keep the child, order for the child's maintenance cannot be passed. *Ralla v. Musammal Atti.*

15 Cr. L. J. 529 :

24 I. C. 841 : 21 P. W. R. 1914 Cr. :

115 P. L. R. 1914 : A. I. R. 1914 Lah. 417.

—————**S. 488—Maintenance to co-wife.**

A lesser wife, refusing to live with the chief wife, will not be deprived of her right to maintenance if, at the time she married, she did not know that the husband had been previously married. *Maung Po We v. Ma The Hla.*

11 Cr. L. J. 750 :

8 I. C. 997 : 3 Bur. L. T. 154.

—————**S. 488—Marriage—Buddhist woman marrying Muhammadan husband—Maintenance.**

A Buddhist woman married by a Muhammadan person is a "wife" for the purposes of S. 488, although the marriage is not strictly valid according to the Muhammadan Law. Even in the eye of the Muhammadan Law, she appears to be so regarded and it is in accordance with justice, equity and good conscience that she should be so regarded. *Maung Pahtan v. Ma San.*

40 Cr. L. J. 653 :

182 I. C. 259 : 12 R. Rang. 1 :

A. I. R. 1939 Rang. 207.

—————**S. 488—Marriage, proof of.**

Long cohabitation does not become in effect legal marriage. *M. S. Singleys v. Ma To.*

34 Cr. L. J. 1502 :

151 I. C. 1089 : 7 R. Rang. 141 :

A. I. R. 1934 Rang. 166.

—————**S. 488—Marriage, proof of.**

Wife claiming maintenance—Parties belonging to low cast—*Nikah* recognised among them—Marriage taking place 17 years ago—Priest dead : *Held*, no strict proof of marriage was necessary. *Bogis Mangati v. Applama.*

34 Cr. L. J. 108 :

140 I. C. 876 : 59 Cal. 1257 :

I. R. 1933 Cal. 65 (2) : A. I. R. 1932 Cal. 866.

—————**S. 488—"Means," meaning of.**

The word 'means' in S. 488, does not signify only visible means such as real property or definite employment. If a man is healthy and able-bodied, he must be taken to have the "means" to support his wife. *In re : Kandasami Chetty.*

27 Cr. L. J. 350 :

92 I. C. 862 : 50 M. L. J. 44 :

1926 M. W. N. 146 : A. I. R. 1926 Mad. 346.

—————**S. 488—Means and inability.**

If a man can be shown to be capable of earning money, then he has the means to

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maintain his wife. *In re : Muni Kantivijayajee.*

33 Cr. L. J. 625 :

138 I. C. 517 : 34 Bom. L. R. 587 :

56 Bom. 260 : I. R. 1932 Bom. 385 :

A. I. R. 1932 Bom. 285.

—————**S. 488—Means and inability.**

Prima facie a young man of twenty-six years of age must be presumed to be capable of earning money. The presumption may be rebutted. *In re : Muni Kantivijayajee.*

33 Cr. L. J. 625 :

138 I. C. 517 : 34 Bom. L. R. 587 :

56 Bom. 260 : I. R. 1932 Bom. 385 :

A. I. R. 1932 Bom. 285.

—————**S. 488—Means and inability—Husband's insolvency, effect of—Husband adjudicated insolvent—Whether sufficient cause for non-payment of maintenance.**

The mere fact that the husband has been adjudicated an insolvent does not show that he is unable to pay for the maintenance of his wife and that constitutes sufficient cause for non-payment. Under the provisions of S. 60, C. P. C., as now enacted, the salary to the extent of the first hundred rupees and one-half of the remainder of such salary is exempt from attachment and does not vest in Receiver. The husband would, therefore, if he is prepared to do work and earn salary, be in a position to support his wife. *Shyama Charan v. Anguri Devi.*

39 Cr. L. J. 553 :

175 I. C. 235 : 1938 A. L. J. 225 : 10 R. A. 652 :

I. L. R. 1938 All. 486 : 1938 A. W. R. 157 :

A. I. R. 1938 All. 253.

—————**S. 488—Miscellaneous — Prostitution, whether profession.**

For the purposes of S. 488, prostitution cannot be treated as a profession by which a girl can earn her livelihood. *Krishnasamy Iyer v. Chandravadhana.*

14 Cr. L. J. 525 :

20 I. C. 1005 : 1913 M. W. N. 695 :

14 M. L. T. 224 : 25 M. L. J. 349.

—————**S. 488—Miscellaneous—Order of maintenance of wife in England—Magistrate in India, confirmation by, with variation as to rate—Date from which maintenance is payable—Further maintenance.**

Where a provisional order of maintenance passed by the Justices of the Peace in England against a husband in favour of a wife, is confirmed by a Magistrate in British India with a variation as to rate, the order must direct maintenance to be paid only from the date of the order directing maintenance and not from any earlier period and provision must also be made for payment of future maintenance. *In re : Rose Craker.*

29 Cr. L. J. 458 :

108 I. C. 906 : A. I. R. 1928 Mad. 809.

—————**S. 488—Neglect or refusal.**

An order under S. 488 directing payment of compensation to the wife and child of the accused cannot be made where it appears that he has not neglected or refused to maintain his wife and child and has been regularly

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decree of a Civil Court is relevant when the Magistrate is considering what form of order he should make under S. 488. If the Magistrate comes to the conclusion that an order for maintenance should be made, he ought to make it clear in his order that anything paid under the decree of the Civil Court will be taken into account against anything which he may order to be paid. *In re : Taralakshmi Manuprasad.*

40 Cr. L. J. 91 :

178 I. C. 533 : 40 Bom. L. R. 1103 :

11 R. B. 125 : A. I. R. 1939 Bom. 499.

S. 488—Jurisdiction, ouster of, by Civil Court decreed.

The existence of a decree of a Civil Court for maintenance, which cannot be executed owing to the insolvency of the husband, does not oust the jurisdiction of the Magistrate to pass an order for maintenance under S. 488. *In re : Mahomedali Mithabhai.*

31 Cr. L. J. 609 :

124 I. C. 127 : 31 Bom. L. R. 1366 :

A. I. R. 1930 Bom. 144.

S. 488—Jurisdiction—Powers of Courts.

Criminal Courts can take notice of the fact that the mother is the lawful guardian of minor children under personal law of parties. *Allah Rakhi v. Karam Elahi.*

35 Cr. L. J. 344 :

147 I. C. 123 : 35 P. L. R. 34 :

14 Lah. 770 : 6 R. L. 335 :

A. I. R. 1933 Lah. 969.

S. 488 — Jurisdiction — Proceedings in wrong Court—Effect.

An order under S. 488, passed by a Magistrate who is otherwise competent to pass such an order would not be vitiated by the mere fact that the proceedings were held in a wrong District. *Sitaram Kahwar v. Sukia Kalwarin.*

30 Cr. L. J. 525 :

115 I. C. 602 : 49 C. L. J. 205 :

I. R. 1929 Cal. 426 : A. I. R. 1929 Cal. 336.

S. 488—Jurisdiction.

Temporary residence of the husband and wife is sufficient to give jurisdiction to a Court under S. 488, where they have no fixed place of abode and no permanent residence. *Khairunnissa v. Bashir Ahmed.*

31 Cr. L. J. 331 :

122 I. C. 59 : 31 Bom. L. R. 931 :

53 Bom. 781 : A. I. R. 1929 Bom. 410.

S. 488—Jurisdiction.

The Court at the place where the husband is residing, when proceedings under S. 488 are started, has jurisdiction to entertain the proceedings. *Bishen Das v. Amar Kaur.*

34 Cr. L. J. 1171 :

146 I. C. 51 : 6 R. L. 170 :

A. I. R. 1933 Lah. 387 (1).

S. 488—Jurisdiction.

The expression 'last resided' in Cl. (8) of S. 488, means both a permanent as well as a temporary residence. *Emperor v. Janki.*

34 Cr. L. J. 32 (2) :

140 I. C. 394 : 15 N. L. J. 24 :

I. R. 1932 Nag. 146 : A. I. R. 1932 Nag. 85 (2).

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S. 488—Jurisdiction.

The mere hiring or purchase of a residential building at a place would not confer jurisdiction on the Magistrate of that place to entertain petitions under S. 488 against the owner. *Bai Ganga v. Amrit Lal Purshottam.*

38 Cr. L. J. 248 :

166 I. C. 574 : 38 Bom. L. R. 1107 :

9 R. B. 244 : A. I. R. 1937 Bom. 35.

S. 488—Jurisdiction.

The petitioner's father was a resident of the Gujrat District and her husband was a resident of the Jhelum District. The husband paid some visits to the petitioner in her father's house and these were the last occasions when the husband and the wife lived together : *Held*, that the husband last resided with his wife in her parents' house within the meaning of S. 488, and consequently the Gujrat Courts have jurisdiction. *Allah Ditta v. Sakina Bibi.*

29 Cr. L. J. 687 :

110 I. C. 239 : A. I. R. 1928 Lah. 853.

S. 488—Living separate by consent—Maintenance.

When the breach between the husband and wife is irremediable, and it is quite impossible for the latter to return to the former after many years' separation without leading to fresh trouble and dispute, she is entitled to live separately and get maintenance. *Baloch Khan v. Zainab Bibi.*

32 Cr. L. J. 1251 :

134 I. C. 817 : 32 P. L. R. 619 :

I. R. 1931 Lah. 1009 : A. I. R. 1931 Lah. 561 (2).

S. 488—Living separate by mutual consent.

If each party finds it impossible to live amicably and comfortably with the other and each party is content that they should live separately the separate living is by mutual consent. *J. Chan Toon v. Ma Ti.*

37 Cr. L. J. 6 :

159 I. C. 81 : 8 R. Rang. 245 :

A. I. R. 1935 Rang. 359.

S. 488—Living separate with consent, what is.

The expression mutual consent as used in Sub-s. (4) of S. 488, means a consent on the part of the husband and wife to live apart, no matter what the circumstances may be. Where a wife refuses to live with her husband on some specific ground, such as cruelty or the fact that he is keeping another woman, it cannot be said that the husband and wife are living apart by mutual consent if the husband does not insist that the wife should live with him. *Ram Saran Das v. Ram Piari.*

38 Cr. L. J. 312 :

166 I. C. 894 : 1936 A. L. J. 1379 :

I. L. R. 1937 All. 430 : 9 R. A. 458 :

1936 A. W. R. 1268 : A. I. R. 1937 All. 115.

S. 488—Maintenance—Adidravida woman, right of.

Where an *Adidravida* woman applied for maintenance against a *Naidu* alleging that she was his lawful wife and the fact of marriage was proved: *Held*, an *Adidravida* woman is not invalid and the applicant was entitled to an

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bringing the order to an end automatically.
Kanagammal v. Pandara Nadar.

28 Cr. L. J. 271 :
100 I. C. 239 : 25 L. W. 148 :
52 M. L. J. 176 : 50 Mad. 663 :
1927 M. W. N. 111 :
A. I. R. 1927 Mad. 376.

————S. 488—Order for maintenance, form of.

The function of the Magistrate is restricted to passing an order as to the amount of maintenance and his order should not embody restrictive conditions which could not be enforced in summary criminal proceedings. It would be certainly undesirable if a Magistrate were to pass an order with regard to one part of the compromise incompatible with an order which the Civil Court might pass with regard to the rest ; but where the Magistrate restricts himself to the fixation of the amount of maintenance and where that order is to take effect immediately without further conditions, then it would not matter if changes are contemplated in the future. *John P. E. Coelho v. Mrs. Blanche.*

38 Cr. L. J. 170 :
166 I. C. 27 : 9 R. N. 116 :
I. L. R. 1937 Nag. 230 :
A. I. R. 1936 Nag. 228.

————S. 488—Order of maintenance, operation of.

An order directing payment of maintenance for any period prior to the date of application is illegal. *Abdul Rahim v. Amir Begum.*

27 Cr. L. J. 610 :
94 I. C. 354 : 7 Lah. 365 :
27 P. L. R. 539 :
A. I. R. 1926 Lah. 532.

————S. 488—Order of maintenance—Subsequent civil suit negating relationship—Stay of maintenance order.

Where the relationship, on which a maintenance order under S. 488 is based, has been declared by the final decree of a competent Civil Court not to exist, the person adversely affected is entitled to ask the Magistrate to abstain from giving any further effect to his order of maintenance. *Madou Venkayya v. Madou Paidamma.*

24 Cr. L. J. 720 :
73 I. C. 944 : 32 M. L. T. 345 :
1923 M. W. N. 401 :
18 L. W. 132 : 45 M. L. J. 104 :
46 Mad. 721 : A. I. R. 1923 Mad-707.

————S. 488—Procedure—Correction of wrong order, mode of.

A Magistrate in the first instance actually ordered the husband to pay certain sum as maintenance for his wife although she had not applied for such an order. Subsequently, when his attention was drawn to his mistake, he amended his own order without notice to the wife and cancelled the order of maintenance for the wife whilst enhancing that of the children : *Held*, this was an illegality on the part of the Magistrate. Having found his error, it was his duty to submit the proceedings to the Sessions Judge for submission to

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the High Court for rectification under S. 369, Cr. P. C. *Saw Gwan Shein v. Ma Kin Kin.*

41 Cr. L. J. 833 :
190 I. C. 142 : 13 R. Rang. 66 :
A. I. R. 1940 Rang. 222.

————S. 488—Procedure—Denial of valid marriage—Duty of Magistrate.

If on an application by the wife for maintenance under S. 488, the respondent denies the validity of the marriage, the question should be decided by the Magistrate himself. The applicant should not be left to establish her claim by a civil suit. *Mangli v. Ganda Singh.*

33 Cr. L. J. 447 :
137 I. C. 30 (1) : 33 P. L. R. 230 :
I. R. 1932 Lah. 312 :
A. I. R. 1932 Lah. 301.

————S. 488—Procedure—Dispute as to legitimacy of child—Enquiry, mode of.

In proceedings under S. 488 for the maintenance of a child, the question of its legitimacy was raised. Witnesses were examined on both sides but the Magistrate found himself unable to arrive at any definite conclusion on their evidence as to the legitimacy of the child. He, accordingly, took the course of going to the village and examining without previous notice certain residents as Court-witnesses. After doing this, he offered to examine any one else in the village whom the counter-petitioner might want ; but he did not want to examine any one whom he had not already called. Solely on such new evidence he found that the child was legitimate and awarded maintenance : *Held*, on revision that since the finding of the Court was based exclusively on evidence subsequently obtained, the counter-petitioner who had already produced all the evidence at his command was likely to have been prejudiced by such a course of action and the Court in pursuing it went beyond the reasonable discretion afforded by S. 540. *In re : Manikath Kulappura Veetil Bhargavi Amma.*

28 Cr. L. J. 251 :
100 I. C. 123 : 25 L. W. 151 :
52 M. L. J. 118 : 38 M. L. T. 38 :
A. I. R. 1927 Mad. 361.

————S. 488 Procedure—Examination of applicant, necessity of.

An order for maintenance passed under S. 488 simply on the applicant's verification on oath of the truth and correctness of her application, without examining the applicant or her witnesses (if any) on oath is bad, as the application cannot be used to supplement, much less to take the place of, the applicant's examination on oath in the presence of her husband. *Kamta v. Mangal Dei.*

25 Cr. L. J. 302 :
76 I. C. 974 : 23 O. C. 237.

————S. 488—Procedure—Ex parte proceedings.

So far as the right of the Court to proceed *ex parte* is concerned, there is not much difference between a civil case and a criminal one. *Kadia Kallan Pitambar v. Kadiani Shamoo Ramji.*

2 Cr. L. J. 249.

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but maintenance, *i. e.*, a house to live in, under S. 488. *Makhan Singh v. Harnamo.*

29 Cr. L. J. 909 :
111 I. C. 669.

-----S. 488—Maintenance—Separate maintenance on account of husband having secured wife—Burmese Buddhist.

Polygamy being legal among Burmese Buddhists, the refusal of a chief wife to live with her husband merely because he had taken a second wife, is a proper ground for refusing to make an order for her personal maintenance under S. 488. *Paro Thin v. Ba Win.*

7 Cr. L. J. 444 :
4 L. B. R. 146.

-----S. 488—Maintenance, what is—Educational expenses of child—Proper order.

An application under S. 488, by the mother of a child against the father of the child, for the "educational expenses" of the child, should be made by her in the name of the child as the guardian of the child and not in her own name. The "educational expenses" of a child do not come within the term "maintenance" as used in S. 488. *Knmlti v. Emperor.*

25 Cr. L. J. 1249 :
82 I. C. 257 : A. I. R. 1925 All. 73.

-----S. 488—Maintenance—Wife—Marriage, necessity of.

Under S. 488 a woman cannot be granted a maintenance order against a man unless she proves herself to be his legal wife according to his personal law. *Pwa Me v. San Hla.*

16 Cr. L. J. 39 :
26 I. C. 631 : 7 L. B. R. 270 :
A. I. R. 1914 L. Bur. 266.

-----S. 488—Maintenance—Wife—Marriage proof of.

Under S. 488 a woman is not entitled to maintenance even if she has lived with a man as his wife for 12 years and has also borne him a child. Only legally married women are entitled to maintenance under S. 488. *A T. Lakshmi Ambalam v. Andiammal.*

39 Cr. L. J. 228 :
172 I. C. 811 : 1937 M. W. N. 1131 :
1937 2, M. L. J. 885 : 46 M. L. W. 766 :
10 R. M. 497 : A. I. R. 1938 Mad. 66.

-----S. 488—Maintenance—Wife—Marriage, proof of—Buddhist Law.

In maintenance proceedings under Cr. P. C., the wife must show that she is the wife of the accused. In question of marriage between a Chinese Buddhist man and Burmese Buddhist woman, the man's own personal law would be applicable to him. The marriage laws among the Chinese are considerably more restricted than among the Burmese Buddhists. *Wa Foon v. Ma Thein Tin.*

15 Cr. L. J. 484 (b) :
24 I. C. 572 : 7 Bur. L. T. 71 :
A. I. R. 1914 U. Bur. 30.

-----S. 488—Maintenance—Wife having relations willing to maintain—Effect.

A wife's application for maintenance against her husband should not be dismissed on the mere ground that she has relations or

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friends willing to maintain her or to bear the costs of the proceedings. *Chandu v. Rama Misari.*

16 Cr. L. J. 80 :
26 I. C. 672 : A. I. R. 1916 Mad. 567.

-----S. 488—Maintenance of minor children—Minors living with mother after dissolution of marriage with father—Duty of father to maintain them—Negligence, what constitutes.

Where two minor children lived with the mother after dissolution of her marriage with their father, it is the duty of the father to make an allowance for their maintenance unless he can show that there has been no negligence or refusal on his part to support and maintain the children. If he has been making no contribution towards their support from the time they left his protection, there is negligence on his part and he can be directed to make an allowance for the maintenance of the children. *Ma Shwe Kyin v. Maung San Nyein.*

38 Cr. L. J. 782 :
169 I. C. 428 : 10 R. Rang. 5 (1).
A. I. R. 1937 Rang. 205.

-----S. 488—Maintenance proceedings—Decree of Civil Court, effect of.

Where, during the pendency of maintenance proceedings, the husband obtains a decree from a Civil Court to the effect that no legal marriage exists between the parties, the Magistrate should drop the proceedings. *Narayanan Masood v. Itticherry Amma.*

18 Cr. L. J. 971 :
42 I. C. 331 : 22 M. L. T. 293 :
33 M. L. J. 449 : 6 L. W. 536 :
1918 M. W. N. 65 : A. I. R. 1918 Mad. 431.

-----S. 488—Maintenance proceedings, nature of.

The provisions in the Cr. P. C., in regard to applications for maintenance, stand by themselves. They are not really criminal proceedings. *Ma Saw May v. U Aung Thin.*

36 Cr. L. J. 1391 :
158 I. C. 641 : 8 R. Rang. 198 :
A. I. R. 1935 Rang. 277.

-----S. 488—Maintenance to children.

A father is liable for the maintenance of his own child whether legitimate or otherwise, but not for the child of another man. *Abdul Rahim v. Amir Begam.*

27 Cr. L. J. 610 :
94 I. C. 354 : 7 Lah. 365 : 27 P. L. R. 539 :
A. I. R. 1926 Lah. 532.

-----S. 488—Maintenance to children.

A father is not at liberty to refuse to maintain his children on the ground that they are not living with him. *Nga Po Saw v. Mi Thei.*

11 Cr. L. J. 662 :
8 I. C. 479 : 1910 1 U. B. R. 34.

-----S. 488—Maintenance to children.

A Muhammadan girl between 15 and 16 years of age is entitled to maintenance under S. 488. She is not a child able to maintain herself. *A. Haldar v. Safura Bi Bi.*

39 Cr. L. J. 196 :
172 I. C. 879 : 10 R. Rang. 285 (1) :
A. I. R. 1937 Rang. 818.

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whether there are reasonable grounds for such refusal. *Said Bibi v. Umar Din*.

32 Cr. L. J. 468;

130 I. C. 51 : 31 P. L. R. 664 :

I. R. 1931 Lah. 243 : A. I. R. 1930 Lah. 464.

—S. 488—*Refusal to live with husband—Christian husband's conversion to Judaism, effect of.*

A Christian wife is not, by the mere fact of the conversion of her husband to Judaism, entitled to live apart and get maintenance from him. So long as a Jewish husband does not harass a Christian wife and so long as he treats her as a husband should, permits her to practise her own religion and does not apply any temporal or moral pressure on her to cause her to abandon her religion or to adopt his, she has no right to leave her husband and should not be awarded maintenance if she does so. But a Christian wife will be justified from withdrawing from the conjugal domicile where there is an attempt on the part of her husband to introduce a system of polygamy, or concubinage into the household. *Talkar v. Emperor*. 27 Cr. L. J. 1177 : 97 I. C. 809 : 19 S. L. R. 128 : A. I. R. 1926 Sind 278.

—S. 488—*Refusal to live with husband—Duty of Magistrate.*

If the husband offers to maintain his wife on condition of her living with him, and she refuses to live with him, the Magistrate may consider any grounds of refusal stated by her and may make an order under the section notwithstanding such offer if he is satisfied that there is just ground for so doing. *David Sassoon v. Emperor*. 26 Cr. L. J. 975 :

87 I. C. 431 : 27 Bom. L. R. 359 :

49 Bom. 562 : A. I. R. 1925 Bom. 259.

—S. 488—*Refusal to live with husband.*

Held, that her application should be dismissed. A grievance against an elder wife is not a sufficient cause in Upper Burma for a wife to refuse to live with her husband. *Nga Po Saw v. Mi Thet*. 11 Cr. L. J. 662 :

8 I. C. 479 : 1910, 1 U. B. R. 34.

—S. 488—*Refusal to live with husband.*

Husband neither neglecting nor refusing to maintain wife—Wife refusing to live with husband without just grounds for refusal—Wife is not entitled to separate maintenance. *Gangunal Lokumal v. Himathmal Tipomai*.

36 Cr. L. J. 1457 :

158 I. C. 376 : 8 R. S. 50.

—S. 488—*Refusal to live with husband—Jurisdiction.*

The mere indifference of the husband is not a sufficient cause for the wife to refuse to live with him. *J. Chan Toon v. Ma Ti*.

37 Cr. L. J. 6 :

159 I. C. 81 : 8 R. Rang. 245 :

A. I. R. 1935 Rang. 359.

—S. 488—*Refusal to live with husband—Reasons.*

Non-payment of prompt dower by Muhammadan husband is not sufficient reason to

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entitle wife to claim separate maintenance when she refuses to live with him—Right conferred on wife under S. 488 is independent of personal law—Protection of Muhammadan Law in derogation of statutory provisions of Cr. P. C. cannot be claimed. *Muhammad Azizullah v. Abdul Hakim*. 36 Cr. L. J. 524 :

154 I. C. 561 : 1935 O. W. N. 292 :

7 R. O. 477 : A. I. R. 1935 Oudh 285.

—S. 488—*Refusal to live with husband—Reasons.*

Petition for maintenance—Allegation that wife was turned out of husband's house—Enquiry as to whether wife had good reason for not living with husband is necessary. *Tajbaro v. Ghulam Qadar*. 35 Cr. L. J. 491 :

147 I. C. 772 : 6 R. Pesh. 39 :

A. I. R. 1933 Pesh. 101 (1).

—S. 488—*Refusal to live with husband.*

The fact that a younger wife is likely to suffer annoyance from an elder wife, and has some reason to fear that her husband may not protect her from such annoyance, is not sufficient cause for refusing to live with her husband, within the meaning of the proviso to clause (3) of S. 488. *Maung Waing v. Ma Chit*. 1 Cr. L. J. 545 :

U. B. R. 1904 Cr. Pro. 10 : 10 Bur. L. R. 319.

—S. 488—*Refusal to live with husband—Reasons.*

Where the husband has behaved in a violent manner towards his wife who has consequently left his house, it is not necessary for her to prove habitual ill-treatment in order to justify her refusal to return to his house. *Ignatius v. Alagamma*. 36 Cr. L. J. 1044 :

156 I. C. 968 : 8 R. Rang. 57 :

A. I. R. 1935 Rang. 192.

—S. 488—*Refusal to live with husband.*

The applicant's wife with his approval, went to stay for a while with her mother, and while she was there, a serious quarrel took place, which resulted in Mrs. Garraty refusing to return to her husband. Applicant early in 1907 took a woman to live with him as his mistress, and she lived with him up to the time when this case came on for hearing before the Magistrate in March, 1908, the application for maintenance having been filed on the 19th of that month. Before the Magistrate Mrs. Garraty agreed to return to her husband within a week on his putting away his mistress and promising to have nothing more to do with her: but subsequently she refused to abide by that arrangement: *Held*, that at the date of the application, Mrs. Garraty had an unanswerable reason for refusing to live with her husband, and that her right to refuse was not demolished by the fact, even if it be a fact, that the husband was driven to concubinage by his wife's continued refusal to live with him. *E. G. Garraty v. Ruth Garraty*.

8 Cr. L. J. 422 :

14 Bur. L. R. 240.

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—S. 488—*Maintenance to children—Father's offer to maintain.*

If a minor is living with the legally constituted guardian other than the father, then an order for maintenance under S. 488 cannot be refused merely on the ground that offer of the father to maintain the child, if the latter lives with him, is not accepted. *Sarfaraz Begum v. Miran Bakhsh.*

29 Cr. L. J. 1052 :
112 I. C. 476 : 29 P. L. R. 401 :
9 Lah. 313 : A. I. R. 1928 Lah. 543.

—S. 488—*Maintenance to children—Father's offer to maintain.*

If a separate maintenance allowance is awardable to the mother, a separate allowance is also allowable to such children as should remain in the mother's custody. A Magistrate is entitled to consider the circumstances in which a father's offer to maintain his children is made, and whether it is right and proper, that the children, if not in the custody of the father, should be handed over to him. *In re : Bai Manek.*

29 Cr. L. J. 1049 :
112 I. C. 473 : 30 Bom. L. R. 958 :
52 Bom. 763 : A. I. R. 1928 Bom. 410.

—S. 488—*Maintenance to children—Illegitimate daughter—Marriage, effect of.*

Where an order is made against a person under S. 488, for the maintenance of his illegitimate daughter, the question whether on her marriage, the daughter becomes disentitled to maintenance would depend on the answer to the question whether the husband is able to maintain the girl and she has, therefore, ceased to be "unable to maintain" herself. If in spite of her marriage, the girl still remains unable to maintain herself either because her husband is too poor to maintain her or for any other good reason, the father's liability to maintain the child would still exist under S. 488. *Meenatchi Ammal v. Karuppana Pillai.*

26 Cr. L. J. 732 :
86 I. C. 220 : 1925 M. W. N. 67 :
21 L. W. 142 : 48 M. L. J. 183 :
48 Mad. 503 : A. I. R. 1925 Mad. 491.

—S. 488—*Maintenance to children—Liability of father, nature of.*

A Muhammadan father offered to maintain his daughter aged about 14 years and asked for the custody of the child and it was contended by him that he should not be charged with her maintenance : *Held*, that the contention was valid. *Abdulla v. Mussammal Zainab.*

1 Cr. L. J. 39 :
7 P. L. R. 11.

—S. 488—*Maintenance to children—Malabar Law.*

The offspring of Malabar sambandam marriage are not entitled to an order for maintenance under S. 488, where the *tavazhi* or *tarwad* to which their mother is attached, has sufficient funds to maintain them. *Parppatti Chinna v. Shakunni Menon.*

20 Cr. L. J. 733 :
52 I. C. 893 : 10 L. W. 229 :
26 M. L. J. 238 : 37 M. L. J. 361 :
1919 M. W. N. 632 : A. I. R. 1919 Mad. 193.

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—S. 488—*Maintenance to children.*

Minor daughter of Muhammadan parents in custody of divorced mother—Father's offer to maintain child if custody is given to him amounts to refusal to maintain. *Allah Rakhi v. Karam Ilahi.*

35 Cr. L. J. 344 :
147 I. C. 123 : 35 P. L. R. 34 :
14 Lah. 770 : 6 R. L. 335 :
A. I. R. 1933 Lah. 969.

—S. 488—*Maintenance to children.*

Offspring of Malabar marriage is entitled to maintenance against father only if and when the mother's *tavazhi* or *tarwad* is unable to maintain them. *K. Raman v. A. Parvathi.*

34 Cr. L. J. 1159 (2) :
145 I. C. 970 (1) : 38 L. W. 587 :
65 M. L. J. 629 : 1933 M. W. N. 1276 :
6 R. M. 178 (1) : A. I. R. 1933 Mad. 794.

—S. 488—*Maintenance to children—One child found to be able to maintain himself—Effect on order.*

Where an order is made against a father for the maintenance of his children and subsequently it is proved that the eldest child who has attained majority is in a position to maintain himself, the order ceases to be enforceable in respect of him but it does not cease to be enforceable in respect of other children. *Ma E. Shi v. U. San Kai.*

40 Cr. L. J. 241 :
179 I. C. 643 : 11 R. Rang. 336 :
A. I. R. 1939 Rang. 67.

—S. 488—*Maintenance to children—Power of Magistrate.*

With regard to the maintenance of children, it is sufficient under S. 488 (1), if neglect or refusal to maintain them is proved. On such proof the Magistrate can make an order for the payment of a monthly allowance for the maintenance of each child to such person as the Magistrate from time to time directs. An offer to maintain the children in future is not sufficient in itself to debar the Magistrate from making the order. The Magistrate will be entitled to consider the circumstances in which the offer is made, and whether it is right and proper that the children, if not in the custody of the father, should be handed over to him. *David Sassoon v. Emperor.*

26 Cr. L. J. 975 :
87 I. C. 431 : 27 Bom. L. R. 359 :
49 Bom. 562 : A. I. R. 1925 Bom. 259.

—S. 488—*Maintenance to children.*

The mere fact that the mother, since the date of an order for maintenance of her child against the father, had taken the child to live with the father and had taken him again away from the father, cannot lead to any automatic cancellation of the order for maintenance. *Zanhra Bi v. Muhammad Yusuf.*

32 Cr. L. J. 247 :
129 I. C. 216 (2) : 32 P. L. R. 143 :
I. R. 1931 Lah. 152 : A. I. R. 1930 Lah. 1043.

—S. 488—*Maintenance to children.*

The words "without sufficient cause" as applied to S. 488 (3), are very wide and justify the raising of a plea that the order

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not with a view to take the wife back, but simply to evade the payment of the allowance awarded. *Ma Pwa Shein v. Maung Po Kwe.*

40 Cr. L. J. 821 (b) :

183 I. C. 292 : 12 R. Rang. 100 :

1939 Rang. 741 : A. I. R. 1939 Rang. 314.

———S. 488—Review—Final order in proceedings for maintenance, whether judgment—Order under S. 488—Review—Magistrate, power of.

The Cr. P. C. does not authorise a Magistrate to review a final order made by him in a proceeding under S. 488. *Nanda Narain Newar v. Manmaya Kamini.*

18 Cr. L. J. 556 :

39 I. C. 700 : 21 C. W. N. 344 :

A. I. R. 1917 Cal. 799.

———S. 488—Revision—Amount of maintenance.

The amount fixed for maintenance was not a question that came within the scope of revisional powers. *Kadia Kalian Pitamber v. Kadiani Shamoo Ramji.*

2 Cr. L. J. 249.

———S. 488—Revision—Setting aside order in view of Civil Court decree.

A Magistrate's jurisdiction to settle maintenance under S. 488, is only auxiliary to that of the Civil Courts. Therefore a Civil Court decree declaring that A is not the legitimate child of B supersedes a Magistrate's previous order for A's maintenance and the Magistrate is justified under S. 490, in refusing to enforce the Criminal Court order after the Civil Court decree is passed. And a High Court can set aside in revision the previous Criminal Court order in view of the subsequent Civil Court decree. *Raghubar v. Emperor.*

16 Cr. L. J. 609 :

30 I. C. 433 : 2 O. L. J. 251 :

A. I. R. 1915 Oudh 113.

———S. 488—Scope.

A man's taking vows and becoming a *sadhu* cannot affect the status of his wife for the purpose of S. 488. *In re : Muni Kantivijayaji.*

33 Cr. L. J. 625 :

138 I. C. 517 : 34 Bom. L. R. 587 :

56 Bom. 260 : I. R. 1932 Bom. 385 :

A. I. R. 1932 Bom. 285.

———S. 488—Scope.

Buddhist Monk is amenable to S. 488. *Maung Tin v. Ma Hmin.* (F. B.)

34 Cr. L. J. 815 :

144 I. C. 187 (2) : 11 Rang. 226 :

I. R. 1933 Rang. 92 :

A. I. R. 1933 Rang. 138.

———S. 488—Scope of.

An application under S. 488, Cr. P. C., is not a complaint nor is the person against whom the application is made an accused. Proceedings under S. 488 are not, strictly speaking, criminal proceedings except in the sense that they are taken under the provisions of the Cr. P. C. They may be described as quasi-criminal proceedings partaking more of civil than of criminal character as they are intended to enforce a Civil liability of the

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husband or the father. *Mehr Khan v. Bakhat Bhari.*

29 Cr. L. J. 1002 :

112 I. C. 218 : 10 Lah. 406 :

A. I. R. 1929 Lah. 32.

———S. 488—Second application—Maintenance for illegitimate child, application for, dismissal of—Order, if final—Magistrate, jurisdiction of, to entertain another application.

A Magistrate's order dismissing an application for maintenance under S. 488 is a final order so far as his Court is concerned, and he has no jurisdiction to entertain a second application on the same facts. *Mulesari v. Nand Kumar Singh.*

17 Cr. L. J. 106 :

32 I. C. 842 : A. I. R. 1917 Cal. 608.

———S. 488—Second application.

No second inquiry is competent into allegations which have already been once enquired into and adjudicated upon by a competent Court. Plaintiff applied for maintenance under S. 488, in 1914, alleging cruelty as an excuse for not living with her husband. The application was dismissed on the ground that she had failed to prove the alleged cruelty. She then brought a fresh application for maintenance on the same allegations; Held, that the allegations having once been enquired into and adjudicated upon by a competent Court, the application must be dismissed. *Sadr-ud-Din v. Musahib Khanam.*

18 Cr. L. J. 326 :

38 I. C. 438 : 24 P. R. 1916 Cr. :

A. I. R. 1917 Lah. 154.

———S. 488—Second application.

Order on previous application does not bar subsequent application for different period. *Maung Tin v. Ma Hmin.* (F. B.)

34 Cr. L. J. 815 :

144 I. C. 187 (2) : 11 Rang. 226 :

I. R. 1933 Rang. 92 :

A. I. R. 1933 Rang. 138.

———S. 488.

The law does not empower a Magistrate to re-hear an application for maintenance under S. 488, Cr. P. C., dismissed for non-appearance. *Hakimi Jan Bibi v. Mouze Ali.*

2 Cr. L. J. 213 :

1 C. L. J. 214.

———S. 488—Second application.

Where an application for maintenance under S. 488 is dismissed for default without any adjudication being made on the merits, it is open to the complainant to make fresh application under that section. *Manmohan Dey v. Surabala Dasi.*

21 Cr. L. J. 3 (b) :

54 I. C. 51 : 30 C. L. J. 128 :

24 C. W. N. 32 : A. I. R. 1920 Cal. 38.

———S. 488—Separate maintenance—Second marriage.

The husband marrying another wife or refusing to divorce the complainant is no ground for awarding a Muhammadan wife separate maintenance. *Ramzan v. Sahib Bibi.*

29 Cr. L. J. 895 :

111 I. C. 575 : A. I. R. 1929 Lah. 56.

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paying them an allowance for their maintenance. *E. A. Graham v. E. H. Graham.*

26 Cr. L. J. 831 :
88 I. C. 479 : 4 Bur. L. J. 11 :
A. I. R. 1925 Rang. 205.

—S. 488—Neglect or refusal to maintain.

In order to give jurisdiction to a Magistrate to take proceedings under S. 488, the first essential is to find that the respondent had neglected or refused to maintain the person for whose maintenance an allowance is asked for. *Sita Devi v. Har Narain.*

32 Cr. L. J. 196 :
129 I. C. 17 : 31 P. L. R. 876 :
I. R. 1931 Lah. 97 :
A. I. R. 1930 Lah. 886.

—S. 488—Neglect or refusal to maintain.

The essential for a proceeding under S. 488 is that the person proceeded against should have neglected or refused to maintain his wife or child unable to maintain itself. In the absence of evidence of such neglect or refusal, an order under this section cannot be justified on the mere ground that the person proceeded against is willing to maintain the applicant. *Intzar Ahmed v. Samidan.*

26 Cr. L. J. 128 :
83 I. C. 688 : 27 O. C. 271 :
1 O. W. N. 150 :
A. I. R. 1925 Oudh 294.

—S. 488—Neglect or refusal to maintain.

Where it is proved that a husband has not refused or neglected to maintain his wife, a criminal Court acting under S. 488 has no jurisdiction to make an order for her maintenance on the ground that the husband has been guilty of cruelty to her. But that is a very different thing from holding that no evidence of cruelty can be admitted in a proceeding under the section to prove, not indeed cruelty as a ground for separate maintenance, but the conduct and acts of the husband from which the Court may draw the inference of neglect or refusal to maintain the wife. A neglect or refusal to maintain wife may be by words or by conduct. It may be express or implied. *Bhikaji v. Maneckji.*

5 Cr. L. J. 334 :
9 Bom. L. R. 359.

—S. 488—"Neglects or refuses to maintain," meaning of.

The expression "neglects or refuses to maintain his wife" in S. 488 does not apply where the husband states that he is willing to maintain his wife and the wife deposes that she is willing to live with her husband but he refuses to maintain her. *Phula Khan v. Emperor.*

16 Cr. L. J. 86 :
26 I. C. 998 : 46 P. W. R. 1914 Cr. :
213 P. L. R. 1915 : A. I. R. 1914 Lah. 590.

—S. 488—Object.

S. 488 provides a speedy remedy and safeguards a deserted wife or child from starvation; but when other issues are raised, they ought to be settled in the Civil Courts to which

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persons aggrieved by orders under the section ought to take their case. *In re : Kandasami Chetty.*

27 Cr. L. J. 350 :
92 I. C. 862 : 50 M. L. J. 44 :
1926 M. W. N. 146 : A. I. R. 1926 Mad. 346.

—S. 488—Object—Maintenance of wife, what is.

The object of proceedings for maintenance is to prevent vagrancy, and that object is attained by the provision of lodging, food and clothing. A husband is bound to "maintain" his wife but he is not bound to do more than supply her with lodging, food and clothing, he is not bound to maintain her "as his wife." *Kumli v. Emperor.* 25 Cr. L. J. 1249 :
82 I. C. 257 : A. I. R. 1925 All. 73.

—S. 488—Offer to maintain as defence.

An offer to maintain, in order to be a valid defence, must be a *bona fide* offer and not made with the object of escaping the obligation to maintain. *Dragon v. Emclie Mi Taik Dragon.*

13 Cr. L. J. 55 :
13 I. C. 391 : 4 Bur. L. T. 269.

—S. 488—Offer to maintain, what is—Child's right.

A father is bound to maintain his child whatever the position of the mother may be, and merely sending a man to go and ask the child to come and live with the father, does not amount to an offer to look after him and cannot absolve the father from his responsibility to maintain him. *Mi Thein v. Nga Po Nyun.*

15 Cr. L. J. 278 :
23 I. C. 486 : 7 Bur. L. T. 34 :
A. I. R. 1914 U. Bur. 1.

—S. 488—Order for maintenance—Decree of Civil Court declaring marriage void, effect of.

When a competent Civil Court has decided that the woman is not and never has been the wife of the man, then a Magistrate cannot, in proceedings under S. 488, hold that the woman is the wife of the man and order him to maintain her. *Nawab Zulfikar Khan v. Mst. Zainab Begam.*

3 Cr. L. J. 229 :
9 O. C. 49.

—S. 488—Order for maintenance, duration of—Return of wife, effect of.

It is a general principle of law that an order whose term is not fixed, and whose currency is not made expressly dependent upon the continued existence of some circumstance or set of circumstances, remains in force until it is cancelled; and *prima facie* this rule applies to maintenance orders passed under S. 488. In such cases, therefore, until the person against whom the order has been made obtains either the cancellation or a modification of the original order, the original order must be deemed to continue in force. The mere fact that a wife who has obtained an order for maintenance against her husband has returned to live with him will not have the effect of

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a child belongs to a well-to-do *tarwad* has nothing to do with the liability of the father, who has sufficient means, to maintain his child and neglects to do so. *In re: Parathy Valappil Moideen.* 14 Cr. L. J. 597 : 11 I. C. 469 : 14 M. L. T. 223 :

25 M. L. J. 355 : 1913 M. W. N. 997.

———S. 488—Variation of order—Power to vary rate.

A Magistrate is competent under S. 488, to vary the rate of maintenance payable under a previous order under the section and to give effect to his order from the date of application. *Hiralal Valaldas v. Bai Amba.* 27 Cr. L. J. 940 :

96 I. C. 396 : 28 Bom. L. R. 669 : A. I. R. 1926 Bom. 419.

———S. 488—Wife—Ill-treatment—Separate maintenance.

Under the present Cr. P. C. the right of a woman who is living separately from her husband to payment of maintenance is not restricted to cases in which she has been treated with habitual cruelty, but the Magistrate has a larger discretion and may make an order for maintenance where there has been a systematic course of ill-treatment and oppression for a number of years. *Kalniya v. Hira.* 31 Cr. L. J. 3 :

120 I. C. 195 : 1929 A. L. J. 1208 : A. I. R. 1929 All. 950.

———S. 488—Wife's right of maintenance.

A man merely by becoming a *sadhu* is not in law excused from maintaining his wife. But if he can prove that by reason of the vows he has taken he is incapable of holding any property or of earning any money, then he cannot be said to have sufficient means to maintain his wife. *In re: Mumi Kantivijayajee.* 33 Cr. L. J. 625 :

138 I. C. 517 : 34 Bom. L. R. 587 : 56 Bom. 260 : I. R. 1932 Bom. 385 : A. I. R. 1932 Bom. 285.

———S. 488—Wife, right of, to maintenance.

Refusal by a Hindu wife of an offer made by her husband to provide her with a separate house does not disentitle her to an order for maintenance under S. 488.

In re: Bai Manek. 29 Cr. L. J. 1049 :

112 I. C. 473 : 30 Bom. L. R. 958 : 52 Bom. 763 : A. I. R. 1928 Bom. 418.

———Ss. 488, 342—Procedure.

S. 342, Cr. P. C., does not apply to proceedings under S. 488 of the Code. *In re: Vithaldas Bhurabhai.* 29 Cr. L. J. 1051 :

112 I. C. 475 : 30 Bom. L. R. 957 : 52 Bom. 768 : A. I. R. 1928 Bom. 347.

———Ss. 488, 489—Cancellation of order, provision for.

Where an order has once been passed by a competent Court under S. 488 for the payment of maintenance for a child, the only power that exists of modifying such an order is that given by S. 489. *Budhni v. Dabal.*

1 Cr. L. J. 595 : 24 A. W. N. 149 : I. L. R. 27 All. 11.

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———Ss. 488, 489—Execution of order—Child's subsequent ability to maintain himself—Procedure.

In an application for execution of an order for maintenance for wife and son, a Magistrate can, under S. 489, go into the question whether the son has become able to maintain himself subsequently to the order under S. 488 and whether the son was in fact able to maintain himself during the period for which arrears of maintenance are applied for. *Thumbuswamy Pillay v. Ma Lone.* 18 Cr. L. J. 103 :

37 I. C. 311 : 9 L. B. R. 49 : 10 Bur. L. T. 209 : A. I. R. 1917 L. Bur. 84.

———S. 488—Maintenance, what includes.

"Maintenance," as used in Ss. 488, 489, does not include children's schooling fees. *Nga Illa v. Mi Ital Kyu.* 11 Cr. L. J. 40 :

1 I. C. 758 : U. B. R. 1909 I Cr. P. 17.

———Ss. 488, 489—Restitution of conjugal rights, decree for—Effect.

Where a wife obtains an order against her husband under S. 488 and subsequently thereto the husband obtains a decree against the wife for restitution of conjugal rights, such decree determines and puts an end to the order of maintenance notwithstanding the fact that the husband does not execute the decree and continues to pay the maintenance. The wife, in such a case, is not in a position to make an application under S. 489. *In re: Chandulal Ranchhod.* 20 Cr. L. J. 687 :

52 I. C. 607 : 21 Bom. L. R. 766 :

43 Bom. 885 : A. I. R. 1919 Bom. 140.

———Ss. 488, 490—Divorce—Effect on order for maintenance.

Where a wife, whose husband has been ordered to pay her an allowance under S. 488, is proved to have been completely and validly divorced, a Magistrate is not only bound to refuse to enforce the order under S. 490, but is also empowered to set aside the order. In such cases, the Magistrate is not only competent but is bound to inquire into the fact and the validity of the divorce. *Emperor v. Shaikh Daul.* 22 Cr. L. J. 633 :

66 I. C. 322 : 17 N. L. R. 92 : A. I. R. 1921 Nag. 7.

———S. 488 (1)—Amount of maintenance—Separate maintenance for wife and children—Rs. 100, if maximum maintenance for wife and child together.

The amount awarded by the Magistrate, Rs. 100 for the wife and Rs. 50 for the child, is not illegal. Under S. 488 (1), sum of Rs. 100 is not the maximum limit of maintenance for wife and child together. *Maung Ba Tun v. Ma Kyway.* 40 Cr. L. J. 537 :

181 I. C. 377 : 11 R. Rang. 460 (1) : A. I. R. 1939 Rang. 151.

———S. 488 (1)—Maintenance—Separate maintenance for wife and children—Maximum.

Where a woman makes an application for herself and also for her child, the application can be treated as an application for an order in favour of the petitioner and also for an order

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———S. 488—*Procedure—Failure to examine accused, effect of—Maintenance cases, procedure in—Failure to examine accused on close of prosecution, whether vitiates trial.*

In maintenance cases, evidence is recorded in the manner prescribed for summons cases and a failure to record the statement of the accused at the close of the prosecution evidence under S. 342, Cr. P. C., does not, therefore, vitiate the trial. *Shadi Khan v. Gul Begam.*

28 Cr. L. J. 478 (b) :
101 I. C. 606 : A. I. R. 1927 Lah. 435.

———S. 488—*Procedure—Husband's right to produce evidence.*

In proceedings under S. 488, the Court is bound to ask the husband if he wishes to adduce evidence before it closes the case, and there is no proper enquiry under law if this is not done. *Puunuswamy v. Almelu Bai.*

31 Cr. L. J. 110 :
120 I. C. 416 : A. I. R. 1930 Nag. 59.

———S. 488—*Procedure—Insanity of respondent—Duty of Court.*

Proceedings under S. 488, although quasi-civil, are also criminal and are wholly governed by the provisions of the Cr. P. C. alone. A Magistrate had no power under the Cr. P. C. to appoint a guardian *ad litem* for a lunatic. Where in proceedings for maintenance under S. 488, a question arises as to the sanity of the respondent, it is the Magistrate's duty to hold a judicial inquiry into the matter and to put the respondent, if necessary, under medical observation, if as the result of such inquiry the Magistrate finds that the respondent is insane and incapable of understanding questions put to him and of giving rational answers, he must postpone further proceedings until satisfied that the respondent is capable of understanding them. *Pongtammal v. Kutliyammal.*

26 Cr. L. J. 701 :
86 I. C. 77 : 1925 M. W. N. 65 :
21 L. W. 180 : 48 M. L. J. 187 :
48 Mad. 388 : A. I. R. 1925 Mad. 440.

———S. 488—*Procedure—Pendency of civil litigation, effect of.*

The fact that a civil litigation relating to maintenance is pending is no ground for not enforcing an order for maintenance passed under S. 488. *Mahbub Sultan v. Qutab Din.*

31 Cr. L. J. 770 :
125 I. C. 63 : 30 P. L. R. 740 :
A. I. R. 1930 Lah. 213.

———S. 488—*Procedure.*

Petition for arrears of maintenance awarded—*Procedure to be followed stated.* *Multan v. Faramosh.*

37 Cr. L. J. 347 (1) :
160 I. C. 802 : 8 R. Pesh. 130 (1) :
A. I. R. 1936 Pesh. 32 (2).

———S. 488—*Procedure.*

Proceedings under Chap. XXXII are of a summary nature—Court should not go deeply into relationship of parties. *Ignatious v. Alagamma.*

36 Cr. L. J. 1044 :
156 I. C. 968 : 8 R. Rang. 57 :
A. I. R. 1935 Rang. 192.

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———S. 488—*Procedure—Summary inquiry, legality of.*

Making of an order in a hasty and a summary fashion is not contemplated by S. 488. That section contemplates a careful order made after a careful inquiry. It is wrong to dismiss an application by the wife under this section on the mere offer of the husband to maintain her without taking any evidence or giving any finding as to neglect or refusal to maintain the wife or as to the sufficiency or otherwise of the wife's reasons for refusing to live with her husband ; " finding " means a finding after an inquiry which is of a judicial nature. *Nooran v. Rasool Baksh Haji.*

40 Cr. L. J. 496 :
181 I. C. 75 : 11 R. S. 204 : 1939 Kar. 383 :
A. I. R. 1939 Sind 80.

———S. 488—*Prohibition.*

Where facts alleged to constitute an offence come to the knowledge of a Magistrate in the course of a judicial proceeding, such a Magistrate is debarred under S. 487 from himself trying the case. *Emperor v. Kunwar Bahadur.*

21 Cr. L. J. 696 :
57 I. C. 936 : 23 O. C. 138 :
2 U. P. L. R. (J. C.) 132 :
A. I. R. 1920 Oudh 127.

———S. 488—*Reference—Duty of Referring Court.*

In all cases where a reference is made to the High Court in proceedings for maintenance, it is desirable that the Referring Court should itself hear both parties before making any recommendation. *Baran Shanta v. Ma Chan Tha May.*

26 Cr. L. J. 535 :
85 I. C. 375 : 2 Rang. 682 :
A. I. R. 1925 Rang. 197.

———S. 488—*Refusal to live with husband.*

A wife is not bound to return to her husband and live with him if really she has reasonable apprehension of physical ill-treatment. Refusal of wife to accept a belated offer of her husband to take her back and maintain her, on the ground that she was afraid of further ill-treatment, is sufficient or just ground when she has reasonable apprehension of physical ill-treatment. *Sundarammal v. Palaniandi Mudali.*

41 Cr. L. J. 532 :
188 I. C. 32 : 1939 M. W. N. 1255 :
51 L. W. 204 : 1940 1 M. L. J. 171 :
12 R. M. 809 : A. I. R. 1940 Mad. 292.

———S. 488—*Refusal to live with husband—Wife refusing to live with husband—Separate maintenance.*

A wife who declines to go to her husband and live with him in his house without any sufficient reason, is not entitled to maintenance. *Tota v. Durgi.*

30 Cr. L. J. 861 :
117 I. C. 903 : 30 P. L. R. 367 :
I. R. 1929 Lah. 727.

———S. 488—*Refusal to live with husband.*

Application for maintenance by wife—Refusal to live with husband—Magistrate to consider

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The Court is then bound to consider the sufficiency of the cause alleged by him and to refuse execution of the order if it is satisfied that the cause is sufficient and to grant execution if it is not so satisfied. The expression 'sufficient cause' implies that the Magistrate before whom the matter comes up, should be in a position to use his judicial discretion without being fettered by any definite rules. *Theetharappa Pillai v. Meenakshi Ammal*.

26 Cr. L. J. 953 :

87 I. C. 105 : 48 M. L. J. 494 :

21 L. W. 702 : A. I. R. 1925 Mad. 715.

———S. 488 (3) proviso (1)—*Refusal to live with husband*.

It is not a ground, within the meaning of S. 488, for a wife's refusal to live with her husband that he has another wife and children by her. *Kirpal Singh v. Santli*.

28 Cr. L. J. 236 :

99 I. C. 1036 : A. I. R. 1927 Lah. 168.

———S. 488 (3) and (4)—*Application of*.

The proviso to Sub-s. 3 and Sub-s. 5 of S. 488, refers only to cases where a wife obtains a maintenance order for herself and not where one is made for the children. *Nan Saw Shwe v. Maung Hpone*.

14 Cr. L. J. 98 :

18 I. C. 658 : 6 L. B. R. 127 :

6 Bur. L. T. 51.

———S. 488, Cl. 4—*Adultery—Meaning of*.

A single act of adultery does not necessarily amount to living in adultery so as to disentitle the wife from claiming maintenance from her husband. The words 'living in adultery' in Cl. 4 of the section, refer rather to a course of conduct or at least to something more than a single lapse from virtue. *Alchamma v. Mahalakshimi*.

5 Cr. L. J. 359 :

2 M. L. T. 166 : 17 M. L. J. 279.

———S. 488 (4)—*Adultery—Meaning of*.

The words 'living in adultery' in S. 488 (4) refer to a course of conduct and mean something more than a single lapse from virtue. A single act of adultery will not, therefore, justify a Magistrate in refusing maintenance under the said section. *In re : Fulchand Magantlal*.

29 Cr. L. J. 34 :

108 I. C. 24 : 30 Bom. L. R. 79 :

I. L. T. 40 Bom. 56 : 52 Bom. 160 :

A. I. R. 1928 Bom. 59.

———S. 488 (4)—*Adultery, what is*.

One lapse from virtue does not disentitle a wife to receive maintenance. *Kallu v. Kausilia*.

1 Cr. L. J. 84 :

1904 A. W. N. 195 : 1 A. L. J. 488 :

I. L. R. 27 All. 92.

———S. 488 (4)—*Adultery, what is*.

The word "live" in "living in adultery" conveys the idea of continuance and consequently the phrase "living in adultery", refers to a course of guilty conduct and not to a single lapse from virtue. *Ma Thein v. Maung Mya Khin*.

38 Cr. L. J. 646 :

168 I. C. 825 : 9 R. Rang. 368 :

A. I. R. 1937 Rang. 67.

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———S. 488 (4)—*Cancellation of order, ground of adultery—Retrospective effect*.

Under S. 488, though adultery disentitles a wife to receive maintenance from her husband, an order of maintenance once passed is not automatically cancelled by adultery. An order cancelling an order for maintenance on account of adultery cannot, therefore, have retrospective effect and deprive her of her right to maintenance which had accrued due prior to the order of cancellation. *Bhag Sultan v. Muhammad Akbar Khan*.

30 Cr. L. J. 779 :

117 I. C. 67 : 1929 Lah. 611 :

A. I. R. 1930 Lah. 99.

———S. 488 (4)—*Living separate by consent*.

Because the wife could not live in a separate house with her husband but insisted on staying on with him where they were, and the husband on his part was not willing or did not find it possible to comply with her wishes, and left the house and lived away from the wife, his living apart did not amount to "living separately by mutual consent". *Richard Bruce Whigham Teasdale v. Florence Teasdale*.

39 Cr. L. J. 969 :

177 I. C. 939 : 66 C. L. J. 567 :

11 R. C. 298 : A. I. R. 1938 Cal. 623.

———S. 488 (4)—*Living separate by consent*.

The separate living must be the result of a deliberate and express agreement between the parties. A hasty rejoinder to a husband, who, in the course of a quarrel, was manoeuvring, for a consent from a wife, cannot be considered to be such consent as would come within the meaning of the law, specially when she was willing to return to him. *Ma Pwa Kyin v. Maung Ba Thin*.

1 Bur. L. J. 124 : A. I. R. 1923 Nag. 100.

———S. 488 (4)—*Living separate by consent*.

What the law contemplates by S. 488, Cr.P.C., is what is well recognised in affiliation proceedings between husband and wife under English Law, namely that where the husband and wife have lived apart by a definite contract mutually made between them, affiliation proceedings are inapplicable. A contract voluntarily and freely made and entered into between the parties by reason of the ill-treatment of the husband towards his wife would be an act of their own violation. Such an agreement would be a voluntary act and contract by the parties themselves unfettered by the decree or declaration of any tribunal. *Nathun Sonar v. Maturwa Kuer*.

20 Cr. L. J. 154 :

49 I. C. 346 : 4 P. L. J. 109 :

A. I. R. 1919 Pat. 339.

———S. 488 (4)—*Living separate by consent, what is*.

In proceedings under S. 488, by wife claiming maintenance from her husband after some evidence had been recorded, the parties entered into compromise and the following order was made by the Magistrate: "The husband shall pay Rs. 15 per mensem to the applicant for her and her children's mainten-

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———S. 488—*Refusal to live with husband, what is.*

The mere fact that a Muhammadan husband marries a second wife is no ground for his first wife to refuse to live with him and to claim separate maintenance. But she cannot be said to refuse to live with her husband within the meaning of Sub-s. (3) and (4) of S. 488, merely because she refuses to accept his offer to provide separate residence for her. *Sukrullafakir v. Fatima.* 25 Cr. L. J. 453 : 77 I. C. 805 : A. I. R. 1924 Nag. 597.

———S. 488—*Refusal to live with husband.*

When husband expresses willingness to take back wife and child, Court should enquire from wife her reasons for not going back. Failure to do so amounts to illegality. *Nur Muhammad v. Hajran.* 36 Cr. L. J. 792 :

155 I. C. 609 : 36 P. L. R. 181 : 7 R. L. 743 : A. I. R. 1934 Lah. 946.

———S. 488—*Refusal to live with husband, when justified.*

The fact that the husband is keeping a mistress and is living with her, is sufficient for his wife to refuse to live with him. *Ram Saran Das v. Ram Piari.* 38 Cr. L. J. 312 :

166 I. C. 894 : 1936 A. L. J. 1379 : I. L. R. 1937 All. 430 : 9 R. A. 458 : 1936 A. W. R. 1268 : A. I. R. 1937 All. 115.

———S. 488—*Refusal to maintain.*

In order to give jurisdiction to a Magistrate to take proceedings under S. 488, the first essential is to find that the respondent had neglected or refused to maintain the person for whose maintenance an allowance is asked for. *Sita Devi v. Har Narain.* 32 Cr. L. J. 196 :

129 I. C. 17 : I. R. 1931 Lah. 97 : 31 P. L. R. 876 : A. I. R. 1930 Lah. 886.

———S. 488—*Refusal to maintain.*

The conduct of the husband of a divorced wife, who is willing to maintain and educate his daughter if he is given the custody of the minor girl, amounts to refusal or neglect within the meaning of S. 488. *Emperor v. Ayshabai.* 1 Cr. L. J. 599 :

6 Bom. L. R. 536.

———S. 488—*Residence.*

The expression "resided" in Cl. 8 of S. 488 includes a temporary residence and is not to be confined to a permanent residence. For the purposes of this clause, a person may have two residences, a permanent place of residence and a temporary place of residence. *Sher Singh v. Amar Kuer.* 28 Cr. L. J. 494 :

101 I. C. 670 : 25 A. L. J. 435 : 49 All. 479 : A. I. R. 1927 All. 291.

———S. 488—*Restitution of conjugal rights, decree for—Effect.*

A decree of a Civil Court for restitution of conjugal rights, even if passed on a compromise, supersedes a maintenance order passed by a Magistrate under S. 488, if the wife persists in refusing to live with her husband. If the conditions laid down in the consent decree

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have not been complied with, the wife should prefer an objection to the Civil Court. *Nur Muhammad v. Mussammatt Aisha Bibi.*

2 Cr. L. J. 104 : 2 A. L. J. 160 : 27 All. 483 : 1905 A. W. N. 54.

———S. 488—*Restitution of conjugal rights, decree for—Effect on maintenance order.*

A decree for restitution of conjugal rights obtained by a husband from a competent Civil Court does not, by itself, operate to cancel a maintenance order previously made against the husband under S. 488, and in considering any application made by the husband for the cancellation of such order on the ground that he has obtained a decree for restitution of conjugal rights, the Magistrate is not necessarily bound to follow the order of the Civil Court but must consider it along with any other circumstances which may be brought before him. *Manng Dun v. Ma Sein.*

26 Cr. L. J. 1341 : 89 I. C. 317 : 3 Rang. 150 : A. I. R. 1925 Rang. 268.

———S. 488—*Restitution of conjugal rights, decree for—Effect on maintenance order.*

Where a wife obtains a maintenance order for her child and there is no decree that the father should have the guardianship of the child, the fact that the father has obtained a decree for restitution of conjugal rights against his wife would not absolve him from the liability to pay maintenance in accordance with the order under S. 488. *Nan Saw Shwe v. Manng Hpone.* 14 Cr. L. J. 98 :

18 I. C. 658 : 6 L. B. R. 127 : 6 Bur. L. T. 51.

———S. 488—*Restitution of conjugal rights, decree for—Effect.*

Under the present Cr. P. C., a decree for restitution of conjugal rights does not necessarily debar a wife from claiming separate maintenance and the matter is within the Court's discretion which, however, must be judicially exercised. Where Civil Court has given to the husband a decree for restitution and if the husband *bona fide* wishes to execute that decree and the wife refuses to obey it, that would be a good ground for cancelling the order of maintenance under S. 488 of the Code. *Ali Mahomed v. Emperor.*

27 Cr. L. J. 876 : 96 I. C. 124 : 20 S. L. R. 145 : A. I. R. 1926 Sind 272.

———S. 488—*Restitution of conjugal rights, decree for—Effect.*

When a wife and child have obtained order for maintenance in their favour, subsequent order of the Civil Court for restitution of conjugal rights in favour of husband does not affect his liability to maintain the child. The subsequent decree of restitution of conjugal rights has to be considered, and if the wife persists without cause in refusing to live with the husband, then the order for maintenance is to be cancelled. Another case where the Magistrate would be justified in not cancelling the order for maintenance is where the suit for restitution is brought,

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party at the adjourned hearing of a case is an *ex parte* order. *Maung Ba Tun v. Ma Kywa*.

40 Cr. L. J. 537 :

181 I. C. 377 : 11 R. Rang. 469 (1) :

A. I. R. 1939 Rang. 151.

—S. 488 (8)—Insolvency of husband—Effect of.

The fact that a person has been adjudicated an insolvent is conclusive, so long as the order of adjudication stands, that he is unable to pay his debts; consequently if he does not pay maintenance allowance to his wife, he is not guilty of wilful neglect within the meaning of S. 488 (3). *Halfhide v. Halfhide*.

25 Cr. L. J. 1088 :

81 I. C. 912 : 50 Cal. 867 :

A. I. R. 1924 Cal. 230.

—S. 488 (8)—Jurisdiction.

In S. 488 (8), the expression "where he resides or is or where he last resided with his wife" is sufficiently wide to confer jurisdiction upon the Chief Presidency Magistrate in a case in which the opposite party works for gain within the jurisdiction of his Court, even though he may not have a permanent residence within such jurisdiction. *Indubala Devi v. Satchid Prosad*.

40 Cr. L. J. 598 :

181 I. C. 898 : I. L. R. 1939 1 Cal. 345 :

11 R. C. 871 : A. I. R. 1939 Cal. 333.

—S. 488 (8)—Jurisdiction—Temporary residence—'Last resided,' meaning of.

The term 'last resided' in S. 488 (8), is not confined to permanent residence but includes temporary residence. Where the husband who had a permanent place of residence at Bombay last resided with his wife in his mother-in-law's house at Surat for about two months as *gharjamai*; *Held*, that Surat Court had jurisdiction to entertain an application for maintenance against him. *In re : Sama Jettha*.

31 Cr. L. J. 1157 :

127 I. C. 179 : 32 Bom. L. R. 764 : 54 Bom. 548 :

A. I. R. 1930 Bom. 348.

—S. 488 (8)—Jurisdiction—Maintenance.

The mere fact that the marriage of the parties had taken place within the jurisdiction of the Magistrate does not confer jurisdiction on him to entertain an application for maintenance under S. 488. *Ghulam Hussain v. Hakam Bibi*.

27 Cr. L. J. 1009 :

96 I. C. 865 : A. I. R. 1926 Lah. 663.

—S. 488 (8)—Residence.

Where there is something more than a flying visit, where a man leaves his house and resides for some time in the house of his parents-in-law with his wife, that is a sufficient residence within the meaning of Sub-s. 8 of S. 488, Cr. P. C., Sub-s. 8 refers also to temporary residence. The word "residence" suggests a certain continuity, but if there be a continuity for such a period of time as to allow it fairly to be said that the husband did reside even for a matter of some weeks with his wife, the

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section should not be so strictly construed as to deprive the woman, who, often in these cases, is helpless, of assistance from the Court, which is most easily accessible to her. It could easily be said that a visit of a few days is not residence within the meaning of S. 488 but it could not easily be said that a visit of a few weeks was not residence within the meaning of S. 488. Each case, however, must be dealt with on its merits, the distinction between a mere visit and residence being borne in mind. *Gangabal v. Pamanmal Lachman*.

40 Cr. L. J. 117 :

178 I. C. 527 : 11 R. S. 97 :

1939 Kar. 196 : A. I. R. 1938 Sind 223.

—S. 488 (9)—Jurisdiction.

Respondent who lived in Darjeeling came to Calcutta where he resided from the 16th to 23rd January. While he was residing in Calcutta an application under S. 488 was made by his wife to the Presidency Magistrate's Court in Calcutta: *Held*, that the residence of the husband in Calcutta from the 16th to the 23rd January, when the application under S. 488 was made, was sufficient to give the Presidency Magistrate's Court in Calcutta jurisdiction, having regard to Sub-s. 9 of S. 488. *Jolly v. Jolly*.

18 Cr. L. J. 706 :

40 I. C. 706 : 21 C. W. N. 872 :

A. I. R. 1918 Cal. 785.

—S. 488 (9)—Jurisdiction.

S. 488, Cl. (9) requires that an application for maintenance should be made either in the district where the husband resides or at the place where he last resided with his wife. Such residence does not include casual visits by a person to the house of his mother-in-law where his wife happens to be at the time. *Ram Kumar v. Rukmini*.

22 Cr. L. J. 710 :

63 I. C. 870 : 24 O. C. 299 :

A. I. R. 1921 Oudh 168.

—S. 488—Residence of father, what is.

For the purposes of S. 488 (9) a man may be said to reside with the mother of his illegitimate children at the place of her settled abode, if he visits her there occasionally, so long as he has the intention of continuing to so visit her. Where a mother of illegitimate children is not shown to have a permanent residence anywhere, her stay for two months at a place where she is occasionally visited by the father of the children, is sufficient to constitute that place as her residence for the purposes of the section. *Hidayat Khatun v. Mahomed Hayat*.

13 Cr. L. J. 522 :

15 I. C. 794 : 5 S. L. R. 220.

—S. 489—Alteration—Grounds for.

Apart from any change of circumstances which could be the basis of a new order under S. 489, a Magistrate hearing an application for alteration of the rate of maintenance fixed, cannot inquire whether at the time of the application and at the time when the order for maintenance was passed the

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—S. 488—*Separate maintenance when allowed.*

The present Code does not restrict payment of maintenance, where the wife is living separately, to cases in which she has been treated with habitual cruelty. *Dragon v. Emelie Mi Taik Dragon.*

13 Cr. L. J. 55 :

13 I. C. 391 : 4 Bur. L. T. 269.

—S. 488—*Stay.*

Pendency of divorce proceedings against wife—Application for maintenance by wife in Criminal Court—Stay of maintenance proceedings until conclusion of divorce petition, is proper. *William J. W. Ross v. Eleanor Agnes Ross.*

34 Cr. L. J. 548 :

143 I. C. 207 : 27 S. L. R. 1 :

I. R. 1933 Sind 121 (1) : A. I. R. 1932 Sind 210.

—S. 488—*Subsequent civil suit, maintainability of.*

Magistrate's order for maintenance does not take away the jurisdiction of the Civil Courts. *Deraji Malinga Naika v. Marati Kaveri*

7 Cr. L. J. 235 :

2 M. L. T. 344 : 30 Mad. 400.

—S. 488—*"Sufficient cause", meaning of.*

The words "sufficient cause" in S. 488 (3) are very wide and would include the raising of a plea that the order has become spent owing to the child having attained majority. *John P. E. Coelho v. Mrs. Blanche.*

38 Cr. L. J. 170 :

166 I. C. 27 : 9 R. N. 116 :

I. L. R. 1937 Nag. 230 :

A. I. R. 1936 Nag. 228.

—S. 488—*Sufficient means.*

Any able-bodied man, who is not prevented by any physical infirmity from working, should, in proceedings under S. 488, be presumed to have sufficient means to support his child as well as himself. The onus lies on him to show that he has no sufficient means. A mere denial by such a man himself of sufficiency of means, is not conclusive proof of want of sufficient means. *Me Tha v. Nga San E.*

13 Cr. L. J. 162 :

13 I. C. 914 : U. B. R. (1911) 1, 90.

—S. 488—*Sufficient means.*

The presumption is that an able-bodied man has sufficient means to support his child as well as himself, and it is for him to prove the contrary. *U. Thiri v. Ma Pwa Yi.*

24 Cr. L. J. 368 :

72 I. C. 368 : 4 U. B. R. 1922, 138 :

A. I. R. 1923 Rang. 131.

—S. 488—*Sufficient means.*

The term "sufficient means" is not confined to pecuniary resources only, but includes a capacity to earn money, and if a man can be shown to be capable of being able to earn money, then he has the means to maintain his wife. *Tin Maung v. Ma Hmin.*

179 I. C. 766 :

11 R. L. 624 : 41 P. L. R. 161 :

A. I. R. 1939 Lah. 24.

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—S. 488—*Sufficient means—Meaning of.*

The word "sufficient means" in S. 488, should not be confined to the actual pecuniary resources but should have reference to the earning capacity. *Abdul Wahab v. Sugrabi.*

37 Cr. L. J. 86 :

159 I. C. 120 : 18 N. L. J. 107 :

8 R. N. 123.

—S. 488—*Unable to maintain.*

The expression "unable to maintain" in S. 488 is not confined to physical inability but includes also pecuniary inability. *In re : Bharata Ayyar.*

25 Cr. L. J. 370 :

77 I. C. 418 : 19 L. W. 275 :

46 M. L. J. 324 : 1924 M. W. N. 305 :

34 M. L. T. 167 : A. I. R. 1924 Mad. 549.

—S. 488—*Unable to maintain.*

The words "unable to maintain itself" in S. 488 apply as much to the case of a child, which has got means of its own or which is entitled in law to be maintained and is being maintained, as to a child which is able to earn living by its own exertions. A child which possesses a legally enforceable right to maintenance from its mother's *tarwad* is in the same position as a child which possesses property in its own right and neither is entitled under S. 488 to an order for maintenance against its father. *Chanlan v. Chakkrapayan Mathu.*

17 Cr. L. J. 16 :

32 I. C. 144 : 19 M. L. T. 23 :

1916 1 M. W. N. 111 : 39 Mad. 957 :

A. I. R. 1917 Mad. 276.

—S. 488—*Unable to maintain.*

The words "unable to maintain itself" in S. 488 cannot be confined to the tender age of the child but must also have reference to its financial dependency. *Purppati Chinna v. Shakunni Menon.*

20 Cr. L. J. 733 :

52 I. C. 893 : 10 L. W. 229 :

26 M. L. T. 238 : 37 M. L. J. 361 :

1919 M. W. N. 632 :

A. I. R. 1919 Mad. 193.

—S. 488—*Unable to maintain.*

The words "unable to maintain itself" in S. 488 mean "unable to earn a livelihood for itself"—that is to say, a complete livelihood, such as an adult person might earn, without depending on any other person. In fixing the sum payable for maintaining a child, it is not permissible in law to take into consideration the fact that the child is able to earn something towards its own support. *Baran Thanta v. Ma Chan Tha May.*

26 Cr. L. J. 535 :

85 I. C. 375 : 2 Rang. 682 :

A. I. R. 1925 Rang. 197.

—S. 488—*Unable to maintain.*

The words "unable to maintain itself" in S. 488 (1) relate to the absence of sufficient maturity in physical and mental development in the child rendering it in consequence unable to earn its livelihood by its own exertions and do not refer to inability through poverty or absence of means. The fact that

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entailing a stoppage of the allowance. *In re : Punjalal Chumilal.* 29 Cr. L. J. 908 :
111 I. C. 668 : 30 Bom. L. R. 617 :
A. I. R. 1928 Bom. 224.

———S. 489—Scope.

The provisions of S. 489 are comprehensive and empower a Magistrate having jurisdiction to vary the amount of allowances: *Haji v. Fatima.* 33 Cr. L. J. 646 (1) :
138 I. C. 624 (1) : I. R. 1932 Sind 87 (1) ;
A. I. R. 1932 Sind 59.

———S. 489 (2)—Cancellation of order, in consequence of Civil Court decree.

Under S. 489 (2) as amended in 1923, it is competent for a Magistrate to cancel or vary an order of maintenance, if he thinks that it should be cancelled or varied in consequence of any decision of a competent Civil Court. If a Civil Court has given to the husband a decree for restitution and the husband *bona fide* wishes to execute that decree and the wife refuses, that would be a good ground for cancelling the order of maintenance under S. 488, but where the Court is satisfied that the husband did not wish to have his wife back and his object in getting the decree was merely to get maintenance order cancelled, in the exercise of the Court's discretion under S. 488 (2), it would be wrong for the Court to cancel the order for maintenance. *Pavakkal v. Athappa Goundan.* 27 Cr. L. J. 30 :
91 I. C. 62 : 49 M. L. J. 269 :
1925 M. W. N. 645 : 22 L. W. 479 :
A. I. R. 1925 Mad. 1218.

———S. 490.

See also Cr. P. C., Ss. 488, 488 (1) (3).

———S. 490—Costs—No provision for costs in S. 490.

S. 490 does not contain any provision such as that in Sub-cl. (7), S. 488, which would enable the Court to grant costs. *Ma E. Shi v. U San Kal.* 40 Cr. L. J. 241 :
179 I. C. 643 : 11 R. Rang. 336 :
A. I. R. 1939 Rang. 67.

———S. 490—Enforceability of order.

Magistrate who passes the order for payment of maintenance can enforce it. There is no such restriction that such order should be enforced only in the district where the person ordered to pay lives. *U. Hpay Latt v. Ma Po Byu.* 37 Cr. L. J. 91 (2) :
159 I. C. 289 : 13 Rang. 289 :
8 R. Rang. 265 : A. I. R. 1935 Rang. 407.

———S. 491.

- Another remedy.
- Application.
- Custody of children.
- Detention.
- Detention in custody, meaning of.
- Discretion.
- English Law.
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- Illegal detention.
- Jurisdiction.
- Miscellaneous.
- Muhammadan Law.
- Object.
- Power of High Court.
- Procedure.
- Scope.
- Second application.
- Special Act.
- S. 491.

See also (i) Cr. P. C., 1898, Ss. 54, 76, 167, 491.

(ii) Extradition Act, 1903, Ss. 2 (a), 3.

(iii) Foreigners Act, 1864, S. 3-A

(iv) Fugitive Offenders Act, 1881 (44 and 45 Vic Ch. 69) S. 14, 19.

(v) *Habeas corpus*.

(vi) Lahore Conspiracy Case Ordinance, 1930.

———S. 491—Another remedy.

An order by the High Court under S. 491, Cr. P. C., would not debar a party from making an application to the District Judge under the Guardians and Wards Act. *Haidari Begum v. Jawad Ali.* 36 Cr. L. J. 554 :
154 I. C. 638 : 1934 A. L. J. 946 :
4 A. W. R. 1406 : 7 R. A. 783 :
A. I. R. 1935 All. 55.

———S. 491—Another remedy.

Fact that other remedy is available, does not prevent giving of relief under S. 491 if provisions are satisfied. *Deputy Commissioner, Gonda v. Mohammad Shikoh.*

35 Cr. L. J. 1108 :
150 I. C. 706 : 1934 O. L. R. 602 :
11 O. W. N. 803 : 7 R. O. 40 :
A. I. R. 1934 Oudh 392.

———S. 491—Another remedy open, effect of.

The fact that a person has a remedy under the Guardians and Wards Act is not a ground for him not to avail himself of any other remedy open to him under the law. *Subbuswami Goundan v. Kamakshi Ammal.*

31 Cr. L. J. 187 :
120 I. C. 892 : 30 L. W. 685 :
1929 M. W. N. 689 : 67 M. L. J. 642 :
53 Mad. 72 : A. I. R. 1929 Mad. 834.

———S. 491—Application—Forum of.

An application under S. 491 is to be made to the High Court in its Ordinary Original Criminal Jurisdiction. *In the matter of : Charu Chandra Majumdar.* 18 Cr. L. J. 73 :
37 I. C. 57 : 20 C. W. N. 1233 :
44 Cal. 76 : A. I. R. 1917 Cal. 253.

———S. 491—Application, evidence of.

The power under S. 491 is a general power of the nature of a *habeas corpus*. The power under the Guardians and Wards Act, is a power under a Special Act, dealing with a special subject, that is, the subject of minors.

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in favour of the child, and the husband can be directed to pay Rs. 100 per month for the maintenance of the petitioner and Rs. 100, for the maintenance of her daughter. *Mrs. M. Bulleel v. R. C. Bulleel.*

39 Cr. L. J. 865 :
177 I. C. 334 : 47 L. W. 594 :
1938 M. W. N. 424 : 1938 M. L. J. 821 :
I. L. R. 1938 Mad. 729 : 11 R. M. 305 :
A. I. R. 1938 Mad. 721.

—S. 488 (1) (3)—Compromise—Effect on order for maintenance.

After a maintenance order had been passed under S. 488 (1), the parties entered into a compromise and the husband against whom the order had been passed applied to the District Magistrate in revision praying that the order be set aside. The compromise merely provided for the maintenance of the wife by the husband in a certain manner other than by paying her the monthly allowance ordered by the trial Court; it further provided that in case of failure, the order of the trial Court should be enforced: *Held*, that the maintenance order passed under S. 488 (1) should remain in force but the existence of the compromise which could be proved at any time was sufficient ground for any Magistrate to refuse to enforce the order if moved to do so under S. 488 (3) or S. 490, Cr. P. C. It is not until the woman sought to enforce the order that any necessity for considering the compromise arose. *Sullau Khan Gulshan Khan v. Khanam Jan.*

38 Cr. L. J. 614 :
168 I. C. 832 : 9 R. Pesh. 133 :
A. I. R. 1937 Pesh. 45.

—S. 488—Divorce pending Proceedings—Effect of.

There is nothing in the provisions of S. 488, which suggest that a husband can avoid payment of sums which a Magistrate might order to be paid under S. 488 (2) by divorcing his wife in the middle of the proceedings. The proper date to be considered for an order under S. 488 (2) is a date on which the application was made. If, on the date on which the application is made, relationship of husband and wife exists, the Magistrate has jurisdiction to pass an order under S. 488 (2) directing the husband to pay sums due on account of maintenance from the date of that application until the period of *iddat* has expired. *Mahomed Nagman v. Zullekhan.*

40 Cr. L. J. 814 :
183 I. C. 536 : 12 R. S. 58 :
1939 Kar. 659 : A. I. R. 1939 Sind 179.

—S. 488—Imprisonment—Arrears, accumulation of—Sentence permissible.

Where a husband ordered to pay Rs. 4/- a month, allows arrears to accumulate to Rs. 170, he can be sentenced to 6 months' simple imprisonment. *Emperor v. Budhu Ram.*

20 Cr. L. J. 367 :
50 I. C. 847 : 12 P. R. 1919 Cr :
15 P. L. R. 1919 : A. I. R. 1919 Lah. 197.

—S. 488—Imprisonment—Arrears allowed to be accumulated—Court, if can issue one warrant and impose cumulative sentence of imprisonment.

The intention of the Legislature in enacting S. 488] was to empower the Magistrate after

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execution of one warrant only to sentence a person, who has defaulted in the payment of maintenance ordered under S. 488, to imprisonment for a period of one month in respect of each month's default and the section does not enjoin that there should be a separate warrant in respect of each term of imprisonment for one month. In other words, where arrears have been allowed to accumulate, the Court can issue one warrant and impose a cumulative sentence of imprisonment. *Emperor v. Beni. (F. B.)*

39 Cr. L. J. 720 :
176 I. C. 397 : 1938 A. L. J. 595 :
1938 O. W. N. 591 : 11 R. A. 104 :
I. L. R. 1938 All. 750 :
1938 A. W. R. 379 : A. I. R. 1938 All. 386.

—S. 488 (3)—Order of maintenance—Duration of—Arrears, recovery of.

It is a general principle of law that an order whose term is not fixed and whose currency is not made expressly dependent upon the continued existence of some circumstance or set of circumstances, remains in force until it is cancelled, and *prima facie* this rule applies to maintenance orders passed under S. 488. Hence where the wife is not living in adultery nor does she refuse to live with her husband, she is not deprived of her right to maintenance under the order merely because she did not apply for maintenance within one year of the order of maintenance. *Jasodabai v. Tarachand Tekchand.*

40 Cr. L. J. 776 :
183 I. C. 336 : 12 R. S. 51 :
1939 Kar. 674 : A. I. R. 1939 Sind 180.

—S. 488—Refusal to live with husband.

Two wives of a Burmese Buddhist can never live amicably in the same house. Hence if one of them living separately refuses to come and live with her husband along with the other wife, she is justified in doing so and is entitled to claim maintenance. *Maung Paik v. Ma Ohn Sint.*

40 Cr. L. J. 702 :
182 I. C. 671 : 12 R. Rang. 24 :
A. I. R. 1939 Rang. 210.

—S. 488 (3)—Restitution of conjugal rights, decree for—Effect.

Where in an application for maintenance under S. 488, Cr. P. C., it appeared that some 13 months before the application, the husband had obtained a decree for restitution of conjugal rights but soon after taking the wife to his house had turned her out with blows: *Held*, that the Magistrate was justified in exercising his discretion in favour of the woman and in favour of absolving her from the condition that she must live with her husband. *Raj Patti v. Emperor.*

25 Cr. L. J. 1246 :
82 I. C. 174 : 22 A. L. J. 806 :
46 All. 877 : A. I. R. 1924 All. 784.

—S. 488—Sufficient Cause—Meaning of—Duty of Court.

The language of cl. (3) of S. 488 contemplates a person, against whom an order for maintenance has been made coming into Court when execution of the order is applied for and showing cause why the order should not be executed.

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———S. 491—*Detention in custody—Meaning of.*

It cannot be said that a person is detained in custody because he is prevented from seeing certain people whom he wants to see. *Hazoor Ara Begum v. Deputy Commissioner, Gonda.*

35 Cr. L. J. 1052 :

149 I. C. 991 : 11 O. W. N. 799 :

6 R. O. 607 : A. I. R. 1934 Oudh 301.

———S. 491—*Discretion—Bombay High Court rules—Effect of.*

By S. 491, Cr. P. C., it appears to be left entirely to the discretion of the Court, whether it should or should not direct the person to be brought before it to be dealt with according to law, but Rule 794, Bombay High Court Rules, deprives the Court of all further discretion and commands that, in the absence of cause being shown against the rule, which is a very different thing from allowing the Court to exercise its discretion, even where technically the cause is inadequate, the Court shall pass an order that the person or persons improperly detained shall be delivered to the person entitled to their custody. *Zara Bibi v. Abdul Razzak.*

11 Cr. L. J. 687 :

8 I. C. 618 : 12 Bom. L. R. 891.

———S. 491—*English Law—Applicability of.*

Rules of English Law relating to application for writ of *habeas corpus* are not applicable to exercise of power conferred on High Court under S. 491. *Haydesi Begum v. Jawad Ali Shah.*

35 Cr. L. J. 493 :

147 I. C. 820 : 1933 A. L. J. 1410 :

6 R. A. 573 : A. I. R. 1934 All. 22.

———S. 491—*Habeas corpus—Application in High Court in first instance—Procedure.*

It is not reasonable or normal procedure to apply into High Court for issue of directions of the nature of a *habeas corpus* under S. 491 or for bail while applications by the same petitioners for bail are pending in the Sessions Court. The proper course in a matter of this kind is to apply to the lower Courts and obtain their orders before coming up to the High Court. *Kashi Ram v. Emperor.*

30 Cr. L. J. 301 :

114 I. C. 444 : I. R. 1929 Lah. 284 ;

A. I. R. 1929 Lah. 522.

———S. 491—*Habeas corpus—Common Law writ, when competent.*

High Court or any Judge of it cannot issue the Common Law writ of *habeas corpus* in any of the cases covered by S. 491. *District Magistrate, Trivandrum v. K. C. Mammen Mappillai.* (F. B.)

40 Cr. L. J. 320 :

180 I. C. 216 : 1938 M. W. N. 1289 :

11 R. M. 663 : (1939) 2 M. L. J. 135 :

I. L. R. 1939 Mad. 708 :

A. I. R. 1939 Mad. 120.

———S. 491—*Habeas corpus—Considerations—Welfare of child.*

On application for *habeas corpus* in regard to the custody of a child, the Court has to look to the interest of the child as being paramount. Where the father of a child, who

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was a motor driver and out on the roads practically all the day, applied by a writ of *habeas corpus* for the custody of his child of about 7 years of age and there was further nobody in the house of the applicant to look after the child, their Lordships declined to interfere observing that the proper remedy of the applicant was to apply under S. 25, Guardians and Wards Act. *Moidin v. Kunhadavi.*

31 Cr. L. J. 985 :

126 I. C. 111 (1) : A. I. R. 1929 Mad. 33.

———S. 491—*Habeas corpus—Order by Single Judge, appeal under Common Law, jurisdiction of Bombay High Court.*

An order by Judge directing a writ of *habeas corpus* to issue is not an order made in the exercise of criminal jurisdiction and is open to appeal. *Mahomedalli Allabux v. Ismailji Abdulali.*

27 Cr. L. J. 721 :

95 I. C. 49 : 28 Bom. L. R. 471 :

50 Bom. 616 : A. I. R. 1926 Bom. 332.

———S. 491—*Husband and wife—Wife minor—Application by husband for habeas corpus—Order.*

On an application under S. 491 by a writ of *habeas corpus* against his father-in-law for production of his minor wife of immature age, what the Court has to consider is the welfare of the minor wife, and in doing so, the fact that she prefers to reside elsewhere than with her husband, is not entitled to any weight, although where she is old enough to form a good opinion, this would be a very important circumstance for consideration. *Subbuswami Goundan v. Kamakshi Ammal.*

31 Cr. L. J. 187 :

120 I. C. 892 : 30 L. W. 685 :

1929 M. W. N. 689 : 57 M. L. J. 642 :

53 Mad. 72 : A. I. R. 1929 Mad. 834.

———S. 491—*Illegal arrest—Power of High Court.*

Arrest under illegal extradition warrant—High Court can interfere under S. 491 and set at liberty person arrested. *Sandal Singh v. District Magistrate and Superintendent, Dchra Dun.*

35 Cr. L. J. 1296 :

151 I. C. 279 : 1934 A. L. J. 556 :

56 All. 409 : 4 A. W. R. 1526 :

7 R. A. 128 (2) : A. I. R. 1934 All. 148.

———S. 491—*Illegal arrest—Power of High Court.*

The detention of a person becomes illegal where he is arrested and kept in custody under S. 10, Extradition Act, for a period extending over two months, if no extension has been granted by the Local Government, under Sub-s. 3, and under the circumstances, the only order the High Court can pass is that the prisoner should be discharged from custody. *Suraj Narayan Jha v. Emperor.*

36 Cr. L. J. 1500 :

158 I. C. 981 : 16 P. L. T. 551 :

2 B. R. 32 (2) : 8 R. P. 233 :

A. I. R. 1935 Pat. 419.

———S. 491—*Illegal custody—Meaning of.*

A Magistrate in remanding an accused person to Police custody should briefly

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ancee provided she, along with the children resides in that house which the husband allots to her separate from his second wife. If the husband maltreats her or is cruel to her, the applicant shall be entitled to live separate from the husband wherever she likes and to receive Rs. 15 per mensem as maintenance allowance". The husband refused to provide any house for her and gave her a beating and turned her out: *Held*, that the condition, in the order, that the husband would provide a house for his wife where she would live separately from his second wife did not amount to the husband and wife "living separately by mutual consent" as laid down in Sub-s. 4 of S. 488. No question of "living separately by mutual consent," was involved in the condition embodied in the compromise. *Bhagwan Singh v. Gurcharan Kaur*.

40 Cr. L. J. 794 :

183 I. C. 464 : 41 P. L. R. 527 :

12 R. L. 117 : A. I. R. 1939 Lah 209.

—S. 488 (4)—Maintenance—Separate maintenance—Husband having second wife—Burmese Buddhist.

Ordinarily the fact that a Burmese Buddhist husband takes a second wife might be a good reason for the first wife declining to live with him, unless he provides her with a separate house. Where, however, a husband marries a second wife owing to the refusal of his first wife to live with him, but is willing to take back the first wife, the latter is not entitled to maintenance under S. 488 (4). *Po Nycin v. Ma Shwe Kin*.

19 Cr. L. J. 966 :

47 I. C. 866 : 11 Bur. L. T. 105 :

A. I. R. 1918 L. Bur. 9.

—S. 488 (4) and (5)—Adultery—Meaning of.

The mere fact that a woman, in whose favour an order for a maintenance allowance has been passed, has given birth to an illegitimate child is not sufficient to establish that she has been "living in adultery" for the purposes of S. 488 (5). The words "living in adultery" mean following a course of adulterous conduct more or less continuous. A single act of adultery cannot by itself amount to "living in adultery," and several such acts, if isolated, do not necessarily come within the meaning of that term. But a single act of adultery may be sufficient reason for refusing maintenance when applied for by the wife. *Paiki v. Vishwanath*.

9 Cr. L. J. 390 :

1 I. C. 801 : 5 N. L. R. 19.

—S. 488—Adultery—Meaning of.

The words 'living in adultery' in S. 488 (5), denote a continuous course of conduct and not isolated acts of immorality. One or two lapses from virtue would be acts of adultery but would be quite insufficient to show that the woman was "living in adultery" which means that she must be living in a state of quasi-permanent union with the man with whom she is committing adultery. There is clearly a great distinction between "committ-

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ing adultery" and "living in adultery". *Ma Mya Khin v. N. L. Godinho*.

37 Cr. L. J. 1115 :

165 I. C. 205 : 9 R. Rang. 191 :

A. I. R. 1936 Rang. 446.

—S. 488 (5)—Cancellation of order—Retrospective effect.

When previous order to pay maintenance is subsequently cancelled under S. 488 (5), such order of cancellation takes effect from the date of the order and has no retrospective effect. It cannot, therefore, affect the arrears due up to the date of the order. *Tari Bala Suklabaidya v. Kibal Ram Suklabaidya*.

39 Cr. L. J. 357 :

173 I. C. 785 : 42 C. W. N. 64 :

10 R. C. 573 : 66 C. L. J. 571 :

I. L. R. 1938 1 Cal. 509 :

A. I. R. 1938 Cal. 144.

—S. 488 (5)—Cancellation of order—Return of wife.

An order for maintenance passed in favour of a wife remains in force until it is cancelled notwithstanding the return of the wife to the husband for living with him. *Narayanaswami Mudali v. Mangayarkarasammal*.

28 Cr. L. J. 237 :

99 I. C. 1037 : 28 M. L. T. 13.

—S. 488 (5)—Cancellation of order—Return of wife to husband, effect of.

The return of a wife to her husband temporarily after obtaining an order for maintenance may have the effect of suspending the operation of the order, it has not the effect of cancelling the order in the way in which it can be cancelled under S. 488 (5). *Parul Bala Debi v. Satish Chandra Bhattacharjee*.

24 Cr. L. J. 945 :

75 I. C. 529 : 37 C. L. J. 180 :

A. I. R. 1923 Cal. 456.

—S. 488 (6)—Procedure—Recording of evidence.

The effect of S. 488 (6) and S. 302 (4) read together is that in summons case tried by Presidency Magistrate, it is not necessary to record evidence. *In re : Chhagan Hargovan*.

33 Cr. L. J. 461 :

137 I. C. 27 : 34 Bom. L. R. 276 :

I. R. 1932 Bom. 242 : A. I. R. 1932 Bom. 179.

—S. 488 (6)—Second application.

A Magistrate has power under S. 488 (6) to re-open a case in which maintenance has been awarded by his predecessor, and to revise the order granting maintenance where the petition is presented within three months of the order. *Maung Tun Yin v. Ma Thein Shin*.

24 Cr. L. J. 928 :

75 I. C. 304 : 2 Bur. L. J. 61 :

A. I. R. 1923 Rang. 159.

—S. 488 (6) (1)—Ex parte order, what is.

The proceedings instituted under S. 488, Cr. P. C. are of a quasi-civil nature. Therefore the word *ex parte* used in the aforesaid section is used in the same sense as is used in Os. IX and XVII, C. P. C. Therefore an order passed, against an absent

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—S. 491—*Jurisdiction—Power of High Court to quash proceedings executing a warrant without jurisdiction.*

Nasirabad lies outside British India, and so a warrant of arrest of a person residing in British India, cannot be issued by a Nasirabad Magistrate as he has no jurisdiction to do so. Such warrant, if issued, cannot be executed in British India, and if it is executed, the proceedings can be quashed by the High Court under S. 491. *Tahilram Khanchand v. Emperor.* 39 Cr. L. J. 298 : 173 I. C. 322 : 10 R. S. 203 : 32 S. L. R. 134 : A. I. R. 1938 Sind 46.

—S. 491—*Jurisdiction—Refusal to exercise.*

Further, the Judge has no opinion in the matter and cannot lawfully decline jurisdiction or refuse to entertain and determine applications made to him. It would be contrary to his oath of office to do so. *Crown Prosecutor, Madras v. K. C. Mammen Mappillai.* 40 Cr. L. J. 297 : 179 I. C. 917 : 1938 M. W. N. 1161 : 11 R. M. 634 : A. I. R. 1939 Mad. 115.

—S. 491—*Jurisdiction.*

The mere fact that after his arrest the accused was temporarily released on bail pending further enquiry does not oust the jurisdiction of the High Court under S. 491. *Sandal Singh v. District Magistrate and Superintendent of Dehra Dun.* 35 Cr. L. J. 1296 : 151 I. C. 279 : 1934 A. L. J. 556 : 56 All. 409 : 4 A. W. R. 1526 : 7 R. A. 128 (2) : A. I. R. 1934 All. 148.

—S. 491—*Jurisdiction to issue habeas corpus, nature of.*

The law as to the jurisdiction and the duty of each Judge of the High Court to entertain and determine applications for issue of a writ of *habeas corpus* is the same as the law in England and each Judge of the High Court is a tribunal to which such applications can be made and must hear them on the merits. The jurisdiction is thus of a peculiar and exceptional character as every Judge has it, and not merely the High Court of which he forms a part. *Crown Prosecutor, Madras v. K. C. Mammen Mappillai.* 40 Cr. L. J. 297 : 179 I. C. 917 : 1938 M. W. N. 1161 : 11 R. M. 634 : A. I. R. 1939 Mad. 115.

—S. 491—*Miscellaneous.*

A Commissioner of Police acting under a warrant issued under the Goondas Act is not acting under the Cr. P. C. *Bisseswar Rajgaria v. Emperor.* 28 Cr. L. J. 10 : 99 I. C. 42 : 30 C. W. N. 791 : 53 Cal. 962 : A. I. R. 1926 Cal. 961.

—S. 491—*Muhammadan Law — Custody of children.*

Under Muhammadan Law, the mother is, during the subsistence of marriage, entitled to the guardianship or custody of male children up to the age of seven, and that right survives even after separation or divorce. *Zara Bibi v. Abdul Rozzak.* 11 Cr. L. J. 687 : 8 I. C. 618 : 12 Bom. L. R. 891.

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—S. 491—*Muhammadan Law (Shiah)—Custody of children.*

According to the Shiah Muhammadan Law, a mother is entitled to the custody of her male child, only until he is weaned, and not, as amongst the Sunnis, till he is seven years of age. But this proposition is correct only when both parents of the child are alive and there is a contest as to who should be entitled to the custody of the minor. Therefore, on the death of a Shiah Muhammadan father, in the absence of any circumstances disqualifying the mother, she becomes entitled as a matter of right to the custody of her minor son as against everybody else including the father's executor. In Muhammadan Law, the mere use of words, in a Muhammadan's will, from which an appointment of a minor's guardian could be spelt out by implication, is not sufficient to deprive the mother of infant children of the right, she undoubtedly has, to have the possession and custody of the persons of such children. There must be a specific appointment. *Sherbanoo v. Ajbai.* 9 Cr. L. J. 214 : 1 I. C. 309 : 11 Bom. L. R. 75.

—S. 491—*Object.*

Proceedings by way of *habeas corpus* are proceedings calling upon a person having custody of a prisoner to produce him and demonstrate under what authority he holds him in custody. If the authority be a legitimate authority binding on the officer complying with it, he is bound to obey the order of that authority and the Court cannot interfere. All that the Court can do is to see that there is no patent defect visible in the authority by which the person having custody detains any person. *Jamna v. Emperor.* 27 Cr. L. J. 37 : 91 I. C. 69 : 20 S. L. R. 128 : A. I. R. 1926 Sind 126.

—S. 491—*Object.*

The underlying principle of every writ of *habeas corpus* is to ensure the protection and well-being of the person brought before the Court under that writ, and the real interest and well-being of a person brought up on a writ of *habeas corpus* ought to be not only the determining but the sole consideration. *Zara Bibi v. Abdul Razzak.* 11 Cr. L. J. 687 : 8 I. C. 618 : 12 Bom. L. R. 891.

—S. 491—*Power of High Court, limitation on.*

The powers of the High Court under S. 491, are limited and they do not authorize the High Court to enter as it were upon an enquiry into the conduct of the Political Agent before issuing a warrant of arrest under S. 7, Extradition Act. All that the High Court is concerned with while exercising its power under S. 491 is to see that the authority under which a person is being detained is on the face of it legal and valid. If there are any formal defects in the warrant under which the applicant is arrested, the High Court can certainly take notice of them and can, upon that basis,

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husband had sufficient means to pay such allowance. *In re : Punjalal Chunilal*.

29 Cr. L. J. 908 :
111 I. C. 668 : 30 Bom. L. R. 617 :
A. I. R. 1928 Bom. 224.

—S. 489—Alteration, meaning of—Cancellation.

Under S. 489 the Magistrate on proof of altered circumstances is competent not only to alter or modify an order of maintenance, but can altogether cancel it. The word "alter" in the section includes also a cancellation. *Meenatchi Ammal v. Karuppana Pillai*.

26 Cr. L. J. 732 :
86 I. C. 220 : 21 L. W. 142 :
1925 M. W. N. 67 :
48 M. L. J. 183 : 48 Mad. 503 :
A. I. R. 1925 Mad. 491.

—S. 489—Alteration of order—Change in circumstances, what is.

Before the original order of maintenance can be altered, it must be shown that there has been, if not a change in the circumstances of the husband then a change in the circumstances of the wife. The mere fact that the wife is living in a different manner from the manner in which she lived at the time the order of maintenance was passed, does not necessarily constitute a change in her circumstances. Similarly, if the husband has a mistress and two children by her to maintain, that is because he has chosen to take a mistress, that would be no reason for reducing the allowance awarded to his legal wife. *Ma Mya Khin v. N. L. Godenho*.

39 Cr. L. J. 274 :
173 I. C. 135 : 10 R. Rang. 312 :
A. I. R. 1938 Rang. 42.

—S. 489—Change of circumstances.

Parties to maintenance order can move Magistrate again when there is change of circumstances. *Shanno Devi v. Daya Ram*.

35 Cr. L. J. 473 :
147 I. C. 719 : 6 R. L. 433 (2) :
35 P. L. R. 320 :
A. I. R. 1933 Lah. 1026.

—S. 489—Change of circumstances.

Where the amount available from the *tavazhi* or *tarwad* funds becomes insufficient to maintain the children, that would be a change of circumstances within the meaning of S. 489. *Parppati Chinna v. Shakunni Menon*.

20 Cr. L. J. 733 :
52 I. C. 893 : 10 L. W. 229 :
26 M. L. T. 238 : 37 M. L. J. 361 :
1919 M. W. N. 632 :
A. I. R. 1919 Mad. 193.

—S. 489—Imprisonment—Second Class Magistrate, powers of.

A Second Class Magistrate is not competent to pass a sentence of imprisonment for breach of an order under S. 488 directing payment of maintenance. *In re : Kuppi Nalika*.

36 Cr. L. J. 830 :
155 I. C. 694 : 68 M. L. J. 493 :
41 L. W. 697 : 7 R. M. 602 (1) :
1934 M. W. N. 922 :
A. I. R. 1935 Mad. 572 (1).

Cr. P. CODE (1898), S. 489**—S. 489—Modification of maintenance order—Law.**

Where an order has once been passed by a competent Court under S. 488 for the payment of maintenance for a child, the only power that exists of modifying such an order is that given by S. 489 of the Code. *Budhni v. Dabal*.

1 Cr. L. J. 555 :
24 A. W. N. 149 :
I. L. R. 1927 All. 11.

—S. 489—Procedure—Application for alteration by husband—Wife insane—Her proper representative.

Where, due to the insanity of the wife, her brother was appointed under S. 71, Lunacy Act, to manage her estate mainly for the purpose of collecting the amount of maintenance made payable by the husband, he is obviously the proper person to state the case for the wife in an application by her husband under S. 489 for reduction of the amount of maintenance. There is nothing in the Code which prevents the Magistrate from taking his evidence. Nor is there anything in the Code which requires that any additional or different evidence should be produced or that the wife should be otherwise represented. *Zinabhai Bhimbhai v. Bai Mani*.

39 Cr. L. J. 53 :
171 I. C. 899 : 10 R. B. 246 :
39 Bom. L. R. 626 :
I. L. R. 1937 Bom. 674 :
A. I. R. 1937 Bom. 454.

—S. 489—Reduction of amount.

Maintenance of Rs. 25 per mensem for petitioner and her two children—Petitioner securing job of Rs. 6 per month—Respondent's income same: Held, reduction of amount from 25 to 20 not justified. *Lilawanti v. Madan Gopal*.

37 Cr. L. J. 68 :
159 I. C. 310 : 8 R. L. 378 (1) :
A. I. R. 1935 Lah. 24.

—S. 489—Reduction of amount.

Where there has been no application by the husband under S. 489 for reduction of the maintenance, the order reducing the rate for the months of which arrears were claimed retrospectively is improper. *Lilawanti v. Madan Gopal*.

37 Cr. L. J. 68 :
159 I. C. 310 : 8 R. L. 378 (1) :
A. I. R. 1935 Lah. 24.

—S. 489—Scope.

Before the orders regarding fixation of maintenance can be vacated, action must be taken under S. 489. *Multan v. Faramosh*.

37 Cr. L. J. 347 (1) :
160 I. C. 802 : 8 R. Pesh. 130 (1) :
A. I. R. 1936 Pesh. 32 (2).

—S. 489—Scope.

S. 489 contemplates only cases where there is a change of financial circumstances of the person affected that justifies an alteration in the allowance that has been fixed. The section does not refer to a change in the status of the parties, e.g., by divorce,

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under S. 491 of the Cr. P. C. *Ghanshamdas Khatumal v. Manager, Eneumberrd Estates.*

28 Cr. L. J. 194 :
99 I. C. 930 : A. I. R. 1927 Sind 123.

———S. 491 (1) (b)—Scope—Exercise of powers, occasion for.

The power conferred on the High Court by S. 491 (1) (b), to issue a direction in the nature of a *habeas corpus* has to be exercised with caution and in a matter of urgency and not in a case where there is a dispute merely as to who should be the guardian of a particular minor. *Sullan Singh v. Maya Ram.*

31 Cr. L. J. 719 :
124 I. C. 728 : 1930 A. L. J. 615 :
A. I. R. 1930 All. 260.

———S. 491 (b)—Scope.

Temporary release of prisoner to enable him to be at bed side of his wife who is seriously ill—Subsequent re-arrest and re-confinement into prison without trial is competent. *Girdhari Lal Agarwala v. Emperor.*

36 Cr. L. J. 325 :
153 I. C. 351 : 7 R. A. 483 : 4 A. W. R. 1154 :
A. I. R. 1935 All. 181.

———S. 492—Interpretation.

The words “in the absence of the Public Prosecutor” in S. 492 are wide and include temporary absence of the Public Prosecutor at the time and in the Court where a case is proceeding. *Emperor v. Dipchand.*

31 Cr. L. J. 684 :
124 I. C. 378 : A. I. R. 1930 Sind 156.

———S. 493—Precedence of Public Prosecutor.

Prima facie, neither S. 145 (2), Railways Act, nor S. 495, Cr. P. C., affects S. 493 of the latter enactment which deals with the right of appearance and precedence of the Public Prosecutor before any Court in which any case of which he has charge is under trial. *Bengal Nagpur Railway Co. v. Makbul.*

27 Cr. L. J. 313 (b) :
92 I. C. 697 : 1926 Pat. 74 : 7 P. L. T. 343 :
A. I. R. 1925 Pat. 755.

———S. 493—Precedence of Public Prosecutor.

Where the Public Prosecutor has charge of a prosecution, a Pleader instructed by a private person including the agent of a Railway Administration, must act under the direction of the Public Prosecutor. *Bengal Nagpur Railway Co. v. Makbul.*

27 Cr. L. J. 313 :
92 I. C. 697 : 1926 Pat. 74 : 7 P. L. T. 343 :
A. I. R. 1925 Pat. 755.

———S. 493—Scope—Application by private party for change of charge, competency of.

An application by a private party that a charge in a case has not been properly framed and that it should have been framed under another section is not barred by the provisions of S. 493. *Dasaundha Singh v. Lachhman Singh.*

29 Cr. L. J. 1056 :
112 I. C. 480 : A. I. R. 1929 Lah. 127.

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———S. 494.

———Accomplice.
———Accused.
———Acquittal.
———Approver.
———Consent of Court.
———Discharge.
———Discharged accused.
———Discretion.
———Discretion of Public Prosecutor.
———Magistrate, powers of.
———Private Prosecutor.
———Proper withdrawal.
———Public Prosecutor.
———Revision.
———Scope.
———Scope of.
———Security proceedings.
———Who can withdraw.
———Withdrawal.
———Withdrawal of accused from prosecution.
———Withdrawal of some charges.
———Withdrawal of prosecution.

———S. 494.

See also (i) Cr. P. C., 1898, Ss. 114, 136, 337, 367, 403, 436, 439, 492 (2).

(ii) Penal Code, 1860, S. 97.

———S. 494—Accomplice—Withdrawal of prosecution, effect—Prior statements of accomplice, whether should be produced.

An accomplice, who is tried jointly with the accused, ceases to be on trial with the accused as soon as the prosecution against him is withdrawn under S. 494 and becomes a competent witness in the case. Prior statements of such a witness made to and verified by a Magistrate must be made accessible to the accused for the purposes of cross-examination, and if necessary, contradiction. *Sherati Sheikh v. Emperor.*

15 Cr. L. J. 693 :
26 I. C. 141 : 18 C. W. N. 1213 :
A. I. R. 1915 Cal. 184.

———S. 494—Accused—Withdrawal against—Whether competent witness.

So, if the prosecution be withdrawn and the accused discharged under S. 494, Cr. P. C., he would be a competent witness. *Banu Singh v. Emperor.*

4 Cr. L. J. 145 :
10 C. W. N. 962 :
I. L. R. 33 Cal. 1353.

———S. 494—Acquittal.

S. 403 applies to an order of acquittal under S. 494. *Mahadeogir v. Emperor.*

14 Cr. L. J. 135
18 I. C. 887 : 9 N. L. R. 26.

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Where there is a Special Act dealing with a special subject, resort should be had to that Act instead of to a general provision. *Haidari Begum v. Jawad Ali*. 36 Cr. L. J. 554 :

154 I. C. 638 : 1934 A. L. J. 946 :

7 R. A. 783 : 4 A. W. R. 1406 :

A. I. R. 1935 All. 55.

—S. 491—Custody of children.

In a suit for the custody of minor children where the defendant has no personal interest in the children or their services and no right to their custody, and his object is only to send back the children to their parents and natural guardian, the proceedings can be treated as of *habeas corpus* under S. 491, for the purpose of determining the custody of the children. *Pollard v. Rouse*.

12 Cr. L. J. 180 :

6 I. C. 754 : 33 Mad. 288 :

8 M. L. T. 47 : 1 M. W. N. 187.

—S. 491—Custody of children.

M, the father of two minor girls of the ages of about 14 and 16 years, applied for a writ against N, his younger brother, for their surrender. M became a *sanyasi* in 1901 and relinquished his rights as head of the family to N. He became a Brahmo in 1906 and between 1906 and 1910 again began to live with his wife and children and also begot some more children. The elder brothers of the minors had all along been living with N and were educated by him. The wife died in April, 1910. The object of the writ was to prevent the marriage of the minors before they attained the age of 16, and there was no question of morality or corruption: *Held*, that the petitioner was quite free to keep his daughters unmarried till the 16th year or even after that age, even though he may put his daughters not only to great inconvenience but to danger of ex-communication and the fact of his becoming a Brahmo did not affect the matter: *Held*, also, that as the petitioner became a *sanyasi* previously, he was not in 1906, when he became a Brahmo, the guardian in Hindu Law of his children. *Mullusawmy Sastry v. Narayana Sastry*.

11 Cr. L. J. 641 :

8 I. C. 393 : 8 M. L. T. 300 :

1911 2 M. W. N. 36 : 21 M. L. J. 195.

—S. 491—Custody of children.

On an application for *habeas corpus* in respect of detention of a minor child against the guardian's wishes, jurisdiction of the Court is essentially a parental one and must be exercised for the benefit and welfare of the child, the word "welfare" being taken in its widest sense. The moral and religious welfare of the child as well as its physical well-being must be considered, with due regard to its ties of affection. If an infant capable of forming an intelligent opinion expresses its views, the Court is bound to take them into consideration. In the same way, the age of the child is also an important factor. There is, however, no hard and fast rule that in the case of a girl over 16 and a boy over 14, the Court has no option in the matter and that the wishes of the infant must be given effect to. Such a rule is too artificial, and even if such a rule exists in

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England, there is no warrant for the extension of the doctrine to India where different considerations may apply and different conditions do prevail. *Saraswathi Ammal v. Dhanakoti Ammal*.

26 Cr. L. J. 616 :

85 I. C. 840 : 47 M. L. J. 614 :

1924 M. W. N. 870 : 20 L. W. 902 :

48 Mad. 299 : A. I. R. 1924 Mad. 873.

—S. 491—Custody of children.

The mother of a minor girl between 17 and 18 years of age applied for a writ of *habeas corpus* for the production of the girl who was living with her step-sister and had consented to give herself in marriage to a relation to whom her mother objected. The girl's choice of her future husband was a free one and she expressed a decided preference to remain with the step-sister: *Held*, that the proper order to make in the case was to free the girl from all restraint and to set her at liberty to go where she chose. *Saraswathi Ammal v. Dhanakoti Ammal*.

26 Cr. L. J. 616 :

85 I. C. 840 : 47 M. L. J. 614 :

1924 M. W. N. 870 : 20 L. W. 902 :

48 Mad. 299 : A. I. R. 1924 Mad. 873.

—S. 491—Custody of children.

When a Court of competent jurisdiction has declared a person to be a fit and proper person to exercise guardianship over an infant, the custody of that person cannot be said to be either illegal or improper. *Subharathnammal v. Seshachalam Naidu*.

33 Cr. L. J. 49 :

134 I. C. 1215 : 34 L. W. 171 :

1931 M. W. N. 768 : 61 M. L. J. 219 :

54 Mad. 759 : I. R. 1932 Mad. 31.

A. I. R. 1931 Mad. 773.

—S. 491—Custody of children—Welfare of children.

The main consideration for the Court is the benefit or welfare of the child. The term welfare, in this connection, must be read in the largest possible sense, that is to say, every circumstance must be taken into consideration and the Court must do what, under the circumstances, a wise parent acting for the true interest of the child would or ought to do. The moral and religious welfare of the child must be considered as well as its physical well being. *Pollard v. Rouse*.

12 Cr. L. J. 120 :

6 I. C. 754 : 33 Mad. 288 : 8 M. L. T. 47 :

1 M. W. N. 187.

—S. 491—Detention—Meaning of.

The applicant's nephew, who had been under his guardianship for a number of years, went to his sister's house to attend her marriage and refused to return on the ground that he intended to discontinue his studies and to get some work, and that he was kept back to stay with his sister as she was often left alone when her husband went out on duty. The applicant applied for a writ of *habeas corpus*: *Held*, that the facts did not amount to a 'detention' of the boy against his will and the case was not one in which an order under S. 491 could be made. *R. P. A. Paul v. C. Hunt*.

28 Cr. L. J. 865 (b) :

104 I. C. 705 : 6 Bur. L. J. 111.

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———**S. 494—Private Prosecutor—Right of withdrawal.**

Non-compoundable cases can only be withdrawn under Ss. 494 and 495, and not by Private Prosecutors. *Emperor v. A. Yankaya*.

22 Cr. L. J. 753 :
64 I. C. 273 : 10 L. B. R. 75 :
13 Bur. L. T. 244.

———**S. 494—Proper withdrawal—Test.**

Where the High Court is considering whether a Magistrate has rightly made an order of discharge under S. 494 or not, one test and a very important test is whether in coming to a decision it has taken into consideration extraneous circumstances which ought not properly to have been taken into account. *G. V. Raman v. Emperor*.

31 Cr. L. J. 315 :
121 I. C. 678 : 33 C. W. N. 468 :
56 Cal. 1023 : A. I. R. 1929 Cal. 319.

———**S. 494—Public Prosecutor appearing for withdrawing—Legality of.**

Application for withdrawal of prosecution by Public Prosecutor entering appearance for that purpose only. Per *S. K. Ghose, J.*—Application is only not regular but is not illegal. Per *Lord Williams, J.*—Application is neither irregular nor illegal but merely unusual. *Sher Singh v. Jitendranath Sen*.

33 Cr. L. J. 3 :
134 I. C. 1045 : 54 C. L. J. 253 :
36 C. W. N. 16 : 59 Cal. 275 :
I. R. 1932 Cal. 5 : A. I. R. 1931 Cal. 607.

———**S. 494—Revision—Interference.**

An order allowing a case to be withdrawn under S. 494, is open to revision but the High Court will not interfere if sufficient reasons are recorded by the Court allowing the withdrawal. *Bepin Behari Ghose v. Hari Pada Ghose*.

24 Cr. L. J. 5 :
71 I. C. 53.

———**S. 494—Revision—Interference.**

An order omitting to give reasons for refusing or consenting to withdraw is liable to be set aside in revision. *Suganehand v. Chunilal*.

24 Cr. L. J. 361 :
72 I. C. 361 : 6 N. L. J. 177 :
A. I. R. 1923 Nag. 260.

———**S. 494—Revision—Interference.**

An order passed under S. 494, by a Magistrate is a judicial order, and if the discretion vested in a Magistrate by that section is arbitrarily exercised, the High Court is entitled to interfere and would be justified in passing the order which ought to have been passed by the Magistrate. *Gopi Bari v. Emperor*.

21 Cr. L. J. 641 :
57 I. C. 657 : 1 P. L. T. 400 :
A. I. R. 1920 Pat. 362.

———**S. 494—Revision—Interference.**

Where the discretion is exercised by a Court of competent jurisdiction under S. 494, which is not on the face of it arbitrary, the practice of the High Court is that as a Revisional Court it will neither enquire into the reasons nor

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interfere with the exercise of such discretion. *Gomibai v. Emperor*.

33 Cr. L. J. 449 :
137 I. C. 344 : 26 S. L. R. 67 :
I. R. 1932 Sind 74 : A. I. R. 1932 Sind 92.

———**S. 494—Revision—Withdrawal by Public Prosecutor—Sanction by Court—Interference by High Court.**

Where at a Sessions trial, the Public Prosecutor withdrew a charge and the Judge approving of it discharged the accused: *Held*, that the accused had a statutory right to an acquittal and the High Court could not set it aside even though the Sessions Judge recorded no reasons for the action he took and the Prosecutor offered no reasons for the withdrawal. *In re : Sadayan*.

11 Cr. L. J. 193 :
4 I. C. 1126 : 5 M. L. T. 216.

———**S. 494—Scope.**

In the matter of the withdrawal of a case, S. 494 controls the other sections of the Code relating to the trial of cases committed to the Sessions Court. *Bepin Behari Ghose v. Hari Pada Ghose*.

24 Cr. L. J. 5 :
71 I. C. 53.

———**S. 494—Scope.**

S. 494 says nothing about pardons at all. It gives a general executive discretion to withdraw from the prosecution subject to the consent of the Court, which may be determined on many possible grounds, one of which, no doubt, is that the person in respect of whom the charge is withdrawn may be willing to give evidence. *Faqir Singh v. Emperor*.

40 Cr. L. J. 360 :
176 I. C. 898 : 1938 O. W. N. 809 :
19 P. L. T. 717 : 42 C. W. N. 125 :
40 P. L. R. 876 : 1938 M. W. N. 969 :
48 L. W. 537 : (1938) 2 M. L. J. 780 :
68 C. L. J. 328 : 40 Bom. L. R. 1254 :
I. L. R. 1938 Lah. 628 :
32 S. L. R. 937 : 11 R. P. C. 81 :
1938 O. L. R. 405 : 4 B. R. 850 :
65 I. A. 388 : 1938 A. W. R. 170 :
A. I. R. 1938 P. C. 266.

———**S. 494—Scope.**

The whole procedure and the various consequences under S. 494 differ from those under S. 337. *Faqir Singh v. Emperor*.

40 Cr. L. J. 360 :
176 I. C. 898 : 1938 O. W. N. 809 :
19 P. L. T. 717 : 42 C. W. N. 1252 :
40 P. L. R. 876 : 1938 M. W. N. 969 :
48 L. W. 537 : (1938) 2 M. L. J. 780 :
68 C. L. J. 328 : 40 Bom. L. R. 1254 :
I. L. R. 1938 Lah. 628 :
32 S. L. R. 937 : 11 R. P. C. 81 :
1938 O. L. R. 405 : 4 B. R. 850 :
65 I. A. 388 : 1938 A. W. R. 170 P. C. :
A. I. R. 1938 P. C. 266.

———**S. 494—Scope.**

The Public Prosecutor, with the consent of the Sessions Court and under the provisions of S. 494, withdrew from the prosecution on the charge of culpable homicide, and therefore the accused was acquitted: *Held*, that this

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indicate his reasons for doing so. But if there are sufficient grounds for considering that the accused was concerned with serious offence, the mere omission to record reasons for remanding him to Police custody will not render his custody illegal within the meaning of S. 491. *Sundar Singh v Emperor*.

32 Cr. L. J. 339 :

129 I. C. 481 : 12 Lah. 16 :

31 O. L. R. 780 : I. R. 1931 Lah. 193 :

A. I. R. 1930 Lah. 945.

S. 491—Illegal custody—Meaning of.

A person cannot be said to be 'improperly detained' within S. 491 unless the judgment convicting him can be reviewed. *Diwan Singh of Delhi v. Emperor*.

38 Cr. L. J. 390 :

167 I. C. 465 : I. L. R. 1936 Nag. 99 :

9 R. N. 186 : A. I. R. 1936 Nag. 132.

S. 491—Illegal detention—Power of High Court to set at liberty.

An improper exercise of the power of detention may be corrected by the High Court under suitable provisions of law such as S. 491, Cr. P. C. *Sri Lal Agarwala v. Emperor*.

27 Cr. L. J. 1185 :

97 I. C. 945 : 44 C. L. J. 134.

S. 491—Jurisdiction—Criminal Appellate Bench, power of.

Petitioner's brother was arrested without a warrant by the Calcutta Police acting on the basis of two telegrams received from Jodhpur State Police requesting the arrest and stating that the person whose arrest was requested was "wanted for embezzlement." On an application being made by the petitioner under S. 491 for a writ of *habeas corpus* : Held, that the Criminal Appellate Bench of the High Court had jurisdiction to entertain and dispose of the application under S. 491. *Subodh Chandra Ray v. Emperor*.

26 Cr. L. J. 625 :

85 I. C. 913 : 29 C. W. N. 98 :

40 C. L. J. 489 : 52 Cal. 319 :

A. I. R. 1925 Cal. 278.

S. 491 — Jurisdiction—Effect of other laws.

The individual jurisdiction and the individual duty of each Judge in this matter are not affected in any way by any statutory provision or rule. Therefore, r. 2-A of the Appellate Side Rules (Madras) is *ultra vires*, because its effect is to take away the individual jurisdiction which each Judge has in this matter, and to prevent the performance of his legal duty to determine on the merits any application for issue of a writ of *habeas corpus* made to him. *Crown Prosecutor, Madras v. K. C. Mammen Mappillai*.

40 Cr. L. J. 297 :

179 I. C. 917 : 1938 M. W. N. 1161 :

11 R. M. 634 : A. I. R. 1939 Mad. 115.

S. 491—Common Law — Jurisdiction—Effect of.

The High Court of Judicature has, under its Common Law powers jurisdiction to issue a writ for the production of a person outside British India provided it is satisfied that he is in the custody or control of a

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person within its jurisdiction. The enactment of S. 491, Cr. P. C., cannot be said to have affected this Common Law jurisdiction of the High Court. *Mahomedali Allabux v. Ismailji Abdullati*.

27 Cr. L. J. 721 :

95 I. C. 49 : 28 Bom. L. R. 471 :

50 Bom. 616 : A. I. R. 1926 Bom. 332.

S. 491—Jurisdiction—Habeas corpus, writ of, in respect of person in Native State.

The High Court has no power to issue directions of the nature of a *habeas corpus* under S. 491 (1), Cr. P. C., where the person in respect of whom this power is invoked is in the custody of a Native State over which the High Court does not exercise jurisdiction and there is no person within British India who may be said to have vicarious custody of such person. Directions in the nature of *habeas corpus* cannot be issued to the Political Agent of a Native State to produce a person within that State where the person concerned is not in custody under the direction or control of the Political Agent. *Shiva Prosad v. Emperor*.

30 Cr. L. J. 1083 :

119 I. C. 527 : 1929 A. L. J. 520 :

I. R. 1929 All. 1055 : A. I. R. 1929 All. 347.

S. 491—Jurisdiction—Nature of.

The jurisdiction of Judges of High Court is conferred by the Letters Patent and the manner of its exercise is determined by the Judges who exercised it according to their own notions of what the law requires them to do. The assignment or allotment of work by the Chief Justice to the Judges determines only the cases in which jurisdiction is to be exercised by particular Judges. This cannot, however, deprive any Judge of his individual jurisdiction to entertain applications or issue of a writ of *habeas corpus* ; nor does it absolve him from his individual duty to determine them on the merits. A duty imposed by the law itself on a particular Judge cannot be transferred to another Judge. The jurisdiction and the duty as regards applications for a writ of *habeas corpus* are *sui generis* and do not fall within the framework of S. 108, Government of India Act, or any rule framed thereunder. *Crown Prosecutor, Madras v. K. C. Mammen Mappillai*.

40 Cr. L. J. 297 :

179 I. C. 917 : 1938 M. W. N. 1161 :

11 R. M. 634 : A. I. R. 1939 Mad. 115.

S. 491—Jurisdiction—Power of High Court to issue writ in cases under Extradition Act.

Cases arising under the Extradition Act, 1903, can be brought up to High Courts by means of applications for issue of writs of *habeas corpus* and decided on their merits. The High Court's jurisdiction to issue such writs has not been removed by any provision in the Extradition Act. *Crown Prosecutor, Madras v. K. C. Mammen Mappillai*.

40 Cr. L. J. 297 :

179 I. C. 917 : 1938 M. W. N. 1161 :

11 R. M. 634 : A. I. R. 1939 Mad. 115.

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———S. 494—*Withdrawal, effect of.*

Where the Public Prosecutor put in a petition under S. 494, for withdrawing a case against one of the accused persons and the application was granted: *Held*, such person became a competent witness and his evidence was admissible, even though no formal order of discharge was recorded. *Deputy Legal Remembrancer v. Banu Singh*. 5 Cr. L. J. 142 : 5 C. L. J. 224.

———S. 494—*Withdrawal—Effect on accused.*

The effect of S. 494 is that as soon as an accused is discharged under that section, he is taken away from the category of an accused person and becomes, under the general principles of law, a competent witness against his co-accused. *G. V. Raman v. Emperor*.

31 Cr. L. J. 315 :
121 I. C. 678 : 33 C. W. N. 468 :
56 Cal. 1023 : A. I. R. 1929 Cal. 319.

———S. 494—*Withdrawal—Fresh complaint—Competency of.*

Crown withdrawing case under S. 494—Injured person can bring fresh complaint.

Nasir v. Abdul Karim. 36 Cr. L. J. 473 :
154 I. C. 73 : 37 P. L. R. 150 :
7 R. L. 513 : A. I. R. 1934 Lah. 169.

———S. 494—*Withdrawal—Fresh complaint—Competency of.*

When a case is withdrawn under S. 494 and the accused is discharged on the ground that the evidence discloses no case against him, it is not competent for another Magistrate to proceed against the accused on the ground that there is a *prima facie* case against him, except in accordance with the provisions of S. 497. *Chandiram Verhomal v. Emperor*.

23 Cr. L. J. 737 :
69 I. C. 625 : 15 S. L. R. 131 :
A. I. R. 1922 Sind 23.

———S. 494—*Withdrawal—Grounds for.*

The fact that the prosecution case is a weak one, is not sufficient to justify the Prosecuting Inspector in applying for its withdrawal and the Magistrate in consenting thereto. *Satwarao Nagorao Hatkar v. Kambarao Bhagorao Hatkar*.

39 Cr. L. J. 458 :
174 I. C. 510 : 10 R. N. 403 :
1938 N. L. J. 12 : A. I. R. 1938 Nag. 334.

———S. 494—*Withdrawal—Grounds for.*

The fact that the prosecution would entail a great deal of expense in calling handwriting experts is also no reason for withdrawing it. *Satwarao Nagorao Hatkar v. Kambarao Bhagorao Hatkar*.

39 Cr. L. J. 458 :
174 I. C. 510 : 10 R. N. 403 :
1938 N. L. J. 12 : A. I. R. 1938 Nag. 334.

———S. 494—*Withdrawal—Grounds for.*

Where prosecution for forgery has been launched by an experienced Civil Judge after a full trial on the merits and the accused does not appeal against the order, it would be allowing an undesirable precedent if such a prosecution were to be, unless for very cogent reasons, cut short by the prosecuting

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authorities. *Satwarao Nagorao Hatkar v. Kambarao Bhagorao Hatkar*.

39 Cr. L. J. 458 :
174 I. C. 510 : 10 R. N. 403 :
1938 N. L. J. 12 : A. I. R. 1938 Nag. 334.

———S. 494—*Withdrawal—Interference by High Court—Grounds.*

Ordinarily the High Court will not interfere with the discretion given to the prosecution by S. 494, but it undoubtedly has power to do so in special circumstances where the withdrawal appears to be manifestly improper. There is nothing wrong in the Prosecuting Inspector consulting the superior officers before putting in his application for withdrawal. S. 494 itself does not prescribe that reasons in writing must be given, but it is obviously desirable that reasons should be given in order to enable the High Court to Judge whether the withdrawal has been rightly made. *Satwarao Nagorao Hatkar v. Kambarao Bhagorao Hatkar*.

39 Cr. L. J. 458 :
174 I. C. 510 : 10 R. N. 403 :
1938 N. L. J. 12 : A. I. R. 1938 Nag. 334.

———S. 494—*Withdrawal—Meaning of.*

Prosecuting Inspector stating that there was no case: *Held*, it did not amount to withdrawal. *Alopi Din v. Emperor*.

36 Cr. L. J. 1103 :
157 I. C. 205 : 8 R. A. 140 :
1935 A. L. J. 653 :
1935 A. W. R. 134 :
A. I. R. 1935 All. 366.

———S. 494—*Withdrawal—Object of.*

There is nothing in S. 494 which prevents a Public Prosecutor if he thinks it is in the interests of the administration of justice, from withdrawing the case as against one of the accused for the purpose of calling him as a witness against the others. *Harihar Sinha v. Emperor*. (F. B.)

37 Cr. L. J. 758 :
163 I. C. 9 : 40 C. W. N. 876 :
63 C. L. J. 307 : 8 R. C. 698 :
A. I. R. 1936 Cal. 356.

———S. 494—*Withdrawal—Objection to—Stage for.*

Accused who think they are being prejudiced by the non-prosecution of charges other than those for which they are actually tried, must raise the objection before pleading to the charges actually laid against them. Prejudice is a question of fact. *Abdul Hamid v. Emperor*.

27 Cr. L. J. 1100 :
97 I. C. 364 : 8 P. L. T. 12 : 6 Pat. 208 :
A. I. R. 1927 Pat. 13.

———S. 494—*Withdrawal—Omission to order discharge—Effect of.*

Where, however, the Court purporting to act under S. 494 sanctioned withdrawal of the prosecution, but omitted to record an order of discharge and the accused continued to be kept in custody *Held*, that his

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hold that the warrant is on the face of it invalid. *Israr Husain v. Emperor*.

41 Cr. L. J. 152 :
185 I. C. 302 : 1939 A. L. J. 895 :
I. L. R. 1940 All. 23 : 12 R. A. 314 :
1939 A. W. R. 737 : A. I. R. 1939 All. 730.

-----S. 491—Procedure—Single Judge, powers of—Order by Single Judge issuing writ of habeas corpus, whether within jurisdiction.

An order of a Single Judge directing a writ of habeas corpus to be issued is an order passed without jurisdiction and it must be disregarded and the application filed under S. 491, must be dealt with by the Bench dealing with criminal matters. *District Magistrate, Trivandrum v. K. C. Mammen Mappillai*. (F. P.)

40 Cr. L. J. 320 :
180 I. C. 216 : 1938 M. W. N. 1289 :
11 R. M. 663 : 1939 2 M. L. J. 135 :
I. L. R. 1939 Mad. 708 :
A. I. R. 1939 Mad. 120.

-----S. 491—Scope.

An executive order can be revised only if it comes within the purview of S. 491. *Bassisswar Raj Garia v. Emperor*.

28 Cr. L. J. 10 :
99 I. C. 42 : 30 C. W. N. 791 :
53 Cal. 962 : A. I. R. 1926 Cal. 961.

-----S. 491—Scope.

Disputes between the parties as regards the possession or ownership of the movable or immovable properties are outside the purview of S. 491. *Hazoor Ara Begum v. Deputy Commissioner of Gonda*.

35 Cr. L. J. 1052 :
149 I. C. 991 : 11 O. W. N. 799 :
6 R. O. 607 : A. I. R. 1934 Oudh 301.

-----S. 491—Scope—Guardianship disputes—Another remedy.

The proper method of having a bona fide dispute as to the guardianship of minor children between their parents settled, is by way of application under the Guardians and Wards Act and not by way of one application under S. 491 of the Cr. P. C. Where an application is made under the latter section and the Court is of opinion that the applicant has another remedy open to him under which the rights of the parties can be more satisfactorily settled, it has power to refuse to exercise its discretionary powers under the provision of S. 491. *Sica Lay Teong v. Yeo Boon Lay*.

27 Cr. L. J. 737 :
95 I. C. 65 : 4 Bur. L. J. 269 :
A. I. R. 1926 Rang. 76.

-----S. 491—Scope—Hindu mother with children under guardianship—Mother inclined to Christian faith—Likelihood of conversion—Removal from guardianship—Procedure—Application for writ of habeas corpus, whether proper remedy.

Where a Hindu mother having under her guardianship her minor children, is inclined towards a belief in the Christian religion and it is likely that she may be ultimately converted to that religion, she may be removed from guardianship and another guardian may be

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appointed. The proper procedure for praying that relief is, however, an application under the Guardians and Wards Act and not one for issue of a writ of habeas corpus under S. 491 for production of the children. *Nandam Peda Vecraswami v. Guttikonda Ratnamma*.

29 Cr. L. J. 1048 :
112 I. C. 472 : A. I. R. 1928 Mad. 1087.

-----S. 491—Scope—Interference with orders under S. 10, Sind Encumbered Estates Act.

The Judicial Commissioner's Court cannot interfere under S. 491 with the order of the manager of an estate when he orders arrest of a person in exercise of the jurisdiction conferred upon him under S. 10, Sind Encumbered Estates Act. *Sherkhan Dhani Baksh v. Emperor*.

40 Cr. L. J. 710 :
182 I. C. 963 : 12 R. S. 37 :
A. I. R. 1939 Sind 155.

-----S. 491—Scope.

It is not proper that questions regarding conversion and validity of marriage which involve the status of parties should be decided in an application for a writ of habeas corpus. *Jai Dayal Dhingra v. Sohagan*.

35 Cr. L. J. 1397 :
151 I. C. 692 : 35 P. L. R. 594 :
7 R. L. 181 : A. I. R. 1934 Lah. 647.

-----S. 491—Scope.

S. 491, which displaces the writ of habeas corpus, is not illegal in so far as it displaces the writ. *Pratulehandra Mitra v. Commandant, Hijli Detention Camp*.

35 Cr. L. J. 1466 :
151 I. C. 1028 : 38 C. W. N. 299 :
59 C. L. J. 185 : 61 Cal. 197 :
7 R. C. 201 : A. I. R. 1934 Cal. 259.

-----S. 491—Second application—Whether competent.

Dismissal of application under—Second application to the same effect and with the same object is expressly prohibited. *Hydari Begum v. Jawaid Ali Shah*.

35 Cr. L. J. 493 :
147 I. C. 820 : 1933 A. L. J. 1410 :
6 R. A. 573 : A. I. R. 1934 All. 22.

-----S. 491—Second application, whether lies.

A High Court should not, under S. 491, re-try for itself a question which has already been determined by the High Court in its Ordinary Original Criminal Jurisdiction or pass an order overriding an order already made by the High Court. *Rameswar Khiroriwala v. Emperor*.

30 Cr. L. J. 254 :
114 I. C. 132 : 32 C. W. N. 889 :
I. R. 1929 Cal. 196 : 56 Cal. 32 :
A. I. R. 1928 Cal. 367.

-----S. 491—Special Act—Arrest—Habeas corpus, writ of.

Where, a person is arrested under the orders of the Manager, Encumbered Estates, under the provisions of S. 10, Sind Encumbered Estates Act read with S. 157, Bombay Land Revenue Code, the High Court has no jurisdiction to issue a writ of habeas corpus

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it is before judgment under Cl. (2).
Giribala Dasi v. Mader Gazi.

34 Cr. L. J. 433 (2) :
142 I. C. 891 : 36 C. W. N. 928 :
56 C. L. J. 79 : 60 Cal. 233 :
I. R. 1933 Cal. 317 :
A. I. R. 1932 Cal. 699.

—S. 494—Withdrawal—Stage for.

S. 494 contemplates the case of withdrawal of a prosecution by the Public Prosecutor in cases tried by Jury before the return of the verdict, and in other cases, before the judgment is pronounced and it does not contemplate the case of withdrawal after the conviction and in the appellate stage of case.
Ananta Lal Sinha v. Jahiruddin Biswas.

28 Cr. L. J. 833 :
104 I. C. 449 : 46 C. L. J. 121 :
A. I. R. 1927 Cal. 816.

—S. 494—Withdrawal—When Court should allow.

A Magistrate may allow the Public Prosecutor to withdraw the prosecution against an accused person in order that his evidence might be available after his discharge against the other accused. *G. V. Ramau v. Emperor.*

31 Cr. L. J. 315 :
121 I. C. 678 : 56 Cal. 1023 :
33 C. W. N. 468 :
A. I. R. 1929 Cal. 319.

—S. 494.

Withdrawal of accused from prosecution—Such accused is a competent witness.
Sudam Chandra Bag v. Emperor.

34 Cr. L. J. 675 :
144 I. C. 74 : I. R. 1933 Cal. 494 :
A. I. R. 1933 Cal. 148.

—S. 494—Withdrawal of some charges—Consent of Court, want of—Irregularity.

Failure to obtain the consent of a Court under S. 494, to confine the prosecution to some of the charges alone, is a mere irregularity and does not vitiate a trial where no objection is taken to such trial in the trial Court. *Abdul Hamid v. Emperor.*

27 Cr. L. J. 1100 :
97 I. C. 364 : 8 P. L. T. 12 :
6 Pat. 208 : A. I. R. 1927 Pat. 13.

—S. 494—Withdrawal of prosecution—Discharged accused, value of, evidence of.

Where a prosecution is withdrawn before the charge is framed, the accused is discharged and when another prosecution is launched subsequently, the evidence of the co-accused in the first prosecution though admissible against the accused, in practice no weight should be given to it without corroboration. *Abdul Majid v. Emperor.*

36 Cr. L. J. 1248 :
157 I. C. 840 : 39 C. W. N. 1082 :
8 R. C. 132 : A. I. R. 1935 Cal. 473.

—S. 494—Withdrawal of prosecution—Duty of Magistrate.

A withdrawal under S. 494, either under Cl. (a) or under Cl. (b) is a simple withdrawal unconditioned and unconditional. The

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Court is concerned only with the question whether the ground for the proposed course is such as would justify it in giving its consent. If the Court finds that the object of withdrawing from the prosecution is to avail of the evidence of the particular accused, and the circumstances of the case are such that it would further the ends of justice to have his evidence and that S. 387 is inapplicable, the Court will not be wrong in giving its consent. What the Public Prosecutor will or will not do thereafter in a case in which the withdrawal has been under Cl. (a) with the effect of a discharge, is a matter which is no concern of the Court. *Harihar Sinha v. Emperor.* (F. B.)

37 Cr. L. J. 758 :
163 I. C. 9 : 40 C. W. N. 876 :
63 C. L. J. 307 : 8 R. C. 698 :
A. I. R. 1936 Cal. 356.

—S. 494—Withdrawal of prosecution—Opposition by complainant—Duty of Magistrate.

Where a case has been started upon a Police report, and the Court Sub-Inspector wants to withdraw the case, the Court acts without jurisdiction in rejecting the prayer for withdrawal, simply because the complainant wants to proceed with the case. In such a case, the complainant has no *locus standi* to control the proceedings. *Gopi Bari v. Emperor.*

21 Cr. L. J. 641 :
57 I. C. 657 : 1 P. L. T. 400 :
A. I. R. 1920 Pat. 362.

—S. 494—Defect in procedure—Effect of.

Where an accused person is in fact discharged from custody by virtue of a withdrawal of his prosecution and the Magistrate trying the case takes judicial notice of such withdrawal, the omission to use the formal words : "I discharge this accused" would be at most an irregularity curable by the provisions of S. 537. *Muhammad Nur v. Emperor.*

11 Cr. L. J. 21 :
5 I. C. 21.

—S. 494 (a)—Acquittal instead of discharge—Effect.

An order that purports to be one of acquittal has to be regarded as one of discharge, when under the provision of law that was applied, only a discharge order could be passed. *Tolladugu Musalayya v. Matchi Ranga Rao.*

34 Cr. L. J. 12 :
140 I. C. 322 : 36 L. W. 641 :
1932 M. W. N. 1230 : I. R. 1932 Mad. 850 :
A. I. R. 1933 Mad. 98.

—S. 494 (a)—Withdrawal—Accused, whether competent witness.

The applicants and one Majida were prosecuted for an offence under S. 401, Penal Code. In the course of the trial, but before any charge was framed, the Public Prosecutor withdrew from the prosecution of Majida, and tendered him as a witness against the other accused. As a matter of fact, no formal order of discharge was passed in respect of Majida under the provisions of S. 494 (a), Cr. P. C. : Held, that in view of the fact that there had

Cr. P. CODE (1898), S. 494**———S. 494—Acquittal.**

Withdrawal after charge amounts to acquittal.
Alopi Din v. Emperor. 36 Cr. L. J. 1103 :
 157 I. C. 205 : 1935 A. L. J. 653 :
 1935 A. W. R. 134 : 8 R. A. 140 :
 A. I. R. 1935 All. 366.

———S. 494—Approver—Discharge of.

It is not contrary to law to discharge the approver under S. 494 (a). *Harihar Sinha v. Emperor.* (F. B.) 37 Cr. L. J. 758 :
 163 I. C. 9 : 40 C. W. N. 876 :
 63 C. L. J. 307 : 8 R. C. 698 :
 A. I. R. 1936 Cal. 356.

———S. 494—Consent of Court.

A fortiori is the Magistrate bound to give his consent to a withdrawal; no tacit assent may be assumed. *Kanhaiya Lal v. Baijnath.* 34 Cr. L. J. 519 :
 143 I. C. 77 : 29 N. L. R. 201 :
 I. R. 1933 Nag. 149 :
 A. I. R. 1933 Nag. 78.

———S. 494—Discharge.

Withdrawal at beginning amounts to discharge. *Alopi Din v. Emperor.* 36 Cr. L. J. 1103 :
 157 I. C. 205 : 1935 A. L. J. 653 :
 1935 A. W. R. 134 : 8 R. A. 140 :
 A. I. R. 1935 All. 366.

———S. 494—Discharged accused—Evidence, value of.

The witness discharged under S. 494 can only be considered a competent witness in the sense that his evidence is not inadmissible in respect of the facts to which it relates. In practice, no weight should be given to it without corroboration. *Abdul Majid v. Emperor.* 36 Cr. L. J. 1248 :
 157 I. C. 840 : 39 C. W. N. 1082 :
 8 R. C. 132 : A. I. R. 1935 Cal. 473.

———S. 494—Discharged accused—Value of his evidence.

In any case, the evidence of an accomplice must be regarded as tainted, particularly of an accomplice who has been discharged under S. 494, Cr. P. C., and it must be corroborated in material particulars before it can be acted upon. *Chhaprolia v. Emperor.*

24 Cr. L. J. 696 :
 73 I. C. 808 :
 A. I. R. 1924 Lah. 235.

———S. 494—Discretion.

Court may allow Public Prosecutor to withdraw from prosecution in suitable case although it comes to conclusion that prosecution is true. *Sher Singh v. Jitendranath Sen.*

33 Cr. L. J. 3 :
 134 I. C. 1045 : 54 C. L. J. 253 :
 36 C. W. N. 16 : 59 Cal. 275 :
 I. R. 1932 Cal. 5 :
 A. I. R. 1931 Cal. 607.

———S. 494—Discretion.

Withdrawal of prosecution—Court has wide

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discretion—Test enunciated. *Sher Singh v. Jitendranath Sen.* 33 Cr. L. J. 3 :
 134 I. C. 1045 : 54 C. L. J. 253 :
 36 C. W. N. 16 : 59 Cal. 275 :
 I. R. 1932 Cal. 5 :
 A. I. R. 1931 Cal. 607.

———S. 494—Discretion—Duty of Magistrate.

If the prosecution, in order to avail of the evidence of an accused as against his co-accused, considers it necessary to withdraw from the prosecution as against him, S. 494 would warrant such a course on the ground of public policy. But the withdrawal is dependent on the consent of the Court; and, therefore, the Court in order to see whether it should consent or not will have to enquire into the reasons which prompt the withdrawal. And if the Court finds that S. 337, with its statutory safeguards is open to be availed of, it will be a sound exercise of its discretion to withhold consent. *Harihar Sinha v. Emperor.* (F. B.) 37 Cr. L. J. 758 :
 163 I. C. 9 : 40 C. W. N. 876 : 63 C. L. J. 307 :
 8 R. C. 698 : A. I. R. 1936 Cal. 356.

———S. 494—Discretion, nature of.

The discretion under S. 494, however, is a judicial discretion, and in cases, where it is open to the prosecution to obtain the approver's evidence by applying for the tender of a conditional pardon under S. 337 (1), the Magistrate must keep the provisions of that section before him when he exercises his discretion. As a general rule, the discretion will be wrongly exercised in such cases if the consent is given before the charge is framed. *Haribar Sinha v. Emperor.* (F. B.).

37 Cr. L. J. 758 :
 163 I. C. 9 : 40 C. W. N. 876 : 63 C. L. J. 307 :
 8 R. C. 698 : A. I. R. 1936 Cal. 356.

———S. 494—Discretion of Public Prosecutor—Consent of Court.

To the Public Prosecutor is entrusted discretion to withdraw from the prosecution with the consent of the Court, and his withdrawal puts an end to the case. The law gives him a real discretion in the matter. It may often be proper for him to consult the District Magistrate or other authorities before exercising that discretion, but in the eye of the law and of the Court, the discretion is his alone, subject to the consent of the Court. The Public Prosecutor holds a very honourable and responsible office. *Emperor v. Labbai Kutti.* 40 Cr. L. J. 437 :

180 I. C. 605 : 1938 M. W. N. 582 :
 11 R. M. 732 : A. I. R. 1939 Mad. 190.

———S. 494—Magistrate, powers of.

The language of S. 494 is very wide and gives a discretion to the Magistrate as to whether he would consent to the withdrawal of a prosecution by the Public Prosecutor, such discretion to be exercised not arbitrarily but must be based on correct legal principles. *G. V. Raman v. Emperor.* 31 Cr. L. J. 315 :
 121 I. C. 678 : 33 C. W. N. 468 : 56 Cal. 1023 :
 A. I. R. 1929 Cal. 319.

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that the case be withdrawn on certain terms and the District Magistrate orders the Court Inspector to withdraw the case, and the accused is acquitted by the Trying Magistrate on an application by the Court Inspector and without ever consulting the complainant, the order passed is not legal and should be set aside. *Ram Gobind Singh v. Lallu Singh*.

25 Cr. L. J. 970 :
81 I. C. 618 : 21 A. L. J. 855 :
46 All. 88 : A. I. R. 1924 All. 203.

—S. 495—Private Counsel—Power of, to withdraw—“Any such officer,” meaning of.

The words “any such officer” in S. 495 (2) refer only to the “Advocate-General, Standing Counsel, Government Solicitor, Public Prosecutor, or other officer generally or specially empowered by the Local Government in this behalf” in Sub-s. (1). It is only these officers who have the power to withdraw from the prosecution with the effect stated in S. 494. An Advocate privately engaged by the complainant and permitted by the Magistrate to appear for the prosecution, cannot withdraw from the prosecution. *Nga Maung Gyi v. Nga Lu Gale*.

10 Cr. L. J. 14 :
U. B. R. Cr. 1908.

—S. 495—Railways Act, 1890, S. 145 (2) Person authorised by Agent of Railway—Right to conduct prosecution.

S. 145 (2), Railways Act, only entitles a person authorised by the Agent of a Railway to conduct prosecution on behalf of the Railway Administration without the permission of the Magistrate, which would, except for this provision, be required under S. 495. *Bengal Nagpur Railway Co. v. Makbul*.

27 Cr. L. J. 313 (b) :
92 I. C. 697 : 1926 Pat. 74 :
7 P. L. T. 343 : A. I. R. 1925 Pat. 755.

—S. 495—Scope—Magistrate's power to refuse permission to Pleader.

There is nothing in S. 495 which shows that where a person is conducting a prosecution and is anxious and permitted to prosecute, the prosecution can be taken out of the hands of his Pleader and assigned to some other person who is not the Public Prosecutor. A Magistrate has no jurisdiction to refuse to allow any particular Pleader from appearing on behalf of the complainant. *Ghadially v. Emperor*.

25 Cr. L. J. 571 :
81 I. C. 59 : 18 S. L. R. 30 :
A. I. R. 1925 Sind 99.

—S. 495—Who can withdraw.

A Police Circle Inspector who is permitted to conduct a prosecution, can withdraw it as well with the permission of the trying Magistrate under S. 495. *Anantharama Vadhiar v. Muthia Tevan*.

15 Cr. L. J. 641 :
25 I. C. 841 : 1914 M. W. N. 776 :
A. I. R. 1915 Mad. 234.

—S. 495—Who can withdraw.

Criminal Courts have no jurisdiction to acquit accused persons on a motion for withdrawal of the case by a Police Inspector who is not

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specifically permitted to conduct the prosecution under S. 495. *Chockananda Gownden v. Salambura Gownden*,
10 Cr. L. J. 501 :
4 I. C. 132.

—S. 495—Who can conduct.

The fact that the complainant in a case is also the Prosecuting Inspector of the Court does not deprive him of his right to prosecute the case in his private capacity as a private citizen. *Maung Pu v. Emperor*.

17 Cr. L. J. 486 :
36 I. C. 166 : A. I. R. 1917 L. Bur. 153.

—S. 495—Who can withdraw.

Under S. 495, an officer of the Police not below a certain rank which the Local Government is to prescribe is entitled to conduct the prosecution and is, therefore, by the same section, entitled to make an application for withdrawal. Where the lowest rank prescribed by the Local Government is that of the Sub-Inspector and a Circle Inspector being above that rank, his appearance in the case under the instructions of the District Superintendent of Police to apply for withdrawal is sufficient to enable him to present the application for the withdrawal of the prosecution. *Dattatraya Govindrao Pakode v. Emperor*.

39 Cr. L. J. 65 :
172 I. C. 130 : 10 R. N. 167 :
A. I. R. 1938 Nag. 76.

—S. 495—Withdrawal—Record of reason, necessity of.

Reasons no doubt for giving permission to withdraw a criminal case are desirable, but to say that they are essential is, overstating the law. The Cr. P. C. makes no such requirement, and once the consent of the Court is given, it rests on the party applying to have this decision set aside to show that the consent was given in disregard of the judicial exercise of the discretion which the Magistrate has to give his consent to the withdrawal. *Dattatraya Govindrao Pakode v. Emperor*.

39 Cr. L. J. 65 :
172 I. C. 130 : 10 R. N. 167 :
A. I. R. 1938 Nag. 76.

—S. 495—Withdrawal of permission.

Complaint by woman for outraging her modesty—Advocate engaged by her—Permission granted—Court Jamadar applying to conduct prosecution—Reference to District Magistrate—Procedure, held not proper—Withdrawal of permission on receiving instructions held illegal. *Janai Achar v. Emperor*.

36 Cr. L. J. 1046 :
156 I. C. 789 : 8 R. S. 15 :
29 S. L. R. 114 : A. I. R. 1935 Sind 3.

—S. 496.

See also (i) Cr. P. C. 1898, Ss. 107, 117, 195, 496.

(ii) Extradition Act, 1903, S. 7.

—S. 496—Amount of security.

An order was made against the accused under S. 112 and he was then told that he would be admitted to bail only if he furnished his own recognisance for Rs. 10,000 and a surety for the same amount, these being the particular sums which were also

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action was not illegal or unreasonable. *Emperor v. Nga Po Gyi*.

3 Cr. L. J. 234 :
12 Bur. L. R. 21.

—S. 494—Scope.

S. 494, Cr. P. C. does not require the Public Prosecutor to state reasons for withdrawing a case. *Mul Singh v. Emperor*.

24 Cr. C. J. 433 :

72 I. C. 593 : A. I. R. 1923 Lah. 163.

—S. 494—Security proceedings—Withdrawal by Public Prosecutor, legality of—Proper mode of ending.

S. 494 has no application to proceedings under Chap. VIII of the Code because such proceedings are not prosecutions. The Public Prosecutor has no authority to apply for the withdrawal of proceedings taken under S. 107. However the Jurisdiction of the Magistrate under this section is a discretionary jurisdiction. Consequently if, after having made his preliminary order under S. 107, the Magistrate is convinced by evidence, or other materials of which he is permitted to take judicial notice, that the person is no longer likely to do anything which might lead to a breach of the peace, it is open to him to make an order under S. 119 discharging the person. This is the only way in which proceedings under S. 107 can be brought to an end. They cannot be brought to an end by the Crown withdrawing from the enquiry. *The King v. Ba Khin*.

41 Cr. L. J. 853 :

190 I. C. 196 : 1940 Rang. 226 :
13 R. Rang. 75 : A. I. R. 1940 Rang. 189.

—S. 494—Who can withdraw.

A person appointed as Public Prosecutor for the purposes of a case under S. 492 is competent to withdraw a case. *Emperor v. Dipchand*.

31 Cr. L. J. 684 :

124 I. C. 378 : A. I. R. 1930 Sind 156.

—S. 494—Who can withdraw.

The officer, who has the power of withdrawing from the prosecution of a case under S. 494, is the officer referred to in S. 495, Cl. (1): Where, in the course of an enquiry by a Magistrate an Inspector of Police appeared and said that he withdrew the case against the accused and the Magistrate thereon discharged the accused under S. 494: *Held*, that the order of discharge was illegal and liable to be set aside. *Lakshmana Chetty v. Keelan Perai Karuppan*.

11 Cr. L. J. 722 :
8 I. C. 867.

—S. 494—Withdrawal—Inquiry, necessity of.

Application for withdrawal—Formal enquiry under S. 494 before withdrawal is not necessary. *Gomibai v. Emperor*.

33 Cr. L. J. 449 :

137 I. C. 344 : 26 S. L. R. 67 :
I. R. 1932 Sind 74 : A. I. R. 1932 Sind 92.

—S. 494—Withdrawal, application for—Duty of Magistrate.

The fact that the District Magistrate has instructed the Public Prosecutor to apply for withdrawal, is no reason for a Magistrate giving his consent to such withdrawal. The Magistrate must not surrender his authority to the District Magistrate, but must act judicially and come to his own independent

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conclusion as to whether withdrawal ought to be permitted or not upon a consideration of all the relevant circumstances. *The King v. Ba Khin*.

41 Cr. L. J. 853 :

190 I. C. 196 : 1940 Rang. 226 :

13 R. Rang. 75 : A. I. R. 1940 Rang. 189.

—S. 494—Withdrawal—Consent of Court.

Prosecution can be withdrawn under S. 494 only with the consent of the Court, and in exercising his discretion, the Judge must act judicially. *Abdul Majid v. Emperor*.

36 Cr. L. J. 1248 :

157 I. C. 840 : 39 C. W. N. 1082 :

8 R. C. 132 : A. I. R. 1935 Cal. 473.

—S. 494—Withdrawal—Court's consent not properly given—Order quashed.

A document had been tampered with while it was in the custody of the Sub-Registrar. Thereupon the opposite party and the Sub-Registrar were prosecuted under Ss. 193, 467, 477, 109 and 120-A, Penal Code. After some evidence for the prosecution had been recorded, the Government called for the record which was not returned back for six months. After it was received back, the Government Pleader filed a petition for withdrawal of the case under S. 494 on certain grounds which were not substantial. The trying Magistrate although holding that there was sufficient and substantial evidence to show that the offence had been committed, passed an order of discharge which was asked for. The District Judge upheld the order: *Held*, that consent of the Magistrate was not properly given and the orders of withdrawal and discharge which followed upon it should be quashed. *Devendra Kumar Roy v. Yar Bakht Chaudhury*. (S. B.)

40 Cr. L. J. 349 :

180 I. C. 384 : 43 C. W. N. 301 :

11 R. C. 676 : I. L. R. 1939 1, Cal. 407 :

A. I. R. 1939 Cal. 220.

—S. 494—Withdrawal—Discretion of Court.

It is legally open to the Crown to withdraw from the prosecution of any particular accused, even if it be for the purpose of securing him as a witness in the case. Of course, it is for the Court, whose consent is necessary under S. 494 to exercise its discretion according to the circumstances of each case, and it is open to the Court to give or withhold its consent. *Govind Balwant Loghate v. Emperor*.

17 Cr. L. J. 256 :

34 I. C. 976 : 18 Bom. L. R. 266 :

A. I. R. 1916 Bom. 229.

—S. 494—Withdrawal—District Magistrate whether should consult Public Prosecutor—Magistrate to record reasons.

A District Magistrate is not bound to consult the Public Prosecutor in charge of a case before applying for withdrawal of the case; and the fact that no reasons are given, is no ground for setting aside an order permitting withdrawal. It is not obligatory but it is desirable that a Magistrate should record reasons for permitting withdrawal of a case. *Emperor v. Dipchand*.

31 Cr. L. J. 684 :

124 I. C. 378 : A. I. R. 1930 Sind 156.

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———S. 496—Powers of Police regarding bail—Bond from third party, legality of—Bond not taken from accused—Surety's liability.

Under S. 496, a Police Officer can either demand a bail from an accused or accept his own bond without sureties, but under no provision of law can he take a third party's bond for the appearance of the accused without taking an undertaking from the accused himself. In order to be enforceable, a bail bond must be in accordance with the forms prescribed in Cr. P. C. *Wadhawa Singh v. Emperor*.

29 Cr. L. J. 491 :

109 I. C. 219 : A. I. R. 1928 Lah. 318.

———S. 496—Proceedings under Ch. VIII—Applicability.

Magistrate is bound to comply with provisions of S. 496, which are imperative in proceedings under Ss. 107 and 110. *Raghnandan Prashad v. Emperor*.

1 Cr. L. J. 775 :

8 C. W. N. 779 : I. L. R. 32 Cal. 80.

———S. 496—Proceedings under Chap. VIII—Applicability.

The law does not empower a Magistrate to detain in custody, until the completion of the enquiry, the person proceeded against under S. 107 or S. 110. S. 496 of the Code is imperative, and a Magistrate is bound to comply with its provisions. *Raghnandan Prashad v. Emperor*.

1 Cr. L. J. 775 :

8 C. W. N. 779 : I. L. R. 1932 Cal. 80.

———S. 496—Refusal to grant bail—Grounds.

Grounds which would merely necessitate severe punishment in case of conviction are not grounds for a refusal to grant bail. *Achhaibar Misir v. Emperor*.

30 Cr. L. J. 718 :

117 I. C. 99 : 1929 A. L. J. 927 :

I. R. 1929 All. 675 :

A. I. R. 1929 All. 614.

———S. 496—Scope of—Person not charged with non-bailable offence—Right of bail.

S. 107, Cl. (4) is not subject to or controlled by, S. 496. S. 496 does not give absolute right to bail to any person who is not charged with non-bailable offence and should be read along with other provisions of the Code giving a special right of detention to a Court. *Narainsawmy Naicken v. Emperor*.

13 Cr. L. J. 447 :

15 I. C. 79 : 1912 M. W. N. 169 :

11 M. L. T. 253 : 22 M. L. J. 357.

———S. 496—Scope of—Person complained against, whether covered.

Where a Magistrate upon taking the statement of the complainant sends for the accused as a witness, and then, without examining him, binds him down to appear before the Police, where he sends the case for enquiry, his order regarding bail is not illegal. The provisions of S. 496 are very wide and cover not only the case

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of an accused but of the person complained against. *Waryam Singh v. Emperor*.

26 Cr. L. J. 167 :

83 I. C. 727 : A. I. R. 1923 Lah. 663.

———S. 496—Bouding under Chap. VIII—Applicability.

S. 496 applies to proceedings under S. 109 of the Code. S. 496 does not merely refer to an accused person but generally to "any person other than a person accused of a non-bailable offence who appears or is brought before a Court." *Emperor v. Karbalai Hussain*.

41 Cr. L. J. 155 :

185 I. C. 318 : 12 R. N. 149 :

1939 N. L. J. 537 :

I. L. R. 1940 Nag. 61 :

A. I. R. 1940 Nag. 75.

———S. 497.

———Amendments.

———Amount of security.

———Appellate Court.

———Applicability.

———Application for bail.

———Attempt to murder.

———Bail.

———Cancellation of bail.

———Criminal breach of trust by public servant, etc.

———Death or transportation.

———Discretion.

———English precedents, value of.

———Enquiry.

———Granting bail.

———Murder, charge of.

———Object.

———Refusal to grant bail.

———Refusing bail.

———Revision.

———Scope.

———Serious cases.

———S. 497.

Sec also (i) Cr. P. C., 1898, Ss. 17, 366, 426, 491.

(ii) Extradition Act, 1903, S. 10 (4).

———S. 497—Amendments—Effect of—Powers of Magistrates in bail matters.

The new S. 497 draws a distinction between non-bailable offences which are punishable with death or transportation for life and other non-bailable offences. In the former case, the Magistrate's powers for granting bail are restricted, but it is not so in the latter class of cases. The proviso to the section also gives the Court power to direct that any person under the age of sixteen years or any woman or any sick or infirm person accused of such an offence be released on bail. *King-Emperor v. Abhairaj Kunwar*.

40 Cr. L. J. 841 :

183 I. C. 713 : 1939 O. W. N. 791 :

1939 O. L. R. 548 : 12 R. O. 54 :

A. I. R. 1940 Oudh 8.

———S. 497—Amendments—Effect of.

S. 497 as amended in 1923, tends to limit rather than enlarge the powers of Magistrates

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position was in no way changed from that of an accused. *Banu Singh v. Emperor*.

4 Cr. L. J. 145 :

10 C. W. N. 962 :

1. L. R. 33 Cal. 1353.

—S. 494—Withdrawal—Public Prosecutor, right of.

The accused, a First Grade Subordinate Judge, was charged with receiving illegal gratification from one N in respect of (1) a horse, and (2) two *hundis* for Rs. 55 and Rs. 50, respectively. N was impleaded as a co-accused. By direction of the Court, the two charges were split and were ordered to be tried separately. A Pleader was appointed to conduct the prosecution of the accused before N was joined as co-accused. The horse case having been taken up for trial, the Public Prosecutor withdrew from the prosecution of N. N received an assurance from the District Magistrate that if he gave truthful evidence, the *hundi* case against him would also be dropped. The Magistrate discharged N under S. 494, Cr. P. C. Objections were taken to the competency of N to give evidence under S. 343, Cr. P. C., and to the power of the Court to administer to him oath under S. 342 (4). It was also urged that the Public Prosecutor had no power to withdraw from the prosecution of N: *Held*, (1) that the appointment of the Public Prosecutor was for the case and not with reference to any particular accused, and that the Public Prosecutor had every right to conduct the prosecution as against persons subsequently impleaded or to withdraw from the prosecution as against any of the accused. *Govind Balwant Laghate v. Emperor*.

17 Cr. L. J. 256 :

34 I. C. 976 : 18 Bom. L. R. 266 :

A. I. R. 1916 Bom. 229.

—S. 494—Withdrawal—Record of reasons.

An order passed under S. 494 must be passed like any other considered order and the Magistrate is bound to give his reasons. *Kanhaiya Lal v. Baijnath*.

34 Cr. L. J. 519 :

143 I. C. 77 : 29 N. L. R. 201 :

I. R. 1933 Nag. 149 :

A. I. R. 1933 Nag. 78.

—S. 494—Withdrawal—Record of reasons.

In granting permission to withdraw complaint, the Court is not bound to record reasons. *Lakshmi Narain v. Mohammad Hanif*.

33 Cr. L. J. 337 :

136 I. C. 714 : 33 P. L. R. 394 :

I. R. 1932 Lah. 250 :

A. I. R. 1932 Lah. 368.

—S. 494—Withdrawal—Record of reasons.

Reasons for withdrawal—Court and Prosecutor thinking prosecution case is not sufficient—Some sufficient reasons enunciated. *Giribala Dasi v. Mader Gazi*.

34 Cr. L. J. 433 (2) :

142 I. C. 891 : 36 C. W. N. 928 :

56 C. L. J. 79 : 60 Cal. 233 :

I. R. 1933 Cal. 317 :

A. I. R. 1932 Cal. 699.

Cr. P. CODE (1898), S. 494**—S. 494—Withdrawal—Record of reasons—Necessity of.**

An order by which a Court, acting under S. 494, accords consent to the withdrawal from a prosecution, is a judicial order and the reason for every such order, should be recorded. *Rajani Kanta Shaha v. Idris Thakur*.

22 Cr. L. J. 760 :

64 I. C. 280 : 25 C. W. N. 615 :

34 C. L. J. 51 : A. I. R. 1921 Cal. 259.

—S. 494—Withdrawal—Record of reasons—Necessity of.

In withholding or according consent to the withdrawal of a prosecution under S. 494, the Court acts in a judicial capacity and for its order, as for every order judicially made, it ought to give and record its reasons. *Umesh Chandra Roy v. Satis Chandra Roy*.

18 Cr. L. J. 886 :

41 I. C. 998 : 26 C. L. J. 208 :

22 C. W. N. 691 :

A. I. R. 1918 Cal. 485.

—S. 494—Withdrawal—Record of reasons—Necessity of.

When a Court acting under S. 494 gives its consent to a withdrawal from the prosecution, it should record its reasons in order that the High Court may be in a position to say whether the discretion vested in the Court has been properly exercised. *Abdul Gani v. Abdul Kadar*.

25 Cr. L. J. 1106 :

81 I. C. 930 : 2 Bur. L. J. 287 :

1 Rang. 756 : A. I. R. 1924 Rang. 168.

—S. 494—Withdrawal—Reasons, recording of.

S. 494, Cr. P. C., does not expressly require the Court to give any reasons for consenting to a withdrawal nor is there any provision which compels the Court to write a reasoned judgment establishing the propriety of the order. *Gulli Bhagat v. Narain Singh*.

25 Cr. L. J. 446 :

77 I. C. 734 : 2 Pat. 708 :

5 P. L. T. 404 : A. I. R. 1924 Pat. 283.

—S. 494—Withdrawal—Requirements of order.

An order on an application for withdrawal made by the Public Prosecutor under S. 494 is passed by the Court in its judicial capacity, and the Court must give and record its reason so that the High Court may be in a position to say whether the discretion vested in the Court has been properly exercised. *G. V. Raman v. Emperor*.

31 Cr. L. J. 315 :

121 I. C. 678 : 56 Cal. 1023 :

33 C. W. N. 468 :

A. I. R. 1929 Cal. 319.

—S. 494—Withdrawal—Stage for.

Cls. (1) and (2) cover all possible cases and limit time before which withdrawal can take place—Case triable by Jury—Jury not empanelled—Withdrawal can be made as

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intention of the Legislature is that an accused should be brought before a Magistrate competent to try him with as little delay as possible and that occasions for remand to Jail custody shall be as few as possible as is shown by S. 344 of the Cr. P. C. *Tularam v. Emperor*. 27 Cr. L. J. 1063 (b): 97 I. C. 39 : A. I. R. 1927 Nag. 53.

—S. 497—Bail—Policy of law—Granting bail—Considerations for.

Under the Cr. P. C., as amended in 1923, it is no longer the case that bail ought to be refused merely because an offence is non-bailable. The rule is now restricted to offences punishable with death or transportation for life. In other cases bail may be granted unless there are reasons why the accused should not be admitted to bail. *Abhram Bali v. Emperor*. 26 Cr. L. J. 1286 : 89 I. C. 150 : 12 O. L. J. 394 : 28 O. C. 220 : A. I. R. 1925 Oudh 489.

—S. 497—Bail—Refusal—Considerations.

Bail should not be refused on the ground that the accused has been sentenced to a long term of imprisonment or that the granting of bail has a tendency to increase the number of appeals and of protracting the appellate proceedings. *Gul v. Emperor*. 29 Cr. L. J. 470 : 109 I. C. 118 : 22 S. L. R. 435 : A. I. R. 1928 Sind 142.

—S. 497—Cancellation of bail—Bail granted by Sub-Divisional Magistrate—Cancellation by District Magistrate, legality of.

A District Magistrate ordered the re-arrest of the applicants who were accused of an offence under S. 304, Penal Code, and had been released on bail by the Sub-Divisional Magistrate: *Held*, that such an order was illegal and must be set aside. The District Magistrate's order having been set aside, the applicants, by virtue of the Sub-Divisional Magistrate's previous order, must be released on bail as before, and there will be no reason for them to apply under S. 497 or S. 498, that they be so released. *Maung Ba Chit v. Emperor*. 12 Cr. L. J. 244 : 10 I. C. 774 : 4 Bur. L. T. 70.

—S. 497—Cancellation of bail—Grounds.

Where, the Magistrate to whom the case is transferred is satisfied that the accused person has been tampering with a prosecution witness, the Magistrate in order to prevent a repetition of the offence is entitled to direct that the accused be re-arrested notwithstanding the order for his release on bail by the first Magistrate. *Emperor v. Rantmal Kawmal Marwadi*. 41 Cr. L. J. 251 : 186 I. C. 101 : 41 Bom. L. R. 1232 : I. L. R. 1940 Bom. 38 : 12 R. B. 312 : A. I. R. 1940 Bom. 40.

—S. 497—Cancellation of bail—Grounds.

Under Sub-s. (5) of S. 497, a Court has ample jurisdiction in the exercise of its discretion to order the re-arrest of any person out on bail, if it feels that the circumstances warrant

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or demand such a course. *Sanyasayya Naidu v. Public Prosecutor*. 26 Cr. L. J. 1593 : 90 I. C. 665 : 22 L. W. 156 : A. I. R. 1925 Mad. 1224.

—S. 497—Cancellation of bail—Legality of.

It is open to the Sessions Judge to cancel the bail of an accused against whom proceedings are going on in the Committing Magistrate's Court on the grounds referred to in the section. *Jahana v. Emperor*. 36 Cr. L. J. 227 : 152 I. C. 1080 : 35 P. L. R. 558 : 7 R. L. 360 : A. I. R. 1934 Lah. 609.

—S. 497—Criminal breach of trust by public servant, etc.—Magistrate's power to take bail—Validity of.

Under S. 497, a Magistrate has no power to grant bail in cases falling under S. 409, Penal Code. *Maung Ba Maung v. Emperor*. 32 Cr. L. J. 148 : 128 I. C. 577 : I. R. 1931 Rang. 33 : A. I. R. 1930 Rang. 335.

—S. 497—Death or transportation—Meaning of.

The phrase "an offence punishable with death or transportation for life" in S. 497 refers only to an offence in which the sentence of transportation for life is prescribed as an alternative sentence to capital punishment. The phrase must not be taken as extending to offences punishable with transportation for life alone. *Mohammad Eusoof v. Emperor*. 27 Cr. L. J. 401 : 93 I. C. 65 : 3 Rang. 538 : A. I. R. 1926 Rang. 51.

—S. 497—Death or transportation—Meaning of.

The phrase "death or transportation for life" in S. 497 does not extend to offences punishable with transportation for life only but refers only to those offences for which death and transportation for life are alternative sentences. *Tularam v. Emperor*. 27 Cr. L. J. 1063 (b) : 97 I. C. 39 (2) : A. I. R. 1927 Nag. 53.

—S. 497—Death or transportation—Meaning of.

The phrase "death or transportation for life" in S. 497 must be read disjunctively as if it ran "punishable with death or punishable with transportation for life." *Emperor v. Nga San Htwa*. 28 Cr. L. J. 773 : 104 I. C. 101 : 5 Rang. 276 : A. I. R. 1927 Rang. 205.

—S. 497—Discretion—Considerations.

The discretion vested in the Court to grant bail should be judicially exercised in accordance with principles laid down by Statute on the facts of each particular case. The main question which the Court has to consider in determining matters of bail is whether there are reasonable grounds for believing the accused guilty of the offences charged. *Gul v. Emperor*. 29 Cr. L. J. 470 : 109 I. C. 118 : 22 S. L. R. 435 : A. I. R. 1928 Sind 142.

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been a valid and effective withdrawal of the prosecution as against Majida, his evidence as a witness was admissible against the other accused. *Muhammad Nur v. Emperor*.

11 Cr. L. J. 21 :
5 I. C. 21.

————S. 494 (a)—*Withdrawal—Record of reasons.*

In according or withholding consent to an application for withdrawal of a case by the Public Prosecutor under S. 494 (a), the Court acts in a judicial capacity and for its order, as for every order judicially made, the Court must give and record its reasons, so that the High Court may be in a position to say whether the discretion vested in the Court has been properly exercised. *Suganchand v. Chunilal*.

24 Cr. L. J. 361 :
72 I. C. 361 : 6 N. L. J. 177 :
A. I. R. 1923 Nag. 260.

————S. 494 (a)—*Withdrawal—Record of reasons.*

In according or withholding sanction to an application for withdrawal made by the Public Prosecutor under the provisions of S. 494 (a), the Court acts in a judicial capacity, and for such order so judicially made, the Court must give and record its reasons so that the High Court may be in a position to say whether the discretion vested in the Court has been properly exercised. *Jagat Chandra Roy v. Kalimuddi Sardar*.

24 Cr. L. J. 229 :
71 I. C. 693 : 26 C. W. N. 880.

————S. 494 (a)—*Withdrawal—Re-trial in same proceedings—Competency of.*

Where the case against the accused is withdrawn under S. 494 (a), he is discharged from these proceedings and cannot be put back into them. He may again be tried in other proceedings on the same charge but not in these proceedings. *Harihar Sinha v. Emperor*. (F. B.)

37 Cr. L. J. 758 :
163 I. C. 9 : 40 C. W. N. 876 :
63 C. L. J. 307 : 8 R. C. 698 :
A. I. R. 1936 Cal. 356.

————S. 494 (b)—*Acquittal.*

Where a certain number of persons have been, as a matter of fact, charged with robbery before a Magistrate, who consents to the withdrawal of the charge, the only course left to him is to make an order of acquittal under S. 494 (b). *Sheobaran Das v. Shibli*.

2 Cr. L. J. 21 :
2 A. L. J. 30.

————S. 494 (b)—*Withdrawal—Acquittal.*

Certain persons were charged by a District Magistrate with the offence of robbery. On behalf of a complainant in the case, an application was presented to the High Court praying that inasmuch as the charge of robbery was against more persons than five, and was really or ought to have been, a charge of dacoity, the Magistrate might be directed to commit the accused persons to the Court of Session. Before the final hearing of this application, the Magistrate permitted the prosecution to withdraw the charge of robbery: *Held*,

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that whether or not the accused ought to have been charged with dacoity, they were in fact charged with robbery, and this being so, the only order which the Magistrate could pass, if he permitted that charge to be withdrawn, was an order of acquittal under S. 494 (b). *Sheobaran Das v. Shibli*.

1 Cr. L. J. 1051 :
24 A. W. N. 277.

————S. 495.

See also Cr. P. C., 1898, Ss. 112, 422.

————S. 495—‘Any person,’ meaning of.

It is doubtful whether the words “any person” in S. 495, Cr. P. C., would include an absolute stranger who had no connection in the remotest degree with the prosecution and whose desire to help the prosecution was based on a personal grudge only. *Darshan Das v. Atma Ram*.

14 Cr. L. J. 389 :
20 I. C. 213 : 11 A. L. J. 313.

————S. 495—*Application of—Security proceedings.*

Neither S. 495 nor S. 403 applies to security proceedings. *In re : Muthia Moopan*.

14 Cr. L. J. 559 :
21 I. C. 159 : 36 Mad. 315.

————S. 495—*Assistant Police Prosecutor—Power to conduct cases.*

Whether Assistant Police Prosecutor should be clothed with wider powers as officer generally or specially empowered to conduct it, is for Government to decide. *Kabul v. Emperor*.

35 Cr. L. J. 320 :
147 I. C. 131 : 27 S. L. R. 331 :
6 R. S. 132 : A. I. R. 1933 Sind 345.

————S. 495—*Discretion to permit conducting of prosecution, exercise of.*

Under S. 495, the Trying Magistrate has to decide for himself whether he should grant or withhold permission to the complainant to conduct the prosecution and should not be guided by the District Magistrate’s opinion on a reference. *Maving Pu v. Emperor*.

17 Cr. L. J. 486 :
36 I. C. 166 : A. I. R. 1917 L. Bur. 153.

————S. 495—*Officer of Police, meaning of—Excise Officers.*

Excise Officers are not in pleading included in the expression “Officers of Police” in S. 405 (4), Cr. P. C. *Emperor v. Gopal Shinde Patel*.

34 Cr. L. J. 905 :
145 I. C. 138 : 35 Bom. L. R. 376 :
57 Bom. 441 : 6 R. B. 44 :
A. I. R. 1933 Bom. 234.

————S. 495—*Private complaint—Withdrawal without his consent, legality of.*

When a private complaint is filed before a Magistrate who gives permission to the complainant to conduct the prosecution and be responsible for its conclusion, the Court Inspector having nothing to do with the case, if, after the prosecution evidence is closed and charge is framed, the accused makes an application to the District Magistrate requesting

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charge against him should be tried without any unreasonable delay, and such delay will dispose the High Court to grant bail. Where a police officer of superior rank swears that he has evidence which implicates the accused, it is sufficient to raise a suspicion that the accused may have committed an offence. *Rojah Narendra Lal Khan v. Emperor*.

9 Cr. L. J. 375 :

1 I. C. 738 : 13 C. W. N. 43 :

36 Cal. 166.

————S. 497 — Granting bail—Considerations for.

If after a remand, evidence of an incriminating character is not adduced and if the prosecution had already sufficient time to adduce such evidence, the Court would reasonably come to the conclusion that such evidence was not forthcoming at the time. It should then, under Sub-s. (2) of S. 497, release the accused on bail, whatever be the nature of the offence, though the preliminary enquiry should proceed. *Jamini Mullick v. Emperor*.

9 Cr. L. J. 409 :

1 I. C. 910 : 36 Cal. 174 :

13 C. W. N. 51.

————S. 497 — Granting bail—Considerations for.

In a case of murder, the fact that the accused is a *goshain* and has no member in his family who can look after his case, is no reason to admit him to bail. *Sri Chand v. Emperor*.

36 Cr. L. J. 184 (1) :

152 I. C. 802 (b) : 7 R. A. 398 (1) :

3 A. W. R. 668 : A. I. R. 1934 All. 815.

————S. 497 — Granting bail—Considerations for.

In cases involving the taking of accounts, it is desirable that the accused should be given full opportunity of instructing his Counsel as regards accounts, etc. *Ram Narain v. Emperor*.

32 Cr. L. J. 1175 (2) :

134 I. C. 490 : 32 P. L. R. 383 :

I. R. 1931 Lah. 938 : A. I. R. 1932 Lah. 16.

————S. 497 — Granting bail—Considerations for.

In considering an application for bail from a person accused of a non-bailable offence, the Court must be satisfied by an examination of the investigation, inquiry or trial; whether or not there are reasonable grounds for believing that the accused has committed such offence. In the latter case, the accused should be admitted to bail, but not in the former. *Jawad Husain v. Emperor*.

21 Cr. L. J. 161 :

54 I. C. 769 (a) : A. I. R. 1919 All. 82 (a).

————S. 497 — Granting bail—Considerations for.

Magistrates are bound to consider whether a prisoner, if released, will suborn evidence and they may well refuse to enlarge on bail a prisoner who is of such a character that his presence at large will intimidate witnesses. *Emperor v. Mohammed Panah*.

36 Cr. L. J. 711 :

155 I. C. 113 : 28 S. L. R. 47 :

7 R. S. 186 : A. I. R. 1934 Sind 131.

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————S. 497 — Granting bail—Considerations for.

Offence under S. 409, Penal Code—Court need not be as strict as in an offence like murder. *Emperor v. Keshav Vesudo Kirtikar*.

35 Cr. L. J. 539 :

147 I. C. 1010 : 35 Bom. L. R. 1072 :

6 R. B. 233 : A. I. R. 1933 Bom. 492.

————S. 497 — Granting bail—Considerations for.

On a complaint under S. 409, Penal Code, the Magistrate should hold a preliminary enquiry before issuing a warrant of arrest. He should not issue it merely on a sworn statement of the complainant, without asking him how he proposed to prove his allegations: *Held*, that where the Magistrate issues warrant of arrest without any preliminary inquiry, the accused should be granted bail. *Htye Yar v. The King*.

39 Cr. L. J. 91 :

172 I. C. 176 : 10 R. Rang. 229 :

A. I. R. 1937 Rang. 474.

————S. 497 — Granting bail—Considerations for.

Questions to be taken into consideration before granting bail, stated. *Allahrakhio Umced Ali v. Emperor*.

35 Cr. L. J. 144 :

146 I. C. 561 : 6 R. S. 68 (2) :

A. I. R. 1933 Sind 367.

————S. 497—Granting bail—Consideration for.

S. 497 says nothing about taking into consideration the likelihood or unlikelihood of an accused person absconding or any other matter, except whether or not there are reasonable grounds for believing that the accused is guilty of the offence charged against him. Magistrates are bound to follow the provisions of S. 497 in dealing with the question of admitting a person to bail who is accused of a non-bailable offence. *Henderson v. Emperor*.

14 Cr. L. J. 171 :

19 I. C. 171 : 6 L. B. R. 172 :

6 Bur. L. T. 73.

————S. 497—Granting bail—Consideration for.

The accused, who was a Deputy *Tahsildar*, was charged before the Head Assistant Magistrate of Chittoor with the offence of criminal misappropriation. He was at first on bail but after the examination-in-chief of a few witnesses for the prosecution, the Magistrate cancelled the bail and remanded the accused to jail. When the accused again applied for bail, the Magistrate refused it without recording any reasons. The accused now applied to the High Court for bail. The offence was said to have been committed more than a year and a half before the date of the complaint: *Held*, that under the circumstances, as the Magistrate had given no reason for cancelling the original bail, the accused should be released on sufficient bail being furnished. *Chengarlaya Pillai v. Emperor*.

12 Cr. L. J. 503 :

12 I. C. 223 : 1911 2 M. W. N. 138.

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stated in the order under S. 112. The result was that owing to his inability to furnish such heavy security, the accused remained in custody during the greater part of the enquiry. Finally an order was made against him under S. 118: *Held*, that the order requiring security for bail in such large sums being oppressive, the order under S. 118 must be set aside. *Mir Hashamali Mir Kasamali v. Emperor*.

19 Cr. L. J. 329 :
44 I. C. 345 : 20 Bom. L. R. 121 :
A. I. R. 1918 Bom. 254.

—S. 496—Application of.

The proviso to S. 496, that bail can be granted only to a person other than a person accused of a non-bailable offence is not applicable to the Court of Session acting under S. 498 of the Code. *Achhaibar Misir v. Emperor*.

30 Cr. L. J. 718 :
117 I. C. 99 : I. R. 1929 All. 675 :
1929 A. L. J. 927 : A. I. R. 1929 All. 614.

—S. 496—Bail bond, form of.

In the absence of any special form prescribed by law with reference to the preventive sections of the Cr. P. C., there is nothing to prevent the use of the printed form prescribed for appearance under Ss. 496—499, specially when the bond makes it clear what the nature of the proceedings was, and in which Court accused was to appear. *Emperor v. Karabalai Hussain*.

41 Cr. L. J. 155 :
185 I. C. 318 : 1939 N. L. J. 537 :
I. L. R. 1940 Nag. 61 : 12 R. N. 149 :
A. I. R. 1940 Nag. 75.

—S. 496—Bail—Grounds for granting.

Two brothers accused in a case—One of them having to arrange for funds and defence, is not sufficient ground for granting bail. *Emperor v. Sardar Jahan*.

35 Cr. L. J. 614 :
148 I. C. 133 : 6 R. A. 647 :
A. I. R. 1933 All. 895.

—S. 496—Bail, grant of—Appearance before Court, necessity of.

A Judge has jurisdiction to grant bail where the applicant is in the lock-up under arrest. It is not necessary in order to invest the Judge with jurisdiction, that the accused person must be put up before the Court. *Achhaibar Misir v. Emperor*.

30 Cr. L. J. 718 :
117 I. C. 99 : I. R. 1929 All. 675 :
1929 A. L. J. 927 : A. I. R. 1929 All. 614.

—S. 496—Cancellation of bail.

Accused let on bail in bailable offence, by City Magistrate—District Magistrate cancelling bail on Police Report is improper. Even trial Court should not cancel bail but only enhance amount of bail. *Bashir-ud-Din v. Emperor*.

33 Cr. L. J. 752 :
139 I. C. 330 : I. R. 1932 All. 554 :
A. I. R. 1932 All. 327.

—S. 496—Cancellation of bail—Subsequent grant.

Bail granted by Sessions Judge cancelled by

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High Court—Sessions Judge cannot grant bail subsequently. *Emperor v. Sardar Jahan*.

35 Cr. L. J. 617 :
148 I. C. 133 : 6 R. A. 646 :
A. I. R. 1933 All. 895.

—S. 496—Cancellation of bail on offence developing into non-bailable one.

In an application for release of a person on bail, it was found that he was accused of a bailable offence and released on bail granted under S. 496, but through some development in the condition of the party injured, the offence became a non-bailable one punishable with transportation for life: *Held*, that in view of the changed circumstances, the Magistrate had power to cancel the bail granted which no longer fitted in with the facts and to carry out the provisions of S. 497 (1). *Osman Piroo v. Emperor*.

38 Cr. L. J. 93 :
165 I. C. 923 : 30 S. L. R. 131 :
9 R. S. 110 : A. I. R. 1936 Sind 187.

—S. 496—Granting bail—Considerations for.

In dealing with an application for bail, it is relevant that the Court should consider what are the penal consequences of the act when proved, and what is the nature of the offence charged, and whether the offence charged is or is not a bailable offence. *Khadim Ali v. Emperor*.

22 Cr. L. J. 654 :
66 I. C. 414 : 19 A. L. J. 693 :
A. I. R. 1921 All 94.

—S. 496—Object.

When a man is arrested who is not accused of a non-bailable offence, no needless impediments should be placed in the way of his being admitted to bail. The intention of the law is that in such cases the man is ordinarily to be at liberty and it is only if he is unable to furnish such moderate security, if any is required of him, as is suitable for the purpose of securing his appearance before a Court pending enquiry, that he should remain in detention. *Mir Hashamali Mir Kasamali v. Emperor*.

19 Cr. L. J. 329 :
44 I. C. 345 : 20 Bom. L. R. 121 :
A. I. R. 1918 Bom. 254.

—S. 496—Person giving bail—Liability of.

S. 496 does not state that a person released on bail must give a bond himself nor is there anything requiring such a bond on first principles. The person giving bail, enters into a contract with a penalty clause to produce the accused person before a Magistrate when called upon. The person giving bail is the principal. The person for whom bail is given is the subject of the contract. If the person giving bail fails to perform his contract, then the penalty clause may be put into operation against him, although as in other contracts with a penalty clause, it is not necessary to exact the penalty in full. *Indar v. Emperor*.

41 Cr. L. J. 958 :
190 I. C. 688 : 42 P. L. R. 411 :
13 R. L. 225 : A. I. R. 1940 Lah. 339.

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cretion has been improperly exercised. *Allahrakhio Umced Ali v. Emperor*.

35 Cr. L. J. 144 :
146 I. C. 561 : 6 R. S. 68 (2) :
A. I. R. 1933 Sind 367.

————S. 497—Scope.

Grant of bail is rule and refusal an exception. *Hutchinson v. Emperor*.

32 Cr. L. J. 1271 :
134 I. C. 842 : 1931 A. L. J. 515 :
53 All. 931 : I. R. 1931 All. 858 :
A. I. R. 1931 All. 356.

————S. 497—Scope.

S. 497 is limited to the jurisdiction of the Courts of Trial in the matter of granting or refusing bail. *Bishambar Nath v. Emperor*.

25 Cr. L. J. 1132 :
81 I. C. 956 : 11 O. L. J. 527 :
1 O. W. N. 281 : A. I. R. 1924 Oudh 435.

————S. 497—Scope—Practice.

The rule laid down in S. 497 for the guidance of Courts other than the High Court is a rule founded upon justice and equity and one which should be followed by the High Court as well as by every other Court subordinate to it, unless anything appears to the contrary. *Ashraf Ali v. Emperor*.

16 Cr. L. J. 215 :
27 I. C. 839 : 42 Cal. 25 :
A. I. R. 1915 Cal. 784.

————S. 497—Serious Cases—Granting bail—Discretion.

Bail should not generally be granted in cases of crimes punishable to long terms of imprisonment and never in case of murder. *Hikayat Singh v. Emperor*.

33 Cr. L. J. 574 :
138 I. C. 27 : 11 Pat. 280 :
13 P. L. T. 530 : I. R. 1932 Pat. 162 :
A. I. R. 1932 Pat. 209.

————Ss. 497, 439—Cancellation of bail—Powers of High Court.

Ss. 497 (3) and 439, Cr. P. C., empower the High Court to set aside an order of a Magistrate allowing bail in a non-bailable offence, after notice to the opposite party. *Emperor v. Bashiran*.

26 Cr. L. J. 4 :
83 I. C. 483 : A. I. R. 1923 All. 479 (1).

————Ss. 497, 498—Bail—Policy of law.

The policy of the law is to allow bail in case of under-trial prisoners rather than to refuse it. It is no ground for refusing bail that to grant it would prejudice the case. *Emperor v. Ghulam Muhammad*.

27 Cr. L. J. 302 :
92 I. C. 590 : 7 L. L. J. 331 :
A. I. R. 1925 Lah. 510.

————Ss. 497, 498—English precedents, value of.

The decisions of English Courts are not necessarily a safe guide in interpreting sections of the Indian Code relating to the grant of bail. *Rajah Narendra Lal Khan v. Emperor*.

9 Cr. L. J. 375 :
1 I. C. 738 : 13 C. W. N. 43 :
36 Cal. 166.

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————Ss. 497, 498—Jurisdiction of High Court.

The High Court has no power to release on bail under S. 498 or S. 497, persons who have been arrested by the Police, where there is no order by any Court in the matter. *Srilal Agarwala v. Emperor*. 27 Cr. L. J. 1185 : 97 I. C. 945 : 44 C. L. J. 134.

————S. 497 (1)—Applicability — Sedition cases.

S. 497 (1) does not apply to application for bail by persons accused under S. 121-A, I. P. C.—Section applicable is S. 497 (2). *Hutchinson v. Emperor*. 32 Cr. L. J. 1271 : 134 I. C. 842 : 1931 A. L. J. 515 : 53 All. 931 : I. R. 1931 All. 858 : A. I. R. 1931 All. 356.

————S. 497 (1)—Death or transportation—Meaning of.

The words 'offence punishable with death or transportation for life' in S. 497 (1), cover not only offences punishable with death, or in the alternative, with transportation for life but also offences merely punishable with transportation for life. *Naranji Premji v. Emperor*.

29 Cr. L. J. 901 :
111 I. C. 661 : 30 Bom. L. R. 622 :
A. I. R. 1928 Bom. 244.

————S. 497 (5)—Cancellation of bail—Grounds.

The granting of bail in a non-bailable offence is a concession allowed to an accused person and it presupposes that this privilege is not to be abused in any manner and that the accused person has not come into contact with the prosecution witnesses or to exert any undue influence on them so as to destroy the evidence or to minimise its effect against him. It is a sort of trust reposed in him by Court and if it is found that he has betrayed this trust in any manner or that he has misused the liberty thus granted to him by Court, he disentitles himself to the privilege so granted. This is more specially so, when he happens to occupy a dominating position in relation to the witnesses concerned and can injure or benefit them by his own fiat. *Emperor v. Jivon Lal Gauba*.

37 Cr. L. J. 937 :
164 I. C. 376 : 9 R. L. 110 :
17 Lah. 779 : 39 P. L. R. 56 :
A. I. R. 1936 Lah. 730.

————S. 497 (5)—Cancellation of bail—Power of Magistrate when bail granted by Police.

In the case of an accused person who has been released by the Police, the Magistrate has no power under S. 497 (5), to commit him to custody. The words 'by itself' in S. 497 (5) mean by the Magistrate in question. *Lakhamsi v. Emperor*.

35 Cr. L. J. 580 :
147 I. C. 1159 : 27 S. L. R. 197 :
6 R. S. 178 : A. I. R. 1933 Sind 331 (2).

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in granting bail in non-bailable cases.
Boudville v. Emperor. 26 Cr. L. J. 427 :

85 I. C. 43 : 2 Rang. 546 :
A. I. R. 1925 Rang. 129.

—S. 497—Amendments—Effect of.

S. 497 leaves ample room for exercise of discretion in granting bails and the object of the amendment made by S. 136 of Act XVIII of 1923 in section was to vest in the Courts a discretion less fettered than before in the matter of granting of bails. *Tularam v. Emperor.* 27 Cr. L. J. 1063 (b) :

97 I. C. 39 : A. I. R. 1927 Nag. 53.

—S. 497—Amendments—Effect of.

The amended S. 497 does not limit the powers of Magistrates in granting bail in case of non-bailable offences except in cases punishable with transportation for life or with death. *Emperor v. Nga San Htwa.*

28 Cr. L. J. 773 :
104 I. C. 101 : 5 Rang. 276 :
A. I. R. 1927 Rang. 205.

—S. 497—Amendments—Effect of.

The discretion of the Courts in matters of bail is less fettered under the amended Code than before the amendment. *Nagendra Nath Chakrabarti v. Emperor.* 25 Cr. L. J. 732 :

81 I. C. 220 : 38 C. L. J. 388 :
51 Cal. 402 : A. I. R. 1924 Cal. 476.

—S. 497—Amount of security—Discretion.

In fixing the amount of security which an accused person applying for bail can be called upon to furnish, Courts should be guided by the principle that the object of demanding security is not to penalise the accused but to ensure his presence in Court, and amount must be fixed with due regard to the means of the accused and the nature of the offence. *Chetanand v. Gurbakhsh Singh.*

31 Cr. L. J. 980 :
125 I. C. 615 : A. I. R. 1930 Lah. 668.

—S. 497—Appellate Court—Grant of bail—Grounds.

Persons accused of non-bailable offences should not be released on bail as a rule, but they may be so released if there are reasons for believing that the case against them is such that it is not likely to succeed, or if there are special circumstances justifying bail. *Emperor v. Bashiran.*

26 Cr. L. J. 4 :
83 I. C. 483 : A. I. R. 1923 All. 479 (1).

—S. 497—Appellate Court—Non-bailable offence, conviction for—Grant of bail.

When an accused person has been convicted of a non-bailable offence by a competent Court after a regular trial, the Court of Appeal should not ordinarily release the accused on bail unless there is an error of law or a mistake or a mis-statement of fact apparent on the face of the record or for any of the reasons mentioned in the proviso to Sub-s. (1) of S. 497. *Gul v. Emperor.*

29 Cr. L. J. 470 :
109 I. C. 118 : 22 S. L. R. 435 :
A. I. R. 1928 Sind 142.

Cr. P. CODE (1898), S. 497**—S. 497—Application for bail—Particulars in.**

An affidavit supporting an application for bail should set forth on what ground bail is desired, and the reasons for the ground should be explained. *Sri Chund v. Emperor.*

36 Cr. L. J. 184 (1) :
152 I. C. 802 (b) : 7 R. A. 398 (1) :
3 A. W. R. 668 : A. I. R. 1934 All. 815.

—S. 497—Attempt to murder—Bail—Considerations for.

Charge of attempt to murder—Injured person not well-enough to be subjected to identification—Bail should not be allowed. *Emperor v. Pritam Singh.* 33 Cr. L. J. 335 :

136 I. C. 709 : 33 P. L. R. 387 :
I. R. 1932 Lah. 245 : A. I. R. 1932 Lah. 433.

—S. 497—Bail—Considerations.

The Magistrates are bound, when weighing the probability of the prisoner appearing for trial, to consider the nature of the offence charged, the character of the evidence against the prisoner and the punishment which, in the event of conviction, is likely to be inflicted on the prisoner. Again, while mere vague allegations that the prisoner, if released, will tutor witnesses, should not be taken into account, the Magistrate may well refuse to enlarge on bail where the prisoner is of such a character that his presence at large will intimidate witnesses or where there are reasonable grounds for believing that he will use his liberty to suborn evidence. *Emperor v. Nga San Htwa.*

28 Cr. L. J. 773 :
104 I. C. 101 : 5 Rang. 276 :
A. I. R. 1927 Rang. 205.

—S. 497—Bail—Grounds for granting and refusing.

The Magistrates are bound, when weighing the probability of the prisoner appearing for trial, to consider the nature of the offence charged, the character of the evidence against the prisoner, and the punishment which, in the event of conviction is likely to be inflicted on the prisoner. Again, while mere vague allegations that the prisoner, if released, will tutor witnesses, should not be taken into account, the Magistrate may well refuse to enlarge on bail where the prisoner is of such a character that his presence at large will intimidate witnesses, or where there are reasonable grounds for believing that he will use his liberty to suborn evidence. *Muhammad Eusoof v. Emperor.* 27 Cr. L. J. 401 :

93 I. C. 65 : 3 Rang. 538 :
A. I. R. 1926 Rang. 51.

—S. 497—Bail—Policy of law—Grant of bail—Considerations.

The object of the detention of the accused being to secure the appearance of the accused to abide the sentence of law, the principal inquiry is whether a recognizance would effect that end. In seeking an answer to this inquiry, the Courts should consider the seriousness of the charge, the nature of the evidence, the severity of the punishment prescribed for the offence, and in some instances, the character, means and standing of the accused. The

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by the Criminal Law Amendment Act, and it is, therefore, open to the High Court to exercise that power in the case of a person accused of an offence, to the proceedings in respect of which, Part I of the Criminal Law Amendment Act has been applied. Where it appeared that there was cause for further enquiry into the case against an accused person, the High Court refused to grant bail. *Sourindra Mohan v. Emperor*.

11 Cr. L. J. 217 :
6 I. C. 8.

———S. 498—Granting bail—Power of High Court.

Though S. 498 confers wide powers of granting bail on the High Court, yet on principles and authority, it must be interpreted as being controlled by the provisions of S. 497 of that Code which applies to other Courts. *Gul v. Emperor*.

29 Cr. L. J. 470 :
109 I. C. 118 : 22 S. L. R. 435 :
A. I. R. 1928 Sind 142.

———S. 498—Granting bail after conviction, effect of.

Although a mere order for suspension of sentence may not have the effect of setting a man at liberty, an order for bail unquestionably has the effect of suspending the sentence. There is no power to alter or modify the sentence once the judgment is signed unless it is expressly conferred and an order releasing a person on bail after conviction carries with it a suspension of sentence, and that can only be done by an Appellate Court while it is still seized of the proceedings. *Bashiruddin Ahmad v. Emperor*.

38 Cr. L. J. 384 :
167 I. C. 373 : 9 R. N. 182 :
I. L. R. 1937 Nag. 236 :
A. I. R. 1937 Nag. 181.

———S. 498—Granting bail by High Court—Considerations for.

In exercising discretion under S. 498 the High Court should not confine its attention only to the question whether the prisoner is or is not likely to abscond, as there may be other circumstances also which may affect the question of granting bail to accused persons who are alleged to have committed crimes of a grave nature. *Rajah Narendra Lal Khan v. Emperor*.

9 Cr. L. J. 375 :
1 I. C. 738 : 36 Cal. 166 :
13 C. W. N. 43.

———S. 498—Granting bail by High Court—Discretion.

Granting of bail—Discretion of High Court or Court of Session is not limited to considerations set out in S. 497. *Hutchinson v. Emperor*.

32 Cr. L. J. 1271 :
134 I. C. 842 : 1931 A. L. J. 515 :
53 All. 931 : I. R. 1931 All. 858 :
A. I. R. 1931 All. 156.

———S. 498—Granting bail by High Court—Discretion.

The High Court should not grant bail in cases where a person is charged with offences

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punishable with death or transportation for life except for exceptional and very special reasons. *Maung Ba Maung v. Emperor*.

32 Cr. L. J. 148 :
128 I. C. 577 : I. R. 1931 Rang. 33 :
A. I. R. 1930 Rang. 335.

———S. 498—Granting bail by High Court—Discretion.

The power of a High Court to direct admission to bail under S. 498 is unfettered and in no way limited by the provisions of S. 497 (1) of the Code; but the High Court will not grant bail in non-bailable offences except when special circumstances are disclosed. *Harchand Jhamatmal v. Emperor*.

18 Cr. L. J. 642 :
40 I. C. 290 : 10 S. L. R. 208 :
A. I. R. 1917 Sind 32.

———S. 498—Granting bail by High Court—Discretion.

Under S. 498, the High Court has power to release a person on bail in any case, that is to say, that the powers in granting bail in non-bailable offences is unrestricted, but that power has to be used judicially and not in an arbitrary manner. *King-Emperor v. Abhai-raj Kunwar*.

40 Cr. L. J. 841 :
183 I. C. 713 : 1939 O. W. N. 791 :
1939 O. L. R. 548 : 12 R. O. 54 :
A. I. R. 1940 Oudh 8.

———S. 498—Granting of bail by High Court—Limitation.

Although a High Court is not limited within the bounds of S. 497 and has absolute discretion in the matter, yet as the Legislature has placed the initial stage of dealing with crimes upon Magistrates and has in effect enacted that persons accused of non-bailable offences shall be detained in custody except when, in the opinion of the Magistrate, there are no reasonable grounds for believing that the accused has committed the offence charged against him, a High Court is, as a rule, bound to follow the general law and to depart from it only under very special circumstances, especially in the initial stages of a case. *Henderson v. Emperor*.

14 Cr. L. J. 171 :
19 I. C. 171 : 6 L. B. R. 172 :
6 Bur. L. T. 73.

———S. 498—Granting bail by High Court—Stage for.

The words "in any case" and "whether there be an appeal on conviction or not" in S. 498, do not mean that the Court can act once it has reached finality. The Code must be read as a whole and since its scheme is to render a Court *functus officio* the moment judgment is signed, the section cannot possibly mean that nevertheless the High Court has power to release an accused on bail and thus suspend sentence when no tribunal is seized of the proceedings. *Bashiruddin Ahmad v. Emperor*.

38 Cr. L. J. 384 :
167 I. C. 373 : 9 R. N. 182 :
I. L. R. 1937 Nag. 236 :
A. I. R. 1937 Nag. 181.

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———S. 497—*Discretion—Powers of Magistrates.*

In granting bail, Magistrates can proceed under S. 497 only and their discretion is regulated by the provisions of that section. *Joglekar v. Emperor.* (F. B.) 33 Cr. L. J. 94 :

135 I. C. 113 : 1931 A. L. J. 773 :
54 All. 115 : I. R. 1932 All. 1 :
A. I. R. 1931 All. 504.

———S. 497—*Discretion—Powers of Magistrates.*

There should be a judicial exercise of the discretion. The cumulative effect of all the combined circumstances should weigh with the Court. *Joglekar v. Emperor.* (F. B.)

33 Cr. L. J. 94 :
135 I. C. 113 : 1931 A. L. J. 773 :
54 All. 115 : I. R. 1932 All. 1 :
A. I. R. 1931 All. 504.

———S. 497—*English precedents, value of.*

It is not open to Courts in India, in view of the express provisions in the Cr. P. C., to follow the English authorities which lay down the principles on which bail is granted in that country. *Gul v. Emperor.* 29 Cr. L. J. 470 :
109 I. C. 118 : 22 S. L. R. 435 :
A. I. R. 1928 Sind 142.

———S. 497—*Enquiry—Application for trial—Duty of Magistrate.*

On an application for bail, the Court is not called upon to conduct a preliminary trial of the case and consider the probability of the accused's guilt or innocence. It would be entirely exceeding its function if it did that in any detail; but it may incidentally have to look at the weight of the evidence against the accused as a necessary part of its proper function, that is, to inquire whether the giving of the bail as opposed to the arrest of the accused might lead to a real danger of his absconding and not appearing to take his trial, or whether there is any real reason to suppose that he is likely to tamper with the witnesses who would be called against him. *Sanyasappa Naidu v. Public Prosecutor.* 26 Cr. L. J. 1593 :
90 I. C. 665 : 22 L. W. 156 :
A. I. R. 1925 Mad. 1224.

———S. 497—*Granting bail—Grounds for—Considerations for.*

Accused under S. 121-A, I. P. C., alleged to have held meetings, studied and probably disseminated communist teachings—Accused not alleged with having done any illegal act in pursuance of conspiracy—No probability of accused being sentenced to transportation for life: Held, that case was one in which bail should be granted. *Hutchinson v. Emperor.*

32 Cr. L. J. 1271 :
134 I. C. 842 : 1931 A. L. J. 515 :
53 All. 931 : I. R. 1931 All. 858 :
A. I. R. 1931 All. 356.

———S. 497—*Granting bail—Considerations for.*

An accused may ordinarily be released on substantial bail until reasonable grounds are made out for presuming his guilt.

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Another consideration is whether there are any grounds for supposing that the accused, if released on bail, would abscond. But if after the granting of bail, it appears subsequently on the production of further evidence that a case has been made out against the accused, it is competent for the Magistrate to direct the accused to surrender. The detention of an accused under trial is not intended to be penal, but its object is to secure attendance. The seriousness of an alleged offence and some evidence of its perpetration by the accused would justify detention. *Jamini Mull v. Emperor.* 9 Cr. L. J. 409 :
1 I. C. 910 : 36 Cal. 174 : 13 C. W. N. 51.

———S. 497—*Bail, considerations in granting.*

The discretionary power of the Court to admit to bail is not arbitrary but is judicial, and in exercising that discretionary powers, the Courts have to consider the seriousness of the charge, the nature of the evidence, the severity of the punishment prescribed for the offence, and in some instances, the character, means and standing of the accused. *Ramchand v. Emperor.* 30 Cr. L. J. 1129 :
120 I. C. 10 : I. R. 1929 Lah. 954 :
A. I. R. 1929 Lah. 284.

———S. 497—*Granting bail—Considerations for.*

Bail is not to be withheld merely as a punishment and the requirements as to bail are merely to secure the attendance of the accused at the trial. The test is to be applied by reference to the following considerations amongst others; (1) The nature of accusation; (2) The nature of evidence in support of the accusation; (3) The severity of the punishment which conviction will entail; (4) The character of the sureties, that is to say, whether they are independent or indemnified by the accused; (5) The character and behaviour of the accused. *Krishna Chandra Jogti v. Emperor.*

28 Cr. L. J. 621 :
102 I. C. 909 : 8 P. L. T. 557 :
6 Pat. 802 : A. I. R. 1927 Pat. 302.

———S. 497—*Granting bail—Considerations for.*

However serious an offence may be, if it is bailable and there is no reason such as the likelihood of the applicant absconding if released on bail, the seriousness of the offence would not alone justify a Court in refusing bail to which a convicted person is entitled under the law. *Abdul Habib Khan v. Emperor.*

29 Cr. L. J. 450 :
108 I. C. 689 : 26 A. L. J. 363 :
A. I. R. 1928 All. 211.

———S. 497—*Granting bail—Considerations for.*

If a person is accused of a non-bailable offence, then unless the Magistrate considers that there are no reasonable grounds for believing him to be guilty, he must refuse bail, no matter how certain he may be that the accused will appear to stand his trial. It is the right of an accused person to demand that the

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High Court ought not to grant bail in such cases except for exceptional and very special reasons. *Emperor v. Nga San Hwa.*

28 Cr. L. J. 773 :
104 I. C. 101 : 5 Rang. 276 :
A. I. R. 1927 Rang. 205.

—S. 498—Scope.

Powers under S. 498 conferred upon a Sessions Judge or the High Court are not handicapped by the restrictions in the preceding section. *Joglekar v. Emperor.* (F. B.)

33 Cr. L. J. 94 :
135 I. C. 113 : 1931 A. L. J. 773 :
54 All. 115 : I. R. 1932 All. 1 :
A. I. R. 1931 All. 504.

—S. 498—Scope—Proceedings under S. 8—Sind Frontier Regulation—Granting bail—Power of High Court.

An application for bail on behalf of the accused who is being tried by a *Jirgah*, or Council of Elders under S. 8, Sind Frontier Regulation, 1892, cannot be made to the High Court under S. 498. *Emperor v. Ghulam Kadir.*

12 Cr. L. J. 568 :
12 I. C. 656 : 5 S. L. R. 105.

—S. 498—Scope.

S. 498 invests the High Court or the Court of Session with similar jurisdiction as a Court of superior appellate or revisional jurisdiction. *Bishambar Nath v. Emperor.*

25 Cr. L. J. 1132 :
81 I. C. 956 : 11 O. L. J. 527 :
1 O. W. N. 281 : A. I. R. 1924 Oudh 435.

—S. 498—Scope.

The extended powers given to the High Court under S. 498 are certainly not to be used to get rid of the very reasonable and proper provisions of S. 497. *Ashraf Ali v. Emperor.*

16 Cr. L. J. 215 :
27 I. C. 839 : 42 Cal. 25 :
A. I. R. 1915 Cal. 784.

—S. 498—Scope.

Under S. 498, a wider discretion to grant bail is given to the Court of Session and the High Court than that given to Subordinate Courts by S. 497. *Emperor v. Krishna Gopal.*

35 Cr. L. J. 294 :
146 I. C. 1083 : 34 P. L. R. 1068 :
15 Lah. 39 : 6 R. L. 323 :
A. I. R. 1933 Lah. 925.

—S. 498—Serious cases—Granting bail—Discretion.

In offences punishable with death or transportation, bail should be granted only in exceptional cases. *Joglekar v. Emperor.* (F. B.)

33 Cr. L. J. 94 :
135 I. C. 113 : 1931 A. L. J. 773 :
54 All. 115 : I. R. 1932 All. 1 :
A. I. R. 1931 All. 504.

—S. 498, 497—Granting bail by High Court—Discretion.

The High Court, however, is not limited within the bounds of S. 497, Cr. P. C., and holds absolute discretion in the matters, but it is bound to follow the General Law as a rule and not to depart from it, except under very

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special circumstances, especially so in the initial stages of a case. *Boudville v. Emperor.*

26 Cr. L. J. 427 :
85 I. C. 43 : 2 Rang. 546 :
A. I. R. 1925 Rang. 129.

—S. 498, 497 (1)—Granting bail by High Court—Discretion.

The High Court's power to grant bail under S. 498, is not limited by the restriction imposed by S. 497 (1). The High Court will not, however, grant bail in non-bailable cases except in special circumstances and according to the exigencies of each particular case. *Emperor v. Mohammad Panah.*

36 Cr. L. J. 711 :
155 I. C. 113 : 28 S. L. R. 47 :
7 R. S. 186 : A. I. R. 1934 Sind 131.

—S. 499.

See also (i) Cr. P. C., 1898, Ss. 498, 514.

—S. 499—Bail bond—Conditions, legality of.

The only condition contemplated by a bail bond is a condition for attendance in Court and a bail bond in which any other condition of the nature of condition as to undertaking for good behaviour is included, such a bond cannot be regarded as a bond under the Code. The forfeiture of such a bond is, therefore, illegal. *Giani Mehar Singh v. Emperor.*

41 Cr. L. J. 138 :
185 I. C. 249 : I. L. R. 1939 2 Cal. 42 :
43 C. W. N. 639 : 12 P. C. 349 :
A. I. R. 1939 Cal. 714.

—S. 499—Bail—Essentials of.

It is incumbent under S. 499, to get a bond executed by the person who is released on bail and unless that is done, there can be no valid bond by a surety alone. Similarly, the mentioning of a definite Court before which the accused person is to appear is an essential condition of a bond under S. 499. Where therefore a bond is executed by a surety alone and it does not mention any definite Court and time for the appearance of the accused, no proceedings can be taken under S. 514, Cr. P. C. *Brahma Nand Misra v. Emperor.*

41 Cr. L. J. 85 :
184 I. C. 662 : 1939 A. L. J. 779 :
I. L. R. 1939 All. 924 : 12 R. A. 273 :
A. I. R. 1939 All. 682.

—S. 499—Bond—Consideration—Forfeiture.

An accused, who was committed to take his trial at the Sessions Court, was released on bail. The bail bond was in Form No. 42, Cr. P. C., the accused binding himself to appear at the Sessions Court on a specified date. Below his signature was the undertaking by the surety that he shall cause the accused's appearance at the Sessions Court for the trial, and that in case of the accused making default, he shall be liable to forfeit the amount of the security. The latter declaration did not, however, mention the date for accused's appearance. The accused having made default, the security was forfeited :

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S. 497—Granting bail—Considerations for.

The proper test to be applied in the solution of the question whether bail should be granted or refused, is whether it is probable that the party will appear to take his trial. The test is applied with reference to the nature of the accusation, the nature of the evidence in support of the accusation, the severity of the punishment which conviction will entail, and in some instances, the character, means and standing of the accused. *Nagendra Nath Chakrabarti v. Emperor.*

25 Cr. L. J. 732 :
81 I. C. 220 : 38 C. L. J. 388 : 51 Cal. 402 :
A. I. R. 1924 Cal. 476.

S. 497—Granting bail—Discretion.

Bail will not be withheld merely as a punishment. *Allahrakhio Umeed Ali v. Emperor.*

35 Cr. L. J. 144 :
146 I. C. 561 : 6 R. S. 68 (2) :
A. I. R. 1933 Sind 367.

S. 497—Granting bail—Discretion.

Interlocutory stage—That evidence should practically justify conviction is not necessary. Discretion, how to be exercised, pointed out. *Emperor v. Keshav Vcsude Kirtikar.*

35 Cr. L. J. 539 :
147 I. C. 1010 : 35 Bom. L. R. 1072 :
7 R. B. 233 : A. I. R. 1933 Bom. 492.

S. 497—Granting bail—Discretion.

The rule in respect of non-bailable offences is that bail is not to be taken except in special circumstances. *Emperor v. Nensi Hansraj.*

3 Cr. L. J. 499 :
8 Bom. L. R. 420.

S. 497—Granting bail—Considerations for.

Where members of two parties are being prosecuted and a member of one of the parties applies for bail, the fact that a member of the opposite party has been released on bail and that that party will thereby have a better chance of their case being properly represented in Court and that the applicant is required to instruct his Counsel is a matter which should be considered by the Court. *Fathe Singh v. Emperor.*

30 Cr. L. J. 697 :
116 I. C. 748 : I. R. 1929 All. 604 :
1929 A. L. J. 585 : 51 All. 603 :
A. I. R. 1929 All. 320.

S. 497—Granting of bail—Documentary evidence unintelligible without help of accused.

Where the whole defence rests on a proper and correct appreciation of the voluminous documentary evidence produced in a case and the bulk of it is wholly unintelligible to the Counsel for the accused unless explained by the accused to their Counsel frequently, the refusal to release the accused on bail is tantamount to a positive denial of justice. *Bishambar Nath v. Emperor.*

25 Cr. L. J. 1132 :
81 I. C. 956 : 11 O. L. J. 527 : 1 O. W. N. 281 :
A. I. R. 1924 Oudh 435.

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S. 497—Murder, charge of—Bail.

A person accused of murder should not be released on bail either by the Police or the Court before whom he is brought if there appear reasonable grounds for believing that he has been guilty of the offence of which he is accused. *Nga San Tin v. Emperor.*

28 Cr. L. J. 188 :
99 I. C. 860 : 5 Bur. L. J. 170.

S. 497—Object.

It is no doubt true, that the object of S. 497 (5), Cr. P. C., is not punitive, but it is equally true that the interests of the administration of justice demand that nobody should be allowed to impede the course of justice or hamper its administration in any manner. *Emperor v. Jiwan Lal Gaura.*

37 Cr. L. J. 937 :
164 I. C. 376 : 9 R. L. 110 : 17 Lah. 779 :
39 P. L. R. 56 : A. I. R. 1936 Lah. 730.

S. 497—Object—Normal rule.

Following the principle that an accused is regarded as innocent until he is proved guilty, it is an established principle throughout the greater part of the British Empire that an accused is kept in detention before his trial mainly that his appearance for trial may be assured, bail being normally accepted when the security is such as to make it morally certain that the accused will appear. *Mohamad Eusoof v. Emperor.*

27 Cr. L. J. 401 :
93 I. C. 65 : 3 Rang. 538 :
A. I. R. 1926 Rang. 51.

S. 497—Refusal to grant bail—Grounds.

Refusal of bail—Mere general allegation that accused may suborn evidence, if released, is no ground for refusing bail. *D. R. Guru v. Emperor.*

32 Cr. L. J. 278 :
129 I. C. 341 : 32 Bom. L. R. 1131 :
I. R. 1931 Bom. 149 : A. I. R. 1930 Bom. 484.

S. 497—Refusing bail—Grounds.

In India any allegation that the accused is tampering or attempting to tamper with witnesses and thereby obstructing the course of justice, would be a very cogent ground for refusing bail. *Krishna Chandra Jagti v. Emperor.*

28 Cr. L. J. 621 :
102 I. C. 909 : 8 P. L. T. 557 :
6 Pat. 802 : A. I. R. 1927 Pat. 302.

S. 497—Revision—From order refusing bail.

An order refusing bail which has not been made after a proper appreciation of the facts, is liable to be set aside by the High Court. *Ramchand v. Emperor.*

30 Cr. L. J. 1129 :
120 I. C. 10 : I. R. 1929 Lah. 954 :
A. I. R. 1929 Lah. 284.

S. 497—Revision—Interference.

The High Court will not lightly interfere with the exercise of discretion vested in the lower Court, and will interfere only when the dis-

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———S. 499—Surety—Liability of.

Surety for attendance of accused on a fixed date and on other dates—Transfer of case and re-transfer to same Court—Non-appearance of accused after re-transfer—Surety is not liable. *Hem Lal Ganguly v. Emperor*. 35 Cr. L. J. 532 : 147 I. C. 1041 : 37 C. W. N. 880 : 6 R. C. 391 (1) : A. I. R. 1934 Cal. 101.

———S. 499—Surety—Liability of.

Where although the conditions imposed on the accused before releasing him on bail do not form part of the bail bond executed by the surety, yet if the surety has signed the order-sheet of the Magistrate against the part which contains the undertaking on which he accepted the bail bonds, the order-sheet with the surety's signature itself becomes a part of the contract between the parties. *Ram Bilas Sharma v. Emperor*. 41 Cr. L. J. 214 : 185 I. C. 598 : 6 B. R. 221 : 21 P. L. T. 194 : 12 R. P. 429 : A. I. R. 1940 Pat. 375.

———S. 499—Surety—Liability of—Construction—Legality of bond—Burden of proof.

The terms of a surety bond have to be determined by the language used in the bond itself. What the surety thought or did not think is immaterial, and it is not for a surety to show that the bond is illegal, but for the Crown to show that the document it wishes to enforce against him is one which can be so enforced under the law. *Emperor v. Chinta Ram*. 38 Cr. L. J. 100 (b) : 165 I. C. 825 : 9 R. N. 96 : I. L. R. 1937 Nag. 137 : A. I. R. 1936 Nag. 243.

———S. 500.

See also (i) Cr. P. C., 1898, S. 195 (1) (b).
(ii) Criminal trial.

———S. 501—Applicability.

S. 501 applies to a case where there are sureties and where through mistake, fraud or otherwise, insufficient sureties have been accepted. *In re : Karuthan Ambalam*. 17 Cr. L. J. 132 : 33 I. C. 308 : 18 Mad. 1088 : A. I. R. 1916 Mad. 1053.

———S. 502—Cancellation of bail—Application for—Discharge of surety—Procedure.

S. 502, Cr. P. C., does not provide for a Magistrate discharging a surety so soon as he applies. The Magistrate shall issue a warrant directing the arrest of the accused, and only on the appearance of the accused before him, does the Magistrate then discharge the surety. He cannot discharge the surety before the accused appeared or was brought before him. *Fateh Chand Wadhmal v. Emperor*. 41 Cr. L. J. 802 : 189 I. C. 800 : 1940 Kar. 479 : 13 R. S. 51 : A. I. R. 1940 Sind 136.

———S. 502—Cancellation of bail bond, application for—Duty of Magistrate.

Where a surety applies for a cancellation of his bond, under S. 502, Cr. P. C., there is no

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such thing as hearing the application on the merits. The presentation of the application itself imposes upon the Magistrate the duty of issuing a warrant for the arrest of the accused. Hence, where a surety after once presenting an application for cancellation of his bail bond, fails to appear in person or by pleader, such failure cannot deprive him of his right to treat the bond as cancelled. When once the application is presented and received, there is no option left to the Magistrate but to act under S. 502, Cr. P. C. *In re : Anant Shivaji*. 6 Cr. L. J. 385 : 9 Bom. L. R. 1285.

———S. 502—Cancellation of bond, application for—Procedure.

Where the surety files an application for the discharge of his bond, under S. 502 (2), Cr. P. C., the proper procedure is for the Magistrate to issue a warrant for arrest, directing that the person or persons for whom he had stood surety should be brought before him. It is not right that this surety should be called upon to forfeit the bond, ordered to pay the amount of the bond or any part thereof. *Tha Maung v. Emperor*. 38 Cr. L. J. 1010 : 171 I. C. 80 : 10 R. Rang. 130 : A. I. R. 1937 Rang. 244.

———S. 502—Scope of—Absence of accused—Trial when can proceed—Jurisdiction.

S. 502, Cr. P. C. applies only to cases in which the Magistrate has issued a summons in the first instance. It does not apply to a case where the accused has been arrested without or after the issue of a warrant. When a Magistrate has no jurisdiction to hear a case in the absence of the accused, jurisdiction cannot be conferred by any consent on the part of the accused. *Abdul Hamid v. Emperor*. 24 Cr. L. J. 872 : 75 I. C. 72 : 1923 Pat. 239 : 2 Pat. 793 : 2 P. L. R. 1 Cr. : A. I. R. 1924 Pat. 46.

———S. 502—Warrant of arrest—Surety applying for discharge of bond—Forfeiture of bond—Procedure.

Where a surety applies for the discharge of his bond and the arrest of the accused, a Magistrate is not competent to forfeit the bond without first proceeding under S. 502 by issuing warrant of arrest against the accused. *Gurmukh Singh v. Emperor*. 27 Cr. L. J. 848 : 95 I. C. 768.

———S. 503.

See also Cr. P. C., 1898, S. 195.

———S. 503—Applicability.

S. 503 (2) has no application to a Ruling Prince of Native State—Fact that he, through his Agent, has filed a complaint in British India, under Indian States Protection against Disaffection Act, against person who wants to examine him does not make any difference. *Ditwan Singh v. Muhammad Akram*. 34 Cr. L. J. 797 : 144 I. C. 510 : 1933 Nag. 226 : 16 N. L. J. 170 : 29 N. L. R. 315 : I. R. 1933 Nag. 243 : A. I. R. 1933 Nag. 226.

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————S. 498.

————Application for bail.

————Bail.

————Granting bail.

————Granting bail after conviction, effect of.

————Granting bail by High Court.

————Proceedings under Criminal Law Amendment Act, 1908, Part I.

————Scope.

————Serious cases.

————S. 498.

See also Cr. P. C., 1898, Ss. 439, 406, 497.

————S. 498—Application for bail—Right of accused to argue in person.

No accused has right to be allowed to argue in person application for bail. *Hutchinson v. Emperor*.

32 Cr. L. J. 1271 :

134 I. C. 842 : 53 All. 931 :

1931 A. L. J. 515 :

I. R. 1931 All. 858 :

A. I. R. 1931 All. 356.

————S. 498—Bail—Powers of High Court and Sessions Court—Limitations.

The powers of the High Court or of the Court of Session given by S. 498 are not controlled by the statutory limitations laid down in S. 497 of refusing to release an accused person on bail if there appear reasonable grounds for believing that he has been guilty of an offence punishable with transportation for life. Those powers are not fettered by any rules defining the limits within which they would be exercised as the powers under S. 497 are, but though the exercise of the powers under S. 498 is entirely left to the discretion of the High Court, the High Court is not to act arbitrarily and the exercise of the discretion must be based on judicial grounds. *Bishambar Nath v. Emperor*.

25 Cr. L. J. 1132 :

81 I. C. 956 : 1 O. L. J. 527 :

10 O. W. N. 281 :

A. I. R. 1924 Oudh 435.

————S. 498—Granting bail—Considerations for.

Bail will not be withheld merely as a punishment. But in granting or refusing bail, the Courts will take into consideration, amongst other things, the question whether the accused, if released on bail, is likely to tamper with the prosecution evidence or get up false evidence in support of the defence. *Emperor v. Mohammed Panah*.

36 Cr. L. J. 711 :

155 I. C. 113 : 28 S. L. R. 47 :

7 R. S. 186 : A. I. R. 1934 Sind 131.

————S. 498—Granting bail—Considerations for.

If the Court is satisfied that there are reasonable grounds for believing that no case has been or is likely to be made out against the accused and there is no reason to believe that he will abscond, the Court should

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ordinarily grant bail. *Hardwari Lal Gupta v. Emperor*.

33 Cr. L. J. 497 (a) :

137 I. C. 514 (a) : 33 P. L. R. 331 :

A. I. R. 1932 Lah. 344.

————S. 498—Granting bail—Considerations for.

The *factum* of commitment to Sessions by a Magistrate does not necessarily give the Sessions Judge reasonable grounds for believing that the accused has been guilty of the offence charged. It does not, therefore, debar the Sessions Judge from granting bail to the accused. *Nisar Ali v. Abdul Hamid*.

36 Cr. L. J. 1141 :

157 I. C. 286 : 8 R. Pesh. 18 :

A. I. R. 1935 Pesh. 101.

————S. 498—Granting bail—Considerations for.

Where one of the accused, under Ss. 307 and 337, Penal Code, made a confession implicating himself and the petitioners and the confession was corroborated by such of the evidence as was recorded by the Magistrate who was inquiring into the case, the High Court refused bail, holding that the evidence put forward was such, that if believed, it would amount to material corroboration of the confession. *Ashraf Ali v. Emperor*.

16 Cr. L. J. 215 :

27 I. C. 839 : 42 Cal. 25 :

A. I. R. 1915 Cal. 784.

————S. 498—Granting bail—Non-bailable offence—Discretion—Interference.

S. 498 gives the Court of Session and High Court very wide powers to admit an accused to bail even when he is charged with a non-bailable offence. The admission to bail is a matter within the discretion of the Sessions Judge. In this case the Judge having exercised his discretion with proper care, the High Court refused to interfere. *Emperor v. Badri Prasad*.

8 Cr. L. J. 49 :

5 A. L. J. 419 : 1908 A. W. N. 195.

————S. 498—Granting bail—Non-bailable offence—Validity for.

An accused person ought to be released on bail until reasonable grounds are made on the evidence of believing him to be guilty. *In re : Johur Mall*.

4 Cr. L. J. 221 :

10 C. W. N. 1093.

————S. 498—Granting bail—Power of High Court.

After a Coroner has drawn up an inquisition and committed the accused to prison, it is only by the intervention of the High Court that he can be released on bail. *Emperor v. Jogeshawara Passi*.

1 Cr. L. J. 13 :

7 C. W. N. 889 : I. L. R. 1931 Cal. 1.

————S. 498—Granting bail—Power of High Court.

No restriction has been placed on the power of the High Court to grant bail under S. 498.

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Magistrate, portion of, when admissible before Sessions trial.

Where an identifier of *pardanashin* lady witness has not been put on oath, the statement of the lady cannot be accepted in evidence, as there is no certainty that the woman examined is the same who was to be examined. *Lachmi Lal v. Emperor.*

23 Cr. L. J. 218 :
65 I. C. 1002 : 1922 Pat. 159 :
3 P. L. T. 338 : A. I. R. 1922 Pat. 40.

—S. 503—Jurisdiction.

Courts in British India cannot issue process against or order examination of persons residing outside British India. *Fazal Rahman Khan v. Emperor.*

37 Cr. L. J. 618 :
162 I. C. 270 : 8 R. Pesh. 192 :
A. I. R. 1936 Pesh. 101.

—S. 503—Jurisdiction—Issue of commission to examine witness in Burma—If can be issued.

Burma has ceased to be part of British India and a Magistrate in British India has no power to issue commission for the examination of a witness in Burma. *Sina Thana Navana Nachiappa Chetty v. M. Nachiappa Chettiar.*

39 Cr. L. J. 27 :
171 I. C. 931 : 1937 M. W. N. 1132 :
46 L. W. 703 : (1937) 2 M. L. J. 902 :
10 R. M. 413 (2) : I. L. R. 1938 Mad. 455 :
A. I. R. 1938 Mad. 192.

—S. 503—Power of High Court to issue Commission.

An application was made on behalf of an accused in a criminal case for the issue of a Commission or a letter of request for the examination of a witness residing in England : *Held*, that the High Court had no authority either to issue a Commission or a letter of request to the English Courts for the examination of a witness in a criminal case. *Emperor v. Corporal Allen.*

10 Cr. L. J. 571 :
4 I. C. 400.

—Ss. 503, 506—Commission, issue of—Court, if can issue commission for examination of witnesses.

It is desirable that the witnesses on whose statement the accused is likely to be convicted should be examined in the presence of the accused so that the latter may get a chance of cross-examining him and the Court may also have a chance of noticing the demeanour of the witness ; but to say that in no case a commission should be issued for the examination of a witness would be to delete the provisions of Ss. 503 and 506. *Bala Bux v. Emperor.*

39 Cr. L. J. 732 :
176 I. C. 558 : 19 P. L. T. 395 :
4 B. R. 734 : 11 R. P. 85 :
A. I. R. 1938 Pat. 366.

—Ss. 503, 506—Commission, issue of—District Magistrate ordering the trying Magistrate to examine a witness at her house.

Where the District Magistrate purporting to act under S. 503, Cr. P. C., ordered a Subordinate Magistrate before whom the case was pending, to examine one of the wit-

Cr. P. CODE (1898), S. 506

nesses in her own house : *Held*, that the order was illegal as S. 503 related to the issue of a commission and not to a case where the trying Magistrate had to examine a witness himself, and that even if the order be treated as an order for issue of a commission, the District Magistrate could not pass such an order without reference under S. 506 being made to him. *Imperator v. Chato.*

10 Cr. L. J. 211 :
2 S. L. R. 8.

—Ss. 503, 506—Commission when issued—Ch. xl.—C. P. C. O. XXVI, r. I—Discretion of Court.

The issue of a commission to examine a witness is not a very satisfactory mode of proceeding either in civil or criminal cases. On the one hand the Court has no opportunity of noting the demeanour of the witness and on the other of controlling irrelevant and unnecessary harassing cross-examination of the witnesses. Chapter XL of the Cr. P. C., confers a wide discretion on the Court to issue Commissions for the examination of witnesses, but such discretion should be sparingly exercised and only in a cases for real hardship and inconvenience having due regard to the prejudice which is likely to be thereby caused to the opponent. *Vishnoo Nainaram v. Dipchand Sitaldas.*

27 Cr. L. J. 89 :
91 I. C. 393 : 20 S. L. R. 28 :
A. I. R. 1926 Sind 124.

—S. 506.

See also Cr. P. C., 1898, S. 503.

—S. 506—Commission, issue of.

A Magistrate is not bound to issue a commission for the examination of a witness, under S. 506, Cr. P. C., if he is of opinion that the evidence of that witness is not necessary for the ends of justice. *Dinabandhu Banikya v. Hasan Ali.*

31 Cr. L. J. 645 :
124 I. C. 325 : 33 C. W. N. 1088.

—S. 506—Pardanashin Ladies—Exemption from attendance—Commission for examination of witnesses.

Though *pardanashin* women and ladies, who lead a life of seclusion, cannot claim as a matter of course to be examined on Commission, the Court should issue Commission for their examination in cases where their presence in Court is not absolutely necessary. *Crown v. Chatranbai.*

9 Cr. L. J. 249 :
1 S. L. R. 5.

—S. 506—Rejection of application for issue for Commission—Powers of District Magistrate and High Court—Remedy of party—District Magistrate, if has jurisdiction.

The District Magistrate can, in a case which is not before him, act only upon the application of the trial Magistrate. If the trial Magistrate rejects the application for the examination of witnesses on commission, then, the only remedy open to the aggrieved party is to come to the High Court in revision. *Salch v. Emperor.*

38 Cr. L. J. 127 :
166 I. C. 45 : 9 R. S. 119 : 30 S. L. R. 366 :
A. I. R. 1936 Sind 221.

Cr. P. CODE (1898), S. 498

—S. 498—Proceedings under Criminal Law Amendment Act, 1898, Part I—*Who can grant bail.*

The Sessions Judge has no jurisdiction to grant bail to a person accused of an offence, in the proceedings in respect of which, Part I of the Criminal Law Amendment Act, 1898, has been applied by the Local Government. In such a case the High Court only can grant bail. *Emperor v. Lalit Kumar.*

11 Cr. L. J. 219 :
6 I. C. 10.

—S. 498—Scope—Bail for leave to appeal to Privy Council.

A non-chartered High Court has no power either under the Cr. P. C. or in the exercise of its inherent jurisdiction to release on bail a prisoner with whose case it has finally dealt merely because he desires to move the Privy Council. *Pitumal v. Emperor.*

25 Cr. L. J. 672 :
81 I. C. 160.

—S. 498—Scope—Bail for leave to appeal to Privy Council.

After deciding a criminal case, whether on Original, Appellate or Revision side and upholding conviction of a prisoner, the Chief Court, Punjab, has no power under S. 498, to suspend the operation of his sentence and to release him on bail, on his asserting his intention to appeal to His Majesty in Council, because :—(a) The section does not refer to a case where the Court is *functus officio* but refers to cases where the Court has still some power left as regards the sentence of the accused; (b) The Cr. P. C. does not provide for an appeal to the Privy Council and does not provide for the release of the accused appealing to the Privy Council. *Diwan Chand v. Emperor.*

8 Cr. L. J. 89 :
3 P. W. R. Cr. 49 : 15 P. R. Cr. 1908.

—S. 498—Scope—Bail for leave to appeal to Privy Council.

After the High Court has disposed of an application for revision under S. 439, Cr. P. C., an accused person who is undergoing a sentence of imprisonment cannot be let on bail under S. 498, Cr. P. C. on the ground that he intends to apply to the Privy Council for special leave to appeal against the order of the High Court. The case having been completely and finally disposed of by the High Court, there remains no ground on which bail can be granted. *Hanmantrao v. Emperor.*

27 Cr. L. J. 185 :
91 I. C. 1001 : 21 N. L. R. 161 :
A. I. R. 1926 Nag. 228.

—S. 498—Scope—Bail for leave to appeal to Privy Council.

Between the time of Appellate Court dealing finally with a criminal matter, and the time when a successful approach has been made to the Privy Council, the Court in matters of bail is *functus officio*. It is only when leave to appeal has actually been granted that any

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question of granting bail, either directly or indirectly arises. *Babu Lal Chaukhani v. Emperor.*

166 I. C. 612 :
40 C. W. N. 1313 : 9 R. C. 558 :
I. L. R. 1937 1 Cal. 464 :
A. I. R. 1936 Cal. 809.

—S. 498—Scope—Bail for leave to appeal to Privy Council and pending application for leave to appeal.

After a High Court has dealt with the case of an accused in revision, it is *functus officio* and has no jurisdiction under S. 498 to grant bail in order that a petition for leave to appeal may be made to His Majesty in Council or until the petition for leave to appeal to His Majesty in Council is disposed of. *Tulsi Telini v. Emperor.*

24 Cr. L. J. 362 :
72 I. C. 362 : 50 Cal. 585 :
A. I. R. 1924 Cal. 64.

—S. 498—Scope—Bail pending appeal to to Privy Council.

Once the High Court has passed orders in a criminal appeal, it becomes *functus officio* and has no seisin in the case. The seisin may be revived when the Judicial Committee has granted leave to appeal. The power of the High Court to deal with an application for bail pending decision of appeal to Privy Council depends whether it has been directed by the Privy Council to do so or not. Once leave is granted and seisin taken, S. 498 expressly empowers the High Court to act in the matter not on its own motion but on behalf of the Privy Council and its jurisdiction to that limited extent revives. *Bawa Faqir Singh v. Emperor.*

39 Cr. L. J. 982 :
177 I. C. 974 : 1938 O. W. N. 1018 (2) :
11 R. O. 81 : 1938 O. L. R. 459 :
A. I. R. 1939 Oudh 31.

—S. 498—Scope.

High Court's power to act under S. 498 is entirely unfettered by any condition. *Hutchinson v. Emperor.*

32 Cr. L. J. 1271 :
134 I. C. 842 : 1931 P. L. T. 515 :
53 All. 931 : I. R. 1931 All. 858 :
A. I. R. 1931 All. 356.

—S. 498—Scope—High Court's power to grant bail after it has dealt with cases.

S. 498 does not empower a High Court to release on bail a prisoner with whose case it has finally dealt and with regard to whom, therefore, it is *functus officio*. *Pitumal v. Emperor.*

25 Cr. L. J. 672 :
81 I. C. 160.

—S. 498—Scope—Powers of High Court—Limitations.

Although the High Court has no absolute discretion in the matter of granting bail under S. 498, the discretion must be exercised judicially, and since the Legislature has chosen to entrust the initial stage of dealing with questions of bail to Magistrates and while giving Magistrates an unfettered discretion of granting of bail in all cases except two classes, *i. e.* cases punishable with death and cases punishable with transportation for life, the

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———S. 510—*Report of Chemical Examiner.*

Meagre and cryptic report of Chemical Examiner is hardly of any value. *Gaya Kunwar v. Emperor.*

35 Cr. L. J. 700 :
148 I. C. 600 : 11 O. W. N. 312 :
6 R. O. 421 : A. I. R. 1934 Oudh 62.

———S. 510—*Report of Chemical Examiner—Value of.*

It can hardly be open to the Courts to render S. 510 nugatory by refusing to attack any weight to the reports of the Chemical Examiner even though he is not examined. *Aishan Bibi v. Emperor.*

36 Cr. L. J. 14 :
152 I. C. 206 : 15 Lah. 310 :
37 P. L. R. 67 : 7 R. L. 263 :
A. I. R. 1934 Lah. 150.

———S. 510—*Report of Chemical Examiner—Value of.*

Report of Chemical Examiner though meagre and unsatisfactory, admitted by Sessions Judge --High Court cannot, in appeal, reject it as inadmissible. *Gaya Kunwar v. Emperor.*

35 Cr. L. J. 700 :
148 I. C. 600 : 11 O. W. N. 312 :
6 R. O. 421 : A. I. R. 1934 Oudh 62.

———S. 510—*Scope of.*

As S. 510 uses the word 'may' and not 'shall,' and the Court has a discretion in the matter. *Happu v. Emperor.*

35 Cr. L. J. 280 :
146 I. C. 1089 : 1934 A. L. J. 173 :
6 R. A. 397 : A. I. R. 1933 All. 837.

———S. 511.

See also (i) Cr. P. C., 1898, S. 310.
(ii) Penal Code, 1860, S. 75.

———S. 511—*Identity.*

An unauthenticated and uncertified document called a Finger Impression Slip, though produced by the Police and purporting to be a record of police action, is not a public document within the definition given in S. 74, Evidence Act, and its mere production does not, by the operation of S. 78 of that enactment, prove that the impressions contained in it were made by the fingers of the person named in the slip as the author of them, or that such person was a convict when he made them. *Emperor v. Sahdeo.*

5 Cr. L. J. 220 :
3 N. L. R. 1.

———S. 511—*Identity of accused.*

The papillary ridges covering the bulbous points of the human finger and thumb with which finger impressions are produced, afford a surer criterion of identity than any other comparable bodily feature. Where it is proved by competent expert testimony that two such impressions, made at different times, however, far apart, contain several points of agreement and no points of disagreement in their *minutiae*, no further evidence is necessary to prove that they were made by the same finger. *Emperor v. Sahdeo.*

5 Cr. L. J. 220 :
3 N. L. R. 1.

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———S. 511—*Identity, of fingerprints.*

The previous conviction of an accused person is not proved by merely showing, through the testimony of a fingermark expert, that the fingerprints of the accused taken in Court are similar to those on a paper which purports to record certain previous convictions of the accused. In order to prove previous conviction in such a manner, there must be further evidence to identify the latter fingerprints as those of the person who was previously convicted. *Ram Das Singh v. Emperor.*

18 Cr. L. J. 462 :
39 I. C. 302 : 21 C. W. N. 469 :
A. I. R. 1917 Cal. 211.

———S. 511—*Identity, of fingerprints.*

Where a comparison between two finger prints is relied on to establish the identity of an accused person with a previous convict, it should be strictly proved :—(a) that the previous print was made by the hand of the person who suffered the conviction ; (b) that the subsequent print was made by the hand of the accused ; (c) that an expert in deciphering of finger impressions has found several points of agreement, and no points of disagreement, in the *minutiae* of the two impressions. *Emperor v. Sahdeo.*

5 Cr. L. J. 220 :
3 N. L. R. 1.

———S. 511—*Proof, of previous convictions.*

It is necessary that if there are previous convictions against accused persons, they should be properly proved before sentences are passed on them. *In re : Turimella Kurmanna.*

17 Cr. L. J. 179 :
33 I. C. 819 : A. I. R. 1917 Mad. 186.

———S. 511—*Scope.*

The manner in which a previous conviction may be proved is not limited to the methods laid down in S. 511. *Emperor v. Sahdeo.*

5 Cr. L. J. 220 :
3 N. L. R. 1.

———S. 512.

See also Evidence Act, 1872, Ss. 33, 159.

———S. 512—*Death of witness, proof of.*

Under S. 512, it is incumbent that the death of the witnesses must be proved and the burden of proving the factum of death is upon the party who wishes to tender the evidence. The fact of death must be proved like any other fact, and a mere report that a certain person is dead, is not sufficient. *Emperor v. Labbai Kutti.*

40 Cr. L. J. 437 :
180 I. C. 605 : 1938 M. W. N. 582 :
11 R. M. 732 : A. I. R. 1939 Mad. 190.

———S. 512—*Deposition, when can be used.*

A deposition recorded under S. 512 can only be given in evidence if the deponent is dead, or is incapable of giving evidence, or his attendance cannot be procured without an unreason-

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Held, that the bail bond should be read as one document and the undertaking by the surety should be read as referring to the date mentioned in the portion of the bond signed by the accused and that, therefore, the bond was rightly forfeited for accused's default of appearance. *Mappillai Kadir Rowther v. Emperor*.

19 Cr. L. J. 687 :

46 I. C. 47 : A. I. R. 1919 Mad. 945.

————S. 499—Bond, essentials—Requirements regarding time and place.

Where the surety bond was to the effect that "We shall produce (or cause to appear) the accused at the Sessions Court whenever called upon to do so". *Held*, that the form is not illegal so as to deprive the Judge of jurisdiction on the ground that the bond did not specify time and place in accordance with S. 499. *Man Mohan Chakravarti v. Emperor*.

A. I. R. 1928 Cal. 261.

————S. 499—Bond, essentials of—Forfeiture.

Bail proceedings are special proceedings about which there are specific directions in the Code, and they must be strictly followed. S. 499 states that the time and place at which the accused is to appear must be mentioned in the bond and the second clause of that section states that if the accused is to appear in some other Court, the bond must expressly say so. It is not open to Courts to depart from these express provisions. Where there is no mention in the surety bond of the Court in which the accused is to appear, the bond cannot be enforced. *Emperor v. Chintaram*.

38 Cr. L. J. 100 (b) :

165 I. C. 825 : 9 R. N. 96 :

I. L. R. 1937 Nag. 137 :

A. I. R. 1936 Nag. 243.

————S. 499—Bond—Forfeiture of.

Bond for appearance of accused by surety only—Surety failing to produce accused—Bond can be forfeited. *Reoti Prasad v. Emperor*.

36 Cr. L. J. 297 :

153 I. C. 155 (1) :

7 R. A. 452 : 4 A. W. R. 778 :

A. I. R. 1934 All. 1046.

————S. 499—Bond and forfeiture of.

Where the sureties were well aware of the terms on which they had undertaken to furnish security for the due appearance of the accused, as the terms were set out in the bond which they signed, and they knew that they were responsible for his appearance not only in his Court, but in such Court as the High Court might direct him to attend in order to surrender to his bail and they fail to produce the accused before the Court according to the directions of the High Court, there is a forfeiture of the bond. *Adkoo v. Emperor*.

40 Cr. L. J. 464 :

180 I. C. 608 : 11 R. M. 387 :

I. L. R. 1939 Nag. 170 :

A. I. R. 1938 Nag. 420.

————S. 499—Bond taken by Police—Necessary condition of.

The wording of Ss. 409 and 514 make it

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abundantly clear that a Police Officer in charge of a Police Station has power to make it a condition of a bond that the accused person shall attend before the Police at the time and place mentioned in the bond, and that if he fails to so attend and a Magistrate of the 1st class is satisfied that the bond has been forfeited, any person bound by the bond can be called upon to pay the penalty thereof. *Emperor v. Kanshi Ram*.

14 Cr. L. J. 631 :

21 I. C. 679 : 22 P. R. 1913 Cr. :

6 P. L. R. 1914 : 6 P. W. R. 1914 Cr.

————S. 499—Bond without date—Notice of date to accused and surety—Necessity of.

If no day is specified in the bond but the day is to be a day of which notice is to be given thereafter, reasonable notice must be given to enable both the accused and the surety to attend. *Fatch Chand Wadhmal v. Emperor*.

41 Cr. L. J. 802 :

189 I. C. 800 : 1940 Kar. 479 :

13 R. S. 51 : A. I. R. 1940 Sind 136.

————S. 499—Bond—Valid conditions.

There is no irregularity in the High Court directing that the sureties shall be responsible for the production of an accused person on bail in the High Court and for his subsequent production in the Court of the District Magistrate of the district where he was tried to hear the reserved judgment in his appeal. Such a bond is valid. *Adkoo v. Emperor*.

40 Cr. L. J. 464 :

180 I. C. 608 : 11 R. M. 387 :

I. L. R. 1939 Nag. 170 :

A. I. R. 1938 Nag. 420.

————S. 499—Breach of bond—What is.

The fact that the surety did not produce the accused in a totally different Court even supposing he had undertaken to produce him in a particular Court, is not a breach of the bond and the surety is not liable. *Emperor v. Chintaram*.

38 Cr. L. J. 100 (b) :

165 I. C. 825 : 9 R. N. 96 :

I. L. R. 1937 Nag. 137 :

A. I. R. 1936 Nag. 243.

————S. 499—Scope.

The provisions of S. 499 are not exhaustive and do not override the inherent powers of the High Court in matters of bail. There are no restrictions on the High Court in the matter of imposing conditions on which it grants bail. *Adkoo v. Emperor*.

40 Cr. L. J. 464 :

180 I. C. 608 : 11 R. M. 387 :

I. L. R. 1939 Nag. 170 :

A. I. R. 1938 Nag. 420.

————S. 499—Surety—Liability of—Nature of.

When an accused person is released on bail with sureties, the sureties should ordinarily be made jointly and severally liable for the same amount as the accused, and cannot be made liable for more. The total of the sums recovered from them must not exceed this amount. *Emperor v. Kaung Nga*.

1 Cr. L. J. 475 :

2 L. B. R. 235.

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matter of fact everybody knows it was nothing of the kind, and at the time the witnesses gave their evidence, the question of recording a deposition under S. 512, Cr. P. C., was never intended. *Sheoraj Singh v. Emperor*.

27 Cr. L. J. 874 :
96 I. C. 122 : 24 A. L. J. 394 :
48 All. 375 : A. I. R. 1926 All. 340.

—S. 512—Proceeding under, if inquiry or trial under S. 517.

A proceeding under Sub-s. (1) of S. 512 is neither an inquiry nor a trial within the meaning S. 517 of the Code. *Valliappa Chetty v. Joseph*.

25 Cr. L. J. 666 (b) :
81 I. C. 154 : 2 Bur. L. J. 85 :
A. I. R. 1923 Rang. 248.

—S. 512—Procedure.

Before an exception can be availed of, the conditions prescribed by the Statute must be strictly complied with under S. 33, Evidence Act. Strict proof of the conditions required in that section is insisted on, especially in criminal cases. *Emperor v. Lubhai Kutti*.

40 Cr. L. J. 437 :
180 I. C. 605 : 1938 M. W. N. 582 :
11 R. M. 732 : A. I. R. 1939 Mad. 190.

—S. 512—Procedure.

The fundamental rule is that statements made against a person in his absence cannot be used as evidence against him in a criminal trial. Exceptions to that fundamental rule can only be created by Statute, and when a Statute permits something to be done which a fundamental rule prohibits, that something can only be done by strict compliance of the Statute which creates the exception. *Sheoraj Singh v. Emperor*.

27 Cr. L. J. 874 :
96 I. C. 122 : 24 A. L. J. 394 :
48 All. 375 : A. I. R. 1926 All. 340.

—S. 512—Procedure.

Where a witness is examined at a criminal trial, his depositions cannot be subsequently used at the trial of another accused who is absconding, if the procedure laid down in S. 512 is not observed. It is not the law that for the purpose of being used under S. 512, the depositions of witnesses must be recorded over again in a separate proceeding. It will suffice if at the commencement of the hearing the prosecutor brings to the notice of the Court the fact that such a person is absconding, examines a witness or witnesses to prove that fact and obtains a direction of the Court that the evidence about to be taken is being taken for the purpose of being used, if necessary, against the absconder under S. 512 as well as against the person present and under trial. *Emperor v. Baharuddin*.

39 Cr. L. J. 281 (b) :
173 I. C. 230 : 16 Pat. 116 :
4 B. R. 225 : 10 R. P. 390 :
A. I. R. 1938 Pat. 49.

—S. 512—Scope and object.

S. 512, which empowers a Magistrate to take the depositions of certain witnesses in the absence of the accused, enacts an exception

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to the principle embodied in S. 33, Evidence Act, namely that the evidence of a witness which a party had no right and opportunity to cross-examine, is not legally admissible. *Emperor v. Labhai Kutti*.

40 Cr. L. J. 437 :
180 I. C. 605 : 1938 M. W. N. 582 :
11 R. M. 732 : A. I. R. 1939 Mad. 190.

—S. 512(1)—Finding of abscondence—Necessity of.

A proceeding under S. 512 (1) is neither an inquiry nor a trial within the meaning of S. 517. The Magistrate has no jurisdiction in the proceedings under S. 512 (1) to come to any finding of fact to the prejudice of the accused in the latter's absence, except the necessary preliminary finding, warranted by the terms of the section, that the accused had absconded and there was no immediate prospect of arresting him. In arriving at a finding as to the accused's guilt of the offence with which he was charged in the first information report, the Magistrate exercises a jurisdiction which is not vested in him. Therefore, if an order for delivery is made by the Magistrate, it must be for delivery to the person entitled to the immediate possession of the property having regard to the indisputable or admitted facts, leaving the parties to fight out their case in the Civil Court. *U Ba Hlaing v. Balabux Sodani*.

38 Cr. L. J. 358 :
167 I. C. 245 : 14 Rang. 633 :
9 R. Rang. 305 : A. I. R. 1937 Rang. 42.

—S. 512 (2)—Enquiry—Necessity of.

It is in contradistinction with Sub-s. (2) of S. 512, under which there has to be an inquiry whether an offence punishable with death or transportation has been committed or not by some unknown person. *U Ba Hlaing v. Balabux Sodani*.

38 Cr. L. J. 358 :
167 I. C. 245 : 14 Rang. 633 :
9 R. Rang. 305 : A. I. R. 1937 Rang. 42.

—S. 512 (2)—Order of disposal of property under—Whether appeal lies.

An order made at the conclusion of proceedings under S. 512 (2) for disposal of property produced before the Court, is made under S. 523, and not under S. 517, and therefore, no appeal lies against such order. *U Ba Hlaing v. Balabux Sodani*.

38 Cr. L. J. 358 :
167 I. C. 245 : 14 Rang. 633 :
9 R. Rang. 305 : A. I. R. 1937 Rang. 42.

—S. 513—Surety—Liability of.

The surety or sureties must have a personal stake in seeing that the accused carries out his obligation. *In the matter of : Suraj Narain*.

36 Cr. L. J. 730 :
155 I. C. 430 : 14 Pat. 442 :
16 P. L. T. 223 : 7 R. P. 586 :
A. I. R. 1935 Pat. 195.

—S. 513—Surety for appearance—Liability of.

Surety bond agreeing to forfeit amount on accused's failure to attend—Accused absconding but surety amount realised from accused's property—Surety is not relieved of his lia-

Cr. P. CODE (1898), S. 503

———S. 503—Commission for witness, *legality of*.

An officer appointed as Additional District Magistrate and authorised to exercise all the powers of a District Magistrate as contained in Seh. III, Part V (18) is empowered to issue a commission under S. 503 for the examination of a witness within his own jurisdiction. *Bahadur Ali v. Emperor*. 24 Cr. L. J. 622 :

73 I. C. 510 : A. I. R. 1923 Lah. 158.

———S. 503—Commission, issue of—*Assistant Mint Master of Calcutta Mint, whether expert witness*.

The Assistant Mint Master of the Calcutta Mint is an expert witness with regard to coin and instruments for coining and a Magistrate does not act illegally in allowing him to be examined on commission instead of insisting on his personal attendance. *Gilli v. Emperor*.

26 Cr. L. J. 1232 :

88 I. C. 848 : 2 O. W. N. 377 :

12 O. L. J. 497 : A. I. R. 1925 Oudh 616.

———S. 503—Commission, issue of—*Case of wrongful restraint by obstructing path—No notice taken by Magistrate of Commissioner's report or evidence*.

The petitioners had been convicted of wrongfully restraining the complainant by obstructing a path along which he was entitled to pass. They applied for a local inquiry and the Magistrate ordered a local inquiry by a Pleader who ultimately made a report but no notice was taken either of the report or of any evidence on which it may have been based : *Held*, that the Magistrate had no authority to issue the commission, and the accused must have been seriously misled by it, for they must have thought that the Magistrate would pay attention to its result and they might well have refrained from producing witnesses ; and that, therefore, they should have a further opportunity of adducing evidence. *Mohar Khan v. Gayz-ud-Din Sheikh*.

15 Cr. L. J. 302 :

23 I. C. 510 : 18 C. W. N. 339 :

A. I. R. 1914 Cal. 478.

———S. 503—Commission, issue of—*Commission for examination of witness—Court, discretion of*.

S. 503, Cr. P. C., empowers a District Magistrate to issue a commission for the examination of a witness whose evidence is necessary if his attendance cannot be obtained without unreasonable expense. The District Magistrate is given a discretion in the matter of issuing a commission. *Parma Nand v. Emperor*.

25 Cr. L. J. 652 :

81 I. C. 140 : 4 L. L. J. 538 :

A. I. R. 1923 Lah. 73.

———S. 503—Commission, issue of—*Refusal to execute commission, legality of—Court's discretion to examine witness by commission or summons*.

Once a commission has been issued by a District Magistrate or other Court mentioned in S. 503, Cr. P. C. to an officer representing the British Indian Government in a Native

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State, it is the duty of the latter either to proceed where the witness is or to summon such witness before him and to take down his evidence or to delegate his functions under the commission to any officer subordinate to him and competent to execute the commission, and in that case, such officer must proceed to the place where the witness is or summon the witness before him and take down his evidence. The fact that the powers to execute the commission cannot be delegated to a Magistrate subordinate to a State does not absolve such officer from the duty of executing the commission or of procuring its execution in accordance with law. It is for the Magistrate to decide whether he would summon witnesses residing in a Native State in Court to record their statements or whether he would issue a commission, and if the Magistrate has decided upon the latter course, it is not within the discretion of the Agent to the Governor-General to whom the commission is issued to decline to execute the commission on the ground that there exist other possible means for examining the witnesses. *Sikandar v. Emperor*.

29 Cr. L. J. 202 :

106 I. C. 794 : 9 Lah. 347 :

30 P. L. R. 188 : A. I. R. 1928 Lah. 76.

———S. 503—Commission, issue of—*Remand order directing recording of evidence by commission—Magistrate recording evidence himself, legality of*.

It is not illegal on the part of a Magistrate to record the evidence of witnesses himself when the remand order directs to have the evidence recorded by means of commission. Even if such a procedure be irregular, the irregularity is one curable under the provisions of S. 537. *Sikandar v. Emperor*.

30 Cr. L. J. 948 :

118 I. C. 643 : I. R. 1929 Lah. 803 :

11 L. L. J. 370 : A. I. R. 1929 Lah. 10.

———S. 503—Commission, when issued.

Ss. 503 and 506 should be used sparingly and only in clearest possible cases—Witness temporarily ill is no ground for examining him on commission. *Mohammad Shafi v. Emperor*.

33 Cr. L. J. 942 :

140 I. C. 291 : 13 P. L. T. 345 :

I. R. 1932 Pat. 298 : A. I. R. 1932 Pat. 242.

———S. 503—Complainant *pardanashin* lady, examination of, on commission—*Complainant, whether witness*.

A *pardanashin* complainant may be examined by Commission under S. 503. Cr. P. C., the terms of that section are very wide. They refer not only to an enquiry and a trial, but to any other proceedings. The section authorizes the examination of any witness, and a complainant is certainly a witness. *Abhoyeswari v. Kishori Mohan Banerjee*. 15 Cr. L. J. 348 :

23 I. C. 700 : 18 C. W. N. 1020 :

42 Cal. 19 : A. I. R. 1914 Cal. 479.

———S. 503—Identifier of *pardanashin* witness not put on oath—*Statement, whether admissible—Statement made before Committing*

Cr. P. CODE (1898), S. 514

the bond, the orders cannot be supported.
Birendra Nath Bakshi v. Emperor.

36 Cr. L. J. 888 :
155 I. C. 1120 : 7 R. C. 687 (1) :
A. I. R. 1935 Cal. 336 (1).

—S. 514—Bail-bond—Forfeiture—Ground.

Where a person enters into a personal bail-bond binding himself to appear before the Court of a particular Magistrate, the fact that he fails to appear before a Magistrate other than the one named in the bond is no ground for directing forfeiture of the bond. *Mahabir Pande v. Emperor.*

21 Cr. L. J. 632 :
57 I. C. 456 : 18 A. L. J. 631 :
2 U. P. L. R. All. 301 :
A. I. R. 1920 All. 206.

—S. 514—Bail-bond—Forfeiture.

Where the term of a bail-bond was to surrender the accused persons to the District Magistrate on the day of decision or within the three days after or on such other date as the District Magistrate might direct: *Held*, that the surety had the three alternatives and the bond could not be forfeited unless the Magistrate had fixed a date for the production of the accused. *Bishambar Mahton v. Emperor.*

32 Cr. L. J. 121 :
128 I. C. 348 : 11 P. L. T. 578 :
I. R. 1931 Pat. 44.

—S. 514—Bail-bond—Forfeiture.

Where the words used in a bail-bond executed after the date of hearing had been fixed, were *indul 'talab'* (on call) and proceedings were taken under S. 514, against the sureties without giving them notice of the date of trials: *Held*, that in the absence of evidence on the point, it was not unreasonable to infer that the sureties and the executant might have understood that the date of trial would be intimated to them, and there was no forfeiture of the bond as no such intimation was given to them. *Rajbansi Bhagat v. Emperor.*

31 Cr. L. J. 605 :
124 I. C. 85 : 11 P. L. T. 575 :
A. I. R. 1929 Pat. 658.

—S. 514—Bail-bond without jurisdiction.

The petitioner against whom a warrant of arrest had been issued by the District Magistrate of Budaun appeared before First Class Magistrate at Bareilly and applied for bail. His application was granted and a personal bond was taken from him. He failed to appear at Budaun and the District Magistrate of Budaun forfeited the bond and ordered attachment and sale of his movables: *Held*, that the order forfeiting the bail-bond and ordering sale of the petitioner's movables was wholly illegal inasmuch as the District Magistrate of Bareilly had no jurisdiction to take the bail-bond. *Lal Bahadur v. Emperor.*

31 Cr. L. J. 2 :
120 I. C. 194 : 1930 A. L. J. 199 :
52 All. 94 : A. I. R. 1929 All. 914.

—S. 514—Bail-bond without jurisdiction.

Where a Magistrate without jurisdiction obtains a bail-bond from an accused person for his appearance before another Court outside

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his jurisdiction and it transpires that the Magistrate was not competent either to admit the accused to bail or to secure a bail-bond from him, the bail-bond or personal recognizance of the accused is a nullity. *Lal Bahadur v. Emperor.*

31 Cr. L. J. 2 :
120 I. C. 194 : 1930 A. L. J. 199 :
52 All. 94 : A. I. R. 1929 All. 914.

—S. 514—Bond for appearance—Forfeiture of.

The bonds were executed by the accused for the appearance before certain Court, in the prescribed form. The bonds did not specify the place where the accused were required to appear and were also not signed by the accused. On a certain date the Court sat at a different place than usual, and the accused not having appeared before it, the bonds were forfeited under S. 514. It did not appear from the order-sheet that the accused had knowledge of the change of venue: *Held*, that the order of forfeiture must be set aside under the circumstances. *Imarat Mallik v. Emperor.*

39 Cr. L. J. 473 :
174 I. C. 823 : 10 R. C. 728 :
A. I. R. 1938 Cal. 255.

—S. 514—Bond for appearance—Jurisdiction.

Where the accused gave a personal bond for appearance before a Magistrate and failed to appear before him on the date fixed and a notice was issued to him to show cause why the bond should not be forfeited and in the meantime the case was transferred to another Magistrate: *Held*, that the latter Magistrate had no jurisdiction to order the forfeiture of the bond under S. 514. *In re: Mir Husen Abdul Rahman.*

15 Cr. L. J. 295 (b) :
23 I. C. 503 : 16 Bom. L. R. 84 :
A. I. R. 1914 Bom. 3.

—S. 514—Bond for good behaviour—Forfeiture

Before ordering forfeiture of a security bond for good behaviour, a Magistrate is bound to hold an inquiry after giving notice to the sureties as to whether the person for whose good behaviour the security was given has committed any offence. *Moslem Mandal v. Emperor.*

27 Cr. L. J. 1293 :
98 I. C. 189 : 44 C. L. J. 170 :
54 Cal. 134 : A. I. R. 1926 Cal. 1224.

—S. 514—Bond for good behaviour—Confiscation, time for.

If a Magistrate trying an accused is aware that the latter has already been made to furnish security for good behaviour, and on convicting him, passes no order as to the security bond, no other Magistrate can, in subsequent proceedings, confiscate the bond. One *M. S.* was bound over under S. 110 and was made to execute a bond for Rs. 500 with two sureties, on the ground that he was a habitual thief and dacoit. Before the expiry of the bond, he was convicted and sentenced under S. 19, Act XI of 1878, for possession of a *chhavi*. When the *chhavi* was found, there was a strong suspicion that *M. S.* was actually on a marauding expedition: *Held*, that the conviction of *M. S.* rendered the sureties liable

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—S. 507—Scope of.

S. 507 which is one of the sections contained in Chap. XL, provides for the inspection of depositions taken on commission. It is open to a person accused in a warrant case, to refrain from putting in any interrogatories when the commission is first issued, and to apply at a later stage, for re-issue of the commission together with his cross-interrogatories. *P. G. Dombain v. Someswar Choudhury*.

36 Cr. L. J. 239 :

152 I. C. 1005 (b) : 38 C. W. N. 673 :

59 C. L. J. 377 : 61 Cal. 824 : 7 R. C. 341 :

A. I. R. 1934 Cal. 698.

—S. 509—Deposition of medical witness.

The failure of a Committing Magistrate to append a certificate to the deposition of a medical witness has not the effect of making the evidence inadmissible if it otherwise appears that the statement was recorded and attested by the Magistrate in the presence of the accused. *Nawab v. Emperor*.

34 Cr. L. J. 443 :

142 I. C. 577 : I. R. 1933 Lah. 213 :

A. I. R. 1933 Lah. 131.

—S. 509—Medical witness, evidence of—*Examination of medical witness in Sessions Court, necessity of, if evidence appears deficient or requires explanation or elucidation.*

The statement of a medical witness, taken and attested by a Magistrate in the presence of the accused, is admissible as evidence in the Sessions Court, although the medical witness is not himself called. It ought, therefore, to be recorded with the utmost care and accuracy. Such evidence should be carefully scrutinized by the Sessions Judge; and if it appears that the deposition is essentially deficient or requires further explanation or elucidation, the Judge should summon and examine the witness. *Bharat v. Emperor*.

18 Cr. L. J. 380 :

38 I. C. 764 : 20 O. C. 61 :

A. I. R. 1917 Oudh 288.

—S. 509—Scope of.

S. 509 is not intended to be applied when the medical witness is present in Court. *In re : Rangappa Goundan*.

37 Cr. L. J. 471 :

161 I. C. 663 : 1936 M. W. N. 110 :

43 L. W. 305 : 70 M. L. J. 447 : 59 Mad. 349 :

8 R. N. 845 : A. I. R. 1936 Mad. 426.

—S. 510—Certificate of Chemical Examiner—*Evidentiary value.*

Where all that is on the record of a case is a little scrap of paper on which it is written in somebody's handwriting that the Chemical Examiner's report shows that the packets in question contained cocaine, it is not legal evidence and cannot be a substitute for the original certificate or at least for a copy of it certified by the Magistrate as being a true copy. The provisions relating to the production of a report by the Chemical Examiner in place of the Chemical Examiner's own personal appearance in Court are special

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provisions of the Cr. P. C., and must be strictly adhered to. *Peary Lal v. Emperor*.

39 Cr. L. J. 714 :

176 I. C. 225 (1) : 40 P. L. R. 788 :

11 R. L. 167 (1) : A. I. R. 1938 Lah. 496.

—S. 510—Duty of Court.

Court has discretion of admitting report of Chemical Examiner without requiring officer to be examined in Court—But Court should not admit it, if report is inadequate, unless officer submits bill and satisfactory report. *Gaya Kunwar v. Emperor*.

35 Cr. L. J. 700 :

148 I. C. 600 : 11 O. W. N. 312 :

6 R. O. 421 : A. I. R. 1934 Oudh 62.

—S. 510—Expert certificate—*Admissibility of—Bones, identity of.*

A certificate of a Professor of Anatomy at a Medical College, as to the identity of certain bones submitted to him, is not *per se* admissible in evidence at a criminal trial apart from special authority like S. 510. The certificate must be proved by examining the Professor as a witness. *Ahila Manaji v. Emperor*.

26 Cr. L. J. 339 :

84 I. C. 643 : 24 Bom. L. R. 803 :

47 Bom. 74 : A. I. R. 1923 Bom. 183.

—S. 510—Opinion of Imperial Serologist.

Opinion of Imperial Serologist is entitled to great weight. *Ghirrao v. Emperor*.

34 Cr. L. J. 1009 :

145 I. C. 470 : 10 O. W. N. 1108 :

6 R. O. 53 : A. I. R. 1933 Oudh 265.

—S. 510—Report of Chemical Examiner—*Acceptance, without cross-examination.*

The acceptance of the mere written report of the Chemical Examiner as evidence in criminal cases without subjecting him to cross-examination is dangerous. *Ujagar Singh v. Emperor*.

40 Cr. L. J. 576 :

181 I. C. 864 : 11 R. L. 895 :

41 P. L. R. 493 : I. L. R. 1939 Lah. 206 :

A. I. R. 1939 Lah. 149.

—S. 510—Report of Chemical Examiner.

Admitted without putting him in witness-box—Accused not objecting—Report is rightly admitted. *Emperor v. Bachcha*.

36 Cr. L. J. 362 :

153 I. C. 472 : 7 R. A. 507 (2) :

A. I. R. 1934 All. 873.

—S. 510—Report of Chemical Examiner—*Appeal.*

Under S. 510 any document purporting to be a report under the hand of a Chemical Examiner upon any matter duly submitted to him for examination and report may be used as evidence in any inquiry, trial or other proceeding. It is a piece of evidence that does not require any formal proof, but at the same time it must be tendered as evidence and used as such, so that the accused may have a chance of questioning the identity of the packets submitted to the Chemical Examiner. *Wali Muhammad v. Emperor*.

26 Cr. L. J. 200 :

83 I. C. 904 : 21 A. L. J. 869 :

A. I. R. 1924 All. 193.

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whether the omission has caused prejudice to the party. *Namdeo v. Emperor*.

40 Cr. L. J. 23 :
178 I. C. 207 : 1938 N. L. J. 79 :
11 R. N. 210 : A. I. R. 1938 Nag. 275.

—S. 514—Defect in procedure—Effect of.

Therefore, where a Magistrate calls upon a person subject to a bond to show cause under S. 514 merely on a Police report and takes evidence on oath after the order is issued, he acts without jurisdiction, and the proceedings must be set aside even though, as a matter of fact, the person is not prejudiced in any way by the procedure adopted. *Krishna Narain Singh v. Emperor*.

23 Cr. L. J. 478 :
67 I. C. 830 : 3 P. L. T. 381 :
A. I. R. 1922 Pat. 242.

—S. 514—Defect in procedure—Effect of.

Where the Magistrate has failed to follow the procedure under S. 514 in holding the surety to his bond liable without calling upon him to show cause why the penalty should not be paid, although such an omission is not justifiable, yet if the facts show that such an omission has not occasioned any failure of justice, it is sufficient to prevent interference in revision. *Ram Bilas Sharma v. Emperor*.

41 Cr. L. J. 214 :
185 I. C. 598 : 6 B. R. 221 :
21 P. L. T. 194 : 12 R. P. 429 :
A. I. R. 1940 Pat. 375.

—S. 514—Distress, use of.

The word 'distress' is used only with reference to tangible movable property. *Secretary of State v. Sengammal*.

18 Cr. L. J. 1 :
36 I. C. 83 : 4 L. W. 613 :
1917 M. W. N. 105 : A. I. R. 1917 Mad. 748.

—S. 514—Enforceability.

Criminal Court cannot take bond for production of minor before District Judge—Under S. 514 only the Court which has taken the bond that can enforce it and District Judge cannot take action on bond. *Kanshi Ram v. Emperor*.

34 Cr. L. J. 952 (1) :
145 I. C. 270 : 6 R. L. 90 :
A. I. R. 1933 Lah. 678 (1) .

—S. 514—Forfeiture of bond—Limitation for.

The Cr. P. C., nowhere lays down any limitation as to when action should be taken under S. 514. A Magistrate, therefore, who does not proceed at once to take steps to forfeit the recognizance, can do so subsequently. *Emperor v. Raja Ram*.

1 Cr. L. J. 564 :
I. L. R. 26 All. 202.

—S. 514—Jurisdiction—Court competent or not.

The proper Court to direct the forfeiture of a bail-bond is the Court before which the accused was bound by the bond to appear and the for-

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feiture must be established to the satisfaction of such Court. *Maung Nge v. Emperor*.

26 Cr. L. J. 389 :
84 I. C. 933 : 2 Rang. 581 :
A. I. R. 1925 Rang. 153.

—S. 514—Jurisdiction.

A Magistrate is not prevented from taking steps under S. 514 of the Code in cases in which a breach of the peace has been committed and the parties acting privately compound the offence. *Emperor v. Raja Ram*.

1 Cr. L. J. 564 :
I. L. R. 26 All. 202.

—S. 514—Jurisdiction—Court competent to forfeit.

In the case of a bond for appearance before a Court, the Tribunal empowered to forfeit it is that Court, and no other Court has jurisdiction to do so. *Hira Lal Sahu v. Emperor*.

10 Cr. L. J. 248 :
3 I. C. 113.

—S. 514—Jurisdiction to forfeit, when arises.

The jurisdiction of the Magistrate to take proceedings under S. 514 arises as soon as he is satisfied *prima facie* that the bond has been forfeited. *Namdeo v. Emperor*.

40 Cr. L. J. 23 :
178 I. C. 207 : 1938 N. L. J. 79 :
11 R. N. 210 : A. I. R. 1938 Nag. 275.

—S. 514—Jurisdiction when arises.

There is nothing in S. 514 to debar a Magistrate, who has convicted a person of an offence which involves the forfeiture of the bond, from subsequently taking action against the person by forfeiting the bond in question. *Miram Shah v. Emperor*.

37 Cr. L. J. 849 :
163 I. C. 443 : 9 R. Pesh. 2 :
A. I. R. 1936 Pesh. 141.

—S. 514—Jurisdiction.

Where a surety executed a bond for appearance of a certain accused before the Court of Sessions, and an order was made by a Deputy Magistrate that the bond be forfeited as the accused failed to appear: *Held*, that the Deputy Magistrate had no jurisdiction to make the order. *Hira Lal Sahu v. Emperor*.

10 Cr. L. J. 248 :
3 I. C. 113.

—S. 514—Liability under bond.

Where a bond has been given in Court for compliance of its order, the liability of the obligor is not discharged simply because the trial Court has passed the order in his favour where such order is reversed in appeal. *Maung Po Cho v. Maung Shwe Kin*.

30 Cr. L. J. 346 :
114 I. C. 682 : I. R. 1929 Rang. 74 :
A. I. R. 1928 Rang. 310.

—S. 514—Notice—Necessity of.

A bail-bond given for the appearance of a person accused who was to remain in hospital was forfeited. The sureties alleged that they were not allowed to exercise any control over the movements of the accused person, there being a Police guard at the hospital: *Held*,

Cr. P. CODE (1898), S. 512

able amount of delay, expense or inconvenience.
Bhika v. Emperor. 25 Cr. L. J. 95 :
 76 I. C. 31 : A. I. R. 1924 Lah. 605.

—S. 512—Deposition, when can be used.

S. 512 will apply only where the witness is dead or cannot be procured. *Rakhia v. Emperor.*

12 Cr. L. J. 214 :
 10 I. C. 119 : 157 P. L. R. 1911 :
 56 P. W. R. 1911 Cr.

—S. 512—Deposition, when can be used.

Statements previously made by a witness to Magistrates and recorded in the absence of the accused, cannot be treated as evidence in the Sessions Court if the witness is living and can be procured. *Rakhia v. Emperor.*

12 Cr. L. J. 214 :
 10 I. C. 119 : 157 P. L. R. 1911 :
 56 P. W. R. 1911 Cr.

—S. 512—Deposition, when can be used.

When two witnesses, who have given evidence at a previous trial against persons then on their trial, happen to have referred in the course of their evidence at the trial to a person who is absconding and is subsequently tried, their statements cannot be read at the subsequent trial of the accused who was then absconding, merely because they happen to be absent and cannot give evidence. *Sheoraj Singh v. Emperor.*

27 Cr. L. J. 874 :
 96 I. C. 122 : 24 A. L. J. 394 :
 48 All. 375 : A. I. R. 1926 All. 340.

—S. 512—Finding of abscondence—Nature of.

A Magistrate before recording evidence under S. 512, Cr. P. C., took the statements of two constables who had searched for the accused and had not been able to find him and also issued a proclamation against the accused under S. 87 of the Code : *Held*, that the requirements of S. 512, Cr. P. C., had been fulfilled and that evidence had been properly recorded under that section. *Daya Ram v. Emperor.*

27 Cr. L. J. 247 :
 92 I. C. 423 : 6 Lah. 489 :
 A. I. R. 1926 Lah. 83.

—S. 512—Finding of abscondence—Necessity of.

A murder was committed in 1897. The accused ran away at that time and was not heard of till he was arrested in 1915. The witnesses were examined in 1897 on behalf of the prosecution to prove the commission of the offence by the accused. The Magistrate, however, did not record any finding that in his opinion the accused had absconded and that there was no immediate prospect of his arrest. The accused was convicted on the evidence recorded in 1897 : *Held*, that the evidence given in 1897 was inadmissible to prove the guilt of the accused and that the conviction was bad. *Rustom v. Emperor.*

16 Cr. L. J. 801 :
 31 I. C. 817 : 13 A. L. J. 1043 :
 38 All. 29 : A. I. R. 1915 All. 484.

—S. 512—Finding of abscondence—Necessity of.**Cr. P. CODE (1898), S. 512**

S. 512 requires only that before the Court records the depositions of the witnesses for prosecution, it should be proved that the accused person has absconded and that there is no immediate prospect of arresting him, and not that a finding should be recorded to that effect. *Daya Ram v. Emperor.*

27 Cr. L. J. 247 :
 92 I. C. 423 : 6 Lah. 489 :
 A. I. R. 1926 Lah. 83.

—S. 512—Finding of abscondence—Absence of—Effect of.

Where a Magistrate had clear evidence that the accused were absconding and evidence from which he might reasonably infer that there was no immediate prospect of their arrest, and he expressly stated in his order that he was taking evidence under S. 512, the presumption is that he did his duty and did not record the evidence under the section unlawfully. The mere fact that the Magistrate did not recite a finding that there was no immediate prospect of the arrest of the accused, does not render the evidence inadmissible. *Bhagwati v. Emperor.*

20 Cr. L. J. 6 :
 48 I. C. 481 : 16 A. L. J. 902 :
 41 All. 60 : A. I. R. 1918 All. 6.

—S. 512—Incapable of giving evidence—Meaning of.

Where, however, a witness whose deposition has been recorded under S. 512 actually appears in Court at the trial of the absconder and gives evidence, the mere fact that he is unable to remember the details of the occurrence does not render him incapable of giving evidence within the meaning of the section, and his previous deposition cannot be put in evidence against the accused person. The proper procedure in such a case is to read out his previous deposition to the witness under the provisions of S. 159 of the Evidence Act, to refresh his memory, and then to ask him whether he remembers the details of the occurrence. *Bhika v. Emperor.*

25 Cr. L. J. 95 :
 76 I. C. 31 : A. I. R. 1924 Lah. 605.

—S. 512—Object.

The object of the provisions of S. 512 (1), is solely to record, in a particular way and under particular circumstances, depositions of witnesses which may, in the future, be used against the accused person when he is apprehended and brought to trial. There is no inquiry, for there is nothing into which an inquiry can be made. The sub-section is, in fact, directed merely to the record of evidence and nothing more. *U. Ba Hlaing v. Balabux Sodani.*

38 Cr. L. J. 358 :
 167 I. C. 245 : 14 Rang. 633 :
 9 R. Rang. 305 : A. I. R. 1937 Rang. 42.

—S. 512—Ordinary deposition whether can be one under S. 512.

Evidence given at a trial for another purpose cannot, by an *ex post facto* operation, converted into an equivalent of what is called 'a deposition taken under S. 512, Cr. P. C.,' when as a

Cr. P. CODE (1898), S. 514**—S. 514—Proof of forfeiture.**

S. 514 requires the Court to record grounds of the proof that the bond has been forfeited. *Patch Chand Wadhmal v. Emperor*.

41 Cr. L. J. 802 :
189 I. C. 800 : 13 R. S. 51 :
1940 Kar. 479 :
A. I. R. 1940 Sind 136.

—S. 514—Grounds of proof, recording of.

It is not necessary that the Court should separately and formally record the grounds of proof but it is sufficient if they exist and appear in the record of the proceedings. *Namdeo v. Emperor*.

40 Cr. L. J. 23 :
178 I. C. 207 : 11 R. N. 210 :
1938 N. L. J. 79 :
A. I. R. 1938 Nag. 275.

—S. 514—Remission of penalty.

The Court can remit where the accused has been subsequently arrested and the amount forfeited is excessive and the surety is unable to pay. *Girin (Girindra) Das Gupta v. Emperor*.

37 Cr. L. J. 77 :
159 I. C. 385 (b) : 8 R. C. 308 :
A. I. R. 1935 Cal. 246.

—S. 514—Revision.

Order under S. 514—District Magistrate can himself entertain revision. *Emperor v. Pandhi Khan*.

36 Cr. L. J. 215 :
152 I. C. 874 : 7 R. S. 99 :
A. I. R. 1934 Sind 152.

—S. 514—Scope.

Proceedings under S. 514 are of the nature of civil proceedings in which the provisions laid down in the section must be most carefully observed. *Krishna Narain Singh v. Emperor*.

23 Cr. L. J. 478 :
67 I. C. 830 : 3 P. L. T. 381 :
A. I. R. 1922 Pat. 242.

—S. 514—Scope of.

No action shall be taken under S. 514, Cr. P. C., when the Court itself by discharging the accused persons held that their presence on the date of hearing was unnecessary. *Emperor v. Godhan*.

26 Cr. L. J. 400 :
84 I. C. 944 : 1 O. W. N. 586 :
A. I. R. 1925 Oudh 314.

—S. 514—Security for good behaviour—Forfeiture of.

One W. S. was ordered to show cause why he should not be required to give security for good behaviour under S. 110 of the Cr. P. C., and the order was made absolute. N. S. and J. S. offered themselves as sureties who, along with W. S., executed a bond by which they bound themselves to pay a certain sum as penalty if W. S. should commit a breach of the peace or do any act likely to cause a breach of the peace. A form for a bond under S. 107 was by mistake substituted for the form under S. 110. W. S. having been convicted of an offence under S. 430, Penal Code, for having cut the bank of a canal distributary which watered a village below his village, the Magistrate passed an order forfeiting the bond executed

Cr. P. CODE (1898), S. 514

by W. S. and the sureties. It was contended on revision (1) that the bond was void, the proceedings having been under S. 110, Cr. P. C., and W. S. not having been called to show cause under S. 107; (2) that no breach of the peace or act likely to cause a breach of the peace was established; (3) that inasmuch as the Magistrate who convicted W. S. under S. 430, Penal Code, did not order forfeiture as part of the proceedings in that case, the subsequent proceedings were bad, and (4) that as against the sureties the judgment was not conclusive, and that evidence should have been adduced on the forfeiture proceedings that the security had been forfeited: *Held*, that the bond executed by W. S. was bad in law, for the order was that he should be bound over under S. 110, and that the order forfeiting the security furnished by him must be set aside, that the convicting Magistrate anticipated the forfeiture of the security as a result of the conviction, and no great delay had taken place after the conviction before the order of forfeiture was passed, and that the production of a judgment of conviction, and, if necessary, proof of identity is sufficient in such cases for the issue of notice under S. 514, Cr. P. C., and it is for the surety to show cause against forfeiture. *Wadhawa Singh v. Emperor*.

1 Cr. L. J. 90 :
5 P. L. R. 42 : 32 P. R. Cr. of 1903.

—S. 514—Security for good behaviour—Forfeiture of.

Where a conviction for an offence under the Gambling Act was had against a person who was at the time under security to be of good behaviour, it was *held*, that such a conviction was a good ground for taking action under S. 514 although, having regard to the nature of the offence, the Magistrate might well exercise the discretion conferred on him by Cl. (5) of the section. *Emperor v. Abdul Hai*.

3 Cr. L. J. 91 :
26 A. W. N. 13.

—S. 514—Security to keep peace—Forfeiture of—Procedure.

Where a Magistrate convicted and sentenced persons while they were on security under S. 107, and the fact of their being on security was brought to the notice of the Magistrate at the time of conviction, but then he made no order for the forfeiture of the bonds but more than 4 months after conviction ordered forfeiture of the bonds: *Held*, that at the time of conviction the Magistrate should have taken the whole case into consideration and passed once for all what he considered a suitable punishment. It was not open to him to re-consider and add to his order or to proceed piecemeal by passing a sentence once and subsequently passing an order for forfeiture of bonds. *Gul Khan v. Emperor*.

1 Cr. L. J. 1100 :
26 P. R. Cr. of 1904.

—S. 514—Security bond—Forfeiture of—Validity of—Warrant for attendance of a witness—Forfeiture of security, illegal.

In a case under S. 498, Penal Code, there

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bility. Principle of S. 128, Contract Act, does not apply. *Abdul Karim v. Emperor*.

35 Cr. L. J. 315 :
147 I. C. 127 : 6 R. S. 127 :
A. I. R. 1933 Sind 320.

S. 514.

- Amount of bond.
- Appeal.
- Attachment and sale.
- Bail-bond.
- Bail-bond without jurisdiction.
- Bond for appearance.
- Bond for good behaviour.
- Bond for prosecution of property.
- Bond to keep peace.
- Bonds under Bombay Police Act.
- Defect in procedure.
- Distress, use of.
- Enforceability.
- Forfeiture of bond.
- Jurisdiction.
- Liability under bond.
- Notice.
- Penalty.
- Proof.
- Record.
- Remission of penalty.
- Revision.
- Scope.
- Scope of.
- Security for good behaviour.
- Security to keep peace.
- Security bond.
- Statutes.
- Surety.
- Surety for appearance.
- Surety bond.

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See also Cr. P. C., 1898, Ss. 109,
118, 252, 258, 499, 515.

S. 514—Amount of bond.

It is advisable that all considerations should be weighed at the time when a security and surety bond is demanded and that the sum fixed therein should be equitable; the reduction of that sum at the time of forfeiture is *prima facie* inadvisable and goes far to undermine the whole purpose for which such bonds are taken. *Miram Shah v. Emperor*.

37 Cr. L. J. 849 :
163 I. C. 443 : 9 R. Pesh. 2 :
A. I. R. 1936 Pesh. 141.

S. 514—Appeal.

Where a Sub-Divisional Magistrate not exercising the powers of a District Magistrate hears in appeal from an order under S. 514, the proceedings are void. *Emperor v. Muhammad Shah*.

36 Cr. L. J. 557 :
154 I. C. 522 : 7 R. L. 580 :
A. I. R. 1934 Lah. 294.

S. 514—Attachment and sale.

Forfeiture of bond—Before awarding imprisonment, Court should issue warrant of attachment for sale of surety's movable property. *Reoti Prasad v. Emperor*.

36 Cr. L. J. 297 :
153 I. C. 155 (1) : 4 A. W. R. 778 :
7 R. A. 452 : A. I. R. 1934 All. 1046.

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S. 514—Attachment and sale.

When the penalty of the bond is not paid, the first step which the Court should take is to recover the sum by issuing a warrant for the attachment and sale of movable property belonging to the person liable under the bond or his estate if he be dead. It is only when the penalty is not paid and cannot be recovered by attachment and sale that the person bound is liable to imprisonment. *Maung Po Cho v. Maung Shwe Kin*. 30 Cr. L. J. 346 :
114 I. C. 682 : I. R. 1929 Rang. 74 :
A. I. R. 1928 Rang. 310.

S. 514—Bail-bond—Technical forfeiture.

A person who had been arrested, was released upon a bail-bond which bound the surety to produce him at the Court of the City Magistrate of Agra. The surety was ordered to produce the offender in the Court of the Sub-Divisional Officer of Purnea. The offender escaped on his way to Purnea. Subsequently, more than 9 months after the escape and with full knowledge thereof, the surety was ordered to produce the offender before the City Magistrate of Agra in connection with a case at Purnea. The surety having failed to do so, proceedings were taken against him under S. 514: *Held*, that the order calling upon the surety to produce the offender at Purnea was wholly illegal; that the bail-bond, however, was not discharged by the order directing production at Purnea: that, having regard to the fact that it was the illegal direction of the Magistrate to produce the accused at Purnea that resulted in the surety's failure to produce him, and to the fact that when the order for production at Agra was made months after, it was known that the accused had absconded, and in view of the fact that the surety was not in any way to be blamed, there was only a technical forfeiture. *Prabhu Dayal v. Emperor*. 28 Cr. L. J. 586 :
102 I. C. 554 : 25 A. L. J. 537 : 49 All. 825.

S. 514—Bail-bond—Forfeiture.

An order passed against a security for production of accused released on bail, forfeiting his security cannot be sustained if it is not in terms of the bond. *Bhunchshwar Misra v. Emperor*.

A. I. R. 1930 Pat. 519.

S. 514—Bail-bond—Forfeiture.

The amount of a bail-bond cannot be forfeited in case of the failure of the accused to appear in a Court to which the case is transferred, where the obligation to appear in such a Court has not been expressly specified in the bond. *Maung Nge v. Emperor*.

26 Cr. L. J. 389 :
84 I. C. 933 : 2 Rang. 581 :
A. I. R. 1925 Rang. 153.

S. 514—Bail-bond—Forfeiture—Legality.

Where a person denies the execution of a bail-bond and the Magistrate without taking any evidence passes orders forfeiting

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bond, where the Judge does not hold Court on that day. *Samman Singh v. Emperor.*

28 Cr. L. J. 1020 :
106 I. C. 108 : 9 L. L. J. 411 :
29 P. L. R. 231 : A. I. R. 1928 Lah. 20.

—S. 514—Surety for appearance—Liability.

The object of the surety bond is, as far as possible, to ensure that an accused person shall not evade justice in the ordinary sense, that is to say, by flying off the country or the jurisdiction of the Court. But if he elects to die sooner than face his trial, that can hardly be a sufficient reason for forfeiting the surety-bonds, since that was an event which his sureties could not have had in contemplation and which is not of the kind which would impose upon them any moral obligation or responsibility to the Court. *In re : Rama Bapu Pujari.*

17 Cr. L. J. 393 :
35 I. C. 825 : 18 Bom. L. R. 683 :
A. I. R. 1916 Bom. 221.

—S. 514—Surety for appearance—Liability.

The surety is not released by the mere fact that the accused was under arrest for one day or less between the date of the bond and the date when the accused must have been produced in Court. *Madan Mohan Beharilal v. Emperor.*

32 Cr. L. J. 467 :
130 I. C. 161 : I. R. 1931 Pat. 145 :
A. I. R. 1931 Pat. 19.

—S. 514—Surety for appearance—Liability.

Where a person stands surety for the production of an accused person in the Sessions Court on a certain day, the condition of the bond is satisfied if the accused appear in that Court on that day. The surety is not bound to produce the accused subsequently before the District Magistrate. *Behari Lal v. Emperor.*

10 Cr. L. J. 251 :
3 I. C. 188 : 36 Cal. 749.

—S. 514—Surety for appearance—Liability.

Where a person stood surety for certain appellant before the Sessions Court and undertook to produce them in that Court on every date fixed for hearing or whenever required : *Held*, that the condition was satisfied by the attendance of the accused during the hearing ; and that although a requisition might be made by the Sessions Court for the production of the accused in that Court, the surety was not bound to produce them before the Magistrate. A bail-bond should contain a clear proviso for the production of the accused before the Court or officer who is to take measure to secure the surrender of the accused and to re-commit them to jail in terms of the warrant. *Behari Lal v. Emperor.*

10 Cr. L. J. 251 :
3 I. C. 188 : 36 Cal. 749.

—S. 514—Surety for appearance—Liability.

Where a surety is unable to produce the

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person for whom he has given bail owing to some circumstance which is not under the surety's control, for instance, where the accused person is arrested on a criminal charge, he is not liable to forfeit his bail. *Allauddin v. Emperor.*

26 Cr. L. J. 833 :
86 I. C. 657 : 1925 Pat. 46 :
6 P. L. T. 397 : 4 Pat. 259 :
A. I. R. 1925 Pat. 389.

—S. 514—Surety bond, discharge of.

Execution of surety bond at X—Case is transferred to Y—Another bond at Y—*Held*, surety at X discharged under Contract Act (IX of 1872), S. 134. *Emperor v. Pandhi Khan.*

36 Cr. L. J. 215 :
152 I. C. 874 : 7 R. S. 99 :
A. I. R. 1934 Sind 152.

—S. 514—Surety bond, discharge of.

The execution of a new surety bond in respect of the same accused does not, of its own force, discharge the bond previously executed by another person at another place. *Emperor v. Pandhi Khan.*

36 Cr. L. J. 215 :
152 I. C. 874 : 7 R. S. 99 :
A. I. R. 1934 Sind 152.

—S. 514—Surety bond—Forfeiture.

The applicant filed a prosecution under Ss. 323, 504 and 506 (1), Penal Code, against Y and six others. He applied to the Magistrate for stay of the proceedings on the ground that he wanted to apply for a transfer of the proceedings from this Court to another Court, and the Magistrate granted an adjournment on getting two surety bonds from the applicant, that he will apply to the High Court for transfer within three weeks of that date, instead of applying to the High Court for transfer to the Sub-Divisional Magistrate. Evidently the reason for his doing so was that he did not seek a transfer from one Magistrate to another but from one Magistrate to another in the same district, and according to the practice in Sind, an application for transfer of a case from one Magistrate to another in the same District has first to be made to the District or Sub-Divisional Magistrate vested with powers of transfer before an application for transfer is made to the High Court. On the date fixed for the next hearing, the Magistrate trying the case was apprised of this fact and without any demur, he adjourned the hearing. The Sub-Divisional Magistrate rejected the transfer application, but no application for transfer made to the High Court as the parties compromised cases. The Magistrate then took proceedings under S. 514, and called upon the applicant to show cause why the surety bond executed by him should not be forfeited. After getting an application from the applicant he ordered the applicant to pay the full amount of each bond on the ground that although the application for transfer was made to the Sub-Divisional Magistrate, no transfer application was made to the High Court : *Held*, that the applicant merely followed the practice of the Sind High Court ; there had been a technical non-compliance by the applicant with the terms of

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to confiscation of the security. *Buta Singh v. Emperor.*

18 Cr. L. J. 508 :
39 I. C. 476 : 3 P. R. 1917 Cr. :
A. I. R. 1917 Lah. 224.

———S. 514—*Bond for good behaviour—Forfeiture.*

The mere fact that a person who was bound down to be of good behaviour was reasonably suspected by the Police of having committed an offence is not a ground for ordering forfeiture of his security bond. *Moslem Mandal v. Emperor.*

27 Cr. L. J. 1293 :
98 I. C. 189 : 44 C. L. J. 170 :
54 Cal. 134 : A. I. R. 1926 Cal. 1224.

———S. 514 — *Bond for good behaviour — Forfeiture of.*

When a bond for good behaviour is broken and the punishment for such breach is completely suffered before the period named in the bond expires, the sureties, when paying the forfeiture should be asked whether they agree to the bond continuing in force. If they do not agree, the Magistrate should proceed under S. 126 (3), Cr. P. C. *Emperor v. Nga Thein Ga.*

1 Cr. L. J. 547 :
U. B. R. 1904 1st Qr. Cr. P. C. 13.

———S. 514—*Bond for production of property—Forfeiture of.*

During the investigation of a reported case of burglary, the Police seized four bullocks which were handed over to one S. S. as a *supurdar* on his executing a bond undertaking to produce them on demand before a Court or the Police, and on default to pay Rs. 4,000. S. S. was called upon by a Magistrate before whom the case was sent up for trial to produce the bullocks on an appointed date but he did not comply with the requisition. Consequently, the Magistrate directed him to execute another bond to produce the bullocks when he may be called upon to do so, and in default, to pay Rs. 1,000. This bond was accepted by the Magistrate and S. S. was directed to produce bullocks on a particular date. He failed to comply with the order, whereupon the bond was forfeited to the extent of Rs. 100. It was contended on his behalf that as it was not a bond under the Cr. P. C., it could not be forfeited : *Held*, that the bond must be considered to have been executed under S. 516-A, and could be forfeited under S. 514 of the Code. *Shangara Singh v. Emperor.*

30 Cr. L. J. 527 :
115 I. C. 765 : I. R. 1929 Lah. 429 :
A. I. R. 1929 Lah. 658.

———S. 514—*Bond to keep peace—Forfeiture—Procedure.*

Four persons were bound over in a certain sum, with one surety in each case, to keep the peace for a year. Within the year they joined in a very serious riot and were convicted and punished, and the Magistrate who convicted them plainly wrote that, inasmuch as these four persons would forfeit some Rs. 4,000 presently, he refrained from passing a heavy sentence. He then issued process to the sureties and confiscated the security in full : *Held*, that the order of forfeiture was lawful, inasmuch as the Magistrate in passing

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sentence in the substantive case plainly showed his intention to confiscate the security. *Hussain Khan v. Emperor.*

18 Cr. L. J. 566 :
39 I. C. 806 : 15 P. R. 1917 Cr. :
17 P. W. R. 1917 Cr. : A. I. R. 1917 Lah. 188.

———S. 514—*Bond to keep peace.*

The correct form of the bond to keep the peace is given in Sch. V, Cr. P. C., and the correct form of the bond by sureties is also given in the same schedule. These show that the surety does not take responsibility for the payment of the amount forfeited by the principal in the event the principal failing to pay it, but enters into a direct bond taking responsibility that the principal shall not commit a breach of the peace. *Miram Shah v. Emperor.*

37 Cr. L. J. 849 :
163 I. C. 443 : 9 R. Pesh. 2 :
A. I. R. 1936 Pesh. 141.

———S. 514—*Bond to keep peace.*

Where proceedings under S. 514 are initiated within the period prescribed in a bond furnished under S. 107 of the Code, the expiry of the period before the completion of the case is no legal bar to its prosecution under S. 514 of the Code. *Uma Dutt Misir v. Emperor.*

23 Cr. L. J. 623 :
68 I. C. 847 : 20 A. L. J. 693 :
44 All. 657 : A. I. R. 1922 All. 503.

———S. 514—*Bond to keep peace — Forfeiture of.*

If, in convicting a person of an offence involving the forfeiture of a bond for keeping the peace, a Magistrate, who has knowledge of the fact that the person before him has, by his conduct, forfeited his bond, does not make any order for forfeiture, he must be taken to have decided not to take action on the bond in respect of that particular breach of the peace, and he cannot thereafter re-consider and add to his order by directing forfeiture of the recognizance. *Emperor v. Nawaz.*

14 Cr. L. J. 67 :
18 I. C. 403 : 7 P. W. R. 1913 Cr. :
39 P. L. R. 1913 : 13 P. R. 1913 Cr.

———S. 514—*Bonds under Bombay Police Act.*

Bonds taken under S. 106 and 107, City of Bombay Police Act, for appearance before the Police are not bonds taken under the Cr. P. C., or for appearance before a Court and such bonds cannot, therefore, be dealt with under S. 514 of the Code of Cr. P. C. *In re : Hubert Crawford.*

19 Cr. L. J. 607 :
45 I. C. 511 : 20 Bom. L. R. 379 :
42 Bom. 400 : A. I. R. 1918 Bom. 226.

———S. 514—*Defect in procedure.*

The omission to record the reasons for his being so satisfied is a matter relating to procedure and not to jurisdiction. It is not disobedience of an express provision as to a mode of trial but rather of an omission in a matter of procedure. The only question then is

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of property—Bond from complainant, Court's power to take.

A person acquitted of a charge of theft is not entitled to re-delivery of the properties stolen where the Court finds, though it had to acquit the accused for want of sufficient evidence, that the properties had actually been stolen from the complainant. A Criminal Court has no power to order the complainant to execute a bond till the disposal of the question of title to such properties by a Civil Court. *Rasul Khan v. Emperor.* 28 Cr. L. J. 59 :

99 I. C. 91 : 44 C. L. J. 205 :
A. I. R. 1927 Cal. 61.

————S. 516-A—Ex parte order.

Restitution proceedings under S. 516-A, are proceedings of a quasi-civil nature, and where a party against whom an application for restitution has been made fails to appear after notice, *ex parte* proceedings can be taken against him. *Maung Po Cho v. Maung Shwe Kin.* 30 Cr. L. J. 346 :

114 I. C. 682 : I. R. 1929 Rang. 74 :
A. I. R. 1928 Rang. 310.

————S. 516-A—Offence—Meaning of.

In a prosecution of a motor driver for an offence under S. 338, Penal Code, it cannot be said that the car has been used by the accused for the commission of the offence within the meaning of S. 516-A, Cr. P. C., and it is illegal for the Magistrate to detain the motor car pending conclusion of the trial. *Phula Singh v. Emperor.* 33 Cr. L. J. 347 :

136 I. C. 724 (2) : 33 P. L. R. 386 :
I. R. 1932 Lah. 260 (2) :
A. I. R. 1931 Lah. 565.

————S. 516-A—Order pending inquiry.

A Magistrate had no power under the Cr. P. C., to direct that a particular firm should not honour a *hundi* drawn on it on suspicion that the parties to the *hundi* had been guilty of some offence. A District Magistrate could not impound under S. 104, any document which had been produced in a pending case before a Subordinate Magistrate. *Byas Hardeo Das v. Emperor.*

1 Cr. L. J. 1060 :
1 A. L. J. 607.

————S. 517.

- Appeal.
- Applicability.
- Application.
- Boat, whether used for committing offence.
- Civil dispute.
- Confiscation.
- Conversion or exchange.
- Currency notes.
- Custody, meaning of.
- Custody of Court.
- Discretion.
- Disposal by confiscation.
- Disposal by delivery.
- Disposal of property.
- Effect of order.
- Inquiry or trial.

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- Interference.
- Joint property.
- No offence regarding property.
- Notice.
- Order.
- Proceedings under S. 117, if enquiry.
- Property.
- Property regarding which offence committed.
- Property used for committing offence.
- Property within scope.
- Restoration.
- Revision.
- Sedition.
- S. 517.

- See also* (i) Bihar and Orissa Mica Act, 1930, S. 17 (2).
(ii) Contract Act, 1872, S. 178, 178 proviso.
(iii) Cr. P. C., 1898, Ss. 109, 117, 145, 423 (d), 435.
(iv) Criminal trial.
(v) Public Gambling Act, 1867, S. 13.

————S. 517—Appeal—Notice, necessity of.

Appeal against order for disposal of stolen property—Notice to opposite side is necessary. *Brahmu Dutt v. Emperor.* 33 Cr. L. J. 223 :

136 I. C. 9 : 33 P. L. R. 438 :
I. R. 1932 Lah. 185 : A. I. R. 1932 Lah. 294.

————S. 517—Appeal—Forum.

An appeal from an order passed under S. 517 by a Stationary Sub-Magistrate directing the return of the subject-matter of a charge to the complainant, lies to a District Magistrate and not to a Sub-Divisional Magistrate inasmuch as the latter exercises appellate powers only on delegation by the former. *Jogi Venkiah v. Station House Officer of Narasapur.* 23 Cr. L. J. 387 :

67 I. C. 339 : 42 M. L. J. 401 :
30 M. L. T. 251 : 1922 M. W. N. 191 :
15 L. W. 524.

————S. 517—Applicability.

In order that S. 517 may apply, one of the conditions is that there must have been an inquiry or trial in any Criminal Court and that such inquiry or trial must have been concluded. *Mohammad Yusuf v. Krishna Mohan Bhattacharyya.* 39 Cr. R. J. 245 :

172 I. C. 959 : 41 C. W. N. 1376 :
10 R. C. 478 : A. I. R. 1938 Cal. 17.

————S. 517—Applicability.

Section does not apply to property which is not in Court, or in respect of which, offence is not committed. *Zainul Abidin v. Emperor.*

33 Cr. L. J. 569 :
138 I. C. 156 : 9 O. W. N. 434 :
I. R. 1932 Oudh 292 :
A. I. R. 1932 Oudh 218.

————S. 517—Applicability.

S. 517 applies only when an inquiry or trial in a Criminal Court is concluded. Where a complaint is dismissed under S. 203, it cannot be said that there was any inquiry or trial in

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that the sureties should be given an opportunity to prove their allegations. *Maunj Ali v. Emperor*.

31 Cr. L. J. 869 :

125 I. C. 376 : A. I. R. 1930 Lah 591.

—————**S. 514—Notice—Necessity of.**

A bond for appearance is forfeited when the accused does not appear, but it does not require the Court to issue notice to show cause why the bond should not be forfeited. *Fateh Chand Wadhmal v. Emperor*.

41 Cr. L. J. 802 :

189 I. C. 800 : 1940 Kar. 479 :

13 R. S. 51 : A. I. R. 1940 Sind 136.

—————**S. 514—Notice—Necessity of.**

Where the Magistrate directs forfeiture of bond executed for the appearance of accused and directs the surety to pay penalty without giving the accused and the surety an opportunity of showing cause by adducing evidence as to why the accused failed to appear, the order is bad, and must be set aside. *Kumarapan v. The King*.

41 Cr. L. J. 216 :

185 I. C. 614 : 12 R. Rang. 240 :

A. I. R. 1939 Rang. 427.

—————**S. 514—Penalty—Construction.**

A bond imposing a penalty must always be construed strictly. *Vithaldas Moolji v. Emperor*.

33 Cr. L. J. 628 :

138 I. C. 512 : 34 Bom L. R. 584 :

56 Bom. 220 : I. R. 1932 Bom 386 :

A. I. R. 1932 Bom 290.

—————**S. 514—Penalty, enforcement of.**

Penal clause in a bond executed in pursuance of an order of the Magistrate will not be enforced especially when the said clause has not been inserted in the bond in pursuance of the Magistrate's order. *Maung Po Cho v. Maung Shwe Kin*.

30 Cr. L. J. 346 :

114 I. C. 682 : I. R. 1929 Rang. 74 :

A. I. R. 1928 Rang. 310.

—————**S. 514—Penalty.**

The amount of bond executed for appearance before a Court is not fine but a penalty incurred by way of forfeiture under S. 514. *Imarat Mallik v. Emperor*.

39 Cr. L. J. 473 :

174 I. C. 823 : 10 R. C. 728 :

A. I. R. 1938 Cal 255.

—————**S. 514—Penalty—Discretion.**

Where a Magistrate orders forfeiture of bonds, he should inflict lighter punishment than he would otherwise inflict. *Gul Khan v. Emperor*.

1 Cr. L. J. 1100 :

26 P. R. Cr. of 1904.

—————**S. 514—Penalty—Time for exacting.**

There is nothing in S. 514 or any other part of the Code, which restricts expressly or by necessary implication the power of the Court to take action for realization of the penalty under the bond after the order convicting the accused has been passed. The mere fact, that no immediate action under S. 514 has been taken against the person under recognizance to keep the peace, or against the surety, on the conviction of the former to keep the peace, is no bar to such

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proceedings being taken, at a subsequent time, e. g., after expiry of the time for appealing or after the dismissal of an appeal by the principal. *Rasul Khan v. Emperor*. (F. B.)

40 Cr. L. J. 505 :

180 I. C. 849 : 41 P. L. R. 69 :

11 R. L. 725 : I. L. R. 1939 Lah. 283 :

A. I. R. 1939 Lah. 70.

—————**S. 514—Proof of notice—Necessity of.**

The provisions of S. 514 indicate that two steps are to be taken: first, it must be proved to the satisfaction of the Court that the bond has been forfeited, whereupon the Court is to record the grounds of such proof. Secondly, the Court, on being satisfied as aforesaid, may call upon the person bound by such bond to pay the penalty thereof, or to show cause why it should not be paid. *Manmohan Chakravarti v. Emperor*.

A. I. R. 1928 Cal. 261.

—————**S. 514—Proof of forfeiture.**

Under S. 514 before issuing an order calling upon a person who is subject to a bond to show cause why he should not forfeit it, the Magistrate is bound to have before him sufficient proof that a good reason exists for making the order and the section requires that the grounds of such proof must be recorded. *Krishna Narain Singh v. Emperor*.

23 Cr. L. J. 478 :

67 I. C. 830 : 3 P. L. T. 381 :

A. I. R. 1922 Pat. 242.

—————**S. 514—Recording of evidence.**

In case of bond under S. 106, Cr. P. C., it is necessary for the Magistrate to record evidence to prove the commission of a fresh breach of the peace and the forfeiture of the bond. Such evidence need not, according to the terms of S. 514, be taken in the presence of the respondent, but when the respondent appears and shows cause, he must be given an opportunity to cross-examine the witnesses upon whose evidence the Magistrate had directed him to show cause why the bond should not be forfeited. The section does not require that before a final order is made, the witnesses on whose evidence the forfeiture is held to be established, if they have been previously examined in the absence of the accused, must again be examined in his presence. *In re : Mohesh Chundra Roy*.

41 Cr. L. J. 216 :

85 I. C. 614 : 12 R. Rang. 240 :

A. I. R. 1939 Rang. 427.

—————**S. 514—Recording of evidence.**

In cases where a bond has been executed for appearance merely, it is often unnecessary for the Magistrate to record any evidence at all. The Magistrate knows by his own observation that the accused failed to appear in his Court. *Kumarapan v. The King*.

41 Cr. L. J. 216 :

185 I. C. 614 : 12 R. Rang. 240 :

A. I. R. 1939 Rang. 427.

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of N for a return of the debentures, the Magistrate ordered that they should be made over to S: *Held*, (1) that the Magistrate should not have made the order, as there were questions between N and S as to which of them was the rightful owner which could only be determined in a civil suit. (2) that in order to prevent the possibility of N's dealing with the debentures until the decision of the Civil Court, N should be directed to deposit them with an officer of the Court for three months, within which S must be directed to bring a civil suit to determine the ownership of the debentures. *Narendra Nath Mitra v. E. Studd.* 19 Cr. L. J. 788 : 46 I. C. 708 : A. I. R. 1918 Cal. 123.

—S. 517—Civil dispute.

Where a complaint of theft brought on behalf of a *talukdar* against his tenant in respect of some fallen trees, which the tenant has cut down and taken, is dismissed on the ground of uncertainty of ownership, the proper order to be passed with regard to the wood is that it should be sold, if it has not been already sold, and the proceeds should be retained by the Court until they are shown to be payable to one or other of the parties, either in virtue of a decree of Court or in virtue of an agreement amongst themselves. *In re: Visa Samla.*

16 Cr. L. J. 111 :
27 I. C. 159 : 16 Bom. L. R. 951 :
A. I. R. 1914 Bom. 225.

—S. 517—Civil dispute.

Where stolen property has passed into the hands of a third person, and a question of *bona fides* and of title by purchase or otherwise clearly arises, the duty of the Criminal Court, so far as restoration of the property is concerned, is to leave the complainant to his remedy in the Civil Court if he thinks he has one. *Naini Mal v. Emperor.* 24 Cr. L. J. 804 : 74 I. C. 708 : A. I. R. 1924 All. 189.

—S. 517—Civil dispute.

Where there are conflicting claims to the ownership of stolen property and the dispute cannot be definitely adjusted by the Magistrate, the property should be kept in the custody of the Court subject to any order that may be passed by a Court of competent civil jurisdiction. *Ram Khalawan Ahir v. Tulsi Telini.*

84 I. C. 444 :
28 C. W. N. 1094 : A. I. R. 1924 Cal. 1040.

—S. 517—Confiscation.

S. 517 authorises the confiscation only of property which has been used for the commission of an offence. *Appaji Iyer v. Emperor.*

19 Cr. L. J. 301 :
44 I. C. 205 : 34 M. L. J. 253 :
7 L. W. 528 : 41 Mad. 644 :
A. I. R. 1919 Mad. 889.

—S. 517—Conversion or Exchange.

An objection that the coins ordered to be restored are not the identical coins stolen is

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unsustainable in view of the explanation to S. 517. *Soni v. Emperor.* 12 Cr. L. J. 397 : 11 I. C. 581 : 4 S. L. R. 255.

—S. 517—Conversion or Exchange—Meaning of.

In 1906, the accused brought a false case on a forged pro-note against one Kan Gyi, obtained an *ex parte* decree and at a sale in execution of that decree, purchased his garden. In 1908, the accused was convicted of forgery and perjury and was sentenced to a long term of imprisonment. The Government, being satisfied of the justness of Kan Gyi's claim to his garden, applied for revision of the Criminal case against the accused and contended that the District Magistrate should have ordered the restoration of the garden to Kan Gyi under S. 517 read with the explanation: *Held*, that the case was not covered by the Explanation to S. 517 and that the Court could not look at the garden as property acquired by the conversion or exchange of the forged pro-note into a decree. *Emperor v. Nga Ke Maung.* 12 Cr. L. J. 473 : 12 I. C. 81 : 4 Bur. L. T. 211.

—S. 517—Conversion or Exchange—Meaning of.

The words "conversion" and "exchange" must be taken in their ordinary sense. They apply to such acts as the melting down of gold and silver ornaments and the exchange of notes for cash. To hold that in the present circumstance, the pro-note was converted into or exchanged for the garden would involve an undue straining of language. *Emperor v. Nga Ke Maung.* 12 Cr. L. J. 473 : 12 I. C. 81 : 4 Bur. L. T. 211.

—S. 517—Currency notes—Disposal of.

When a question arises between two persons who shall bear a loss resulting from the fraud of a third, the one who has been guilty of negligence shall suffer. Hence where A made over to B halves of certain currency notes as security for payment to B of the price of goods delivered, having previously parted with other halves to C, it was held that B was entitled to recover possession of the halves originally made over to him, from C to whom they had been delivered under an order of the Court, or to obtain compensation from C if C had parted with them, inasmuch as it was C's negligence which enabled A to perpetrate a fraud upon B. *Abdur Razzaq v. Rahmat Ullah.* 2 Cr. L. J. 331 : 1905 A. W. N. 139 : 2 A. L. J. 424 : 27 All. 630.

—S. 517—Currency note, disposal of.

Where a person is convicted of the theft of a currency note, which had passed by delivery to other persons from whom the Police recovered it, the convicting Magistrate should direct that the currency note should be returned "to the person from whom it was taken," unless he finds that some other person is legally entitled thereto. *Subramaniya Iyre v. Javali Angadi.* 12 Cr. L. J. 400 (b) : 11 I. C. 584 : 1911 1, M. W. N. 370.

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is no legal sanction for the Magistrate taking its cognizance to issue a warrant for compelling the complainant's wife to attend as a witness, without first requiring her to attend by a summons as laid down under S. 252, and it is only when the summons is neglected, that the severe measures can be taken under the above circumstances. The security given by a person standing surety for producing the woman in Court is against law and cannot be forfeited if he fails to comply with the terms of the security bond. *Kala Singh v. Emperor*.

6 Cr. L. J. 275 :
2 P. W. R. 76 Cr.

—S. 514—Statutes, construction of.

Where the words of a statute are plain and clear and admit of but one meaning, it is not open to the Courts to speculate as to the intention of the Legislature. In such cases, the intention of the Legislature is to be gathered from the words used. *Rasul Khan v. Emperor*. (F. B.)

40 Cr. L. J. 505 :
180 I. C. 849 : 41 P. L. R. 69 :
11 R. L. 725 : I. L. R. 1939 Lah. 283 :
A. I. R. 1939 Lah. 70.

—S. 514 — Surety, discharge of—*Surety bond, construction of—Surety to produce accused on particular date—Non-appearance on subsequent date.*

A surety bond in criminal cases must be strictly construed and a surety cannot be required to pay the amount of his bond as the result of an opinion held by a Court as to what was in his mind when he signed it. He can be required to forfeit the amount only if the terms expressed in the bond are broken. Where, therefore, a surety binds himself to produce an accused on a particular date and he does so, his liability is discharged and he is not bound for the non-appearance of the accused on any subsequent date. *Nga Po Tin v. Emperor*.

23 Cr. L. J. 68 :
65 I. C. 420 : 4 U. B. R. 1921 71 :
A. I. R. 1922 U. Bur. 8.

—S. 514—Surety—Duty of.

A person should not stand surety for an accused person unless he is in a position to produce the accused in Court. *Jora Singh v. Emperor*.

34 Cr. L. J. 1158 (1) :
145 I. C. 967 : 34 P. L. R. 895 :
6 R. L. 146 (1) : A. I. R. 1933 Lah. 42.

—S. 514—Surety for appearance.

Surety undertaking to produce accused in Court at a place on certain dates—Failure to produce before Court sitting at different place and on another date—Bond is not forfeited. *Basudeb Maity v. Emperor*.

36 Cr. L. J. 76 :
152 I. C. 341 : 38 C. W. N. 801 :
7 R. C. 262 : A. I. R. 1934 Cal. 763.

—S. 514—Surety for appearance—Duty of.

The burden of proving the negative, that is to say, that the accused absented themselves

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without reasonable cause for their non-appearance, is not upon the prosecution and it is for the surety to give an explanation why the accused person was unable to attend Court. *Kumarapan v. The King*.

41 Cr. L. J. 216 :
185 I. C. 614 : 12 R. Rang. 240 :
A. I. R. 1939 Rang. 427.

—S. 514—Surety for appearance—Liability.

A Court will not be justified in calling upon a surety to pay the full amount of the bond on the ground that he had failed to produce the accused in Court on a day of hearing as he had agreed to do where the failure is due to the fact that the complainant and accused had come to an amicable arrangement to have the proceedings against the accused dismissed for default, and the surety had knowledge of the same. *Ali Mohammad v. Emperor*.

27 Cr. L. J. 1152 :
97 I. C. 672 : 8 L. L. J. 402 :
27 P. L. R. 646 : A. I. R. 1926 Lah. 636.

—S. 514—Surety for appearance—Liability.

A person who undertakes to produce an accused person before Court when called upon, and in default, to forfeit a sum of money to Government, is not discharged by the fact that the accused has paid the amount of his own bail-bond. *Kulur Annappa Naick v. Emperor*.

10 Cr. L. J. 294 :
3 I. C. 470.

—S. 514—Surety for appearance—Liability.

On the death of an accused person by suicide before the date fixed for his appearance, the sureties are discharged from liability, and they cannot be penalised in the forfeiture of their bonds by reason of their mistaken admission that he was alive. *In re : Rama Bapu Pujari*.

17 Cr. L. J. 393 :
35 I. C. 825 : 18 Bom. L. R. 683 :
A. I. R. 1916 Bom. 221.

—S. 514—Surety for appearance—Liability.

S. 128, Contract Act, only explains the quantum of a surety's obligation where the terms of the contract do not limit it; that section has no reference to the nature of the obligation of the principal. Where a person stands surety for the attendance of another person before a Court and the latter fails to attend before that Court on the date fixed in the bond, the surety is liable under the bond even if it turns out that the arrest of the principal was illegal. *Chaiju Singh v. Emperor*.

22 Cr. L. J. 662 :
63 I. C. 454 : 2 Lah. 204 :
3 U. P. L. R. Lah. 77 :
A. I. R. 1921 Lah. 79.

—S. 514—Surety for appearance—Liability.

The failure of a surety to produce an accused on the day on which he has undertaken to produce him will not cause forfeiture of his

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forfeiture and it is not necessary that he should hold an enquiry for that purpose.

Appaji Iyer v. Emperor. 19 Cr. L. J. 301 :
44 I. C. 205 : 34 M. L. J. 253 :
7 L. W. 528 : 41 Mad. 644 :
A. I. R. 1919 Mad. 889.

—S. 517—Disposal by confiscation.

Money found on person of accused when arrested—Safe custody by Police under S. 51—Sentence of fine—Fine is recoverable out of the money in safe custody by confiscation of the money. *In re : A. B. Samau.*

35 Cr. L. J. 1344 :
151 I. C. 472 : 7 R. B. 66 :
36 Bom. L. R. 324 :
A. I. R. 1934 Bom. 193.

—S. 517—Disposal by confiscation—Legality of.

The accused was convicted of being in unlawful possession of sponge gold and mill sand. The Magistrate directed these articles to be confiscated: *Held*, that the confiscation was illegal since the disposal of property under S. 517, did not convey the idea of confiscation and the articles in question cannot be said to be property used for the commission of the offence of which the accused was found guilty, *viz*, receiving or being in possession of mining material. (Property can now be confiscated—See Amendment). *Tayamma v. Government of Mysore.*

10 Cr. L. J. 261 :
12 M. C. C. R. 194.

—S. 517—Disposal by confiscation—Legality of.

The course contemplated by S. 517 is restoration of the property to be disposed of, to the person entitled to its possession. The word "disposal" in the section does not include either confiscation or destruction of property. *Prithwigir v. Emperor.* (But see Amendment).

9 Cr. L. J. 539 :
2 I. C. 233 : 5 N. L. R. 59.

—S. 517—Disposal by confiscation—Legality of.

The Petitioner was convicted under S. 182, I. P. C., for giving false information of the theft of a gold chain and pair of *balas* by one Babu Lall. On search, the articles, alleged to have been stolen, were found on the premises of the petitioner-informer himself. On his conviction under S. 182, I. P. C., the Magistrate passed an order confiscating the articles: *Held*, that the order confiscating the articles was illegal. The object of S. 417 is to enable a Magistrate to direct the property to be given to some person to whom it appears to belong or to allow it to continue in the possession of the person in whose possession it was found or to make some other order of that character. (But See amendment). *Lakshmi Narayan Dutt v. Inspector, Ureagan.*

12 Cr. L. J. 273 :
9 C. W. N. 597.

Cr. P. CODE (1898), S. 517

Cash found on a person convicted of illegally importing opium into British India under S. 9 (e) of the Opium Act, cannot be confiscated under any provision of the Act. *Govind Ram v. Emperor.*

25 Cr. L. J. 615 :
81 I. C. 103 : A. I. R. 1924 All. 618.

—S. 517—Disposal by confiscation.

Under S. 517, Cr. P. C., a Criminal Court has no power to direct forfeiture of property. (But see Amendment). *Abinash Chandra v. Emperor.*

6 Cr. L. J. 293 :
11 C. W. N. 1046 : I. L. R. 34 Cal. 986 :
6 C. L. J. 754.

—S. 517—Disposal by confiscation.

Under S. 517 only such property can be attached as is proved to have been used in the commission of an offence. Where a person who has illegally imported opium into British India is convicted of an offence under S. 9 (c) of the Opium Act, and money is found on him which he has received from a person to whom he proposes to sell the imported opium, the money cannot be attached under the provisions of S. 517 as it cannot be said to have been used in importing the opium. (But see Amendment). *Govind Ram v. Emperor.*

25 Cr. L. J. 615 :
81 I. C. 103 : A. I. R. 1924 All. 618.

—S. 517—Disposal by delivery.

A entrusted certain jewels to B, a broker, for sale. The jewels were found with C, the appellant, who had received them in pawn from D. It transpired that B had sold them to D, who then pawned them to C: *Held*, that B did not misappropriate the jewels, but he did misappropriate the money which he received from D for them: *Held*, also, that C was protected by exception 3 to S. 108, Contract Act, and was entitled to have the jewels returned to him under S. 517, Cr. P. C. *Nanlal v. Maung Tun Yan.*

12 Cr. L. J. 467 :
11 I. C. 1003 : 4 Bur. L. T. 170.

—S. 517—Disposal by delivery.

A entrusted some jewels to B to sell for him. B did not sell them, but gave them to her niece C, who pawned them to D. B was convicted of criminal breach of trust, and the Magistrate ordered the jewels to be returned to A: *Held*, that the questions whether S. 178, Contract Act, applied in view of the fact that the jewels were pawned by C and not by B, and whether the circumstances were such as to bring the transaction within the first proviso to that section, were matters to be decided by a Civil Court. As A had given the jewels to be disposed of for money, and as they had been so disposed of, he was not entitled to relief in a Criminal Court. The Magistrate's order was set aside and the jewels were ordered to be returned to D. *Stephen Aviet v. Emperor.*

6 Cr. L. J. 135 :
4 L. B. R. 25.

—S. 517—Disposal by delivery.

A gold sari belonging to the complainant

—S. 517—Disposal by confiscation—Legality of under Opium Act.

Cr. P. CODE (1898), S. 514

the bonds, but that was not enough. If he had come to the High Court at once, he might have been told to go to the Sub-Divisional Magistrate. The parties had compromised their dispute and there was no occasion for the applicant to come to High Court. The grounds given by the Magistrate for forfeiting the bonds were not so sound. *Muhammad Ramzan v. Emperor.*

37 Cr. L. J. 792 :
162 I. C. 985 : 8 R. S. 178 :
A. I. R. 1936 Sind 51.

—S. 514—Surety and bond—Liability of.

Where a person enters into a bond for a certain sum to be paid to Government if he should, within a certain period, commit a criminal offence, and two persons subscribe an undertaking to be sureties for him, the proper procedure for the Magistrate who intends to confiscate the bond is to call upon the Government or its representatives before him to declare against which of the persons liable it elects to proceed, and for what amount, and to pass orders accordingly. In no case can an amount in excess of the amount secured by the bond be demanded or recovered from the person bound or his sureties individually or collectively. *Ali Mahomed v. Emperor.*

12 Cr. L. J. 404 :
11 I. C. 588 : 35 P. W. R. 1911 Cr. :
226 P. L. R. 1311.

—S. 514—Surety-bond—Termination of.

Surety—Case sent to another Magistrate—Surety bond is not exhausted. *Amulya Charan Pal v. Emperor.*

36 Cr. L. J. 133 :
152 I. C. 646 : 38 C. W. N. 852 :
7 R. C. 306 : A. I. R. 1934 Cal. 785.

—S. 514—Surety for appearance—Legality of.

When a person stands surety for the appearance in Court, up to the conclusion of the case, of a man who has been called upon under S. 110, to furnish security for good behaviour, the liability of the surety does not cease until the culprit, if so ordered, appears with his sureties and executes his bond. *Abdul Karim v. Emperor.*

16 Cr. L. J. 74 :
26 I. C. 666 : 32 P. R. 1914 Cr. :
134 P. L. R. 1915 : A. I. R. 1914 Lah. 568.

—Ss. 514, 449—Procedure.

The release of an accused person on bail and the conditions under which that is permitted by the law are governed by S. 499, and the provisions laid down in that section as to the nature and contents of the bail-bond are imperative and must be strictly fulfilled. *Brahma Nand Misra v. Emperor.*

41 Cr. L. J. 85 :
184 I. C. 662 : 1939 A. L. J. 779 :
I. L. R. 1939 All. 924 : 12 R. A. 273 :
A. I. R. 1939 All. 682.

—Ss. 514, 515—Revision.

A High Court is empowered to revise orders passed by Magistrates under S. 514 or by District Magistrates under S. 515 of the Cr. P. C. *Masta v. Emperor.*

2 Cr. L. J. 131 :
15 P. R. Cr. 1905 : 6 P. L. R. 381.

Cr. P. CODE (1898), S. 516**—S. 514 (1)—Notice—Necessity of.**

In the case of a bail-bond in respect of the appearance of an accused person, the Magistrate is not bound, before calling upon the surety to show cause why the penalty of his bond should not be paid, to record evidence and a finding that it was proved to his satisfaction that the bond had been forfeited. *Bishambar Mahlon v. Emperor.*

32 Cr. L. J. 121 :
128 I. C. 348 : 11 P. L. T. 578 :
I. R. 1931 Pat. 44.

—S. 514 (1)—Recording of evidence.

Under S. 514, it is the duty of the Magistrate to record evidence and come to a definite finding that the bond has been forfeited before a notice is issued upon the bailor to show cause why the penalty should not be realized from him. *Zulmi Kahar v. Emperor.*

31 Cr. L. J. 420 :
122 I. C. 532 : 11 P. L. T. 572 :
A. I. R. 1929 Pat. 643.

—S. 514 (1)—Revision.

There is a palpable distinction between bonds which are not, and those which are, for appearance before a Court. Proof other than is directly before the Court in its own record is required in the former and not in the latter. Where a Court had before it the order for bail, the bail-bond, and the fact that the sureties had not produced the accused, and upon these materials drew up proceedings against the principal and the sureties under S. 514: *Held*, that there was substantial compliance with cl. (1) of S. 514, and the High Court would not be justified in interfering in revision on the ground that the Court had no proof that the bond had been forfeited. *Rajbansi Bhagat v. Emperor.*

31 Cr. L. J. 605 :
124 I. C. 85 : 11 P. L. T. 575 :
A. I. R. 1929 Pat. 658.

—S. 515—Scope—Jurisdiction.

A District Magistrate is empowered by S. 515, Cr. P. C., to deal on appeal or revision with orders passed by Magistrates after the penalty has been forfeited. *Masta v. Emperor.*

2 Cr. L. J. 131 :
15 P. R. Cr. 1905 : 6 P. L. R. 381.

—S. 516—Scope.

S. 516 is only concerned with the power to direct levy of the amount (which power may be delegated) and not with the forfeiture which is a condition precedent to the levy. *Hira Lal Sahu v. Emperor.*

10 Cr. L. J. 248 :
3 I. C. 113.

—S. 516-A—Custody—Object of.

Under S. 516-A, Court has to make order for proper custody of property in order to preserve it as evidence. *Brojendra Chandra De v. K. S. Sama.*

32 Cr. L. J. 983 :
132 I. C. 902 : 35 C. W. N. 198 :
I. R. 1931 Cal. 614 : A. I. R. 1931 Cal. 455.

—S. 516-A—Disposal of property—Theft—Acquittal—Accused's right to possession

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———S. 517—*Disposal on delivery.*

During the course of the investigation into a case of dacoity, the petitioners produced certain articles consisting of cash and jewellery before the Police and made certain statements concerning the discovery and production of the articles. They were subsequently charged with and convicted of the offence of the dacoity but their convictions were upset on appeal, the Court holding that the articles produced by the accused had not been identified as the property of the complainant and were not proved to have formed part of the stolen property. Subsequently under S. 517 of the Cr. P. C., the trial Court made an order directing that the articles produced by the petitioners during the investigation should be returned to the complainant; and in making the order, it relied upon the statements of the petitioners made to the Police during the investigation: *Held*, (1) that the statements made by petitioners to the Police were admissible for the purpose of the proceedings under S. 517, Cr. P. C., but could not be relied upon unless they were proved; (2) that the Court having held that the cash and jewellery in dispute did not belong to the complainant and did not form part of the stolen property, the order directing its return to the complainant could not be upheld, and that the articles should be returned to the petitioners, the complainant being left to his remedy in the Civil Court. *Suleman v. Emperor*.

26 Cr. L. J. 737 :
86 I. C. 273 : 6 L. L. J. 213 :
A. I. R. 1924 Lah. 588.

———S. 517—*Disposal by delivery.*

If a pawner removes from the possession of the pawnee the articles pawned by him and passes them on to a third person for good consideration, on pawner's conviction of theft, the trial Court is justified to direct, in the exercise of its discretion under S. 517, that the stolen articles be returned to the pawnee, who was the proper person to recover their possession because he had a lien on them. *Gour Mohan Dahi v. Bansidhar Byas*.

24 Cr. L. J. 238 :
71 I. C. 702 : A. I. R. 1923 Cal. 598.

———S. 517—*Disposal by delivery.*

Order for restitution of property—Disposal of property by parties does not render order *ultra vires*. Court can order payment of equivalent value. *Shamsundar v. Teja Singh*.

36 Cr. L. J. 1237 :
157 I. C. 763 : 8 R. Pesh. 35 :
A. I. R. 1935 Pesh. 98.

———S. 517—*Disposal by delivery.*

Property in respect of which criminal breach of trust has been committed is as much stolen property as property, the possession whereof has been transferred by theft according to the provisions of S. 410, Penal Code, and such property should be handed back by the Criminal Court to the real owner unconditionally where there is no *bona fide* dispute as to title. A person to whom such property has been pawned by the accused is not entitled to retain

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it as against the true owner. *Mohammad Hadi Husain v. Emperor*.
29 Cr. L. J. 983 :
112 I. C. 103 : 5 O. W. N. 281 :
3 Luck. 494 : A. I. R. 1928 Oudh 277.

———S. 517—*Disposal by delivery.*

Restoration on acquittal, Court is bound to return article seized to person from whom it was seized in absence of special circumstances. Mere fact that two persons are quarrelling about possession is no such circumstance. *V. K. Vaidyapuri Chetti v. Simmiah Chetty*.

32 Cr. L. J. 355 :
129 I. C. 458 : 1930 M. W. N. 1106 :
33 L. W. 36 : 59 M. L. J. 901 :
I. R. 1931 Mad. 266 : A. I. R. 1931 Mad. 17.

———S. 517—*Disposal by delivery.*

The general rule in the case of orders under S. 517, is that the property should be returned to the person from whose possession it was taken. *Lakshmana Dorai v. Arunagiri Chetty*.

33 Cr. L. J. 783 :
139 I. C. 354 : 1932 M. W. N. 813 :
I. R. 1932 Mad. 670 : A. I. R. 1932 Mad. 495.

———S. 517—*Disposal by delivery.*

The general rule is that when an accused has been charged with an offence in relation to certain property and he has been acquitted, that property should be returned to him. But this rule has no application where several persons are accused of an offence in respect of the same property and one is acquitted while others are convicted. *Gulabchand Umaji v. Emperor*.

38 Cr. L. J. 382 :
167 I. C. 428 : 9 R. S. 190 :
A. I. R. 1937 Sind 33.

———S. 517—*Disposal by delivery.*

The manager of a certain firm misappropriated a number of currency notes belonging to the firm and deposited them with other firm to redeem certain bills of exchange, which he had pledged on his own account with that firm. The notes were identified by their numbers and most of them were seized by the Police and produced before the Magistrate who directed that they should be returned to the former firm: *Held*, that the order was proper one. *Akshoy Kumar Saha v. Naba Kumar Singh Dhuduria*.

41 Cr. L. J. 791 :
189 I. C. 714 : 13 R. C. 123 :
A. I. R. 1940 Cal. 346.

———S. 517—*Disposal by delivery.*

The petitioner was accused of abetment of theft of an elephant and the elephant was recovered from his possession by the Police. He was acquitted on the ground that he had acquired a share in the ownership of the elephant but the Magistrate made an order handing over the elephant to the complainant until the Civil Court should adjudge to the contrary: *Held*, that the order handing over the elephant to the complainant was illegal and that the animal should be handed back to the accused. *Sattar Ali v. Afzal Mahomed*.

28 Cr. L. J. 546 :
102 I. C. 482 : 54 Cal. 283 :
A. I. R. 1927 Cal. 532.

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the Magistrate's Court. *Ramaswami Aiyar v. Venkeshwara*.

14 Cr. L. J. 27 :

18 I. C. 171 : 24 M. L. J. 1 :

1913 M. W. N. 851 : 14 M. L. T. 431.

—S. 517—Applicability.

S. 517 is not applicable to a case where the property has already passed out of the custody of a Court. Therefore, a party who has taken delivery from the Police of crops attached cannot be ordered to return the same to the opposite party. *Jhumak Singh v. Tota Mahto*.

23 Cr. L. J. 110 :

65 I. C. 494 : 1922 Pat. 128 :

3 P. L. T. 228 : A. I. R. 1923 Pat. 84.

—S. 517—Application.

During the investigation into a case of theft, certain currency notes were produced before the Police by the petitioner. One T was eventually convicted of criminal misappropriation in respect of the notes and the notes were made over to the complainant under the orders of the Magistrate. The petitioner was subsequently tried and convicted of an offence under S. 411, Penal Code, in respect of the notes, but was acquitted by the Sessions Judge on appeal. Nearly six months after his acquittal, he applied to the Sessions Judge for restoration of the notes to him. The Sessions Judge rejected the application on the ground that it was barred by limitation; *Held* (1) that the application was in no sense an appeal against the order of the Magistrate making over the notes to the complainant but an independent application to the Sessions Judge himself with a view to his taking action under S. 520, Cr. P. C. *Kanshi Ram v. Emperor*.

24 Cr. L. J. 713 :

73 I. C. 937 : 4 Lah. 49 :

3 P. W. R. 1923 Cr. :

A. I. R. 1924 Lah. 75.

—S. 517—Application—Limitation for.

No period of limitation is prescribed for an application under S. 517 or 520, and such an application can always be made within a reasonable time of the termination of the proceedings in which the property in dispute was produced. *Kanshi Ram v. Emperor*.

24 Cr. L. J. 713 :

73 I. C. 937 : 4 Lah. 49 :

3 P. W. R. 1923 Cr. : A. I. R. 1924 Lah. 75.

—S. 517—Boat whether used for committing offence.

A boat cannot be regarded as an instrument for the commission of an offence within the meaning of S. 517. *Jarip Gazi v. Emperor*.

1 Cr. L. J. 849 :

8 C. W. N. 887.

—S. 517—Civil dispute.

An order under S. 517 does not decide the question of ownership of the property. It merely decides the question of the right to possession till a Civil Court has decided the question of ownership. *Rahman, M. v. Abdul Samad*.

20 Cr. L. J. 332 (a) :

50 I. C. 668 : 11 Bur. L. T. 267 :

A. I. R. 1919 L. Bur. 51.

Cr. P. CODE (1898), S. 517**—S. 517—Civil dispute.**

But in no circumstances, whether the case be one under S. 517 or under S. 523, can an order be made for detention in Court custody or in the custody of one of the parties, conditional on a civil suit being instituted; for this might mean detention for an indefinite period, if no such suit is brought. *Mohammad Yusuf v. Krishna Mohan Bhattacharjya*.

39 Cr. L. J. 245 :

172 I. C. 959 : 41 C. W. N. 1376 :

10 R. C. 478 : A. I. R. 1938 Cal. 17.

—S. 517—Civil dispute.

But where there is a doubt, not necessarily a strong doubt, not even a reasonably arguable one, such as may arise where the decision involves a contentious point of Civil Law, the normal course of restoring the property to the person from whom it was seized should be followed and the dissatisfied party should be left to seek his remedy in a Civil Court. *Valliappa Chetty v. Joseph*.

25 Cr. L. J. 666 (b) :

81 I. C. 154 : 2 Bur. L. J. 85 :

A. I. R. 1923 Rang. 248.

—S. 517—Civil dispute.

If by reason of a disputed claim to possession, an order for delivery cannot be made, or the property may not be finally disposed of by destruction or confiscation or otherwise, the Court will not make any order under this section at all, but leave the parties to their remedy in a Civil Court, if any. Meanwhile it will be quite proper to make an order under S. 523, where the property is the property seized in the manner stated in the section. This section will equally apply where there has been and there has not been an inquiry or trial, or where the property has been or has not been produced in Court; in other words, even in a case which comes under S. 517. If on the facts the Court finds itself unable to make an order for the disposal of the property in the manner indicated therein, it will be open to it to deal with the matter under S. 523. *Mohammad Yusuf v. Krishna Mohan Bhattacharjya*.

39 Cr. L. J. 245 :

172 I. C. 959 : 41 C. W. N. 1376 :

10 R. C. 478 : A. I. R. 1938 Cal. 17.

—S. 517—Civil dispute whether within scope.

Question of title as to property is to be decided by Civil Court. *Karuppanan Ambalam v. Gurusami Pillai*.

34 Cr. L. J. 586 :

143 I. C. 510 (1) : 1933 M. W. N. 88 (2) :

37 L. W. 415 : 64 M. L. J. 431 :

56 Mad. 654 : I. R. 1933 Mad. 306 :

A. I. R. 1933 Mad. 434 (2) ;

—S. 517—Civil dispute.

Three debentures, the property of S were stolen and were sold by the thief to F who pledged them to N. In a prosecution of F under S. 411, Penal Code, which ended in his acquittal, N having been called upon to produce the debentures made them over to the Magistrate. Subsequently on the application

Cr. P. CODE (1898), S. 517**—S. 517—Disposal by delivery.**

Where the title to property seized is doubtful, it should be returned to the person from whom it was seized, unless there are special circumstances which would render such a course unjustifiable. *Srinivasa Moorthi v. Narasimbalu Naidu*.

28 Cr. L. J. 879 :
104 I. C. 719 : 26 L. W. 168 :
39 M. L. T. 18 : 53 M. L. J. 309 :
1927 M. W. N. 692 : 50 Mad. 916.
A. I. R. 1927 Mad. 797.

—S. 517—Disposal by delivery.

W's buffalo was stolen on 20th April 1906, and was recovered from F in March 1907, after it had been several times bought and sold in overt market: *Held*, that W is entitled to recover the buffalo from F although a *bona fide* purchaser. The law on the subject is contained in S. 108, Contract Act, IX of 1872 (which is different from the law in England); and under it a seller in India cannot give to a buyer a better title than he has himself, and the buyer in overt market is not protected by any of the exceptions to that section. *Faiz Ahmad v. Emperor*.

7 Cr. L. J. 279 :
3 P. W. R. Cr. 11 : 2 P. R. Cr. 1908 :
140 P. L. R. 1908.

—S. 517—Disposal by delivery.

Acquittal of person accused of theft—Property seized to be restored to person producing it. *Karuppanan Ambalam v. Gurusami Pillai*.

34 Cr. L. J. 586 :
143 I. C. 510 (1) : 1933 M. W. N. 88 (2) :
37 L. W. 415 : 64 M. L. J. 431 :
56 Mad. 654 : I. R. 1933 Mad. 306 :
A. I. R. 1933 Mad. 434 (2).

—S. 517—Disposal of property.

Where an accused person says that certain alleged stolen property is not his, the Court is not justified in ordering that it should be given to him. It should be retained by the Court until one or other of the parties has established his right to it. If it has been paid or given to the accused, the Court has power to call upon him to return it. *Chanan v. Emperor*.

14 Cr. L. J. 596 :
21 I. C. 468 : 37 P. W. R. 1913 Cr. :
320 P. L. R. 1913.

—S. 517—Effect of order.

The effect of the order of the Criminal Court is that it determines which of the parties should be left to sue in the Civil Court. *Bhagat Ram v. Emperor*.

12 Cr. L. J. 400 (a) :
11 I. C. 584 : 96 P. L. R. 1911.

—S. 517—Inquiry or trial—Necessity of.

A Magistrate is bound to hold an inquiry of some sort before he can make an order for the disposal of property which has been seized and produced before him. *Valliappa Chetty v. Joseph*.

25 Cr. L. J. 666 (b) :
81 I. C. 154 : 2 Bur. L. J. 85 :
A. I. R. 1923 Rang. 248.

—S. 517—Inquiry or trial—Necessity of.

When a person charged before the Magistrate with criminal breach of trust in respect of

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certain jewels died before trial and before any evidence was recorded, and the alleged owner of the jewels, which were recovered by the Police from the pledgees and sent to the Magistrate along with the charge-sheet, applied to be put in possession of them under Ss. 517 and 523 after enquiry as to their ownership: *Held*, that S. 517 of the Cr. P. C. did not apply to the case: *Held*, further, as there was no evidence or finding about ownership, S. 523 did not apply and that the Magistrate was not bound to hold an inquiry simply to determine the ownership of the jewels. *In re : Kuppammall*.

4 Cr. L. J. 233 :
I. L. R. 29 Mad. 375.

—S. 517—Inquiry or trial—Meaning of.

Where an accused person was acquitted of criminal trespass on the ground that the trial was barred by S. 403: *Held*, that the proceedings in connection with such acquittal did not constitute an inquiry or trial within the meaning of S. 517, and that therefore no order for the disposal of the property in respect of which the trespass was alleged, could be passed at the conclusion of such proceedings. *Tun Hla v. Shwe Ngo*.

7 Cr. L. J. 490 :
4 L. B. R. 229.

—S. 517—Inquiry or trial—Nature of.

Where in a case under S. 380 read with S. 411, Penal Code, the accused and the stolen property are sent to the Magistrate under S. 190 (b), Cr. P. C., and the Magistrate examines no witnesses and discharges the accused and then passes the order with regard to the disposal of the property, the order comes under S. 517, Cr. P. C., since the inquiry had been initiated and concluded. The Sessions Judge, therefore, can deal with the application filed before him under S. 520, Cr. P. C. *Maung Pu Tu v. The King*.

39 Cr. L. J. 763 :
176 I. C. 451 : 1938 Rang. 143 :
11 R. Rang. 67 : A. I. R. 1938 Rang. 278.

—S. 517—Inquiry or trial—Necessity of.

Where an order directing delivery of property is made by a Magistrate without any criminal proceeding before him or any other Magistrate, but merely on the application of the person in whose favour such order is made, such an order is entirely without jurisdiction. S. 517 cannot apply to the case. *Sreedam Chunder Seal v. W. J. O'Grady*.

6 Cr. L. J. 402 :
6 C. L. J. 707.

—S. 517—Interference.

An order passed by a Magistrate under S. 517, is a judicial order and is open to review by the higher Courts on appeal or revision, as the case may be. *Sunder Das v. Emperor*.

32 Cr. L. J. 847 :
132 I. C. 202 : A. I. R. 1931 Lah. 527.

—S. 517—Joint property—Disposal by delivery.

Where it is found that the subject-matter of the offence belongs partly to the accused who was discharged, and partly to him and another jointly, it is not illegal to pass an order to

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—S. 517—Currency-notes—Disposal of.

Where an offence has been committed in respect of money, the court has power to proceed under S. 517, in respect of the currency-notes produced though the notes produced are not identical notes in respect of which the offence was committed. *Hardayal Singh v. Kishore Chand.*

I. R. 1922 Lah. 621.

—S. 517—Currency-notes—Disposal of.

Where in a trial for a criminal breach of trust, it appeared that the accused had transferred one of the misappropriated currency notes to the petitioner, and on the conviction of the accused the Trying Magistrate ordered the note to be returned to the Crown: *Held*, that this was a case for the application of the general rule that property in a currency note passes by mere delivery and that there being no allegation of fraud or bad faith on the part of the petitioner, he was entitled to retain it. *In re: Pandharinath Pundlik Revankar.*

16 Cr. L. J. 783 :

31 I. C. 383 : 17 Bom. L. R. 962 :

A. I. R. 1915 Bom. 265.

—S. 517—Custody—Meaning of.

Under S. 517 the jurisdiction of the Criminal Court is confined to an order at the conclusion of the trial for the disposal of the property which has been stolen and which is before it in the criminal proceedings. It need not be in the possession of the Court, but it must be capable of being ear-marked. *Naini Mal v. Emperor.*

24 Cr. L. J. 804 :

74 I. C. 708 : A. I. R. 1924 All. 189.

—S. 517—Custody of Court—Meaning of.

There was a dispute between A and B with regard to the possession of a house and the Police took possession of the house and locked it. A filed a complaint against B in respect of the house under Ss. 143, 380 and 488, Penal Code, and during the pendency of the case, the key of the house was handed over to A under the orders of the Magistrate. B was acquitted in the end and he applied to the Magistrate for an order directing A to deliver the key to him (B): *Held*, that the Magistrate had no power either under S. 517, to make an order in favour of B as neither the house nor the key was property in the custody of the Court in respect of which an offence was committed. *Bansi Dhar v. Brij Basi Lal.*

31 Cr. L. J. 6 :

120 I. C. 197 : A. I. R. 1930 All. 35.

—S. 517—Discretion.

Barring exceptional cases only where an inquiry may be necessary, as a general rule, a Magistrate acting under S. 517, should pass orders according to his discretion without making any further inquiry. *Gour Mohan Dalui v. Bansidhar Byas.*

24 Cr. L. J. 238 :

71 I. C. 702 : A. I. R. 1923 Cal. 598.

—S. 517—Discretion—Principles of, use of.

An order for the disposal of property under S. 517, is in the discretion of the Court, but that discretion is to be used judicially, and unless the High Court is satisfied that it has

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not been so used, it has no right to interfere with it in revision. *Gour Mohan Dalui v. Bansidhar Byas.*

24 Cr. L. J. 238 :

71 I. C. 702 : A. I. R. 1923 Cal. 598.

—S. 517—Discretion—Principles of, use of.

Orders under S. 517 are discretionary, but the discretion is open to correction where it has been exercised in violation of accepted judicial principles. *In re: Pandharinath Pundlik Revankar.*

16 Cr. L. J. 783 :

31 I. C. 383 : 17 Bom. L. R. 962 :

A. I. R. 1915 Bom. 265.

—S. 517—Discretion—Principles of, use of.

S. 517 invests a Criminal Court with a discretionary power, and it is a rule of law that such power must be exercised judicially, i. e., according to sound principles of law and not in an arbitrary manner. But what that means is not that the order is in the opinion of the higher tribunal of revision an improper one, which it would not have passed, but that having regard to the materials before the Court exercising the discretion, that discretion was exercised in a legal manner. *In re: Sadashiv Narayan Valkar.*

9 Cr. L. J. 162 :

1 I. C. 103 : 11 Bom. L. R. 16.

—S. 517—Discretion—Principles of, use of.

S. 517 invests a Magistrate with discretionary power as to the disposal of exhibits after the conclusion of a criminal case but that discretionary power must be exercised judicially and not arbitrarily. If the person disposing of the property belongs to any of the classes mentioned in Ss. 27 to 30, Sale of Goods Act, inasmuch as he can make a valid pledge or sale provided the requirements of the provisos are fulfilled, the property should be returned not to the owner but to the pledgee or the buyer, as the case may be. *Maung Po Thaung v. Noor Mohamed.*

39 Cr. L. J. 25 :

171 I. C. 897 : 10 R. Rang. 199 :

A. I. R. 1937 Rang. 385.

—S. 517—Discretion—Principles of, use of.

The powers under S. 517 are very large and the Magistrate's discretion under it is wide, but such discretion must be exercised judicially and if so exercised, the High Court should not interfere with it in revision. *Appaji Iyer v. Emperor.*

19 Cr. L. J. 301 :

44 I. C. 205 : 34 M. L. J. 253 :

7 L. W. 528 : 41 Mad. 644 :

A. I. R. 1919 Mad. 889.

—S. 517—Disposal by confiscation.

Before the amendment of the Cr. P. C., 1923, a Magistrate had no authority, under S. 517 of the said Code, to make an order for confiscation of stolen property recovered by the Police. *Ram Khalawan Ahir v. Tulsi Telini.*

26 Cr. L. J. 300 :

84 I. C. 444 : 28 C. W. N. 1094 :

A. I. R. 1924 Cal. 1040.

—S. 517—Disposal by confiscation.

If there are circumstances from which an inference can be drawn that money has been used for gaming, a Magistrate can order its

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———S. 517—Order—Stage for passing.

Under the provisions of S. 517 an order for the disposal of property regarding which an offence has been committed can only be made upon the conclusion of an inquiry or trial before a Criminal Court, and not on the application of a person subsequently made by him to the Court after the conclusion of the trial. *Abdul v. Ghulam Muhammad*.

25 Cr. L. J. 84 :
76 I. C. 20 : 4 Lah. 460 :
A. I. R. 1924 Lah. 261.

———S. 517—Order—Stage for passing.

Where the Magistrate has before him the evidence given for the prosecution in the inquiry, it is not necessary that the order should follow a fresh inquiry after giving opportunity to the party to produce new or further evidence. *In re: Venireddy Babureddy*.

18 Cr. L. J. 469 :
39 I. C. 309 : A. I. R. 1918 Mad. 594.

———S. 517—Proceedings under S. 117, if enquiry.

A proceeding under S. 117 is an enquiry within S. 517. *Emperor v. Beni Madho*.

38 Cr. L. J. 175 :
166 I. C. 271 : I. L. R. 1936 Nag. 150 :
9 R. N. 118 : A. I. R. 1936 Nag. 143.

———S. 517—Property—Nature of.

In S. 517 the words "property regarding which any offence appears to have been committed" include immovable property. *Tun Hla v. Shwe Ngo*.

7 Cr. L. J. 490 :
4 L. B. R. 229.

———S. 517—Property—Nature of.

The expression "regarding which any offence has been committed" in S. 517 includes movable property regarding the possession of which a quarrel is begun or a riot is begun, whatever may be the offence that might ultimately be committed in the course of the quarrel or fight. Where in certain disputes regarding possession of boats, nets and tackle, a quarrel arose which ultimately ended in riot, assault and murder : *Held*, that the boats, nets and tackle were properties in respect of which it was competent to the Court to order disposal under S. 517. *Sheikh Darwood v. Velayuda Semmanoti*.

29 Cr. L. J. 322 (b) :
108 I. C. 65 : 27 L. W. 132 :
54 M. L. J. 312 : 51 Mad. 606 :
A. I. R. 1928 Mad. 194.

———S. 517—Property, regarding which offence committed—Meaning of.

The accused was convicted of the offence of rash driving on a public way under S. 279, Penal Code, and the convicting Magistrate passed an order under S. 517, Cr. P. C., that the cart, pony and harness which the accused was driving should be sold and the sale-proceeds paid over to the complainant : *Held*, that the order was illegal. *Emperor v. Ilahi Bakhsh*.

1 Cr. L. J. 38 :
5 P. L. R. 9.

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———S. 517—Property regarding which offence committed—Meaning of.

The provisions of S. 517 have reference to cases of offences relating to property or relating to documents, e.g., where the Court directs, as in cases of theft or criminal misappropriation or offences of similar description that the property which is stolen or misappropriated be restored to its owner. *Abinash Chandra v. Emperor*.

6 Cr. L. J. 293 :
11 C. W. N. 1046 : I. L. R. 34 Cal. 986 :
6 C. L. J. 754.

———S. 517—Property used for committing offence—Instances of.

The words of the section, viz., "which, has been used for the commission of any offence" must refer to cases of the same nature, i. e., to instruments like guns and swords produced in Court. *Abinash Chandra v. Emperor*.

6 Cr. L. J. 293 :
11 C. W. N. 1046 : I. L. R. 34 Cal. 986 :
6 C. L. J. 754.

———S. 517—Property within scope.

S. 517 has no application to immovable property. *Bisweswar Singh v. Bhola Nath Pathuk*.

15 Cr. L. J. 175 :
22 I. C. 751 : 18 C. W. N. 1146 :
A. I. R. 1914 Cal. 629.

———S. 517—Property within scope.

S. 517 is limited in its application to movable property. *Adepu Reddi v. Ramayya*.

22 Cr. L. J. 110 :
59 I. C. 414 : 12 L. W. 227.

———S. 517—Property within scope.

S. 517 not only refers to property in respect of which an offence has been committed but also the property before the Court and in its custody. *Gulabchand Umaji v. Emperor*.

38 Cr. L. J. 382 :
167 I. C. 428 : 9 R. S. 190 :
A. I. R. 1937 Sind 33.

———S. 517—Property within scope.

The accused not being mercantile agents within the meaning of S. 2 (9), Sale of Goods Act, deposited ornaments with the third accused G who received them not in good faith. All of the three were tried under S. 406, Penal Code, for criminal breach of trust. G was acquitted and the Magistrate ordered the ornaments produced before him to be restored not only to those three persons to whom they belonged but also to six others, though no offence had been proved against the property belonging to them. G claimed that as he had been acquitted of the offence with which he has been charged in relation to the property, so he was entitled to an order that the property should be returned to him : *Held*, that G was not protected by S. 118, Contract Act, and was not entitled to possession under S. 517, Cr. P. C., whether possession means judicial or physical. *Gulabchand Umaji v. Emperor*.

38 Cr. L. J. 382 :
167 I. C. 428 : 9 R. S. 190 :
A. I. R. 1937 Sind 33.

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was stolen. The thief converted the sari into bangles and sold them to the petitioner for Rs. 184-4-0. The petitioner converted the bangles into gold and sold it in different parts. In the course of the investigation relating to the theft the petitioner was asked to produce Rs. 184-4-0, which sum was before the Court when the theft case was decided. The petitioner was examined as a witness in the case. The trial Magistrate made an order under S. 517 directing this sum to be paid over to the complainant: *Held*, that the money deposited by the petitioner not being either the actual sum paid by the petitioner to the thief as the price of the bangles or the actual sum realised by the petitioner by the sale of the gold, it was not property in respect of which an offence had been committed within the meaning of S. 517 and that, therefore, the order directing the payment of the money to the complainant was illegal. *In re: Anant Virupax Perant*.

19 Cr. L. J. 721 :
46 I. C. 401 : 20 Bom. L. R. 604 :
A. I. R. 1918 Bom. 215.

—S. 517—Disposal by delivery.

A Hindu having died without a male issue, his brother removed the produce of the deceased's land alleged to be in the possession of his widow, and so was charged by her for theft and trespass, but was acquitted on the ground that there was no criminal intention. The Magistrate, however, awarded the land to her or held that the land was in her possession, and ordered the produce to be handed over to her: *Held* (in revision), as regards the produce, that the order was illegal as regards the produce and *ultra vires* as regards the immovable property, as if in an enquiry or trial, the accused had been discharged or acquitted, the Court was bound to restore any property in dispute to the possession of the party from whom it was taken: that unless the Court was of opinion that an offence had been committed regarding such property, S. 517 would not be applicable, and that the difficulties to restoration was removed by the recent amendment of S. 520: *Held*, as regards the land, that though the Magistrate had to determine the question of possession in order to arrive at a decision as to whether criminal trespass had been committed, that fact was by no means equivalent to a necessity for putting that decision into operation for the settlement of civil rights and liabilities and that his finding was a mere *obiter dictum* in reference to civil rights. *Jhala Madarsangji Jemalji v. Bai Jethiba*.

3 Cr. L. J. 309.

—S. 517—Disposal by delivery.

An order directing the keys of a house to be made over to a person is in fact an order directing that possession of the house be delivered to him for the purposes of S. 517. *Sundar Das v. Emperor*.

32 Cr. L. J. 847 :
132 I. C. 202 : A. I. R. 1931 Lah. 527.

—S. 517—Disposal by delivery,

An order under S. 517 cannot direct the party to whom property is delivered to produce it

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when called upon to do so. *Veggu Manikyam v. Emperor*.

11 Cr. L. J. 68 :
4 I. C. 875 : 19 M. L. J. 516.

—S. 517—Disposal by delivery.

At the conclusion of a case of criminal misappropriation of an elephant, the found elephant in dispute was ordered to be delivered to the person in whose possession it was at the time the criminal proceedings were instituted. *Baloram Gogai v. Chintaram*.

2 Cr. L. J. 269 :
9 C. W. N. 549.

—S. 517—Disposal by delivery.

Any property or document in regard to which an offence appears to have been committed or which has been used for the commission of an offence, should not be returned by a Criminal Court to the person who has been convicted. *Pilip Spratt v. Emperor*.

35 Cr. L. J. 1389 :
151 I. C. 735 : 1934 A. L. J. 425 :
4 A. W. R. 550 : 7 R. A. 195 :
A. I. R. 1934 All. 207.

—S. 517—Disposal by delivery.

B asked A for some jewels promising to sell them for A or, if not sold, to return them the same evening. A was induced by this promise to hand over the jewels to B. Instead of selling them, B pawned them the same day for about a third of their value, and then disappeared for four days. On being prosecuted she pleaded guilty to a charge of criminal breach of trust under S. 406, Penal Code, and stated that she had pawned the jewels because she was pressed for money by a creditor. The Magistrate at the close of the trial ordered the jewels to be returned to A: *Held*, that the circumstance was sufficient to constitute at least a *prima facie* case of fraud, within the meaning of the second proviso of S. 178, Contract Act, on the part of B in obtaining the jewels. The order of the Magistrate for the return of the jewels was, therefore upheld. *Kong Lone v. Ma Kay*.

6 Cr. L. J. 125 :
4 L. B. R. 13 : 13 Bur. L. R. 273.

—S. 517—Disposal by delivery.

Cash is not property within the meaning of S. 517 of the Cr. P. C. except in so far as it is capable of being possessed and identified in *specie*. If it is certain that the actual coins on a thief or receiver of stolen property are the actual coins which have been the subject of theft, then it is permissible to treat such cash as stolen property. It is, however, safer in such a case to inflict a fine and to apply the coins found on the person of the accused towards the payment of fine and then to apply the amount of the fine, if necessary, towards compensation. But in no case can coins which have been put into circulation and passed on to the public be treated in the same way as stolen coins actually remaining in the possession of the thief. *Pursu v. Emperor*.

26 Cr. L. J. 1315 :
89 I. C. 259 : 18 S. L. R. 218 :
A. I. R. 1926 Sind 17.

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held to be an order under S. 523. *Ramasawmi Aiyar v. Venkateswara Aiyar*.

14 Cr. L. J. 27 :

18 I. C. 171 : 24 M. L. J. 1 :

1913 M. W. N. 851 : 14 M. L. T. 431.

———S. 517 (1)—Order, whether can be made.

A Court can pass an order under S. 517 (1) as regards the disposal of property only if it appears that an offence has been committed with respect to it, or that it has been used for the commission of an offence. Where, therefore, an accused was found to be a habitual thief and was bound down for good behaviour, but it did not appear that any offence had been committed with respect to the property in dispute which the accused claimed as his own: *Held*, that no order could be passed under S. 517 (1) as to the property. (But see Amendment.) *In re: Govindaraja Padayachi*. 16 Cr. L. J. 811 : 31 I. C. 827 : A. I. R. 1916 Mad. 839.

———S. 518.

See also Cr. P. C., 1898, S. 520.

———S. 518—Disposal by confiscation.

So long as there is any one entitled to the possession thereof, such proceeds should not be confiscated. *Gobind Pershad v. Emperor*.

34 Cr. L. J. 581 :

143 I. C. 358 : I. R. 1933 Lah 347.

———S. 518—Disposal by delivery.

The sale proceeds of stolen property are property to which S. 518 relates, and may be made over to the persons claiming it. *Gobind Pershad v. Emperor*.

34 Cr. L. J. 581 :

143 I. C. 358 : I. R. 1933 Lah 347.

———S. 518—Order, effect of.

Accused was convicted under S. 188, Penal Code, for disobeying an order purporting to have been passed by the District Magistrate in 1873 under S. 518: *Held*, that the conviction could not be sustained, inasmuch as an order made under S. 518 could not enure for all time but had a temporary operation only. *Ram Das v. Emperor*.

22 Cr. L. J. 2 :

58 I. C. 34 : 18 A. L. J. 857.

———S. 519.

See also Cr. P. C. 1898, S. 520

———S. 520.

———Additional District Magistrate empowered with.

———Application.

———Concurrent Jurisdiction.

———Court of Appeal.

———Disposal by confiscation.

———Disposal by delivery.

———Interference by High Court.

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———Notice.

———Order.

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———Restoration of property.

———Scope.

———S. 520.

See also Cr. P. C., 1898, Ss. 145, 423 (1) (d), 517, 520.

———S. 520—Additional District Magistrate, competency of.

Where an additional District Magistrate is invested by the local Government by virtue of the powers conferred upon it by S. 10 (2), Cr. P. C., with the powers of a Court of Revision, he is competent when disposing of a case by virtue of those powers, to make any consequential order as to the disposal of the property, under S. 523, Cr. P. C. *Nagappan Konan v. Ramaram Padayachi*.

31 Cr. L. J. 1085 :

126 I. C. 594 : A. I. R. 1930 Mad 769.

———S. 520—Application—Limitation for.

Application for order of disposal of property under S. 520 can always be made within reasonable time of termination of proceedings, there is no period of limitation for it. *Kanshi Ram v. Emperor*.

24 Cr. L. J. 713 :

73 I. C. 937 : 3 P. W. R. 1923 Cr :

4 Lah. 49 : A. I. R. 1924 Lah 75.

———S. 520—Application—Limitation for.

An application made under S. 520 to a 'Court of Appeal', is not in the nature of an appeal and is not, therefore, governed by period of limitation prescribed for appeals. *Srinivasa Moorthi v. Narasimalu Naidu*.

28 Cr. L. J. 879 :

104 I. C. 719 : 26 L. W. 168.

39 M. L. T. 18 : 53 M. L. J. 309 :

1927 M. W. N. 692 : 50 Mad. 916 :

A. I. R. 1927 Mad 797.

———S. 520—Concurrent Jurisdiction.

An order under Ss. 517, 518 or 519 may be revised once by any one of the Courts mentioned in S. 520 of that Code even though, in respect of the main case in connection with which such order was passed, no appeal or revision has taken place in any Court, or could have been entertained by the Court revising the order. *Emperor v. Hussain Shah*.

I Cr. L. J. 764 :

17 C. P. L. R. 17.

———S. 520—Concurrent jurisdiction.

The Legislature intended in the case of S. 520 to confer concurrent jurisdiction on the District Magistrate and the Court of Sessions; so that where neither of them has had any opportunity of exercising jurisdiction under that section, an applicant may go for redress to either and the Court which first obtains seisin of the case has power to act in the matter. *Emperor v. Nga Po Chil*.

24 Cr. L. J. 858 :

74 I. C. 1050 : 1 Rang 199 :

2 Bur. L. J. 241 : A. I. R. 1923 Rang 227.

———S. 520—Court of Appeal—Sub-Divisional Magistrate hearing appeals, competency of, to make order under S. 520.

A Sub-Divisional Magistrate who hears appeals

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—S. 517—*Disposal by delivery.*

The property taken out of the possession of the accused who are acquitted should be handed over to them in the absence of a finding in the case that it belongs to anybody else. *In re : Goparaju Sitaramiah.*

7 Cr. L. J. 399 :
3 M. L. T. 334.

—S. 517—*Disposal by delivery.*

The rule that title to money passes by delivery is limited to cases where the receipt of money is *bona fide*. Therefore, where the accused stole certain money and handed it over to another person under circumstances sufficient to show that the receipt by this person was not *bona fide*, a Magistrate would be justified under S. 517 in ordering restoration of the money to the true owner. *Soni v. Emperor.*

12 Cr. L. J. 397 :
11 I. C. 581 : 4 S. L. R. 255.

—S. 517—*Disposal by delivery.*

The Sub-Agent of a Bank embezzled a certain amount of money belonging to the Bank and paid a part of it to his creditors in payment of his debts. The Police traced one of these payments, and the creditor to whom the payment had been made, handed the money back to the Police. The Sub-Agent was tried and convicted of the offence of embezzlement, and at the conclusion of the trial, the Court ordered that the money which was handed over to the Police by the creditor of the accused should be handed over to the complainant Bank as property in respect of which an offence appeared to have been committed : *Held*, that the order was justified by the terms of S. 517 of the Cr. P. C. under which the Court purported to act. *Baukey Lal Kapoor v. Allahabad Bank, Ltd., Moradabad and Emperor.*

26 Cr. L. J. 1232 :
88 I. C. 848 : 23 A. L. J. 889 :
A. I. R. 1926 All. 47.

—S. 517—*Disposal by delivery.*

Title to a currency note passes by mere delivery and, therefore, where a stolen currency note is recovered from an innocent third person, it should be returned by the Criminal Court, after disposal of the proceedings in connection with the theft of the note, to the person from whom it is recovered and not to the person from whom it was stolen. *Srinivasa Moorthi v. Narasimbalu Naidu.*

28 Cr. L. J. 879 :
104 I. C. 719 : 26 L. W. 168 :
39 M. L. T. 18 : 53 M. L. J. 309 :
1927 M. W. N. 692 : 50 Mad. 916 :
A. I. R. 1927 Mad. 797.

—S. 517—*Disposal by delivery.*

When a party is charged for theft and that charge is dismissed or the party is discharged, an order can be made under S. 517, for the delivery of the subject-matter of the alleged theft to some party other than the party in whose possession the property was found at the date of the alleged theft. *Kangasabai v. Ramamani.*

11 Cr. L. J. 138 :
5 I. C. 468 : 7 M. L. T. 179 :
20 M. L. J. 425 : 1910 1 M. W. N. 508 :
34 Mad. 94.

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—S. 517—*Disposal by delivery.*

When making an order under S. 517, the Magistrate should have the property delivered to the person who had possession of it before the trial. *Topiah v. Sritrangiah.*

9 Cr. L. J. 436 :
12 M. C. C. R. 247.

—S. 517—*Disposal by delivery.*

When on the acquittal of an accused in a theft case, the Trying Magistrate makes an order restoring the property *in delicto* to the accused, the District Magistrate has no jurisdiction to set aside the order. *Debi Ram v. Emperor.*

25 Cr. L. J. 1168 :
81 I. C. 992 : 22 A. L. J. 506 :
46 All. 623 :
A. I. R. 1924 All. 675.

—S. 517—*Disposal by delivery.*

When there is no case of theft made out, property should be handed over to one who had possession of it. *Brojendra Chandra De v. K. S. Sama.*

32 Cr. L. J. 983 :
132 I. C. 902 : I. R. 1931 Cal. 614 :
35 C. W. N. 198 : A. I. R. 1931 Cal. 455.

—S. 517—*Disposal by delivery.*

Where an accused has been acquitted of the offence of cheating, it is not competent to the Court to restore the goods found in possession of the accused to the complainant under S. 517, Cr. P. C. The proper order in such a case is that the goods should remain in the possession of the person in whose custody they were found. *Ram Dan Damani v. Hari Das Damani.*

27 Cr. L. J. 853 :
95 I. C. 933 : A. I. R. 1926 Cal. 1048.

—S. 517—*Disposal by delivery.*

Where property in respect of which an offence has been committed is seized from the possession of a person to whom it has been pledged by the accused, and there can be no doubt whatsoever that the pledgee is not entitled to retain possession of the property pledged because it had been obtained from the original owner by what is palpably and unmistakably an offence or fraud, or because the circumstances clearly indicate impropriety, or an absence of good faith on the part of the pledgee, a Magistrate is justified in directing its return to the original owner. *Valliappa Chetty v. Joseph.*

25 Cr. L. J. 666 (b) :
81 I. C. 154 : 2 Bur. L. J. 85 :
A. I. R. 1923 Rang. 248.

—S. 517—*Disposal by delivery.*

Where the petitioner's case, in which he charged the opposite party with having forcibly dispossessed him of a bungalow and its contents, was found to be true and the opposite party was convicted under S. 323, I. P. C., for having forcibly dispossessed him of both : *Held*, that it was the duty of the Magistrate to pass orders under Ss. 522 and 517, Cr. P. C., directing restoration to the petitioner of the bungalow and its contents. *Sheikh Ahmed Ali v. Kecnoo Khan.*

9 Cr. L. J. 294 :
1 I. C. 202 : 13 C. W. N. 77 :
34 Cal. 44.

Cr. P. CODE (1898), S. 520

—S. 520—Jurisdiction.

If an order passed by a Magistrate under S. 517, is *ultra vires*, a Court of Appeal, etc., has no jurisdiction to exercise its powers under S. 520 of the Code, inasmuch as, such jurisdiction can only arise from an order legally passed under S. 517. *Kishen Chand v. Nanak Chanda*,

89 I. C. 673 : 7 L. L. J. 625 :

A. I. R. 1926 Lah. 9.

—S. 520—Jurisdiction.

The petitioner was a trader in Kendu-leaves which were used for the manufacture of *biris*. The opposite party had taken a lease from the *zemindar* of the right to collect leaves in jungle and waste lands of the *zemindari*. The exclusive right to dispose of the leaves in jungle and waste lands was with the *zemindar*. The petitioner was prosecuted for theft on account of certain leaves in his possession, but the case ended in acquittal in the Sessions Court. The monopolist (opposite party) had in the meantime applied to the Magistrate to seize the Kendu-leaves in the petitioners, *phandis* in various villages on the ground that they had been collected from jungle and waste lands. The Police accordingly seized a large number of leaves but the Magistrate came to the conclusion that it could not be proved that the leaves came from jungle and waste land, and he, therefore, directed that they should be returned to the petitioner. The District Magistrate acting under S. 520 set aside this order, directing that the leaves should be sold and that the sale proceeds should be retained in criminal deposit awaiting the decision of a Civil Court as to their ownership. *Held*, that in order that the District Magistrate should have jurisdiction to dispose of property, it was only necessary that he should find that it appeared that an offence had been committed in respect of that property, and it was not necessary that the property should be proved to have been stolen: *Held*, also that the existence of a monopoly of this kind cannot be held to cast upon another person the onus of proving that Kendu-leaves in his possession were not taken from the jungle and if the monopolist was unable to prove that the property is stolen, the presumption of law was that it was not. The presumption ought to have been applied in the present case, and even if parties talked of going to the Civil Court, the Magistrate ought not, by the application of S. 520 to have made an order tantamount to attachment before judgment in a civil suit. *Kasiram Marwari v. Makhanji Dwarka Prasad*.

38 Cr. L. J. 1091 :

171 I. C. 589 : 18 P. L. T. 441 :

10 R. P. 221 : 4 B. R. 40 :

A. I. R. 1937 Pat. 591.

—S. 520—Jurisdiction.

Where a case is appealable to the Sessions Court, a District Magistrate has no power to deal with an order regarding the disposal of the property under S. 520, the only Court which can deal with such order is the Sessions Court. *In re : Lawman*.

12 Cr. L. J. 169 (a) :

9 I. C. 947 : 13 Bom. L. R. 131 :

35 Bom. 253.

Cr. P. CODE (1898), S. 520

—S. 520—Jurisdiction.

Where the case is one in which confirmation is required, a person aggrieved by the order regarding the disposal of the property must go to the Court of confirmation. *In re : Lawman*.

12 Cr. L. J. 169 (a) :

9 I. C. 947 : 13 Bom. L. R. 131 :

35 Bom. 253.

—S. 520—Jurisdiction.

Where there is no appeal, and confirmation is not required, he may go to the Court of Revision or Reference. *In re : Lawman*.

12 Cr. L. J. 169 (a) :

9 I. C. 947 : 13 Bom. L. R. 131 :

35 Bom. 253.

—S. 520—Notice—Necessity of.

Although S. 520 does not prescribe the issue of notice to any person before an order under that section is passed, yet it is a general principle of law that an order duly passed by a competent authority in favour of any person should not be set aside without that person being heard. *Rajaram v. Kunjilal*.

20 Cr. L. J. 823 (a) :

53 I. C. 823 : A. I. R. 1918 Nag. 65.

—S. 520—Notice—Necessity of.

An order regarding the disposal of property should not be interfered with by a Higher Court without notice to the other side. *In re : Lawman*.

12 Cr. L. J. 169 (a) :

9 I. C. 947 : 13 Bom. L. R. 131 :

35 Bom. 253.

—S. 520—Order—Nature of.

Orders under Ss. 517, 518 and 519 are essentially of an executive nature, and S. 520 is intended to provide a summary control also of an executive nature, which is wider and more speedy than judicial revision under Chapter XXXII. *Emperor v. Hussain Shah*.

1 Cr. L. J. 764 :

17 C. P. L. R. 17.

—S. 520—Order—Stage for passing.

Similarly a Court of Appeal or Revision is not so limited. S. 520 of the Code expressly authorises the separate consideration, where necessary, of matters referred to in the section: *Ma Wei v. Mg Po Taik*.

26 Cr. L. J. 518 :

85 I. C. 358 : 3 Bur. L. J. 302 :

A. I. R. 1925 Rang. 183.

—S. 520—Power of Appellate Court.

Property in a Bank-note passes, like that in cash, by delivery and a party taking it *bona fide* and for value is entitled to retain it as against a former owner from whom it has been stolen. Where currency notes or current coins have been erroneously disposed of under S. 517, a superior Court may order the re-payment of an equivalent under S. 520 of the Code. *Bodomal Kishinchand v. Emperor*.

13 Cr. L. J. 21 (a) :

13 I. C. 213 : 5 S. L. R. 153.

Cr. P. CODE (1898), S. 517

deliver the property to both on their joint receipt. *Kangasabai v. Ramamani*.

11 Cr. L. J. 138 :
5 I. C. 468 : 7 M. L. T. 179 :
20 M. L. J. 425 : 1910 1 M. W. N. 508 :
34 Mad. 94.

———S. 517—No offence regarding property—Order—Legality of.

Under S. 517 the Court before which any property has been produced, has jurisdiction to order that it be restored to the true owner, even though no offence appears to have been committed in respect of it. *Russool Bibee v. Ahmed Moosajee*.

5 Cr. L. J. 48 :
5 C. L. J. 44 : I. L. R. 34 Cal. 347.

———S. 517—Notice—Necessity of.

An order disposing the property under S. 517 not made on the application of any party and after notice but made in the Property Register probably at the instance of the office cannot be upheld. *Akella Rama Krishnayya v. Devulapalli Seethamma*.

41 Cr. L. J. 275 :
186 I. C. 224 : 1939 M. W. N. 740 :
12 R. M. 636 : A. I. R. 1939 Mad. 916.

———S. 517—Notice—Necessity of.

But when an application is made after some lapse of time, it is proper on general principles of law that the party to be affected by the proposed order should have notice of the application. 71 Ind. Cns. 514 (5) relied on. *Deopujan Mahto v. Kukur Ahir*.

41 Cr. L. J. 559 :
188 I. C. 260 : 21 P. L. T. 448 :
6 B. R. 621 : 19 Pat. 337 : 12 R. P. 695 :
A. I. R. 1940 Pat. 198.

———S. 517—Notice—Necessity of.

In a case in which the question of the right to possession is not one between the complainant and the accused but one between the complainant and a third person, an order for the restoration of the property to one party should not be made without first giving the opposite party an opportunity of being heard. *Sawe Wa v. G. I. Mehta*.

28 Cr. L. J. 932 :
105 I. C. 452 : 5 Rang. 553 :
A. I. R. 1927 Rang. 322.

———S. 517—Notice—Necessity of.

Order must be made in the presence of the purchaser of the commodity who has a right to be heard. *Naini Mal v. Emperor*.

24 Cr. L. J. 804 :
74 I. C. 708 : A. I. R. 1924 All. 189.

———S. 517—Notice—Necessity of.

Where an order under S. 517 is passed simultaneously with the judgment in a criminal case, a separate notice to the parties to show cause why the order should not be passed is not necessary. *Deopujan Mahto v. Kukur Ahir*.

41 Cr. L. J. 559 :
188 I. C. 260 : 21 P. L. T. 448 :
6 B. R. 621 : 19 Pat. 337 : 12 R. P. 695 :
A. I. R. 1940 Pat. 198.

———S. 517—Notice—Necessity of.

Where in regard to proceedings under S. 517 one of the parties does not choose to appear before the Sub-Divisional Magistrate in an

Cr. P. CODE (1898), S. 517

enquiry, he is not entitled to complain that he has not been served with notice of the proceedings in the Appellate Court against the order of the lower Court. *Sheikh Dawood v. Velayuda Semmanoti*.

29 Cr. L. J. 322 (b) :
108 I. C. 65 : 27 L. W. 132 :
54 M. L. J. 312 : 51 Mad. 606 :
A. I. R. 1928 Mad. 194.

———S. 517—Order—Stage for passing.

An order under S. 517 made six months after the trials is bad. *Naini Mal v. Emperor*.

24 Cr. L. J. 804 :
74 I. C. 708 : A. I. R. 1924 All. 189.

———S. 517—Order—Stage for passing.

An order under S. 517 ought to be made at the time of passing judgment in the criminal case itself. *In re : Vemi Reddy Babu Reddy*.

18 Cr. L. J. 469 :
39 I. C. 309 : A. I. R. 1918 Mad. 594.

———S. 517—Order—Stage for passing.

No order can be passed under S. 517, Cr. P. C., until the case is concluded. After that, and within a reasonable time, the Magistrate, who heard the case, is empowered to act. He may do so at the time of pronouncing his order or later. *Kishen Chand v. Nanak Chand*.

26 Cr. L. J. 1453 :
89 I. C. 673 : 7 L. L. J. 625 :
A. I. R. 1926 Lah. 9.

———S. 517—Order—Stage for passing.

S. 517 cannot be read as requiring that the order for disposal of property must be passed simultaneously with the judgment of the case unless the words that are not there are read into the section. *Deopujan Mahto v. Kukur Ahir*.

41 Cr. L. J. 559 :
188 I. C. 260 : 21 P. L. T. 448 :
6 B. R. 621 : 19 Pat. 337 :
12 R. P. 695 : A. I. R. 1940 Pat. 198.

———S. 517—Order—Stage for passing.

S. 517 gives jurisdiction to the Court to pass necessary orders for the disposal of property either at the time of the conclusion of the trial or at a later date. Though the passing of such orders should not be unreasonably postponed, yet the lapse of time does not relieve the Court of the duty and the corresponding jurisdiction to pass orders for the disposal of property which is in the Court's custody or under its control. *Deopujan Mahto v. Kukur Ahir*.

41 Cr. L. J. 559 :
188 I. C. 260 : 21 P. L. T. 448 :
6 B. R. 621 : 19 Pat. 337 :
12 R. P. 695 : A. I. R. 1940 Pat. 198.

———S. 517—Order—Stage for passing.

S. 517 of the Cr. P. C., does not limit the power of the Magistrate or Judge, who has omitted to pass an order for disposal of exhibits as part of his judgment convicting the accused, so as to deprive him of all power to subsequently pass orders for the disposal of the property. *Ma Wet v. Mg. Po Taik*.

26 Cr. L. J. 518 :
85 I. C. 358 : 3 Bur. L. J. 302 :
A. I. R. 1925 Rang. 183.

Cr. P. CODE (1898), S. 522

entitle the complainant to seek his remedy under S. 522, Cr. P. C. unless there is a finding of the Court convicting the accused that the offence with which the dispossession was effected was attended with the use of criminal force, as defined in S. 350, Penal Code. The provisions of S. 522 are, therefore, inapplicable to a case where the dispossession was effected by the use of force as against the property and not as against a person. *Balram Sahu v. Chamru Sahu*.

22 Cr. L. J. 329 (b) :
61 I. C. 57 : 2 P. L. T. 120 :
A. I. R. 1921 Pat. 391.

—S. 522—Applicability of.

In order to make S. 522 applicable to immovable property, it is not necessary that force should be an ingredient of the offence of which the accused is convicted, provided the use of force appears from the evidence. *Adepu Reddi v. Ramayya*.

22 Cr. L. J. 110 :
59 I. C. 414 : 12 L. W. 227.

—S. 522—'Criminal force'—Conviction for criminal trespass—Complainant's remedy lies in Civil Court and not under S. 522.

The definition of "force" and "criminal force" in Ss. 349 and 350, I. P. C., contemplate criminal force being used to any "person" and do not take into account such force being used to a "matter of substance." A conviction for an offence of criminal trespass will not necessarily entitle the complainant to seek his remedy under S. 522, Cr. P. C., unless there is finding of the Court that the offence with which the dispossession happened was attended with the use of criminal force on the person of the complainant. Hence where the complainant's allegation is not that any "force" or "show of criminal force" had been made to him, his remedy, if any, lies in a Civil Court and any order passed under S. 522, Cr. P. C., is illegal. *Bhani v. Narain Singh*.

41 Cr. L. J. 387 :
186 I. C. 895 : 41 P. L. R. 908 :
12 R. L. 443 : A. I. R. 1940 Lah. 84.

—S. 522—'Criminal force' use of—Show of criminal force, whether enough.

The dispossession contemplated by S. 522, Cr. P. C. must be accompanied by criminal force, and as a result of the criminal force used, and the mere show of criminal force is not enough for an order under that section. The foundation of an order under S. 522 should be the finding of the Court to the effect that the person in whose favour the order is made has been dispossessed of a specific property by use of criminal force, which forms the material ingredient in the matter of criminal conviction. *Bundi Singh v. Emperor*.

19 Cr. L. J. 516 :
45 I. C. 276 : 4 P. L. W. 329 :
A. I. R. 1918 Pat. 523.

—S. 522—Delay, effect of—Order passed twenty months after decision of criminal case, whether legal.

S. 522, Cr. P. C., is not mandatory but merely says : a Court may pass a prosecution order. Such an order under it need not be passed simultaneously with the conviction in the

Cr. P. CODE (1898), S. 522

criminal case. Therefore, where an order was passed twenty months after, but the delay was duly explained, the order was upheld as properly passed. *Ghulam Mohammad v. Karam Singh*.

15 Cr. L. J. 275 :
23 I. C. 483 : 14 P. W. R. 1914 Cr. :
112 P. L. R. 1914 : 15 P. R. 1914 Cr. :
A. I. R. 1914 Lah. 325.

—S. 522—Delay, effect of—Order under after delay of more than two months after conviction—Delay not due to fault of complainant—Order, if good.

Where an order under S. 522 was made more than two months after the conviction under S. 448, I. P. C. and the delay was not due to any fault on the part of the complainant, the order is not bad. *Sahibjan v. Emperor*.

41 Cr. L. J. 311 :
186 I. C. 423 : 6 B. R. 366 : 21 P. L. T. 697 :
12 R. P. 512 : A. I. R. 1940 Pat. 409.

—S. 522—Jurisdiction—Bench of Magistrates convicting accused abolished subsequently—Another Bench, if can pass order under S. 522.

Where a Special Bench of Honorary Magistrates which has convicted an accused is subsequently abolished, another Bench has no jurisdiction to pass an order under S. 522, Cr. P. C., upon an application of the complainant. *Bhani v. Narain Singh*.

41 Cr. L. J. 387 :
186 I. C. 895 : 41 P. L. R. 908 :
12 R. L. 443 : A. I. R. 1940 Lah. 84.

—S. 522—Jurisdiction—Restoration of property—Trial Court, refusal of, to make order—Appeal—Revision.

The discretion to pass or not to pass an order for restoration of property under S. 522, Cr. P. C., is vested in the Trial Court, and where that Court declines to make such an order in the exercise of its discretion, a Court of Appeal or Revision has no jurisdiction to compel it to do so. *Azis Ahmad v. Bud dhu Khan*.

24 Cr. L. J. 677 :
73 I. C. 773 : 21 A. L. J. 459 :
45 All. 553 : A. I. R. 1924 All. 183.

—S. 522—Jurisdiction of Appellate Court.

An Appellate Court, while confirming a conviction on appeal, has no jurisdiction to pass an order under S. 522, Cr. P. C., directing the restoration of possession of immovable property to the complainant, where the Court below had not thought it necessary to act under that section. *Bhagbat Shaha v. Siddique Ostagar*.

13 Cr. L. J. 608 :
16 I. C. 176 : 39 Cal. 1050 :
16 C. W. N. 811.

—S. 522—Jurisdiction of District Magistrate—Order for possession—Jurisdiction to pass order for conviction.

An application for an order for possession under S. 522 Cr. P. C., filed after the conviction of the accused was rejected by the trying Magistrate but was allowed on appeal to the District Magistrate: *Held*, that under the circumstances of the case, the order was a proper one and should not be interfered with. *Khubi v. Bukhlal*.

19 Cr. L. J. 734 :
46 I. C. 414 : 16 A. L. J. 489 :
A. I. R. 1918 All. 407.

Cr. P. CODE (1898), S. 517**—S. 517—Property within scope.**

Where the accused dispossessed the complainant of his garden by breaking the padlock of its gate, but used no force or violence and were convicted of the offence of criminal trespass: *Held*, that the Court had no power to order the restoration of the garden to the complainant under S. 522, nor under S. 517 as the latter did not apply to immovable property. *Biswaswar Singh v. Bhola Nath Pathak*.

15 Cr. L. J. 175 :
22 I. C. 751 : 18 C. W. N. 1146 :
A. I. R. 1914 Cal. 629.

—S. 517—Property within scope.

Under S. 517 it is not necessary that the property to be disposed of should have been used for the commission of an offence or that some offence should appear to have been committed regarding it; the Court has power to make an order for the disposal of any property "produced before it or in its custody." *Ganpat v. Bani*.

21 Cr. L. J. 414 :
56 I. C. 62 : A. I. R. 1920 Nag. 219.

—S. 517—Discretion.

The power to order restoration is discretionary and the Court is not bound to exercise it. *Ramasawmi Aiyar v. Venkateswara Aiyar*.

14 Cr. L. J. 27 :
18 I. C. 171 : 24 M. L. J. 1 :
1913 M. W. N. 851 : 14 M. L. T. 431.

—S. 517—Revision.

A Magistrate of the first class acquitted an accused person of an offence under S. 411, Penal Code, with which he was charged but ordered the property, the subject of the charge, to be delivered to the complainant and the Sessions Judge agreed with the Magistrate: *Held*, that this finding of fact not being obviously wrong, could not be interfered on revision. The order as to delivery of the property, cannot be interfered on revision. *Bhagat Ram v. Emperor*.

12 Cr. L. J. 400 (a) :
11 I. C. 584 : 96 P. L. R. 1911.

—S. 517—Revision.

In the case of an acquittal by the trial Court, the Sessions Judge or District Magistrate as a Court of Revision has power under S. 520 to interfere with the order of the trial Court passed under S. 517 of the Code, regarding the disposal of the property in respect of which offence was committed. *U Po Hla v. Ko Po Shein*.

30 Cr. L. J. 540 :
115 I. C. 901 : 7 Rang. 345 :
I. R. 1929 Rang. 133 :
A. I. R. 1929 Rang. 97.

—S. 517—Revision.

In the case of a conviction by a First Class Magistrate, the District Magistrate has, in the absence of an appeal to the Sessions Court, power to interfere with an order passed under S. 517 of the Code by the trial Court. *U Po Hla v. Ko Po Shein*.

30 Cr. L. J. 540 :
115 I. C. 901 : 7 Rang. 345 :
I. R. 1929 Rang. 133 :
A. I. R. 1929 Rang. 97.

Cr. P. CODE (1898), S. 517**—S. 517—Revision.**

The fact that an order for delivery of property under S. 517 has been carried out, does not deprive the High Court of its power to order restoration of the property to the rightful person. *Sawee Wa v. C. I. Mehta*.

28 Cr. L. J. 932 :
105 I. C. 452 : 5 Rang. 553 :
A. I. R. 1927 Rang. 322.

—S. 517—Revision.

Though the Court has a discretion under S. 517, the High Court can interfere with an order under that section if the lower Court has not exercised any discretion in the matter. *Lakshmana Dorai v. Arunagiri Chetty*.

33 Cr. L. J. 783 :
139 I. C. 340 : 1932 M. W. N. 813 :
I. R. 1932 Mad. 670 :
A. I. R. 1932 Mad. 495.

—S. 517—Sedition—Press, whether used for committing.

An offence under S. 124-A, I. P. C., consists in publication. The printing press in which seditious matters punishable under S. 124-A, Penal Code, have been printed, cannot be said to be property which has been used for the commission of an offence within the meaning of S. 517, the press being a remote instrument. *Abinash Chandra v. Emperor*.

6 Cr. L. J. 293 :
11 C. W. N. 1046 :
6 C. L. J. 754 : I. L. R. 34 Cal. 986.

—Ss. 517, 518, 519—Nature of order.

Orders under Ss. 517, 518 and 519 are essentially of an executive nature, and S. 520 is intended to provide a summary control also of an executive nature, which is wider and more speedy than judicial revision under Chap. XXXII. *Emperor v. Hussain Shah*.

1 Cr. L. J. 764 :
17 P. L. R. 17.

—Ss. 517 to 520—Scope—Revising an order by use of S. 520, Cr. P. C.

An order under Ss. 517, 518 or 519 of the Cr. P. C., 1898, may be revised once by any one of the Courts mentioned in S. 520 of that Code even though, in respect of the main case in connection with which such order was passed, no appeal or revision has taken place in any Court, or could have been entertained by the Court revising the order. *Emperor v. Hussain Shah*.

1 Cr. L. J. 764 :
17 C. P. L. R. 17.

—Ss. 517, 523—Property, disposal of—Forfeiture—Complaint dismissed under S. 203—Power to order forfeiture of property used in fabricating false evidence.

Where a complaint is dismissed under S. 203, and there are grounds for believing that certain property was used by the complainant for fabricating false evidence against the accused, the Court has jurisdiction to pass an order directing the forfeiture of such property. In such a case even if the order purports to have been made under S. 517, it should be

Cr. P. CODE (1898), S. 522

the use of criminal force as defined in S. 350, Penal Code. *Hari Chand v. Emperor*.

20 Cr. L. J. 488 :
51 I. C. 472 : 16 P. R. 1919 Cr. :
A. I. R. 1919 Lah. 248.

———S. 522—Order restoring possession—
Certain conditions of validity.

Although there is no explicit provision of law to require that a Magistrate who passes an order under S. 522, Cr. P. C., should give the party against whom it is proposed to make the order an opportunity of showing cause against it, he should do so as a matter of the due exercise of judicial discretion. Before an order can be passed under S. 522, there must be conviction of an offence of which the use of criminal force is a material ingredient. *Pon Nyun v. Maung Nyo*.

2 Cr. L. J. 377 :
3 L. B. R. 20 : 11 Bur. L. R. 164.

———S. 522—Order restoring possession—
Dispossession by show of force.

Under S. 522, Cr. P. C., whenever an accused is convicted of an offence attended by show of force, the Court has the power to order the person who has been dispossessed by the accused of any immovable property by such show of criminal force to be restored to the possession of the same. *Chhakoo Mandal v. Emperor*.

5 Cr. L. J. 278 :
11 C. W. N. 467.

———S. 522—Order restoring possession, *legality of*—*Trespass committed in absence of complainant.*

An order to restore possession of immovable property under S. 522, Cr. P. C., can be made only where dispossession was by the use of force as defined in S. 350, Penal Code, and therefore, cannot be made in a case where a trespass was committed in the absence of the complainant. *Mangiram v. Emperor*.

28 Cr. L. J. 964 :
105 I. C. 676 : 26 P. L. R. 500.

———S. 522—Order restoring possession, *legality of*—*Time when order to be made*—*Whether to be made simultaneously with order of conviction*—*Notice to accused, if necessary.*

It is not essential in law that an order restoring possession should find a place in the actual judgment. It must be immediate, that is directly arising out of the judgment of the Court convicting in the case and without any fresh materials having in the meantime been produced. Before an order under S. 522 is made, the accused is in law not entitled to any notice. Therefore, such an order passed four days after the conviction of an accused on the express finding in the judgment without any fresh materials and without any notice to the accused, is competent and not without jurisdiction. *Jatindra Nath v. Emperor*.

14 Cr. L. J. 172 :
19 I. C. 172.

———S. 522—Order restoring possession, *legality of.*

Where it is found that the accused were still putting a fence round the land when complain-

Cr. P. CODE (1898), S. 522

ant arrived at the spot and prevented him from taking possession by show of force, an order restoring possession is justifiable. *Allah Jawaya v. Emperor*.

27 Cr. L. J. 495 :
93 I. C. 895.

———S. 522—Order restoring possession, *propriety of*—*Breaking open lock and taking possession of house during owner's absence.*

Accused taking advantage of the temporary absence of the complainant from his house, broke open the outer lock of the house and entered into unlawful possession and the complainant, when he returned, was driven out by force: *Held*, that under the circumstances, an order of restoration of possession to the complainant passed under S. 522 on conviction of the accused for trespass was a proper order. *Maruthayee v. Appavu Pillai*.

24 Cr. L. J. 476 :
72 I. C. 892 : 31 M. L. T. 383 :
A. I. R. 1923 Mad. 237.

———S. 522—Order restoring possession *setting aside of*—*Notice to complainant, whether necessary.*

An order under S. 522, Cr. P. C. ought not to be declared as of no effect without hearing what the complainant, who is the party most interested in the maintenance of the order, has to urge in support of it. *Majid Ali Sardar v. Ali Asrab*.

20 Cr. L. J. 846 :
53 I. C. 942 : 23 C. W. N. 862 :
29 C. L. J. 167 : A. I. R. 1919 Cal. 8.

———S. 522—Order restoring possession, *when passed*—*Criminal trespass accompanied by show of force.*

Accused came armed in large numbers and forced themselves into the house of the complainant in spite of the remonstrance made by the complainant and succeeded in taking possession of the house. They were convicted under Ss. 143 and 448, Penal Code, and an order was also passed against them under S. 522, Cr. P. C., directing restoration of the possession of the house to the complainant: *Held*, that the accused having taken possession of the house by means of criminal trespass threatening to use force to the complainant, their act came within the purview of S. 522, Cr. P. C., and the order directing restoration of possession was, therefore, perfectly valid. Under S. 522 of the Cr. P. C., an order directing the restoration of possession of the property must be made by the Magistrate trying the case within one month of the conviction of the accused in the case. *Rameswar Singh v. Emperor*.

27 Cr. L. J. 137 :
91 I. C. 809 : 4 Pat. 438 : 7 P. L. T. 285 :
A. I. R. 1925 Pat. 689.

———S. 522—Order restoring possession *when passed*—*Criminal trespass, conviction for*—*Criminal force, use of, absence of.*

Petitioners were convicted of an offence under S. 447, Penal Code, by reason of their having continued to cultivate certain fields in spite of their ejection. There was nothing to indicate that the offence was attended

Cr. P. CODE (1898), S. 520

under S. 407 of the Cr. P. C., is a Court of Appeal within the meaning of S. 520, and is competent to pass orders on an application made under that section for the disposal of the property concerned in the case, treating such application as part of the proceedings in the appeal. But before disposing of such application, notice thereof should be given to the complainant, unless there is good reason for dispensing with such notice. *Arunachala Thevan v. Vellachami Thevan*.

24 Cr. L. J. 162 :
71 I. C. 514 : 44 M. L. J. 56 :
17 L. W. 462 : 32 M. L. T. 104 :
46 Mad 162 : A. I. R. 1923 Mad 324.

S. 520—Court of Appeal—Meaning of.

A Court of Appeal, within the meaning of S. 520 is the Court to which an appeal lies in the particular case, and not the Court to which appeals would ordinarily lie from the Court deciding that particular case. *In re : Khima Bukhad*.

19 Cr. L. J. 597 :
45 I. C. 501 : 20 Bom. L. R. 395 :
42 Bom. 664 : A. I. R. 1918 Bom. 186.

S. 520—Court of Appeal—Meaning of.

A First Class Magistrate, who tried the accused on a charge of theft of certain cattle acquitted them and directed the cattle to be given to one of the accused. The complainant applied to the Sessions Judge, who directed that the cattle be returned to the complainant. *Held*, that the accused having been acquitted, the Sessions Judge was neither the Court of Appeal nor the Court of Revision with respect to the case and had, therefore, no power to make an order under S. 520 regarding the disposal of the cattle. *In re : Khima Bukhad*.

19 Cr. L. J. 597 :
45 I. C. 501 : 42 Bom. 664 :
20 Bom. L. R. 395 :
A. I. R. 1918 Bom. 186.

S. 520—Court of Appeal—Meaning of.

The words "Court of Appeal" in S. 520 merely imply the Court to which appeals would ordinarily lie and do not mean that an appeal must lie in the particular case in which an order has been passed as to property. *Bhagat Ram v. Emperor*.

12 Cr. L. J. 400 (a) :
11 I. C. 584 : 96 P. L. R. 1911.

S. 520—Disposal by confiscation—Notice—Necessity of.

No order for the confiscation of property, the subject of an offence, can be passed under S. 520 without giving notice to the complainant and hearing his objections, if any. *Ma Sein v. Emperor*.

17 Cr. L. J. 207 :
34 I. C. 319 : 9 Bur. L. T. 193 :
A. I. R. 1916 L. Bur. 69.

S. 520—Disposal by delivery.

One Onkar filed a complaint under S. 506 against the three accused to the effect that they were demanding under threats the restoration of certain *bahis* which were in the complainant's possession. These *bahis* had been in the possession of Onkar for the last 10 or 11 years but the trying Magistrate found that

Cr. P. CODE (1898), S. 520

they really belonged to two of the accused. He, however, passed no order with regard to the restoration of the *bahis* but added that if they wanted to get them back, they should seek their remedy in a proper Court. In an appeal the Appellate Court directed that the *bahis* be returned to the accused : *Held*, that the offence of criminal intimidation was complete but the order of restoration was bad. *Dukar v. Emperor*.

21 A. L. J. 877 : A. I. R. 1924 All. 213.

S. 520—Disposal by delivery.

S. 520 contemplates that the Court of Reference or Revision shall order restitution if justice so requires. Where a remedy is allowed by law, it must be assumed that the Legislature intends that the Tribunal invested with jurisdiction shall enforce its order in the manner it considers most suitable, even though there is no express provision for doing the same. *Badrul Hasam v. Chamela*.

19 Cr. L. J. 995 :
48 I. C. 175 : A. I. R. 1918 Pat. 304.

S. 520—Disposal by delivery.

The intention of the Legislature in adding to S. 520 the words "and make any further orders that may be just" was to enable a superior Court to give effect to an order setting aside the order of the Court of first instance, by directing the restitution of the property if the order of the Court of first instance has been carried out. *Bodomal Kishinchand v. Emperor*.

13 Cr. L. J. 21 (a) :
13 I. C. 213 : 5 S. L. R. 153.

S. 520—Interference by High Court.

Neither under S. 430 nor under S. 520, will the High Court exercise its revisional jurisdiction except as a Court of last resort. *Emperor v. Hussain Shah*.

1 Cr. L. J. 764 :
17 C. P. L. R. 17.

S. 520—Jurisdiction.

Additional Sessions Judge, is a Court of Appeal—Such Judge is not a Court of Revision within S. 520. *Sabhapati Dubey v. Ram Kissen Kumar*.

37 Cr. L. J. 541 :
162 I. C. 255 : 62 Cal. 861 : 8 R. C. 582 :
A. I. R. 1936 Cal. 185.

S. 520—Jurisdiction.

An application for revision under S. 520 from an order of a trying Magistrate for disposal of property following upon an order of acquittal lies to the Sessions Court or the District Magistrate's Court. *Walchand v. Hari Anant Joshi*. (F. B.)

33 Cr. L. J. 807 :
139 I. C. 433 : 56 Bom. 369 :
34 Bom. L. R. 1203 :
I. R. 1932 Bom. 489 :
A. I. R. 1932 Bom. 534.

S. 520—Jurisdiction.

"Court of Appeal" in S. 520, meaning of—Jurisdiction of Court of Appeal to deal with order of disposal of property under S. 517 is not limited by Court in which appeal from acquittal lies. *Banur-ud-Din Biswas v. Gani Mia Sawdagar*.

37 Cr. L. J. 313 :
160 I. C. 591 : 40 C. W. N. 287 :
8 R. C. 445 : A. I. R. 1936 Cal. 21.

Cr. P. CODE (1898), S. 522

pass into the complainant's garden, unattended with any force. The Magistrate ordered that possession of the garden should be restored to the complainant. Accordingly, the possession was restored to him. The accused moved the High Court which set aside the order for restoration. The accused then applied to the Magistrate for re-delivery of the possession of the garden to them, but the Magistrate refused the prayer on the ground that he had no power to direct the Police to re-deliver the possession of the garden to the accused: *Held*, that the order of the High Court, setting aside the order for restoration carried with it the incident of restoration of the garden to the accused and that the Magistrate had power to direct the Police to restore possession of the garden to the accused. *Biswaswar Singh v. Bhola Nath Pathak*.

15 Cr. L. J. 222 :
22 I. C. 1006 : 18 C. W. N. 1146 :
A. I. R. 1914 Cal. 275.

—S. 522—Proceedings under—Conviction set aside—Property, restoration of.

Once it is held that no offence has been committed, the consequences arising from the commission of the offence must automatically cease to be. Consequently, where a conviction is set aside, an order under S. 522, Cr. P. C., resulting therefrom must also be set aside. But the order regarding the proceedings taken under S. 522 should follow on the order disposing of the appeal from conviction and not precede it. *Lal Chand v. Dasandhi*.

24 Cr. L. J. 493 :
72 I. C. 957 : A. I. R. 1923 Lah. 15.

—S. 522—Restoration of possession—Judge becomes functus officio, one month after conviction—Revisional Court, if can change period of limitation and restore possession.

Under S. 522, Cr. P. C., a month after the date of conviction, the trial Judge becomes *functus officio* in the matter of delivering possession. It would be illogical to hold that in spite of the lower Court having ceased to have the power of giving possession, the revisional Court can, when moved to consider the order of that Court refusing to give possession on the ground of limitation, enlarge that period and grant the relief. Sub-cl. (3), S. 522 comes into play when an appeal or revision has been preferred against the conviction. It is then that the Appellate or Revisional Court is seized of the jurisdiction to restore possession although the original Court may not have done so, and such higher Courts are not bound by the limitation of one month in doing so. But this clause does not help if the Court of Revision is considering the order of the trial Court under S. 522 refusing to grant possession because the time for making the order had passed. *Said Umar v. Abdulkadir*.

38 Cr. L. J. 333 :
166 I. C. 872 : 9 R. Pesh. 73 :
A. I. R. 1937 Pesh. 7.

—S. 522—Restoration of property.

An accused person may, upon his acquittal, be restored to the possession of a property from

Cr. P. CODE (1898), S. 522

which he has been deprived in favour of the complainant. *Manki v. Bhagwanti*.

2 Cr. L. J. 24 :
2 A. L. J. 64 : 25 A. W. N. 19 :
2 M. A. 415.

—S. 522—Restoration of property—Conviction, setting aside of.

Where a conviction is set aside, an order under S. 522, Cr. P. C., which was passed in consequence of such conviction must also be set aside, and the property should be restored to the accused even though the equities are clearly in favour of the complainant. *Rughunath v. Raghunath Sahai*.

30 Cr. L. J. 902 :
118 I. C. 392 : I. R. 1929 Lah. 744.

—S. 522—Revision.

The High Court has full power to interfere in revision with an order under S. 522, passed by a Magistrate. *Sheikh Ahmed Ali v. Keenoo Khan*.

9 Cr. L. J. 294 :
1 I. C. 202 : 13 C. W. N. 77 :
34 Cal. 44.

—S. 522—Scope of—Criminal force essential to confer jurisdiction—Appellate Court, finding of, that force not used—Possession, order for, reversal of.

The use of criminal force is an essential ingredient to give Criminal Courts jurisdiction to act under S. 522, Cr. P. C. Where, therefore, an Appellate Court reverses a conviction on the ground that no force was used, it ought also to reverse the order awarding possession, and to restore the parties to their original positions. *Rajathammal v. Rajamanikam Pillay*.

23 Cr. L. J. 502 :
68 I. C. 38 : 15 L. W. 533 :
1922 M. W. N. 356 : 31 M. L. T. 20 :
A. I. R. 1922 Mad. 188 (1).

—S. 522—Scope of—Obstruction by erection of hut—Order of removal of obstruction.

The accused were convicted under S. 341/114, I. P. C. for wrongfully restraining a person by the erection of a hut, and an order for the removal of the obstruction was made: *Held*, that a Criminal Court does not possess an inherent power to make a consequential or incidental order to give proper and sufficient effect to the result consequent upon and issuing out of a conviction of this nature. But as, on the facts of the case, the offence was attended by criminal force and as the complainant was dispossessed by reason of the obstruction complained of, the case falls within the purview of S. 522, Cr. P. C., and the order is sustained as though made under that section. That a Criminal Court has inherent power, irrespective of its powers under S. 522, Cr. P. C. to make an order for removal of obstruction on a conviction under S. 341, I. P. C. *Mohini Mohan Chowdhry v. Harendra Chandra Chowdhry*.

1 Cr. L. J. 453 :
8 C. W. N. 538 : I. L. R. 31 Cal. 691.

—S. 522—Scope of—Violence against fencing, not against any individual—Order under S. 522, whether competent.

The term "force," as defined in S. 349,

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———S. 520—*Power of Appellate superior Court.*

The words “make any further orders that may be just” in S. 520 are intended to enable superior Courts to pass proper orders in cases where property has been erroneously disposed of under S. 517 of the Code. *Kaushi Ram v. Emperor.* 24 Cr. L. J. 713 : 73 I. C. 937 : 4 Lah. 49 :

3 P. W. R. 1923 Cr. : A. I. R. 1924 Lah. 75.

———S. 520—*Power of Appellate Court.*

Under S. 520 an Appellate Court has full power to order that the parties should have their title to the property in dispute established in the Civil Court. *Azmat Shah Khan v. Emperor.* 14 Cr. L. J. 526 : 20 I. C. 1006 : 11 A. L. J. 452 : 35 All. 374.

———S. 520—*Power of High Court.*

S. 520 gives a High Court ample powers to pass any order as to disposal of property which may be just on the facts of the case. *Ramamani v. Kanakasabai.*

16 Cr. L. J. 813 (a) : 31 I. C. 829 : A. I. R. 1916 Mad. 840.

———S. 520—*Power of High Court.*

The High Court has jurisdiction under S. 520 of the Cr. P. C., to interfere with or under S. 423, Cl. (d) to amend an order made by a lower Court under S. 517. *Hagu Biswas v. Manmatha Nath Mitra.*

15 Cr. L. J. 184 : 22 I. C. 760 : 18 C. W. 859 : A. I. R. 1914 Cal. 658.

———S. 520—*Power of superior Court.*

That under S. 520 of the Code the Sessions Judge was possessed of very wide powers and could pass any order that he deemed just. *Kaushi Ram v. Emperor.* 24 Cr. L. J. 713 :

73 I. C. 937 : 4 Lah. 49 : 3 P. W. R. 1923 Cr. : A. I. R. 1924 Lah. 75.

———S. 520—*Restoration of property—Acquittal of accused.*

Certain properties were found in the house of the accused, which the complainant alleged had been stolen from his house. The accused was convicted and his conviction upheld on appeal. An order was passed by the first Court to the effect that the properties, which were then in the custody of the Court, should be made over to the complainant. The High Court in revision, acquitted the accused who moved the High Court for the restoration of the properties to him : *Held*, that as the accused has been acquitted of the offence of theft, the proper order is to direct that the property found in the possession of the accused should be restored to him. *Hagu Biswas v. Manmatha Nath Mitra.* 15 Cr. L. J. 184 :

22 I. C. 760 : 18 C. W. N. 859 : A. I. R. 1914 Cal. 658.

———S. 520—*Scope.*

An order by an Appellate Court under S. 520, Cr. P. C., staying or modifying, altering or annulling an order of a Subordinate Court can be made only when the order of

Cr. P. CODE (1898), S. 522

the Subordinate Court is one relating to property and made under Ss. 517, 518 or 519, Cr. P. C. *Saraj Din v. Khalil Shah.*

27 Cr. L. J. 574 : 94 I. C. 142 : A. I. R. 1926 Lah. 487.

———S. 520—*Scope.*

S. 520 means that any court, which has powers of appeal, confirmation, reference or revision in respect of the trial Court, that being the Court subordinate thereto referred to in the section, can make any substantive order it thinks fit in respect of property dealt with by the trial Court under Ss. 517, 518 or 519. *Walchand v. Hari Anant Joshi.* (F. B.)

33 Cr. L. J. 807 : 139 I. C. 433 : 34 Bom. L. R. 1203 : 56 Bom. 369 : I. R. 1932 Bom. 489 : A. I. R. 1932 Bom. 534.

———S. 522.

———Applicability of.

———‘Criminal force’.

———Delay, effect of.

———Jurisdiction.

———Jurisdiction of Appellate Court.

———Jurisdiction of District Magistrate.

———Legality of order.

———Legality of order under.

———Limitation.

———Order for restoration of possession.

———Order for restoration of property.

———Order restoring possession.

———Order under.

———Powers of Appellate Court.

———Power of Court.

———Power of Court to pass order restoring possession.

———Power of Magistrate.

———Power of Magistrate to direct restoration of property.

———Proceedings under.

———Restoration of possession.

———Restoration of property.

———Revision.

———Scope of.

———S. 522.

See also Penal Code, 1860, Ss. 349, 448.

———S. 522—*Applicability of—Accused acquitted of trespass—Jurisdiction to order possession to complainant—Courts, duty of.*

A Magistrate, after acquitting an accused person of trespass under S. 447, Penal Code, cannot proceed to pass an order under S. 522, Cr. P. C. and put the complainant in possession of the land in dispute, inasmuch as S. 522, gives jurisdiction to the Criminal Court only when a person is convicted of an offence attended by criminal force. Courts are not to deal with questions of abstract justice but are tied down by the wording of the Statute Law on the subject. *Emperor v. Ali Bahadur.*

23 Cr. L. J. 260 : 66 I. C. 324 : 24 O. C. 352 : A. I. R. 1922 Oudh 144.

———S. 522—*Applicability of—“Criminal force”, whether can be used as against property.*

A conviction for criminal trespass will not

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Police, if the Magistrate finds that the person entitled to possession is known, he need not issue any proclamation. If he has issued proclamation, that will not prevent him from ordering immediate delivery of the property to a person to whom he might have ordered delivery without issue of proclamation. When the Magistrate finds that a claim which has been made is proved provided no other claimants appear, he should wait until the six months specified in the proclamation have expired before passing final orders. *Po Lwin v. Emperor*.

4 Cr. L. J. 203 :
3 L. B. R. 197.

———**S. 523—Duty of Court—Property stolen—Accused absconding—Property in possession of person not rightful owner—Rightful owner, if can be forced to bring civil suit for its recovery.**

Where the known facts plainly show that the property has been stolen, it would be intolerable to allow the person in whose possession the property is found to retain it as against the rightful owner, and force the latter to a civil suit for its recovery if the accused absconds. *A. K. A. R. A. Chettyar v. Ma Saw Hla*.

39 Cr. L. J. 73 :
172 I. C. 106 : 10 R. Rang. 221 :
A. I. R. 1937 Rang. 450.

———**S. 523—Duty of Court to return property seized.**

Property seized should be returned when offence charged is not made out. *Devidas Sowcar v. Janaki Ammal*. 33 Cr. L. J. 559 :
138 I. C. 126 : 62 M. L. J. 632 :
1932 M. W. N. 106 : 35 L. W. 625 :
I. R. 1932 Mad. 510 : A. I. R. 1932 Mad. 428.

———**S. 523—Duty of Magistrate—Delivery of property.**

S. 523, Cr. P. C., says that a Magistrate may order the delivery of the property if he thinks fit, to the person entitled thereto. The Magistrate has not to decide the question of title but merely the question of possession. The question to be decided is, who is entitled to possession. The fact that the accused had been in possession of the property when the charge was made, is not conclusive. *Husensha v. Mashaksha*.

11 Cr. L. J. 339 (a) :
5 I. C. 972 : 12 Bom. L. R. 232.

———**S. 523—Duty of Magistrate.**

If it is established that the property has recently been stolen or acquired dishonestly in some other way, the thief, or the receiver, or whoever he may be, is obviously not the person entitled to possession, so the Courts have a discretion to find out in a summary way who is so entitled, and have power to hand the property over to him. But the position is very different when no charge is established against the person in possession. Criminal Courts have no jurisdiction to enter upon a roving enquiry about the rights to possession of pieces of property when they are entirely unconnected with specific allegations of crime in respect of them. Where it is proved that the person from whose possession the property was seized came by it dishonestly, the Magistrate may have to consider questions of title

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in order to determine the best right to possession. But where it appears that the Police have seized property from a person who is not shown to have committed any offence in relation to that property, then the Magistrate can only hold that that person is entitled to possession of the property. *Sona Bahuji v. Rao Sobhag Singh*.

38 Cr. L. J. 467 :
167 I. C. 848 : 19 N. L. J. 264 :
9 R. N. 226.

———**S. 523—Inquiry—Nature of—Inquiry under S. 523, nature of—Revision.**

It is not incumbent upon the Magistrate to hold a judicial inquiry upon oath, for the purpose of passing an order under S. 523. The section itself does not make any magisterial inquiry imperative. The Magistrate has to satisfy himself, on such material as is before him, who is entitled to possession of the property concerned, and can pass an order on Police reports and papers alone. *Chuni Lal v. Ishar Das*.

24 Cr. L. J. 670 :
73 I. C. 702 : 4 Lah. 38 :
A. I. R. 1924 Lah. 76.

———**S. 523—Judicial discretion—Disposal of property seized by police; Magistrate's order for revision.**

When a Magistrate passes an order under S. 523, Cr. P. C., for the disposal of property that has been seized by the police, he is required to exercise a judicial discretion. In the absence of anything to show the title to the property, it should be restored to the party in whose possession it was at the time of its seizure. The High Court, though it may set aside the order made by a Magistrate in such a case, has no power to order restitution of the property. *Kyin Non v. E Cho*.

6 Cr. L. J. 126 :
4 L. B. R. 14.

———**S. 523—Judicial discretion.**

The High Court will not interfere with the judicial discretion exercised by the Magistrate if it appears that he had applied his mind as to who was entitled to possession and come to a conclusion with such materials as were placed before him. *Husensha v. Mashaksha*.

11 Cr. L. J. 339 (a) :
5 I. C. 972 : 12 Bom. L. R. 232.

———**S. 523—Order of confiscation—Issue of proclamation—Court should be slow in ordering on mere suspicion.**

The mere fact that there may be confiscation under S. 524 after proclamation as prescribed by S. 523 (2) does not preclude confiscation at once under S. 523 (2) without issuing such a proclamation. But the Court would be slow to pass an order for forfeiture in cases of mere suspicion under S. 523. *Mahbub v. Emperor*.

38 Cr. L. J. 262 :
166 I. C. 690 : 19 N. L. J. 244 :
9 R. N. 239 : A. I. R. 1936 Nag. 266.

———**S. 523—Order under—Interference by High Court.**

The High Court has jurisdiction to interfere

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———S. 522—*Legality of order—Absence of criminal force.*

In the absence of use of criminal force, an order passed under S. 522, is one without jurisdiction and must be set aside. *Suba v. Ali Gauhar.*

36 Cr. L. J. 1161 (1) :
157 I. C. 471 (a) : 37 P. L. R. 176 :
8 R. L. 110 (1) : A. I. R. 1935 Lah. 477.

———S. 522—*Legality of order.*

Order under—Absence of notice will not render order illegal. *In re : Garbad Yadav Vani.*

32 Cr. L. J. 275 :
129 I. C. 337 : 32 Bom. L. R. 1496 ;
55 Bom. 155 : I. R. 1931 Bom. 145 :
A. I. R. 1931 Bom. 77.

———S. 522—*Legality of order under—“Force” and “criminal force” contemplate use of force to person and not to thing—Entry effected by breaking lock of house, whether attended by criminal force—Order under S. 522, legality of.*

S. 522, Cr. P. C., contemplates not only criminal force but criminal intimidation too, and it is inconceivable how a person can criminally intimidate an inanimate object. The term “force” is defined in S. 349, Penal Code, and the term “criminal force” is defined in S. 350, Penal Code, and both sections contemplate the use of force to a person and not to a thing. In a case, therefore, where the complainant himself alleges that the house was locked when the unlawful entry was effected, it can, by no stretch of language, be argued that the offence of criminal trespass was attended by criminal force or by criminal intimidation, and in such a case, an order under S. 522 is illegal. *Ram Chand v. Emperor.*

40 Cr. L. J. 781 :
183 I. C. 340 : 41 P. L. R. 63 :
12 R. L. 111 : I. L. R. 1939 Lah. 513 :
A. I. R. 1939 Lah. 184.

———S. 522—*Legality of order under.*

Lock broken and possession taken in the absence of the possessor of house—Possession, is “without force or show of force”—Order under S. 522, is not legal. *Bihari Lal v. Emperor.*

36 Cr. L. J. 59 :
152 I. C. 162 : 36 P. L. R. 91 :
15 Lah. 786 : 7 R. L. 255 :
A. I. R. 1934 Lah. 454.

———S. 522—*Legality of order under—Magistrate not finding that criminal force was used but finding evidence of complainant to that effect as true—Competency of order under S. 522.*

Where a Magistrate finds that the evidence of the complainant that the accused used criminal force in breaking the lock of the house was true, an order under S. 522, Cr. P. C., is competent even if the Magistrate has not actually found that there was criminal force. *Roda v. Aular Singh.*

40 Cr. L. J. 380 :
180 I. C. 501 : 40 P. L. R. 923 :
11 R. L. 693 : A. I. R. 1938 Lah. 839.

———S. 522—*Limitation—Appellate Court,*

Cr. P. CODE (1898), S. 522

if can order restoration of property after more than one month after conviction.

One month is the time limit fixed for the trial Court in Sub-s. (1) of S. 522, Cr. P. C., for order restoring possession of property but there is nothing in Sub-s. (3) to show that this limitation applies to a Court of Appeal. If it did, the result would be that Sub-s. (3) would be of little or no practical use, as a case will not usually reach the Appellate Court before the expiry of the month. The Court of Appeal, therefore, can pass such order at any time, however long, after conviction. *Namdeo v. Emperor.*

39 C. L. J. 342 :
173 I. C. 620 : 10 R. L. 314 :
I. L. R. 1938 Nag. 454 :
A. I. R. 1938 Nag. 316.

———S. 522—*Limitation.*

Magistrate can take action only within period specified in S. 522. *Aswini Kumar Das v. Sasanka Mohan Bose.*

33 Cr. L. J. 868 :
140 I. C. 66 (1) : 36 C. W. N. 624 :
59 Cal. 1153 : I. R. 1932 Cal. 685 :
A. I. R. 1932 Cal. 750 (1).

———S. 522—*Limitation.*

No time limit for acting under this section is imposed. Court can pass order for restoring property to complainant even after expiry of one month after appellate or revisional proceedings. *Fida Hussain v. Sarfaraz Hussain.*

34 Cr. L. J. 940 :
145 I. C. 327 : 14 P. L. T. 696 :
12 Pat. 787 : 6 R. P. 161 :
A. I. R. 1933 Pat. 617.

———S. 522—*Order for restoration of possession when to be passed.*

An order for restoration of possession under S. 522, should not be passed without hearing the objections of the party against whom it is passed. *Miran Baklish v. Bhag Mal.*

33 Cr. L. J. 123 :
135 I. C. 206 : 32 P. L. R. 758 :
I. R. 1932 Lah. 78 :
A. I. R. 1932 Lah. 17 (1).

———S. 522—*Order for restoration of property—Criminal trespass, conviction for—Criminal force, use of, whether necessary.*

A mere conviction under S. 418, Penal Code, does not justify an order under S. 522, Cr. P. C., unless it is found that the offence was attended by criminal force as expressly mentioned in the latter section. Mere show of criminal force is not sufficient. *Mohesh Sahu v. Emperor.*

20 Cr. L. J. 270 :
50 I. C. 30 : A. I. R. 1919 Pat. 26.

———S. 522—*Order for restoration of property when passed—Restoration of property, order for—Criminal force, use of, whether necessary.*

An order under S. 522, Cr. P. C., directing the restoration of immovable property can only be made where dispossession is effected by

Cr. P. CODE (1898), S. 526

———S. 523 (2)—Duty of Magistrate—
Inquiry as to title unnecessary.

S. 523 (2), Cr. P. C. does not require a Magistrate to make any inquiry at all. He proceeds on such materials as are available before him and has to decide the question not who was in possession at the time the property was seized by the Police but who was entitled to possession. *Ali v. Emperor*.

12 Cr. L. J. 108 :
9 I. C. 634.

———S. 524.—Procedure—Seizure by Police
of property—Presumption in favour of possessor
—Evidence Act, S. 110.

The words "is unable to show that it was legally acquired by him" in S. 524, Cr. P. C. must be read consistently with the ordinary Law of Evidence, and not as intended to supersede anything in that law: Where on a proclamation being issued under S. 523, no one except the accused claims to be the owner of the property attached, and no evidence is adduced to show clearly that the claim is false, the proper and safest course for the Court is to follow the presumption laid down in S. 110, Evidence Act, and to hold the accused as the owner in the absence of proof to the contrary. *Astum v. Emperor*.

16 Cr. L. J. 138 :
27 I. C. 202 : 8 S. L. R. 141 :
A. I. R. 1914 Sind 34.

———S. 524—Scope of—Property seized on
suspicion of being stolen—Order for forfeiture and
sale, legality of—Suit to recover possession, main-
tainability of—Limitation.

An order under S. 524, Cr. P. C., directing property seized on suspicion of its being stolen to be forfeited and ordering the sale-proceeds thereof to be credited to Government, is illegal and without jurisdiction, as all that that section authorises is that the Government shall be free to sell the property or to hold it as a trustee for the true owner. A suit, therefore, for the recovery of possession of such property is maintainable, and the fact that such suit is brought more than a year after the order of confiscation is no bar, as it is not necessary to set that order aside. *Secretary of State for India in Council v. Lown Karan Marwari*.

21 Cr. L. J. 475 :
56 I. C. 507 : 5 P. L. J. 321 :
1920 Pat. 253 : 1 P. L. T. 451 :
A. I. R. 1920 Pat. 182.

———S. 526.

———Adjournment.
———Affidavit.
———Affidavit by accused.
———Appeal, adjournment of.
———Applicability of.
———Application for adjournment, when
lies.
———Application for stay of proceedings.
———Application for transfer.
———Apprehension.

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———Bias.
———Costs.
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———Practice.
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———Right of accused.
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See also (i) Cr. P. C., 1898, Ss. 5, 110,
117 (3), 162, 167, 195,
222 (2), 250, 256, 343,
344, 363, 476, 528, 556.

(ii) Criminal trial.

(iii) Legal Practitioners Act,
1879, S. 14.

(iv) Letters Patent (All.), S. 22.

(v) Penal Code, 1860, Ss. 191,
193.

(vi) Practice.

(vii) Santhal Parganas Justice
Regulation, 1903, S. 4,
Cl. (1).

———S. 526—Adjournment.

Duty of Magistrate to grant adjournment to enable party to apply to High Court for transfer—Failure to conform to the provision is a good ground for granting transfer. *Nenu-mal Vishindas v. Fida Ali*. 34 Cr. L. J. 1144 :
146 I. C. 20 (2) : 6 R. S. 51 :
A. I. R. 1933 Sind 307.

———S. 526—Affidavit.

Every person, except the Advocate General who applies under the section must support his application by an affidavit. *Sadasheo Suryabhanji Kunbi v. Emperor*.

34 Cr. L. J. 1035 :
145 I. C. 445 : 29 N. L. R. 338 :
6 R. N. 50 : A. I. R. 1933 Nag. 201.

Cr. P. CODE (1898), S. 522

by the use of criminal force: *Held*, that an order under S. 522, Cr. P. C., directing the restoration of possession of the fields to the complainant, could not, in the absence of a finding as to the use of criminal force, be made in the case. *Chunni Lal v. Emperor*.

25 Cr. L. J. 42 :
75 I. C. 730 : 21 A. L. J. 593 :
A. I. R. 1924 All. 84.

———S. 522 — Order restoring possession when passed—Offence not attended by criminal force.

An order under S. 522, Cr. P. C. can be made only when the offence in respect of which the accused is convicted was attended by criminal force or show of force or by criminal intimidation. *Teja Singh v. Emperor*.

28 Cr. L. J. 819 :
104 I. C. 435.

———S. 522 — Order restoring possession when passed—Trespass not attended by force—Restoration of possession, legality of.

When an act of criminal trespass was not attended by criminal force, or show of force or by criminal intimidation, possession of the property trespassed upon cannot be restored to the complainant under S. 522, Cr. P. C. *Shera v. Emperor*.

28 Cr. L. J. 320 (a) :
100 I. C. 544 : 28 P. L. R. 238 :
A. I. R. 1927 Lah. 833.

———S. 522 — Order restoring possession, when passed.

Where there is no evidence that a person has been dispossessed of property by the use of criminal force, no order as to possession of the property can be passed under S. 522, Cr. P. C. *Kaon v. Emperor*.

18 Cr. L. J. 898 :
42 I. C. 130 : 6 P. L. R. 1917 :
38 P. W. R. 1917 Cr. : A. I. R. 1917 Lah. 104.

———S. 522—Order under—Order under, if can be passed in revision.

In a proper case the Court of Appeal or the Court of Revision can pass an order under S. 522, Cr. P. C., if such Court is satisfied that an order of the nature is necessary in the interest of justice. *Sahebjan v. Emperor*.

41 Cr. L. J. 311 :
186 I. C. 423 : 6 B. R. 366 :
21 P. L. T. 697 : 12 R. P. 512 :
A. I. R. 1940 Pat. 409.

———S. 522—Order under, nature of.

An order under S. 522, Cr. P. C., is passed not against any person, but in favour of the party dispossessed, provided the conditions necessary to give the Court jurisdiction to make that order are present. *Nur Mohammad Khan v. Muhammad Ali Mian*.

22 Cr. L. J. 575 :
62 I. C. 591.

———S. 522—Order under, when passed.

No order under S. 522, Cr. P. C., can be passed unless there has been dispossession from immovable property. *Mohar Khan v. Gayzuddin Sheikh*.

15 Cr. L. J. 302 :
23 I. C. 510 : 18 C. W. N. 399 :
A. I. R. 1914 Cal. 478.

Cr. P. CODE (1898), S. 522

———S. 522—Order under, when passed—Order must be passed within one month of conviction—Notice, if should be issued before passing order.

For an order under S. 522, Cr. P. C., it must be shown that the owner or occupier of the land was dispossessed by reason of the force shown to him. The order of the Court must be passed within one month from the date of the conviction. It is not sufficient that the application to the Court to exercise its powers should be made within one month of the conviction. In view of the wording of this section it would appear that it was not the intention that notice should be issued to the opposite side before orders should be passed; otherwise it would be easy for convicted persons to bring it about that the Court should never be able to pass order within one month from the date of conviction. *Daw Mya v. Emperor*.

38 Cr. L. J. 918 :
170 I. C. 368 : 10 R. Rang. 80 :
A. I. R. 1937 Rang. 248.

———S. 522—Powers of Appellate Court.

An Appellate Court is not competent to make an order under S. 522, Cr. P. C., directing the restoration of immovable property to the person entitled thereto, where the trial Court has for some reason or other refrained from taking action under the aforesaid section. *Muhammad Din v. Emperor*.

20 Cr. L. J. 30 (a) :
48 I. C. 510 : P. W. R. 1919 Cr. :
33 P. L. R. 1919 : 14 P. R. 1919 Cr. :
A. I. R. 1919 Lah. 399.

———S. 522—Power of Court.

Where a complaint is made against several accused and some of them are convicted, it is competent to the Court to make an order under S. 522. *In re : Garbad Yadav Vani*.

32 Cr. L. J. 275 :
129 I. C. 337 : 55 Bom. 155 :
32 Bom. L. R. 1496 :
I. R. 1931 Bom. 145 :
A. I. R. 1931 Bom. 77.

———S. 522—Power of Court to pass order restoring possession.

Neither complainant nor anybody on his behalf present on property when offence was committed by accused—Order restoring possession to complainant cannot be passed. *Zamin Hussain Khan v. Emperor*.

35 Cr. L. J. 788 (1) :
148 I. C. 790 : 11 O. W. N. 472 :
6 R. O. 434 (1) : A. I. R. 1934 Oudh 185 (1).

———S. 522—Power of Magistrate — Order under, after Judgment in case.

It is competent for a Magistrate to make an order under S. 522, Cr. P. C., subsequent to the passing of the judgment in the criminal case to which such order relates. *Channamalla Mari Devaru v. Verappa Devaru*.

10 Cr. L. J. 262 :
12 M. C. C. R. 199.

———S. 522—Power of Magistrate to direct restoration of property—Order set aside by High Court—Effect of High Court's order.

The accused were convicted of criminal tres-

Cr. P. CODE (1898), S. 526

to prosecute his transfer applications, and finally the Magistrate ordered that the bonds should be forfeited in each case. In the bonds themselves all that the person undertook to do was to file an application in the High Court for the transfer of the cases: *Held*, that if the intention of the law is that bonds should be furnished with the undertaking that not only applications should be filed but also that final orders should be obtained thereon, this should be more clearly expressed in the section itself and should also be clearly set out in the terms of the bonds themselves, and there being no such term in the bond, the orders of the lower Court ordering the forfeiture of the two bonds was incorrect. *Tara Singh v. Emperor*.

39 Cr. L. J. 609 :
175 I. C. 545 : 10 R. L. 745 :
A. I. R. 1938 Lah. 337.

—S. 526—Application for transfer.

An application for transfer ought to be put forward at the earliest possible opportunity after the occurrence of whatever facts or circumstances are alleged as affording a reasonable ground for such an application. *Abdullah Khan Khair Mohamed Khan v. Emperor*.

33 Cr. L. J. 908 :
139 I. C. 791 : 26 S. L. R. 255 :
I. R. 1932 Sind 151 : A. I. R. 1933 Sind 17.

—S. 526—Application for transfer.

In deciding if an application for transfer of a case is to be granted, what is to be considered is whether the accused has ground for reasonable apprehension that he may not have an impartial trial. *Tofa Saku v. Emperor*.

34 Cr. L. J. 1024 :
145 I. C. 521 : 6 R. P. 189 (1).

—S. 526—Application for transfer—Necessity of Trying Magistrate's evidence—Burden of proof.

An application for transfer based on the ground that the evidence of the Trying Magistrate is necessary for the defence, cannot be entertained unless it is clearly shown that the evidence is really essential and that there is likelihood that he can give evidence which would aid the accused in his defence. The burden of proof lies very heavily on the applicant to show that such is the case. *Nabibux Khan Ahmed Khan v. Emperor*.

16 Cr. L. J. 222 :
27 I. C. 846 : 8 S. L. R. 170 :
A. I. R. 1914 Sind 20.

—S. 526—Application for transfer.

Where the petitioner honestly entertains an apprehension that he will not have a fair and impartial trial before a Magistrate and no administrative inconvenience will be caused by the trial of the case which has not yet commenced, an application for transfer must be granted. *Abdul Hakim v. Emperor*.

34 Cr. L. J. 1025 (1) :
145 I. C. 524 (2) : 6 R. P. 187 (2) :
A. I. R. 1933 Pat. 597.

—S. 526—Application for transfer—Who are entitled to.**Cr. P. CODE (1898), S. 526**

Ordinarily, the only persons who are recognised by the Cr. P. C., as parties to a criminal case are the persons who have the right to control the proceedings; these are the Crown, the accused and parties engaged in conducting certain proceedings within the meaning of the Code. The Code does not recognise a private prosecutor, who is a complainant, as a party to the case, and he consequently, is not competent to apply for a transfer as a party interested. *Jamuna Kanth Jha v. Rudra Kumar Jha*.

20 Cr. L. J. 648 :
52 I. C. 424 : 4 P. L. J. 656 :
1920 Pat. 42 : A. I. R. 1920 Pat. 836.

—S. 526—Apprehension—Accused charged under S. 30, Frontier Crimes Regulation (III of 1901)—Bail granted—Application for stay for applying for transfer—Bail cancelled.

It is true that under S. II, Cr. P. C., an offence under S. 30, Frontier Crimes Regulation, is non-bailable, but where the accused had been allowed bail at a previous stage in the proceedings, the cancellation of it, merely because the accused intended to apply for transfer, is an action which might well create an impression upon his mind that he will not receive a fair trial. *Lalan v. Emperor*.

38 Cr. L. J. 387 :
167 I. C. 175 : 9 R. Pesh. 82 :
A. I. R. 1937 Pesh. 20.

—S. 526—Apprehension.

Before the High Court takes into consideration an apprehension in the mind of the accused that he will not get a fair trial, the Court must be satisfied that the apprehension is not a fanciful one. *Ko Ko Gyi v. Emperor*.

37 Cr. L. J. 436 :
161 I. C. 240 : 8 R. Rang. 460 :
A. I. R. 1936 Rang. 114.

—S. 526—Apprehension.

Bias in mind of Judge, is not essential—Apprehension in mind of accused is enough—Held on facts that incidents had occurred to create such apprehension. *Ali Raza Beg v. Emperor*.

37 Cr. L. J. 386 :
160 I. C. 965 : 1936 O. L. R. 123 :
1936 O. W. N. 254 : 8 R. O. 295.

—S. 526—Apprehension.

Complainant, Magistrate's superior Officer—Case need not be transferred—On facts, however held, that case should be transferred. *Bagomal Kauromal v. Noor Nabikhan*.

36 Cr. L. J. 1480 :
158 I. C. 809 : 8 R. S. 57 (1) :
A. I. R. 1935 Sind 195.

—S. 526—Apprehension.

Cross-cases should be tried together—Discharge in one case amounts to expression of opinion creating reasonable apprehension in accused in another case—Case should be transferred. *Bahu v. Emperor*.

36 Cr. L. J. 238 :
152 I. C. 106 (1) : 35 P. L. R. 427 :
7 R. L. 358 : A. I. R. 1934 Lah. 458.

Cr. P. CODE (1898), S. 522

Penal Code, applies to force when used in connection with the human body. Therefore, where an accused is convicted of the offence of rioting for causing violence to a fencing and not to any person, an order under S. 522, Cr. P. C. should not be passed inasmuch as there is no use of criminal force to any individual. *Sadasib Mandal v. Emperor*.

15 Cr. L. J. 720 :

26 I. C. 168 : 18 C. W. N. 1150 :

A. I. R. 1915 Cal. 131.

———Ss. 522, 522 (3)—‘Criminal force,’ use of—*Accused breaking lock of house in absence of owner and taking possession—Order under S. 522, if competent.*

Where an accused takes possession of a house by breaking the lock in the absence of a person in possession of the house, he uses criminal force to the lock which he breaks, criminal, because it involves the crime of mischief and an order under S. 522, Cr. P. C., is therefore, competent. *Roda v. Autar Singh*.

40 Cr. L. J. 380 :

180 I. C. 501 : 40 P. L. R. 923 :

11 R. L. 693 : A. I. R. 1938 Lah. 839.

———Ss. 522, 522 (3)—*Limitation—Order of restoration by Appellate Court more than one month after conviction, revision.*

Sub-s. (3) of S. 522, Cr. P. C. imposes no period of limitation on a Court of Appeal or Revision. A Court of Appeal can, therefore, pass an order restoring possession more than one month after the date of conviction and High Court would not interfere in a revision by convicts against the Appellate Court's order restoring possession. *Roda v. Autar Singh*.

40 Cr. L. J. 380 :

180 I. C. 501 : 40 P. L. R. 923 :

11 R. L. 693 : A. I. R. 1938 Lah. 839.

———S. 522 (1)—*Limitation.*

An order for restoration of possession under S. 522 (1), Cr. P. C., cannot be made after the expiry of one month from the date of the conviction. *Ghazan v. Bhag Bhari*.

33 Cr. L. J. 191 :

135 I. C. 679 : 33 P. L. R. 481 :

I. R. 1932 Lah. 151 :

A. I. R. 1932 Lah. 210.

———S. 522 (3)—*Applicability of—Whether gives right of appeal against order passed under S. 522.*

Sub-s. (3) of S. 522, Cr. P. C., only applies to the Court which is dealing with the original matter either as a Court of Appeal, confirmation, reference or revision in relation to that matter. It does not give any sort of right of appeal by itself against an order passed under S. 522. *Muhammad Sharif v. Diwan Singh*.

41 Cr. L. J. 458 :

187 I. C. 407 : 12 R. L. 467 :

A. I. R. 1940 Lah. 95.

———S. 522 (3)—‘Court of reference’—*Meaning of—Court having power to report case under S. 438, if Court of Reference.*

A Court of Reference in sub-s. (3) of S. 522,

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Cr. P. C., can only be interpreted as meaning a Court which has the power to refer and that is only a Court empowered under S. 488. A Court which has power to refer the case for orders to the High Court under S. 488 is not a Court of Reference. *Mohammad Sharif v. Diwan Singh*.

41 Cr. L. J. 458 :

187 I. C. 407 : 12 R. L. 467 :

A. I. R. 1940 Lah. 95.

———S. 522 (3)—*Limitation—High Court, if can order restoration of possession under S. 522 (3) beyond prescribed period of one month.*

Where a Magistrate passes an order under S. 522, Cr. P. C. beyond the prescribed period of one month, though the order by the Magistrate is illegal, yet it is competent to the High Court under S. 522 (3) as Court of Revision to order the restoration of possession to the person dispossessed. There is no limitation of one month for an order under Sub-s. (3). *Nihal Singh v. Emperor*.

40 Cr. L. J. 958 :

184 I. C. 384 : 1939 A. L. J. 595 :

12 R. A. 225 : I. L. R. 1939 All. 863 :

A. I. R. 1939 All. 662.

———S. 522 (3)—*Limitation.*

Order under S. 522 (3), can be made by Court of Appeal within one month of date of disposal—Remand, is not necessary, when all points are before it. *Gudri Mahton v. Jangi Mahton*.

35 Cr. L. J. 1158 :

150 I. C. 787 : 15 P. L. T. 163 :

7 R. P. 29 : A. I. R. 1934 Pat. 154.

———S. 522 (3)—*Power of Appellate Court.*

Under S. 522 (3), the Appellate Court has jurisdiction to pass such an order. *Miran Bakhsh v. Bhag Mal*.

33 Cr. L. J. 123 :

135 I. C. 206 : 32 P. L. R. 758 :

I. R. 1932 Lah. 78 : A. I. R. 1932 Lah. 17 (1).

———S. 522 (3)—*Restoration of possession—Revision—High Court, power of, to direct restoration.*

Under Sub-s. (3) of S. 522, Cr. P. C. the High Court has power in a reference or revision to make an order for the restoration of possession of immovable property even though no such order might have been made by the Trial or Appellate Court. *Lachman v. Emperor*.

26 Cr. L. J. 206 :

83 I. C. 910 : 21 A. L. J. 871 :

46 All. 92 : A. I. R. 1924 All. 212.

———S. 522 (3)—*Scope of.*

The words “Court of Appeal, confirmation, reference or revision” in S. 522 (3) refer to the Courts dealing with the original conviction or trial and do not apply to the High Court in reference from the order restoring possession. *Ghazan v. Bhag Bhari*.

33 Cr. L. J. 191 :

135 I. C. 679 : 33 P. L. R. 481 :

I. R. 1932 Lah. 151 : A. I. R. 1932 Lah. 210.

———S. 523.

See also Cr. P. C., S. 517.

———S. 523—*Disposal of property seized by Police.*

In disposing of property seized by the

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disqualified to try the second case merely because he has expressed his opinion on the first case tried by him. *Ghulamali v. Emperor*.

36 Cr. L. J. 866 :
155 I. C. 994 : 7 R. S. 220 :
A. I. R. 1935 Sind 72.

—S. 526—Bias.

Magistrate continuing hearing of case in spite of transfer application and cancelling bail—Accused granted bail by Sessions Judge—Accused may be said to have reasonable apprehension of bias. *Durga Das v. Emperor*.

34 Cr. L. J. 960 (1) :
145 I. C. 173 : 6 R. L. 65 :
A. I. R. 1933 Lah 914.

—S. 526—Bias.

Similarly, it cannot be said that the trial Court entertains any bias against the accused, or that the accused should reasonably apprehend that there is such bias, if, when addressed by that Court, the District Magistrate refuses to produce papers called for by the defence on the ground that some are missing and that the rest are confidential. *Bashir Ali v. Emperor*.

20 Cr. L. J. 609 :
52 I. C. 273 : A. I. R. 1919 Pat. 493.

—S. 526—Costs.

Application for transfer—Affidavit containing serious allegations against Magistrate—Denial by Magistrate—Accused's plea informing Court of his inability to support application—Assessment of compensation should be maximum allowed by Statute. *Kali Charan Mahto v. Emperor*.

35 Cr. L. J. 1056 (2) :
150 I. C. 79 : 6 R. P. 704.

—S. 526—Delay, effect of—Adjournment granted on condition that applicant should move High Court for transfer within reasonable time—Applicant wrongly but bona fide moving local Court.

Where an adjournment under S. 526 (8), was granted to the applicant on condition that he should, within reasonable time, apply to the High Court for transfer of the case, and the applicant in mistake, according to the original circular of the High Court which was subsequently cancelled, moved the local Court for transfer: *Held*, that the mistake was *bona fide*, and if made for the first time, the applicant should be pardoned the delay. *Gajadhar Bhagechand v. Emperor*.

39 Cr. L. J. 425 :
174 I. C. 521 : 10 R. S. 258 :
A. I. R. 1938 Sind 66.

—S. 526—Delay in applying for transfer.

An application for transfer, under S. 526, Cr. P. C., ought to be put forward at the earliest possible opportunity after the occurrence of whatever facts or circumstances are alleged as affording reasonable basis for such application. *Ashiq Husain v. Emperor*.

15 Cr. L. J. 536 :
24 I. C. 848 : A. I. R. 1914 All. 379.

—S. 526—Duty of Court—Allowance or**Cr. P. CODE (1898), S. 526**

disallowance of questions by Judge in pursuance of judicial duty cannot by itself afford ground for transfer application.

A Judge or Magistrate who conscientiously tried a case in a judicial proceeding has a legal duty to apply, to the best of his ability, the rules of evidence, as those rules are laid down in the Evidence Act. And his plain judicial duty is to exclude irrelevant evidence, whether in examination-in-chief or in cross-examination. The allowance or disallowance of questions by a Judge in pursuance of a judicial duty can never by itself afford a ground upon which to base an application for a transfer of a case, unless it is either shown affirmatively that there exists some improper motive or unless upon the face of the questions themselves, disallowed or allowed as the case may be, the only possible inference must be that they have been allowed or disallowed for some ulterior and improper reason. *U Saw, Editor-in-Chief of "The Tun" v. The King*.

40 Cr. L. J. 162 :
171 I. C. 72 : 11 R. Rang. 298 :
A. I. R. 1938 Rang. 456.

—S. 526—Duty of Court.

Application under S. 526 (8)—Refusal of adjournment—Imperative nature of S. 526 (8)—Subsequent proceedings are invalidated by S. 537. *Yakoob Kassim v. Emperor*.

36 Cr. L. J. 885 :
156 I. C. 223 : 29 S. L. R. 161 :
7 R. S. 231 : A. I. R. 1935 Sind 27.

—S. 526—Duty of Court—Criminal trial—Procedure—Defence of accused, consideration of—Intimidation of accused or Counsel, whether permissible—Indecent or scandalous questions, when can be asked.

An accused is entitled to ask the Court to consider his defence, whether true or false, and the Court acts illegally in shutting out questions which tend to establish this defence. Indecent and scandalous questions may be put either to shake the credit of a witness or as relating to facts in issue, or to determine whether or not a fact in issue existed. If they are put merely to shake the credit of a witness, the Court has complete dominion over them and may forbid such questions, even though they may have some bearing on the question before the Court. But if they relate to facts in issue or to matters necessary to be known in order to determine whether or not the facts in issue existed, the Court has no discretion to forbid such questions, though they may be indecent or scandalous. Where questions are put in cross-examination to some of the witnesses for the prosecution which have not been put to earlier witnesses, it is the weight to be attached to the case that is affected and not the admissibility of the questions, and it is no ground for disallowing them even though they are scandalous or indecent. Advocates have ample discretion in the conduct of the case of which they are in charge, and the Court cannot fetter their discretion by insisting that their case should be put to this

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with an order made under S. 523, Cr. P. C.,
Ma Thein Nu v. Ma The Hnit.

21 Cr. L. J. 561 :
57 I. C. 81 : 12 Bur. L. T. 266 :
10 L. B. R. 156 : A. I. R. 1920 L. Bur. 36.

—S. 523—Procedure—Property seized by
Police—Order for restoration—Inquiry, whether
necessary.

In dealing with an application for the resto-
ration of property, under S. 523, Cr. P. C.,
it is not incumbent upon the Magistrate to
hold a judicial inquiry upon oath. All that
the law requires is that the Magistrate should
have material before him to satisfy himself
who is entitled to possession. *Ma Thein Nu v.*
Ma The Hnit.

21 Cr. L. J. 561 :
57 I. C. 81 : 12 Bur. L. T. 266 :
10 L. B. R. 156 : A. I. R. 1920 L. Bur. 36.

—S. 523—Property seized by Police.

Police seizing property from person not
shown to have committed offence—Magistrate
should hold such person as being entitled to
property—Remedy of other party claiming
property is civil suit—Burden of proof is on
such party to his title. *Lakshmichand Rajmal*
v. Gopikisan Balmukand.

37 Cr. L. J. 573 :
162 I. C. 265 : 38 Bom. L. R. 117 :
60 Bom. 183 : 8 R. B. 409 :
A. I. R. 1936 Bom. 171.

—S. 523—Revision—Whether lies.

A High Court has jurisdiction to revise orders
passed under S. 523, where a proper case is
made out. *Chuni Lal v. Ishwar Das.*

24 Cr. L. J. 670 :
73 I. C. 702 : 4 Lah. 38 :
A. I. R. 1924 Lah. 76.

—S. 523—Transfer of case—Magistrate
having tried other persons on same charge, whether
ground for transfer.

The fact that a Magistrate trying an
accused person has already tried other
persons on the same charge, is not a
sufficient ground for directing the transfer
of the case to some other Magistrate.
Dalsher v. Emperor.

24 Cr. L. J. 800 :
74 I. C. 544 : A. I. R. 1924 Oudh 547.

—Ss. 523, 144—Duty of Magistrate—
Magistrate refusing to take proceedings under
S. 114—Discretion not judicially exercised—
Interference.

Where a Magistrate after having refused to
take proceedings under S. 144, Cr. P. C.,
thinking that he was not competent to
investigate the question as to who was in
possession of the property seized, directs the
Police to retain it in their custody; and, if it
was liable to decay, to sell it, and deposit the
money in safe custody pending orders from a
proper Court, he has not judicially exercised
the discretion which S. 523 confers on him,
and the High Court can, therefore, interfere
with his order. In such a case, he must
exercise the discretion conferred by S. 523
and if he decides that one or other of the
parties was in possession at the time the
police seized the property, the proper order
to be passed will be to restore that party to

Cr. P. CODE (1898), S. 523

possession. If the Magistrate is unable to
decide who is in possession, it will be his
duty to issue a proclamation under Sub-s. (2)
of S. 523 and proceed in accordance with the
provision of that sub-section. *Ramsagar*
Yadav v. M. Yunus.

41 Cr. L. J. 234 :
185 I. C. 773 : 20 P. L. T. 712 : 6 B. R. 250 :
12 R. P. 451 : A. I. R. 1940 Pat. 32.

—Ss. 523, 524—Order for disposal of
property—Legality of—No offence proved in
respect of property—Possessor unable to prove
how he acquired it.

K was suspected of having been concerned
in a theft. On search of his house, a
considerable quantity of jewellery and money
was found and was taken possession of by the
Police. Inquiry, however, showed that there
was no definite evidence of guilt against K,
nor was any of the property found in the
house claimed by any one else although steps
were taken under S. 523, Cr. P. C., to give
others the opportunity to claim it. K was
unable to show that it was legally acquired
by him and consequently, the Magistrate
ordered that the property should be at the
disposal of the Government: *Held*, that
having regard to the words of Ss. 523, 524,
Cr. P. C., it could not be said that the
Magistrate's proceedings were illegal, but in
the circumstances of the case, the intention
and spirit of these sections had been
disregarded, and the order made by the
Magistrate should be set aside. *In re :*
Kareppa Chanbasappa.

16 Cr. L. J. 207 :
27 I. C. 767 : 17 Bom. L. R. 79 :
A. I. R. 1915 Bom. 295.

—Ss. 523, 524—Power of Magistrate
under—Limitation.

The period of six months prescribed by
S. 523, Cr. P. C., applies only to a person
other than the original possessor. Under
S. 523, the Magistrate to whom a report
is made is competent to act on his own
authority and it is only when action is
contemplated under S. 524 that orders of a
Magistrate of the class mentioned therein
are to be obtained. *Yaru v. Emperor.*

26 Cr. L. J. 1048 :
87 I. C. 768 : A. I. R. 1925 Sind 316.

—S. 523 (2)—Powers of Court—Gambling
on public highway—Public nuisance—Conviction
—Currency notes not traced to any person—
Ownerless property.

Where it is found that the accused caused
annoyance and obstruction to the public by
gambling on a thoroughfare, their conviction
for committing a public nuisance is justified.
Where the currency notes found in the
course of such gambling are not traced to
any particular person as owner, the Magistrate
is entitled to treat them as ownerless property
and deal with them as such. *In re : Juturi*
Venkatappa.

16 Cr. L. J. 254 :
28 I. C. 110 : A. I. R. 1916 Mad. 617.

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whether there has been any real bias in the mind of the presiding Judge against the applicant, but also the further question whether incidents may not have happened which, though they may be susceptible of explanation and may have happened without their being any real bias in the mind of the Judge, are nevertheless such as are calculated to create in the mind of the applicant a justifiable apprehension that he would not have an impartial trial. *Hemanta Kumar Sarkar v. Nanda Kumar Singh*.

38 Cr. L. J. 344 :
167 I. C. 251 : 41 C. W. N. 188 :
9 R. C. 660 : 64 C. L. J. 532 :
A. I. R. 1937 Cal. 64.

S. 526—Duty of Magistrate.

Accused was a prosecution witness, and during his cross-examination by the complainant, was alleged to have abused, insulted and assaulted the complainant. On the complaint coming up before the District Magistrate, the latter remarked that he knew too much about various facts connected with the case to be able to deal with the case in an unprejudiced manner and that he did not wish to transfer it to another Court subordinate to him and that the complainant could, if he wished, apply to the High Court for transfer. The following day the District Magistrate re-considered his previous order and practically cancelled it and three days later he passed another order indicating that the allegations in the complaint did not amount to an offence under S. 352 or S. 504, Penal Code, but that there might be ground for a case under S. 500 and made over the case for disposal to the Additional District Magistrate. The second and the third orders were passed in the absence of the complainant. On application by the complainant to the High Court for transfer of the case to some other District: *Held*, (1) that the District Magistrate was entirely wrong in deciding contrary to his first order that the case should be heard by a Magistrate in his District, nor was he justified in pronouncing an adverse opinion on the merits of the complaint and without affording the complainant an opportunity of being heard in support of his complaint; (2) that in view of the first order of the District Magistrate himself and of the subsequent orders made by him, it was desirable that the case should be heard and decided by some other Magistrate in some other District. *Amar Singh v. Sadhu Singh*.

26 Cr. L. J. 853 :
86 I. C. 709 : 6 Lah. 396 : 7 Lah. L. J. 241 :
2 L. C. 28 : A. I. R. 1925 Lah. 361.

S. 526—Duty of Magistrate—Adjournment—Accused—Proper place for.

Though S. 526 (8) only makes it obligatory to postpone a case when notification is made to the Court before commencement of the hearing, yet when it appears that a *bona fide* application for transfer is about to be made, it would usually be well for the Magistrate at any stage, to grant a reasonable time to enable it to be made. Doek is the accommodation provided in Courts for persons accused of criminal offence, and it is entirely an act of

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indulgence on the part of a Court to allow an accused person to remain outside it. *Allam Singh v. Brindaban*. 13 Cr. L. J. 584 :
15 I. C. 1000 : 5 Bur. L. T. 137.

S. 526—Duty of Magistrate—Anxiety on part of Magistrate to finish case within prescribed period.

It is a salutary rule that Magistrates should ordinarily finish cases within six weeks and that they should submit explanations of delay if any case lasts longer than that period; but the rule should not be allowed to interfere with the course of justice or with a fair decision of any case. On the whole, less time is wasted if Magistrates act strictly, according to the letter and the spirit of the law, without making any special efforts to expedite cases by using extraordinary means, and this anxiety on the part of the Magistrate is not sufficient to create a reasonable apprehension of not having a fair trial. *Kamni Begam v. Bashir Ulzaman Khan*.

37 Cr. L. J. 1100 :
165 I. C. 20 : 1936 A. L. J. 975 :
9 R. A. 242 : 1936 A. W. R. 838 :
A. I. R. 1936 All. 695.

S. 526—Duty of Magistrate—Application direct to High Court, whether competent.

A Magistrate must not refuse an application for adjournment under S. 526 (8), Cr. P. C., on conjectural grounds. It is only in a case where the circumstances existing at the time of the filing of applications are such that it is quite clear to the Magistrate that there is no *bona fide* intention of applying for transfer that he can refuse to adjourn. And if he does so refuse to adjourn, he must take care that he passes no final or penal order against the applicant until the applicant has had a reasonable opportunity of demonstrating by making an application for actual transfer that his intention did really exist. A Magistrate should also remember that should he refuse such an application and should the applicant eventually make an application to the High Court, it is probable that whole of the proceedings subsequent to the application might be held to be void even if the High Court came to the conclusion that there was no ground for transfer. *Nathoomal v. Emperor*.

27 Cr. L. J. 40 :
91 I. C. 72 : 20 S. L. R. 74 :
A. I. R. 1926 Sind 137.

S. 526—Duty of Magistrate—Duty of Court not to act in manner so as to raise fear in accused that Court had made up its mind.

It is always desirable that in his anxiety to dispose of a case, the Magistrate should not act in a manner which may raise a fear in the mind of the accused that he has already made up his mind. *Ishar Singh v. Shama Dusadh*.

38 Cr. L. J. 484 :
167 I. C. 881 : 17 P. L. T. 627 :
3 B. R. 379 : 9 R. P. 449 :
A. I. R. 1937 Pat. 131.

S. 526—Duty of Magistrate.

Judicial Officers should be careful to avoid any opportunities of having improper imputations

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—S. 526—Affidavit by accused—Application for transfer—False statement—Prosecution—Burden of proof.

According to the present practice of the Allahabad High Court an accused person can legally tender his own affidavit in support of an application for transfer, whether the affidavit is tendered and the application made in a subordinate Court or in the High Court, and he can be prosecuted in regard to any false statement made in the affidavit. *Baddu Khan v. Emperor*.

29 Cr. L. J. 336 :
108 I. C. 124 : A. I. R. 1928 All. 182.

—S. 526—Affidavit by accused.

S. 526 (4), Cr. P. C. provides that applications for transfer must be supported by an affidavit, the mode of swearing the affidavit being provided for in S. 539, Cr. P. C. When not so accompanied by an affidavit, it cannot be entertained. *Ujagar Singh v. Emperor*.

37 Cr. L. J. 510 (1) :
161 I. C. 921 : 37 P. L. R. 80 :
8 R. L. 816 : A. I. R. 1936 Lah. 356.

—S. 526—Appeal, adjournment of.

An appeal was presented by some accused to a District Magistrate on the 15th May, who transferred it on the same day to a Joint Magistrate. The Joint Magistrate issued the notice of hearing of the appeal on the 15th July which was served on the 17th July fixing the 21st July as the date for hearing. The High Court being closed on the 18th and 19th July, the accused applied to the High Court on the 20th July for transfer of the appeal and thereafter on the 21st they applied to the Joint Magistrate to adjourn the hearing. The Joint Magistrate refused to adjourn on the ground that the accused had had sufficient time to apply to the High Court but delayed, and thereafter heard the appeal on merits and dismissed: *Held*, that the hearing of the appeal should have been adjourned as the accused had applied for transfer on the first day they could have applied after receipt of notice. *In re: Venugopal Reddy*.

16 Cr. L. J. 244 :
28 I. C. 100 : A. I. R. 1915 Mad. 1163.

—S. 526—Applicability of.

Failure of a District Magistrate to take action under S. 552, cannot cause a reasonable apprehension in the mind of the petitioner that he will not get justice in the District. *Badle v. Emperor*.

150 I. C. 1095 : 36 P. L. R. 240 :
7 R. L. 91 : A. I. R. 1934 Lah. 516.

—S. 526—Applicability of.

It is ordinarily undesirable that a Magistrate who believes that the information that a house has been used as a public gaming-house is credible, should not try the case, but he cannot be said to be personally interested in the case, and S. 526, Cr. P. C., would not apply. He merely comes to the conclusion that the information given to him was credible, and he has subsequently to decide the case on the evidence given in it. Even if the case is being tried by another Magistrate, there would

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be the same presumption and the result would be the same. *Khemchand Girdharilal v. Emperor*.

39 Cr. L. J. 55 :
171 I. C. 1007 : 10 R. N. 150 :
A. I. R. 1938 Nag. 63.

—S. 526—Applicability of.

Transfer application—Applicant suppressing fact of dismissal of prior applications—Tactics to delay disposal of case by devious means—Transfer can be allowed. *Abdullah Umar v. Chandoomal Somimal*.

35 Cr. L. J. 147 :
146 I. C. 586 : 6 R. S. 69 :
A. I. R. 1933 Sind 361.

—S. 526—Application.

An application under S. 526 (8), Cr. P. C., for a transfer of a criminal case pending before a Subordinate Magistrate lies direct to the High Court and it is not necessary that such an application should be made in the first instance to the District or Subordinate Magistrate under S. 528. Whenever an intention to make an application under S. 526, Cr. P. C., is notified to the Court, the Magistrate is not bound to adjourn or postpone the case unless he is satisfied that the accused person has a *bona fide* intention to make an application to the High Court. *Nathoomal v. Emperor*.

27 Cr. L. J. 40 :
91 I. C. 72 : 20 S. L. R. 74 :
A. I. R. 1926 Sind 137.

—S. 526—Application for adjournment when lies (*Quaere*).

Quaere—Whether an application for adjournment under S. 526 is entertainable after the defence witnesses have been examined but before the close of the argument. *Ishar Singh v. Shama Dusadh*.

38 Cr. L. J. 484 :
167 I. C. 881 : 17 P. L. T. 627 :
3 B. R. 379 : 9 R. P. 449 :
A. I. R. 1937 Pat. 131.

—S. 526—Application for stay of proceedings.

A person who was concerned in two cases filed application in both the cases for the staying of proceedings under S. 526, Cl. 8, Cr. P. C. as he intended to apply to the High Court for the transfer of both the cases to another Court. The Magistrate ordered him to execute bonds in each of the cases as provided by the recent amendment to S. 526, and then adjourned the two cases in order to enable him to file an application in the High Court and obtain orders thereon. Applications were in fact filed in the High Court for the transfer of the two cases, and he was ordered by the High Court to deposit a certain sum before notice could be issued to the Magistrate, one deposit being held to be sufficient for both cases. The person, however, failed to make the required deposit, and his transfer applications were dismissed, the person himself having appeared in the meantime in the Court of the Magistrate and asked the Court to proceed with the trial of the cases. On receipt of the order of the High Court, notice was issued to the person to show cause why his bonds should not be forfeited, in both the cases, as he had failed

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trate. The accused applied for transfer on the ground that the offence disclosed was one under S. 452 : *Held*, that there was ground for transferring the case to a Magistrate with higher powers inasmuch as if the allegations of the complainant were true, a much more serious offence had been committed than could properly be punished by a Magistrate of the Third Class. *Suraj Narayan Choudhury v. Emperor*.

31 Cr. L. J. 608 :

124 I. C. 96 : A. I. R. 1929 Pat. 511.

—S. 526—Grounds—Cross-cases—Trial by one Magistrate—Prosecution witness common friend of Magistrate and complainant.

One of the prosecution witnesses being a common friend of the Magistrate and the complainant, is a good reason for transfer of the case. It is desirable that cross-cases should be tried by one and the same Magistrate, and where one of the Magistrates is not competent to try both the cases, the case before him should be transferred to the other who is competent to try both. *Trilok Singh v. Emperor*.

27 Cr. L. J. 782 :

95 I. C. 318 : 8 L. L. J. 257 :

27 P. L. R. 843 : A. I. R. 1926 Lah. 410.

—S. 526—Grounds.

"Ends of justice" significance explained. *Emperor v. Lakshman Chanji Narangekar*. (F. B.)

32 Cr. L. J. 1147 :

134 I. C. 347 : 55 Bom. 576 :

33 Bom. L. R. 675 :

I. R. 1937 Bom. 459 :

A. I. R. 1931 Bom. 313.

—S. 526—Grounds—Fair and impartial trial not expected.

Where it has not been shown that a fair and impartial trial cannot be had or that an order of transfer is expedient in the interests of justice, a case cannot be transferred from one Court to another. *Ghansham Das v. Emperor*.

15 Cr. L. J. 368 :

23 I. C. 736 : A. I. R. 1914 All. 21.

—S. 526—Grounds.

Irregularities in trial calculated to prejudice accused—It is unnecessary that High Court should find accused is in fact prejudiced. *Durga Das v. Emperor*.

34 Cr. L. J. 900 (1) :

145 I. C. 173 : 6 R. L. 65 :

A. I. R. 1933 Lah. 914.

—S. 526—Grounds—Offence charged, joining unlawful assembly.

As a general rule, the mere fact that a Magistrate has, in his capacity as a Magistrate, exercised the powers given to him under S. 127 (1), Cr. P. C., in relation to a particular disturbance or series of disturbances, affords no ground for the transfer from the cognizance of that Magistrate of a case arising out of that disturbance or series of disturbances. If, on the other hand, a Magistrate, in the course of the performance of his duties in relation to any particular disturbance were to acquire any particular knowledge by his own observation or otherwise which might, in the hearing of any case, tend to embarrass him, it is possible that a transfer, either at the

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instance of the Magistrate himself or at the instance of the accused person, might, in some cases, be desirable in the interests of justice. *Maung Ba Chein v. The King*.

40 Cr. L. J. 154 :

178 I. C. 942 : 11 R. Rang. 287 :

A. I. R. 1938 Rang. 454.

—S. 526—Grounds—Officials of district connected with case.

Where a number of officials in the district in which an accused is being prosecuted are personally concerned in the case, whether as witnesses or otherwise, it is desirable that it should be tried elsewhere. *Bhola Nath v. Mrs. Vasheshwar Nauth Singh*.

28 Cr. L. J. 1011 :

106 I. C. 99 : A. I. R. 1927 All. 708.

—S. 526—Grounds—Pleader appearing in Court of his father.

There is no rule against a Pleader appearing in the Court of his father, and the mere fact that the son of a Magistrate appears as a Pleader in a case before him, cannot be a ground for transfer of the case from his Court. *Pearay Lal v. Puttan*.

26 Cr. L. J. 440 :

85 I. C. 56 : A. I. R. 1925 Oudh 348.

—S. 526—Grounds—Proceedings initiated under orders of District Magistrate—Deputy Magistrate of District, where accused is tried, appearing as prosecution witness.

Where the proceedings against an accused were initiated under the orders of a District Magistrate and one of the important witnesses for the prosecution was a Deputy Magistrate of the same District : *Held*, that under such circumstances, the case ought to be transferred to some other District. *Bans Gopal Pande v. Emperor*.

15 Cr. L. J. 543 :

24 I. C. 951 : 1 O. L. J. 271 :

A. I. R. 1914 Oudh 398.

—S. 526—Grounds—Reasonable apprehension of an unfair trial.

In dealing with an application for transfer of a case under S. 526, Cr. P. C., the High Court has only to determine whether good grounds for its transfer have been made out to the Court's satisfaction. Whether transfer of a case is sought on the ground that the accused cannot have a fair and impartial trial in a certain Court, the reasonableness of the accused's apprehension should be decided by reference to the mind of the Court rather than to the mind of the accused. *Narain Chandra Bannerjee v. The Howrah Municipality*.

3 Cr. L. J. 379 :

10 C. W. N. 441.

—S. 526—Grounds—Refusal to grant adjournment for cross-examination of prosecution witnesses—Principles governing transfer.

The fact that a Magistrate acts with some rapidity in the trial of a case, and refuses to grant a short adjournment to enable the accused to prepare his cross-examination of the prosecution witnesses, thereby depriving him of quite a full opportunity of putting forward a defence to the charge made against

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—S. 526—Apprehension.

Excise Inspector while raiding houses of accused taking Magistrates and Police Officers to act as search witnesses—Apprehension honestly entertained by accused is ground for transfer of case. *Deo Dutt Bharti v. Emperor*.

35 Cr. L. J. 1483 :
151 I. C. 1003 : 11 O. W. N. 1193 :
7 R. O. 154 : A. I. R. 1934 Oudh 452.

—S. 526—Apprehension.

If the circumstances of the case are such that the petitioner is bound to entertain a reasonable apprehension in his mind that he will not get a fair trial, he is entitled to get his case transferred. It is unnecessary that the Magistrate should have any real bias against the accused. *Allah Ditta v. Emperor*.

35 Cr. L. J. 1380 :
151 I. C. 669 : 35 P. L. R. 702 :
7 R. L. 158 (1).

—S. 526—Apprehension.

In dealing with an application for transfer, what the Court has to consider is not merely the question whether there has been any real bias in the mind of the Presiding Judge against the applicant, but also the further question whether incidents may not have happened which though they may be susceptible of explanation and may have happened without there being any real bias in the mind of the Judge are nevertheless such as are calculated to create in the mind of the applicant a justifiable apprehension that he would not have an impartial trial. *Ghulam Nabi v. Emperor*.

30 Cr. L. J. 760 :
117 I. C. 377 : I. R. 1929 Lah. 649 :
A. I. R. 1929 Lah. 429.

—S. 526—Apprehension—Summons case—Magistrate arresting accused prior to inquiry.

A District Magistrate acting on a verbal statement made to him in his Chambers against the accused, a Sub-Inspector of Police, of having demanded a bribe, forthwith arrested him and directed an inquiry under S. 202, Cr. P. C. by the Deputy Superintendent of Police. On receipt of the report of the Deputy Superintendent, the District Magistrate transferred the case to a Deputy Magistrate for trial under S. 161, Penal Code. The accused having some difficulty in obtaining copies and apprehending that he would not have an impartial trial in the district, applied for transfer of the case to another district : *Held*, that the application must succeed, that the offence imputed to the accused being one in which a summons only should issue in the first instance, the District Magistrate had no jurisdiction to arrest him and that the circumstances of the case afforded reasonable ground for the accused entertaining a suspicion that his trial would not be impartial. *Din Dayal Singh v. Emperor*.

21 Cr. L. J. 795 :
58 I. C. 523 : 1 P. L. T. 522 :
A. I. R. 1920 Pat. 516.

—S. 526—Apprehension—Transfer—Magistrate cross-examining witness and disallowing questions of complainant—Reasonable apprehension of not receiving justice.

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A Magistrate should not cross-examine frequently the prosecution witnesses, nor should he disallow as irrelevant the questions which the complainant may wish to put to defence witnesses with a view to show their partiality. However, even if he acts in such a manner, it cannot be held that his conduct gives rise to a reasonable apprehension in the mind of the complainant that his case will not receive a fair trial at the hands of the Magistrate. *Abdul Aziz v. Ganesh Prasad*.

25 Cr. L. J. 1185 :
82 I. C. 49 : A. I. R. 1925 Oudh 52.

—S. 526—Apprehension.

Where an accused person applied to the High Court for transfer without informing the trying Magistrate, and the latter, when he came to know of the fact, stayed further proceedings, but cancelled his bail bond : *Held*, that his doing so was likely to cause a reasonable apprehension in the mind of the accused. *Takya Ram v. Emperor*.

32 Cr. L. J. 569 :
130 I. C. 501 : 32 P. L. R. 96 :
A. I. R. 1930 Lah. 958.

—S. 526—Apprehension.

Where several adjournments had to be asked for, but accused were not to blame for them and Court cancelled bail and accused had to get order reversed by Sessions Judge : *Held*, transfer was proper. *Silla Prasad Singh v. Emperor*.

35 Cr. L. J. 292 :
147 I. C. 96 : 10 O. W. N. 906 :
6 R. O. 218 : A. I. R. 1933 Oudh 480.

—S. 526—Apprehension, reasonableness of.

To justify an order of transfer under S. 526, Cr. P. C., the apprehension of not receiving a fair and impartial trial must be a reasonable apprehension in the opinion of the Court, and not such as would merely appear reasonable to the accused. *Wali Mahomed v. Emperor*.

18 Cr. L. J. 644 :
40 I. C. 292 : 10 S. L. R. 183 :
A. I. R. 1917 Sind 45.

—S. 526—Apprehension—Reasonableness of—Transfer of case—Case fit for transfer but having reached final stage—Desirability of transfer.

Where good grounds for a transfer are made out, the Court ought not to refuse it merely because the case has reached an advanced stage or that the transfer may entail expense and trouble to all concerned. It is not so much the real mind of the Magistrate but the impression that is reasonably created in the mind of the accused by the remarks and conduct of the Magistrate that determines the question of transfer of a case. *Sikandar Lal Puri v. Emperor*.

30 Cr. L. J. 129 :
113 I. C. 321 : I. R. 1929 Lah. 163 :
10 Lah. 778 : 31 P. L. R. 87 :
A. I. R. 1928 Lah. 975.

—S. 526—Bias.

Interest or bias is not to be inferred from the opinions formed on evidence judicially recorded, and a Magistrate is not, therefore,

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be transferred although acts were done innocently by crown. *Roshan Lal v. Emperor.*

32 Cr. L. J. 422 :
129 I. C. 684 (2) : 31 P. L. R. 694 :
A. I. R. 1930 Lah. 954.

———S. 526—Grounds—Apprehension of partiality.

Accused reasonably apprehending unfair trial, is proper ground for transfer. *Amrit Lal v. Emperor.*

32 Cr. L. J. 1188 :
134 I. C. 519 : 32 P. L. R. 471 :
I. R. 1931 Lah. 951 : A. I. R. 1931 Lah. 540.

———S. 526—Grounds—Apprehension of impartiality—Issue of the warrant in summons case.

A communication by the Pleader to the accused that the Magistrate had told him that he would convict the accused unless he compromised a certain civil suit with the complainant coupled with the circumstance that bailable warrants had been issued against him in the first instance even though it was a summons case is quite sufficient to deprive the accused of all confidence in the impartiality of the Magistrate and to entitle him to a transfer of the case. *Megh Raj v. Baz Khan.*

28 Cr. L. J. 988 :
105 I. C. 812 : I. L. T. 40 Lah. 27 :
A. I. R. 1928 Lah. 75.

———S. 526—Grounds—Apprehension of partiality.

The officers who administer the law are not above the law. Where no notice was served as required by S. 539 (b), but the Magistrate went to the spot, and asked the accused to execute bond under S. 91, Cr. P. C., and on his failure to do so, and in the absence of witnesses, proceeded to try the case on the spot : *Held*, that the procedure followed was altogether illegal and void : *Held*, further that in view of the extremely unsatisfactory behaviour of the Magistrate, the apprehension entertained by the applicant that he will not have a fair trial was perfectly reasonable and the case must, therefore, be transferred to another. *Ajodhia Prosad Sonar v. Municipal Committee, Khurai.*

37 Cr. L. J. 837 :
163 I. C. 413 : 18 N. L. J. 320 : 9 R. N. 1.

———S. 526—Grounds—Apprehension of prejudice.

Accused, a Civil Court *Amin* in a particular District, was prosecuted for having taken bribes. The Deputy Commissioner of the district directed an inquiry to be made in all partition cases in which the accused had acted as Commissioner in order to find out whether he had taken bribes in those cases : *Held*, that although the Deputy Commissioner had done nothing beyond his duties, the inquiry might cause a reasonable apprehension in the mind of the accused that he would be prejudiced in his trial in that district and that it was, therefore, desirable to transfer the case to some other district for trial. *Benode Behari Banerji v. Emperor.*

25 Cr. L. J. 590 :
81 I. C. 78 : 5 P. L. T. 63 :
A. I. R. 1925 Pat. 115.

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———S. 526—Grounds—Apprehension of prejudice.

It is not necessary for an applicant for transfer of a criminal case to establish that the Magistrate is actually prejudiced against him. All that he need prove is that the conduct of the trial by the Magistrate has been such as to cause a reasonable apprehension in the mind of the accused that he will not receive a fair trial. *Kanwar Sen v. Emperor.*

29 Cr. L. J. 620 :
109 I. C. 812.

———S. 526—Grounds—Apprehension of prejudice—Magistrate's attempt to bring about compromise.

Where a Magistrate made an attempt to have the case compromised and one of the parties applied for its transfer : *Held*, that it was natural that suspicion should be aroused in the mind of the parties and the case should, therefore, be transferred. *Gaya Charan Misra v. Kunwar Bahadur.*

25 Cr. L. J. 570 :
81 I. C. 58 :
A. I. R. 1925 Oudh 179.

———S. 526—Grounds—Apprehension of prejudice—Magistrate putting up with person on whose endorsement the complaint started.

It is undesirable that the Magistrate should be putting up with the person, who had endorsed the complaint while trying a case which started on that complaint. In such a case, the question is not one of legality of the trial but is one whether the accused has reasonable apprehension of prejudice. The case, in these circumstances, should be transferred to another Magistrate. *Bhideswarri Missir v. Emperor.*

39 Cr. L. J. 517 :
175 I. C. 49 : 10 R. P. 571 : 4 B. R. 519 (1) :
A. I. R. 1938 Pat. 376.

———S. 526—Grounds—Apprehension of prejudice—Reasonable apprehension.

Where an accused person has a reasonable apprehension that he will not be fairly treated by the Magistrate, his case should be transferred; but the apprehension must be a real and reasonable one. The sole question to be considered is whether the facts disclosed in the application for transfer give rise to a reasonable inference that the Magistrate who is seized of the case may be wittingly or unwittingly prejudiced against the accused. *Aliqullah v. Emperor.*

18 Cr. L. J. 719 :
40 I. C. 719 : 13 P. W. R. 1917 Cr. :
A. I. R. 1917 Lah. 356.

———S. 526—Grounds—Apprehension of prejudice.

Where the Public Prosecutor of a District was virtually the complainant in a case, and the proceedings had been instituted under the orders of the Additional District Magistrate, who was himself a witness in the case as was another Magistrate who was subordinate to him, and the Trying Magistrate who was on friendly terms with the Additional District Magistrate had shown an undue desire to expedite the trial and had refused an adjournment when it should have been granted : *Held*,

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witness or that. It is highly improper for persons in charge of a prosecution to threaten or intimidate either the accused persons or the Pleaders appearing for them. The position of accused persons is at all times of grave anxiety and persons in charge of a prosecution should remember that nothing should be done by them which may have the effect of intimidating the defence or adding to its anxiety. *Mahammad Mian v. Emperor*.

20 Cr. L. J. 566 :
52 I. C. 54 : A. I. R. 1919 Pat. 515.

———S. 526—Duty of Court.

It is very important for Magistrates to remember that Lawyers in charge of cases of accused have a large discretion in the way they should conduct the defence of accused. The position of accused is, at all times, of grave anxiety and Courts trying criminal cases should be specially on their guard not to do anything which may have the effect of increasing their anxiety. *Yusuf v. Buni Lal Mandal*.

23 Cr. L. J. 559 (b) :
51 I. C. 847 : A. I. R. 1919 Pat. 565.

———S. 526—Duty of Court.

Justice should not only be done but should manifestly and undoubtedly be seen to be done. Where the act of the Magistrate in attempting to arrange an interview with a person was calculated to create an apprehension in the minds of the accused that they would not have a fair and impartial trial in his Court, it is proper that the case should be transferred from his Court. *Muzzaffar Khan v. Ahmad Khan*.

36 Cr. L. J. 192 :
152 I. C. 896 : 35 P. L. R. 478 :
7 R. L. 360 : A. I. R. 1934 Lah. 541.

———S. 526—Duty of Court.

The trial of a case should be in an atmosphere which does not create even a suspicion that there has been or is likely to be an improper interference with the course of justice. It is not merely of some importance but is of fundamental importance that justice should not only be done but should manifestly be seen to be done. *Hari Kishen Das v. Emperor*.

29 Cr. L. J. 867 :
111 I. C. 451 : 29 P. L. R. 667 :
A. I. R. 1928 Lah. 757.

———S. 526—Duty of Court—Transfer application—Apprehension in accused's mind—Reasonable apprehension defined—Absence of bias in judicial officer, effect of.

In transfer applications, what the Court has to consider is not whether any real bias exists in the mind of the Presiding Judge against the accused but the question is whether circumstances do not exist which, though they may be susceptible of explanation, are nevertheless calculated to create in the minds of the accused a reasonable apprehension that they would not have a fair and impartial trial. In determining whether the apprehension is reasonable or not, we have not to come to a conclusion on abstract principles but we have

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to bear in mind the degree of intelligence of the accused. *Musaddi Lal v. Emperor*.

28 Cr. L. J. 787 :
104 I. C. 227 : A. I. R. 1927 Lah. 709.

———S. 526—Duty of Court—Transfer of case—Apprehension in mind of applicant.

In dealing with an application for the transfer of a criminal case, the Court must see whether there is an apprehension in the mind of the applicant that he will not get justice from the Court before whom the case is pending, and whether that apprehension is reasonable. The Court must try and place itself in the position of the applicant and look at the matter from his point of view. *Pulin Behary Dey v. Ashutosh Ghose*.

25 Cr. L. J. 944 :
81 I. C. 560 : 39 C. L. J. 330 :
A. I. R. 1924 Cal. 981.

———S. 526—Duty of Court—Right of accused—Refusal to allow accused to cross-examine complainant.

An application for transfer of a case was made on the ground that the accused had not been allowed to properly cross-examine the complainant and that certain orders and remarks recorded by the Magistrate clearly indicated that he had formed a strong opinion against the petitioner. It appeared that the Magistrate considered that the accused should be allowed to inspect certain Bank books before cross-examining the complainant and the Bank having objected to allowing the necessary inspection, the Magistrate passed an order on the 18th July, directing the Bank to give the accused's Counsel opportunity to inspect the necessary registers: On the 4th of August, however, in the absence of the accused's Counsel and without any reference to the previous order relating to the registers, the evidence of the complainant was closed. The complainant was then summoned as a witness by the defence but when Counsel wished to cross-examine him, his request was refused: Held, (1) that although the Magistrate's refusal may have been strictly legal, it was improper in the circumstances of the case and the Magistrate would have been well advised to have allowed at any rate a reasonable amount of cross-examination, especially when the prosecution raised no objection to such cross-examination; (2) that inasmuch as the case had reached a very advanced stage, the charge having been framed and a certain amount of the defence evidence having been recorded, it could not be transferred but that the Magistrate should allow the accused to cross-examine the complainant after giving him an opportunity of examining the Bank registers. *Sujan Singh v. Jai Lal*.

18 Cr. L. J. 690 :
40 I. C. 690 : 29 P. W. R. 1917 Cr. :
A. I. R. 1917 Lah. 296.

———S. 526—Duty of High Court—In considering transfer application, the Court should put itself in position of petitioner.

The standard which the High Court has to place before itself in order to decide the propriety or otherwise of transfer, is the standard of the petitioner. What the Court has to consider is not merely the question

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complaint, are matters which afford reason to the accused to apprehend that he will not have a fair and impartial trial, and such a case is a proper one in which to direct a transfer. *Rekha Ahir v. Emperor.*

21 Cr. L. J. 504 :
56 I. C. 664 : 1 P. L. T. 494 :
A. I. R. 1920 Pat. 188.

—S. 526—Grounds—Apprehension of unfair trial—Expression of opinion by District Magistrate in favour of accused.

A complaint was lodged against A and certain other persons on a charge of murder in the Court of the Sub-Divisional Officer of a District. Within a few days of the alleged occurrence, the District Magistrate in a public speech addressed to the Sub-Divisional Officer and other officials referred to the high services of A and the baselessness of the charges made against him: *Held*, that the speech amounted to a decided opinion about the charges in question and was likely to create a reasonable apprehension in the mind of the complainant that he will not have a fair and impartial trial. *Rup Narain v. Abdul Hamid Khan.*

25 Cr. L. J. 1374 :
82 I. C. 766 : 11 O. L. J. 657 :
A. I. R. 1925 Oudh 90.

—S. 526—Grounds—Apprehension of unfair trial—Expression of opinion by Magistrate in another case about guilt of accused.

The fact that a Magistrate has expressed in another criminal case a distinct opinion about the guilt of the accused, is a reasonable ground for the apprehension that he may not have a fair and impartial trial before the Magistrate and is, therefore, a good ground for transferring the case from his file. *Vishwanath Prasad v. Emperor.*

27 Cr. L. J. 210 :
92 I. C. 162 : A. I. R. 1926 Nag. 98.

—S. 526—Grounds—Apprehension of unfair trial.

If circumstances have so transpired as to lead the accused to entertain a reasonable apprehension that he may not have a fair trial, it is expedient for the ends of justice that the case should be transferred from one Court to another. It is desirable, in all such cases, that the mind of the accused should be quieted in respect of any reasonable apprehension that he may entertain about his not having a fair trial. But at the same time the convenience of the other side should be taken into consideration. *Khctu Panday v. Mohim Nath Bishi.*

1 Cr. L. J. 33 :
8 C. W. N. 75.

—S. 526—Grounds—Apprehension of unfair trial.

In an order to make out a good case for the High Court to take action under S. 526, Cr. P. C., it is not sufficient for the accused to merely allege that he will not get a fair trial, but he must lay before the High Court the facts which give rise to this belief in his mind and if those facts are found such that they will reasonably give rise to this belief, a transfer

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ought to be made. *Sant Bakhsh Singh v. Emperor.*

6 Cr. L. J. 254 :
10 O. C. 165.

—S. 526—Grounds—Apprehension of unfair trial—Joint trial—Conviction—Joint appeal, whether legal—Separate applications for transfer of joint appeal, whether necessary.

If more than one accused are convicted in a joint trial by one judgment, it is illegal to file one joint appeal on behalf of them although there is nothing illegal if the appeals made separately by them are heard together. It is not absolutely necessary to make separate applications for the transfer of an appeal jointly filed by more than one accused. What has to be established to succeed in a transfer application is a belief in the mind of the accused person that his case will not be fairly tried. *Maharaj Singh Gond v. Emperor.*

27 Cr. L. J. 1062 :
97 I. C. 38 : A. I. R. 1927 Nag. 48.

—S. 526—Grounds—Apprehension of unfair trial—Refusal to follow directions of superior Court—Refusal to grant stay—Striking off passages from accused's written statement.

Where a Magistrate did not adopt the directions given to him by the Sessions Judge as to how the trial should proceed, ignored an application made by the accused under S. 526, Cr. P. C., for stay of proceedings and summarily expunged certain passages from the written statement of the accused, which could not and ought not to have been struck off: *Held*, that the incidents were sufficient to raise a reasonable apprehension in the mind of the accused that he would not have a fair trial and there was sufficient ground for transfer. *Ram Piara Lal v. Emperor.*

32 Cr. L. J. 146 :
128 I. C. 543 : I. R. 1931 Lah. 79 :
A. I. R. 1930 Lah. 882.

—S. 526—Grounds—Apprehension of unfair trial—Refusing access to accused's papers seized by Police—Demanding excessive bail.

Where during the Police investigation, a reasonable request of the accused to examine their papers which had been seized by the Police was refused and the trying Magistrate demanded a very excessive bail, though the amounts involved were small: *Held*, that there was sufficient reason to create an apprehension in the mind of the accused that they would not get a fair trial and the case was a fit one for being transferred to another District. *Dina Nath v. Emperor.*

31 Cr. L. J. 532 :
123 I. C. 534 : A. I. R. 1929 Lah. 860.

—S. 526—Grounds—Apprehension of unfair trial.

The petitioner made an application under S. 526 praying that the proceedings taken against him under S. 110 be transferred from one district to another, on the grounds that he was arrested without a warrant, that his medical certificates were not accepted, that he was not informed of the charge for some days, that his request to reserve cross-

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made against them. It is improper for a Judge or a Magistrate to offer a seat on the *dias* to a private gentleman during the hearing of the case. A Magistrate should not receive visits from any of the parties who have cases pending in his Court. *Ganpat Sohail v. Kosha-lendra Partabsahi*. 27 Cr. L. J. 498 :

93 I. C. 962 : 3 O. W. N. 245 :
13 O. L. J. 644.

———S. 526—*Duty of Magistrate—Magistrate acting as private arbitrator—Subsequently trying case as Magistrate.*

A Magistrate who has dealt with a dispute in an informal manner as private arbitrator, ought not to deal subsequently with the same dispute between the same parties in his capacity of Magistrate. To do so, must necessarily be very inconvenient and embarrassing. *Gobinda Chandra Roy v. Gopal Chandra Pandit*.

14 Cr. L. J. 602 :
21 I. C. 474 : 18 C. L. J. 150.

———S. 526—*Duty of Magistrate—Party asking Magistrate to postpone case.*

Where on the request of a party who intends to apply for transfer, the Magistrate feels bound to postpone the case, he is not competent to impose any conditions but should postpone the case unconditionally. *Daya Wanti v. Bilanand*.

30 Cr. L. J. 1048 :
119 I. C. 327 : I. R. 1929 Lah. 874 :
30 P. L. R. 657 : A. I. R. 1929 Lah. 702.

———S. 526—*Effect of.*

S. 526, Cr. P. C., which clothes the High Court with power to transfer any case from any file to any other file, controls S. 195 (3) and Ss. 467-A and 476-B of the Code. *Budhabai v. Alibai*.

26 Cr. L. J. 796 (b) :
86 I. C. 428 : A. I. R. 1925 Nag. 358.

———S. 526—*Fair trial.*

Court should be satisfied that fair trial cannot be had. The test is not what accused may reasonably or unreasonably have been led to think about it. Every case must be decided on its own facts. *Abdullah Khan Khair Mahomed Khan v. Emperor*.

33 Cr. L. J. 908 :
139 I. C. 791 : 26 S. L. R. 255 :
I. R. 1932 Sind 151 :
A. I. R. 1933 Sind 17.

———S. 526—*Grounds.*

———Absence of bias.

———Accused's election of rival candidate of Magistrate.

———Accused's inability to secure services of counsel.

———Apprehension.

———Apprehension of impartiality.

———Apprehension of partiality.

———Apprehension of prejudice.

———Apprehension of unfair trial.

———Apprehension of unfairness.

———Bias.

———Communal feeling.

———Complaint filed by Deputy Commissioner.

———Convenience.

———Discussion outside.

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———Erroneous order.

———Erroneous refusal to accept bail.

———Expediency.

———Expression of adverse opinion.

———Expression of opinion.

———Favour.

———Harrassment.

———Hostility.

———Improper procedure.

———Indiscretion.

———Interest.

———Local influence.

———Magistrate acting under Police influence.

———Magistrate's action in other capacity.

———Magistrate, necessary witness for defence.

———Magistrate not conversant with language of evidence.

———Magistrate taking prominent part in Police investigation.

———Miscarriage of justice.

———Opinion expressed.

———Opinion formed.

———Prejudice.

———Prejudicial remarks by Magistrate.

———Reasonable apprehension.

———Refusal to adjourn.

———Refusal to call defence witness.

———Refusal to grant interview.

———Relation.

———Trial impartial.

———Transfer.

———Unfair trial.

———Unlawful refusal of bail and unnecessary adjournment.

———Unnecessary adjournment.

———Warrant against *pardanashin* lady.

———What is not.

———Witness disbelieved.

———Grounds for transfer.

———S. 526—*Ground—Case arousing public interest and excitement.*

A mere fact that the case has aroused public interest and some excitement, is no reason for the transfer of the case, when the *challan* does not show that the facts of the case are of any extraordinary complexity or involve any specially difficult question of law. *Emperor v. Prillwinath*.

39 Cr. L. J. 660 :
175 I. C. 935 : 20 N. L. J. 151 :
I. L. R. 1938 Nag. 248 : 11 R. N. 18 :
A. I. R. 1938 Nag. 56.

———S. 526—*Grounds—Complaint disclosing offence which Magistrate could not adequately punish.*

A complaint was made against the petitioner to the effect that he had come with a mob of men to the house where the complainant held the village school, had entered the house, beaten the complainant with the help of those who were with him, and turned him out of the house. There was also an allegation that the petitioner and his companions had taken away certain properties of the complainant. Process were issued against the petitioner under Ss. 448 and 323, Penal Code, and the case was transferred for trial to a Third Class Magis-

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ought to be transferred from the file of the Magistrate. *Nityanund Kanarar v. Emperor.*

2 Cr. L. J. 339 :
9 C. W. N. 619.

—S. 526—Grounds—Bias—Prejudice.

A long series of cases have established the guiding principles upon which Courts should invariably act in dealing with applications for transfer. These are : (1) that it is expedient for the ends of justice to transfer a case from the file of one Magistrate to that of another competent to try it, if, by reason of the words or conduct of the Magistrate before whom the case is pending, any party reasonably apprehends that there is bias against him in the mind of the Magistrate, though there may not be in fact actual bias ; (2) the transfer of a case should be ordered when there are circumstances which may reasonably lead the petitioner to believe that the Magistrate has, to some extent, pre-judged the case against him. *Mahammad Mian v. Emperor.*

20 Cr. L. J. 566 :
52 I. C. 54 : A. I. R. 1919 Pat. 515.

—S. 526—Grounds—Communal feeling.

Case pending in Court of Hindu or Muhammadan Magistrate—That dispute is of communal nature is no ground for transfer—Reasonable apprehension that accused will not get fair trial is necessary. *Nathu v. Joti Parshad.*

35 Cr. L. J. 624 :
148 I. C. 201 : 6 R. L. 516 :
A. I. R. 1934 Lah. 73.

—S. 526—Grounds—Communal feeling—Dispute of communal nature between Muhammadans and Hindus.

Where the criminal proceedings between a Hindu and a Muhammadan partake of a communal nature, it is desirable that the case should be tried by a European Magistrate, if possible. *Hari Kishen v. Allah Bakhsh.*

28 Cr. L. J. 588 :
102 I. C. 556 : A. I. R. 1927 Lah. 520.

—S. 526—Grounds—Communal feeling.

Where a case has given rise to communal feeling to such an extent that one of the parties finds it difficult to persuade its witnesses to appear in Court to give evidence in its favour owing to the fear that they might render themselves liable to injury at the hands of the members of the opposite community, it is desirable that the case should be transferred to some other locality where it may be tried in a calm atmosphere. *Halim v. Emperor.*

27 Cr. L. J. 1391 :
98 I. C. 607 : 8 P. L. T. 153 :
A. I. R. 1927 Pat. 86.

—S. 526—Grounds—Communal feeling—Hindu-Muhammadan case.

Where a Hindu-Muhammadan question is involved in a criminal case, it is desirable that the case should be heard by a European Magistrate. *Mangal v. Emperor.*

26 Cr. L. J. 1056 :
87 I. C. 976 : 2 L. C. 155 :
A. I. R. 1925 Lah. 626.

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—S. 526—Grounds—Complaint filed by Deputy Commissioner.

The mere fact alone that it is the Deputy Commissioner who has laid the complaint, does not afford a reasonable ground for apprehension in the mind of any person that he will not receive a fair trial in the district of the Deputy Commissioner. To get the case transferred to another district, he must further show that the Subordinate Magistrates in that district are in awe of the Deputy Commissioner and look upon him as a person who must, on no account, be crossed. However, cases of this nature which have been instituted by the Deputy Commissioner or District Magistrate of a district, should not be tried by the Magistrate who is in such immediate touch with the Deputy Commissioner or District Magistrate as is the Headquarter's Magistrate of the district. Where there are Magistrates who are not executive officers, it is desirable that they should be chosen to try such cases. *Maung Ba Gon v. The King.*

40 Cr. L. J. 532 :
181 I. C. 315 : 11 R. Rang. 458 :
A. I. R. 1939 Rang. 88.

—S. 526—Grounds—Convenience.

For purposes of transfer, it is the convenience of the accused rather than that of the complainant that has to be considered. *Sohan Lal v. Gopal Singh.*

27 Cr. L. J. 563 :
94 I. C. 131 : A. I. R. 1926 Lah. 493.

—S. 526—Grounds—Convenience.

Where a case has been transferred from the Court of one Magistrate on the ground of an apprehension in the mind of the accused that he would not have a fair trial, it should not be re-transferred to the same Magistrate merely on the ground of convenience. *Emperor v. Pateswari Singh.*

35 Cr. L. J. 272 :
147 I. C. 126 : 6 R. Rang. 150 (1) :
A. I. R. 1933 Rang. 9.

—S. 526—Grounds—Convenience.

Where it is highly inconvenient and risky for the applicant to appear either as an accused or as a witness in certain place, the case should be transferred from that place. *Satbhari v. Muhammad Sidik.*

36 Cr. L. J. 869 (1) :
155 I. C. 1010 : 7 R. S. 221 (1) :
A. I. R. 1935 Sind 68.

—S. 526—Grounds—Discussion outside—Magistrate having private interview with one party out of Court and hearing his version of case.

The fact that the Magistrate trying a case has had an interview with one of the parties to the case, privately and out of Court, and had heard from such party his version of the facts, is sufficient to disqualify him from subsequently trying the case in his magisterial capacity even if there are no reasons for ascribing any prejudice or undue interest in the case to the Magistrate. *Pran Nath v. Emperor.*

39 Cr. L. J. 606 (a) :
175 I. C. 520 : 40 P. L. R. 157 :
10 R. L. 734 : A. I. R. 1938 Lah. 346.

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him, is a ground for making an order transferring the case to some other Court for trial. *Rang Bahadur Singh v. Karimani.*

22 Cr. L. J. 708 :
63 I. C. 868 : 2 P. L. T. 297 :
A. I. R. 1921 Pat. 322.

-----S. 526—Grounds.

Refusal to grant copy under S. 162, is sufficient ground for transfer. *Nek Ram v. Emperor.*

32 Cr. L. J. 370 :
129 I. C. 267 : I. R. 1931 All. 139.
A. I. R. 1931 All. 273.

-----S. 526—Grounds.

The important point to be considered in an application under S. 526 is the fact as to the impression created in the mind of the accused. When the lower Court has not committed a gross error in exercising its discretion, the High Court should not set aside its order. *Vellachami Chettyar v. Murugappa Chettyar.*

34 Cr. L. J. 832 :
144 I. C. 677 : 6 R. Rang. 1.
A. I. R. 1933 Rang. 89.

-----S. 526—Grounds—*The Magistrate's having already expressed opinion in the case is a good ground—Transfer applications should not be lightly dealt with.*

A case having once been dismissed on the report of the Police by a Magistrate was resurrected in the form of a complaint at the suggestion of the Revenue Assistant. The Magistrate subsequently noted that as he had expressed an opinion on the case, he thought it better he should not try it : *Held*, that this was a good ground for transfer. Applications for transfer giving good reasons, if the allegations be correct, why a case should be transferred, require to be seriously dealt with, and should not be casually brushed aside as *fazul*. *Badan Singh v. Emperor.*

5 L. L. J. 520 :
A. I. R. 1924 Lah. 257.

-----S. 526—Grounds—Absence of bias.

The accused applied for a transfer of his case on the ground that in another criminal case arising out of the same transaction, the Magistrate expressed decided opinions, not only on the facts but as to the credibility of certain witnesses, and that he could not, therefore, try the present case with an unbiased mind : *Held*, that interest or bias is not to be inferred from the opinions formed on evidence judicially recorded, and the Magistrate was not, therefore, disqualified to try the case. *Emperor v. Kamil.*

8 Cr. L. J. 159 :
1 S. L. R. 37.

-----S. 526—Grounds—Accused, election agent of rival candidate of Magistrate.

The accused had been an election agent of a person who was a rival candidate of the Magistrate, before whom the case was pending at the last Council Election. It was further alleged that the chief prosecution witness was a friend of the Magistrate : *Held*, that this was sufficient ground for the transfer of the case from the Court of the Magistrate to that

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of some other competent Magistrate. *Nihal Singh v. Emperor.*

26 Cr. L. J. 1440 (b) :
89 I. C. 912 : 1 L. C. 302 :
A. I. R. 1925 Lah. 615.

-----S. 526—Grounds—*Accused, inability of, to secure services of Counsel.*

The fact that an accused person is unable, owing to the influence of persons interested in the prosecution, to secure the services of a competent member of the local bar for his defence is a sufficient ground for the transfer of the case to some other District. *Lalla v. Zahoor Ahmad.*

26 Cr. L. J. 1272 :
88 I. C. 1048 : 2 O. W. N. 682 :
A. I. R. 1925 Oudh 672.

-----S. 526—Grounds—*Apprehension—Allegation between Judge and Counsel, whether ground for transfer.*

It is for the High Court, exercising its jurisdiction under S. 526, Cr. P. C. to transfer a case from one Court to another, to satisfy itself that on the facts disclosed, there is a reasonable apprehension that the accused may be prejudiced and not have a fair trial. A quarrel or unpleasantness between the Judge and the Counsel for the accused is no ground for the transfer of a case under S. 526. *Nibaran Chandra Chatterji v. Emperor.*

18 Cr. L. J. 670 :
40 I. C. 318 : 1917 Pat. 230 :
2 P. L. W. 83 : A. I. R. 1917 Pat. 437.

-----S. 526—Grounds—*Apprehension.*

Court should consider not so much convenience or possible injustice but apprehension in mind of accused. *Emperor v. Pateswen Singh.*

35 Cr. L. J. 272 :
147 I. C. 126 : 6 R. Rang. 150 (1) :
A. I. R. 1933 Rang. 9.

-----S. 526—Grounds—*Apprehension.*

Magistrate handed over judicial record to person to be examined as witness—Is sufficient ground for transfer. *Brahmu Dutt v. Emperor.*

33 Cr. L. J. 223 :
136 I. C. 9 : 33 P. L. R. 438 :
I. R. 1932 Lah. 185 : A. I. R. 1932 Lah. 294.

-----S. 526—Grounds—*Apprehension—Prosecution evidence—Magistrate, failure of, to record point in favour of accused.*

Where the Magistrate, while recording evidence, does not mention the important fact in the accused's favour that the prosecution witness who identified the accused at first pointed out a different man, the omission is gravely reprehensible, would give rise to a very reasonable apprehension in the mind of the accused that his trial would not be conducted fairly, and is a sufficient ground for transfer of the case from that Magistrate's Court to another. *Rabindra Nath Singh v. Emperor.*

26 Cr. L. J. 297 :
84 I. C. 441 : A. I. R. 1925 Pat. 339.

-----S. 526—Grounds—*Apprehension.*

When acts of prosecution are sufficient to create reasonable apprehension, case must

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to harass the accused : *Held*, that there was a clear case for transferring the case to another Magistrate. *Chelanand v. Gurbakhsh Singh*.

31 Cr. L. J. 989 :

125 I. C. 615 : A. I. R. 1930 Lah. 668.

—————**S. 526—Grounds—Harassment.**

Magistrate taking several steps to bring pressure on accused to force them to produce absconders and repeatedly adjourning case for the purpose is ground for transfer. *Fakir Mohammediad v. Emperor*.

32 Cr. L. J. 344 :

129 I. C. 485 : I. R. 1931 Lah. 197 :

A. I. R. 1930 Lah. 953.

—————**S. 526—Grounds—Hostility.**

The complainants in a case applied to the High Court for the transfer of the case from the Court of the Magistrate before whom the case was pending to some other Court. Their application was admitted and further proceedings were stayed. On the date fixed for the hearing of the case before the Magistrate, one of the complainants appeared and apprised the Magistrate of the order of the High Court. The Magistrate instead of staying further proceedings issued a warrant for the arrest of the complainant who had not appeared : *Held*, that there was no justification for the action of the Magistrate and that the Magistrate's attitude towards the complainants being clearly hostile, there was good grounds for transferring the case from his Court to the Court of some other Magistrate. *Fazal Ahmed v. Abdullah Khan*.

27 Cr. L. J. 104 :

91 I. C. 536 : 7 L. L. J. 571 :

A. I. R. 1926 Lah. 151.

—————**S. 526—Grounds—Improper procedure—Application for postponement to enable to apply for transfer—Magistrate inquiring into allegations, propriety of.**

An inquiry by the Magistrate, on a party's applying to him for postponement of the case to enable him to apply for transfer, into the grounds of transfer himself is highly improper and would naturally cause apprehension in the mind of the petitioner that the Tribunal trying the case is not likely to give him a impartial and unbiased hearing. *Mughesuddin v. Emperor*.

27 Cr. L. J. 382 :

92 I. C. 894 : 27 P. L. R. 67 :

A. I. R. 1926 Lah. 236.

—————**S. 526—Grounds—Indiscretion—Stopping cross-examination of complainant, whether ground for transfer.**

Where a trying Magistrate stopped the cross-examination of the complainant in a case because in his view the complainant had been fully cross-examined for one hour : *Held*, that the Magistrate was guilty of an act of indiscretion which could reasonably lead the accused to believe that they would not get a fair trial at his hands and that the case should be transferred to the Court of some other Magistrate. *Yusaf v. Buni Lal Mandal*.

20 Cr. L. J. 559 (b) :

51 I. C. 847 : A. I. R. 1919 Pat. 565.

—————**S. 526—Grounds—Indiscretion.**

Where a Magistrate trying a case has been

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guilty of indiscretions and the case has given rise to undesirable controversy in the district in which it is being tried, it is desirable to remove the hearing of the case to some place outside the district. *Ganpat Sahai v. Koshalendra Parlat Sahi*.

27 Cr. L. J. 498 :

93 I. C. 962 : 3 O. W. N. 245 : 13 O. L. J. 644.

—————**S. 526—Grounds—Interest—Complainant purchasing car through trying Magistrate's son subsequent to complaint.**

The complainant purchased a car through the trying Magistrate's son who was a salesman, on favourable terms. This purchase was made subsequent to the filing of the complaint. The accused applied for transfer : *Held*, though the transaction was a *bona fide* one, though the Magistrate was renowned for his impartiality, the apprehension in the mind of the accused being justifiable, the case should be transferred. *Hemanta Kumar Sarkar v. Nanda Kumar Singh*.

38 Cr. L. J. 344 :

167 I. C. 251 : 41 C. W. N. 188 :

9 R. C. 660 : 64 C. L. J. 532 :

A. I. R. 1937 Cal. 64.

—————**S. 526—Grounds—Interest—Magistrate cross-examining prosecution witnesses on questions suggested by prosecution.**

Where a Magistrate cross-examines a prosecution witness at great length after he has been cross-examined by the defence, on the questions suggested by the Public Prosecutor, an apprehension in the mind of the accused that the Magistrate is taking the side of the prosecution is quite reasonable and the case may be transferred from his Court. *Hafizullah v. Emperor*.

31 Cr. L. J. 736 :

124 I. C. 688 : A. I. R. 1930 Lah. 173.

—————**S. 526—Grounds—Interest—Magistrate trying for compromise.**

Where a Magistrate has interested himself in a case pending before him in the way of trying to obtain a settlement by the parties, it is to the interest of both the parties and but fair to the Magistrate himself that he should not hear the case. *Muzaffar Husain v. Muhammad Yaqub*.

26 Cr. L. J. 869 :

86 I. C. 805 : 23 A. L. J. 191 : 47 All. 411 :

A. I. R. 1925 All. 289.

—————**S. 526—Grounds—Interest.**

Ordinarily, the transfer of a criminal case ought not to be allowed. Where, however, there is some degree of association between the Magistrate and one or other of the parties to a case, as for instance, where a party has a financial hold on the Magistrate, the case ought not to be tried by that Magistrate. *Sham Lal v. Emperor*.

21 Cr. L. J. 843 :

58 I. C. 923 : A. I. R. 1920 All. 195.

—————**S. 526—Grounds—Local influence—Magistrate not biased.**

Where on an application for transfer of a case, although there was no reason for

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that the apprehension of the accused of unfair trial could not, under the circumstances, be called unreasonable and that the case should be transferred to some other District for trial. *Sardari Lal v. Emperor*.

24 Cr. L. J. 286 :
71 I. C. 1006 : 3 Lah. 433 :
A. I. R. 1923 Lah. 264.

———S. 526—Grounds — Apprehension of unfair trial—Accused under bona fide impression of not having fair trial.

Where an accused person is under the bona fide impression that he may not have an impartial trial before a Magistrate, it is desirable that the case should be transferred to another Court. *Jit Singh v. Emperor*.

14 Cr. L. J. 286 :
16 I. C. 718 : 4 P. W. R. 1913 Cr. :
154 P. L. R. 1913.

———S. 526—Grounds — Apprehension of unfair trial—Adjournment, application for — Examining witnesses after application—Examining witnesses after communication.

Where on an application being made by the accused to the trying Magistrate for time to enable him to move the High Court for transfer of the case pending against him, the Magistrate did not pass an order at once but examined 13 witnesses for the prosecution, and then passed an order allowing 14 days' time and where after the fact of the issue of a rule by the High Court on the application for transfer had been communicated by a telegram from a Vakild of the High Court, the Magistrate instead of postponing the case at once examined four witnesses and then made an order for adjournment: Held, that these proceedings on the part of the Magistrate were sufficient to justify the transfer of the case from his file. *Wahed Molla v. Shaik Basaraddi*.

5 Cr. L. J. 291 :
11 C. W. N. 507.

———S. 526 — Grounds — Apprehension of unfair trial—Application based on communal motive—Magistrate committing errors in procedure—Apprehension in minds of accused.

A Magistrate is not barred by reason of belonging to one community or the other from trying cases between members of those two communities. But when a Magistrate finds himself placed in such a position, it is incumbent upon him to exercise the greatest tact and discretion in handling the case. But where he commits errors of procedure so as to give rise to an apprehension in the minds of petitioners that they would not get an impartial trial, the case should be transferred. *Lal Singh v. Emperor*.

39 Cr. L. J. 888 :
177 I. C. 507 : 40 P. L. R. 505 :
11 R. L. 333 (1) : A. I. R. 1938 Lah. 576.

———S. 526 — Grounds — Apprehension of unfair trial—Case sent to Magistrate at request of complainant.

The fact, that a complaint is sent to a particular Magistrate for trial at the request of the complainant, is sufficient to raise an apprehension in the mind of the accused that he will not get a fair trial in the Magistrate's Court, and

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to justify the transfer of the case to some other Court. *Gharsi Mal v. Debi Sahai*.

25 Cr. L. J. 989 :
81 I. C. 637 : A. I. R. 1925 Lah. 121.

———S. 526 — Grounds — Apprehension of unfair trial—Circumstances of each case to be considered.

Although a reasonable apprehension in the mind of the accused that he will not have a fair trial is a sufficient ground for transfer, yet in applying that doctrine, regard must be had to the circumstances of each case. The mere fact that in another case on other evidence the Court may have come to a particular conclusion is not in itself a sufficient ground for transfer. *Assimuddi v. Govinda Baidya*, 1 C. W. N. 426, followed. *Rajani Kanta Dutta v. Emperor*.

10 Cr. L. J. 244 :
3 I. C. 88.

———S. 526—Grounds—Apprehension of unfair trial—Complainant or his Pleader disallowed to examine witnesses—Court examining witnesses itself.

Where a Magistrate does not permit the complainant or his Pleader to examine his witnesses but proceeds to examine them himself, the procedure is likely to raise a reasonable apprehension in the mind of the complainant that he will not obtain a fair trial in his Court and constitutes a sufficient ground for transfer of the case to some other Court. *Janki v. Sheo Narain Singh*.

25 Cr. L. J. 1226 :
82 I. C. 154 :
11 O. L. J. 333 : 27 O. C. 246 :
1 O. W. N. 208 : A. I. R. 1924 Oudh 371.

———S. 526—Grounds—Apprehension of unfair trial—Considerations applicable—Belief that trial will not be impartial.

On an application for a transfer of a criminal case from the Court of a Magistrate before whom it is pending to that of some other Magistrate, the only question is one of the actual belief of the applicant for transfer. If such person in fact believes that he will not have a fair and impartial trial in a certain Tribunal, it is inexpedient that he should be tried by that Tribunal and the case must be transferred unless that is impossible, however high the certainty of the impartiality of that Tribunal may be in the minds of all right-thinking men, and, however discreditable to the applicant the existence of such belief in his mind may be. *Abdulla v. Emperor*.

27 Cr. L. J. 835 :
95 I. C. 755 : 22 N. L. R. 99 :
A. I. R. 1926 Nag. 448.

———S. 526—Grounds—Apprehension of unfair trial—Delay in examining complainant—Disregard of preliminaries prescribed by Code, effect of.

Inordinate delay in examining the complainant, or a disregard of the preliminaries prescribed by the Cr. P. C., for dealing with complaints, and awaiting the consideration of the evidence in another case with which the accused has no concern, in order to decide whether any action should be taken upon the

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S. 526—Grounds—Prejudice—Charges and counter-charges between parties—Discharge of one party—Observations of the Magistrate in the order of discharge as to the guilt of the other party.

There were two cases in which charges and counter-charges of rioting had been made. The Magistrate heard the prosecution evidence in one case, and then without hearing the defence evidence in the case, interposed the other case, heard the prosecution evidence in that case and on that evidence, discharged the accused. In his order of discharge he expressed himself in decided terms as to the guilt of the prosecuting party in that case who were the accused in the first case: *Held*, that the course adopted by the Magistrate was likely to prejudice the accused party in the first case, whose guilt, it might be taken, he pre-judged by his observations in the order of discharge in the other case. The first case was, therefore, to be transferred to the file of some other competent Magistrate for disposal. *In re: Rangasawmy*. 5 Cr. L. J. 290: 2 M. L. T. 89: 1 L. R. 30 Mad. 233.

S. 526—Grounds—Prejudice—Magistrate putting question to witnesses prejudicial to accused.

A Magistrate on the assurance of the Police *peshi* clerk in his Court asked a witness whether the accused had ever been challaned in a *badmashi* case: *Held* (1) that it was improper for the Magistrate to put such question, unless he had satisfied himself on the highest and best information that there was some real foundation for the facts mentioned in the question. The assurance received from the Police *peshi* clerk in his Court was quite insufficient to justify such a question; (2) that the action of the Magistrate was sufficient to cause the accused to apprehend that a fair and impartial trial would not be had and that the case should be transferred. *Suraj Prosad v. Emperor*. 15 Cr. L. J. 234: 23 I. C. 186: 12 A. L. J. 50: A. I. R. 1914 All. 49.

S. 526—Grounds—Prejudice.

Where the Magistrate has pre-judged the case, a sufficient ground for transfer is made out. *Gandama v. Emperor*. 34 Cr. L. J. 950 (2): 145 I. C. 344: 6 R. Rang. 41: A. I. R. 1933 Rang. 164.

S. 526—Grounds—Prejudicial remarks by Magistrate.

If in delivering judgment in one of two separate cases pending in the Court of a Magistrate against the same accused, the Magistrate makes irrelevant observations which amount to pre-judging the case still pending, the ends of justice require that the pending case should be transferred from his Court. *Zahir-ud-Din v. Emperor*. 26 Cr. L. J. 158: 83 I. C. 718: 11 O. L. J. 556: A. I. R. 1924 Oudh 433.

S. 526—Grounds—Reasonable apprehension—Duty of Magistrate to stay proceedings on notification of intention to apply for transfer.

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Under the amended S. 526 (8), Cr. P. C., as soon as the Public Prosecutor, complainant or the accused person notifies to the Court his intention to make an application to the High Court for transfer, the Magistrate is bound to adjourn the case and it is not competent to him after such an application has been made to record any evidence at all. Where an accused was served with a summons only three hours before the time fixed for his appearance, his application for adjournment on the ground that he had no sufficient time to get copies and that his leading Counsel was absent was rejected, and an application for stay in view of an application for transfer was also rejected, the first prosecution witness who gave evidence against the prosecution was ordered to be prosecuted for perjury and the case was adjourned when the second prosecution witness did not give evidence in favour of the prosecution even though other prosecution witnesses were ready to be examined: *Held*, that the circumstances were such as to create in the mind of the accused a justifiable apprehension of partial trial and that the case should be transferred. *Chiranji Lal v. Emperor*. 29 Cr. L. J. 815: 111 I. C. 319: 9 Lah. 537: A. I. R. 1928 Lah. 1.

S. 526—Grounds.

Reasonable apprehension of partiality—Ground for transfer. *Kunja Sahu v. Emperor*. 36 Cr. L. J. 1266: 157 I. C. 758 (a): 16 P. L. T. 587: 1 B. R. 812: 8 R. P. 161 (1).

S. 526—Grounds—Refusal to adjourn—Transfer, application for—Adjournment, refusal to grant, effect of—Duty of Magistrate.

When an application under S. 526, Cl. (8), Cr. P. C., is made, it is not for the Magistrate to decide whether the applicant has an apprehension that he would not receive a fair trial at his hands. That is the function of the High Court. The Magistrate is bound to adjourn the case, unless in his judgment, he is *bona fide* satisfied that the applicant has no intention of making an application for transfer. The refusal of a Magistrate to grant an adjournment to a suspect to enable him to apply for a transfer of the proceedings is a good ground for transfer of the proceedings. *Jatvi v. Emperor*. 27 Cr. L. J. 935: 96 I. C. 391: 20 S. L. R. 122: A. I. R. 1926 Sind 288.

S. 526—Grounds—Refusal to adjourn.

When before the commencement of the trial, a party applies to the Magistrate to adjourn the proceedings on the ground that he intends to apply to the High Court for a transfer, the Magistrate is bound to adjourn the case under S. 526, Cl. 8, Cr. P. C., and if the Magistrate refuses to grant an adjournment, his proceedings subsequent to such refusal, are illegal, and such a refusal is in itself sufficient ground for a transfer of the case. *Crown v. Naoo*. 9 Cr. L. J. 274: 1 S. L. R. 35.

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examination was disallowed, that his prayer as to the production of certain documents was rejected, and that the names of some of his witnesses were struck out while a sum of Rs. 100 was demanded from him before summons could be issued to the rest of his witnesses : *Held*, the facts, taken with the fact of the institution of several criminal proceedings against the petitioner prior to the proceedings under S. 110 would likely give rise to an apprehension in his mind that he was not likely to have a fair and impartial trial in the Court before which security proceedings against him were pending and that, therefore, this was a fit case for transfer. *Jafar Husain v. Emperor.*

16 Cr. L. J. 56 :
26 I. C. 648 : 12 A. L. J. 736 :
A. I. R. 1914 All. 262.

—S. 526—Grounds—Apprehension of unfair trial.

Where in a case of alleged petty theft of four bamboos, worth one rupee, the Magistrate, in the first instance, issued warrants against the accused without a provision for bail, and on their appearance before him, released them on bail of Rs. 500 each : *Held*, that the accused had been given the occasion to apprehend reasonably that they would not have a fair trial before the Magistrate. The case was accordingly transferred to another Magistrate. *Girish Chandra Ghosh v. Chandra Moni Dasi.*

1 Cr. L. J. 528 :
8 C. W. N. 589.

—S. 526—Grounds—Apprehension of unfair trial and prejudice.

The Court must be satisfied that a reasonable apprehension of unfair trial exists and it can only be so satisfied from the circumstances of the case and from the conduct and behaviour of the accused as well as the accused's character and mental status. Where any doubt can be shown as regards the personal impartiality of the Presiding Judge of the Court, a transfer should immediately be granted ; but where no such personal grounds can be shown, a transfer should only be granted when the Magistrate has shown by his acts or orders that there is a possibility that he may be prejudiced against the accused. The fact that he makes a decision against the accused is not sufficient to warrant any apprehension of partiality, if the order is passed in good faith and the reasons for the order are duly stated. *Fasiuddin v. Emperor.*

30 Cr. L. J. 728 :
117 I. C. 213 : I. R. 1929 Nag. 197 :
A. I. R. 1929 Nag. 172.

—S. 526—Grounds—Apprehension of unfairness—Suspicion in mind of accused.

A Magistrate, in the discharge of the multifarious duties of his office, has to perform a very large number of extra-judicial functions, and in the discharge of his executive duties, he may be compelled to act in a way which would raise a suspicion in the mind of an accused person that he is not likely to get justice when the Magistrate came to inquire into a particular matter judicially. In such

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a case, it is advisable that the judicial trial should be held by another Magistrate. *Mohammad Yunis Khan v. Gulab.*

24 Cr. L. J. 811 :
74 I. C. 715 : A. I. R. 1923 Oudh 172.

—S. 526—Grounds—Bias.

A Rule for the transfer of a case was issued by the High Court upon the application of an accused person staying further proceedings before a Magistrate and the direction given by the High Court was intimated to the Magistrate by a telegram sent by the Vakil who obtained the Rule, but the Magistrate proceeded with the case disregarding the telegram : *Held*, that the Magistrate acted injudiciously in going on with the case, that the conduct of the Magistrate indicated clearly the bent of his mind and his bias against the accused, and that the case ought to be transferred to another Court. *Hem Chandra Kar v. Mathur Santhal.*

13 Cr. L. J. 766 (b) :
17 I. C. 78 : 16 C. W. N. 1031.

—S. 526—Grounds—Bias.

It is of paramount importance that persons arraigned before the Courts should have confidence in the impartiality of those Courts, and, if an accused person has a reasonable cause to apprehend that the Court before whom he is being tried is not completely free from bias, a transfer should be directed. To decide what is 'reasonable' cause, regard must be had to the degree of intelligence possessed by the accused. If the actions of a Judicial Officer, though susceptible of explanation and traceable to a superior sense of duty, are calculated to create in the mind of the accused an apprehension that he will not have an impartial trial, the case should be transferred to some other Judge for trial. *Ahmad Din v. Emperor.*

25 Cr. L. J. 638 :
81 I. C. 126 : 1 L. C. 8 :
A. I. R. 1925 Lah. 101.

—S. 526—Grounds—Bias.

The prosecution alleged that the District Magistrate being one of the *ex-officio* chief executive authorities connected with the Court of Wards which had control over the Bettiah *raj* was interested in the case and should not try it : *Held*, that it being impossible, under the circumstances, to prevent persons from having an apprehension that there might be bias in the mind of the Magistrate inclining him to look with favour upon the interests of the Bettiah *raj*, to avoid any possible misapprehension the case should be transferred and tried by some Magistrate other than the District Magistrate. *Kishori Gir v. Ram Narayan Gir.*

1 Cr. L. J. 46 :
8 C. W. N. 77.

—S. 526—Grounds—Bias.

Where circumstances are such as taken by themselves do not show any bias on the part of the Magistrate, but having regard to all the various matters taken together it appears that the accused does not unreasonably apprehend that he cannot have a fair trial : *Held*, that under these circumstances, the case

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to injure—Competent Tribunal—Honorary Magistrate, whether competent.

A charge of an offence falling under the second clause of S. 211, Penal Code, should not be sent for trial or inquiry to an Honorary Magistrate having no experience of criminal trials and the mere fact of the Magistrate making unnecessary adjournments in the inquiry or trial of such a case is a sufficient ground for the transfer of the case from his Court. *Magan Lal v. Ganesh Parsad.*

19 Cr. L. J. 611 :
45 I. C. 515 : 16 A. L. J. 294 :
A. I. R. 1918 All. 372.

—S. 526—Grounds—Warrant against *pardanashin lady.*

An unjustifiable order directing the issue of a warrant against a *pardanashin lady* is a good ground for the transfer of a case from the Court of the Magistrate making the order to some other Court. *Hari Kishen v. Polo Ram.*

28 Cr. L. J. 225 :
99 I. C. 1025 : 27 P. L. R. 604 :
A. I. R. 1927 Lah. 16.

—S. 526—Ground, what is not.

A lessee of *zemindari* property died and the manager of the *zemindari* issued orders to the tenants of the deceased lessee not to pay rent to the representative of the deceased. The orders were illegal and the District Magistrate wrote to the manager to withdraw them but the latter refused to do so. Subsequently the manager became involved in a criminal case. He applied for transfer of the case from the district on the ground that the District Magistrate was angry with him and he was not likely to have a fair trial : *Held*, that there was nothing to show that the District Magistrate was prejudiced against the accused and there was no grounds for the transfer of the case. *Mahadeo Singh v. Emperor.*

25 Cr. L. J. 561 :
81 I. C. 49 : A. I. R. 1922 Pat. 494.

—S. 526—Ground—What is not.

A Magistrate, who disregarded the rule that all subordinate Courts should sit from day to day except Sundays and took up a case on Sunday, does not give a substantial cause for suspecting his impartiality. *Abdullah Khan-Khair Mahomed Khan v. Emperor.*

33 Cr. L. J. 908 :
139 I. C. 791 : 26 S. L. R. 255 :
I. R. 1933 Sind 151 : A. I. R. 1933 Sind 17.

—S. 526—Ground—What is not—Adjournments.

Mere granting unnecessary adjournments to enable the complainant to appear, is no ground for transferring the case. *Maula Baksh v. Marshall.*

27 Cr. L. J. 1022 :
96 I. C. 878 : A. I. R. 1926 Lah. 628.

—S. 526—Ground—What is not—Allegations against Magistrate—If they are untrue, the Magistrate must specifically deny them.

Where petitioners in their application for transfer of the case allege certain things against the Magistrate, and the High Court

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calls for an explanation from him, it is better, if it is a fact, for him to deny the allegations. Merely saying that "what the petitioners believe is not evidence" and that their statements are "purely conjectural and do not admit of any discussion" is not enough. *Bindeshwari Missir v. Emperor.*

39 Cr. L. J. 517 :
175 I. C. 49 : 10 R. P. 571 :
4 B. R. 519 (1) : A. I. R. 1938 Pat. 376.

—S. 526—Ground—What is not—Almost entire prosecution evidence recorded by Magistrate—Mere fact that Magistrate has a lot of work.

The mere fact that a Magistrate has a lot of work is not alone a ground why a case in which almost the entire prosecution evidence has been recorded by him should be transferred from his Court to another Court. *Baij Nath v. Ram Sarup.*

38 Cr. L. J. 181 :
166 I. C. 373 (2) : 9 R. L. 361 :
A. I. R. 1936 Lah. 827.

—S. 526—Ground—What is not.

An accused who was being tried by an Additional District Magistrate made an application for transfer of case on the ground that as the accused had made some unfavourable comment on the Magistrate while he was Deputy Commissioner, the Magistrate might harbour a resentment against the accused which would prevent him doing justice in the case : *Held*, that this could not be accepted as ground for transfer. *U. Saw, Editor-in-Chief of "The Sun" v. The King.*

40 Cr. L. J. 162 :
179 I. C. 72 : 11 R. Rang. 298 :
A. I. R. 1938 Rang. 456.

—S. 526—Ground—What is not.

An appeal was preferred to the Sessions Judge from a conviction under S. 323 and 325, Penal Code. The Sessions Judge after hearing arguments came to the conclusion that, if an offence was committed at all, it was one under Ss. 304 and 307, and that the convicting Magistrate had no jurisdiction to try a case of so grave a nature. He accordingly set aside the convictions and sentences under Ss. 323 and 325, and directed the accused to be committed for trial on charges under Ss. 305, 304, 307 and 325 of the Code : *Held*, that the circumstances did not justify a transfer of the case from the Court of the Sessions Judge who had directed the commitment and re-trial. *Ram Sewak v. Emperor.*

15 Cr. L. J. 367 (a) :
23 I. C. 735 : A. I. R. 1914 All. 111.

—S. 526—Ground—What is not—Appeal, transfer of—Appellate Court having tried some of several accused, whether competent to try appeals of remaining accused arrested subsequently.

The fact that a Sessions Judge has tried the appeals of some persons convicted of dacoity, is no bar to his trying the appeals of the remaining persons convicted of the same dacoity who were arrested subsequently, nor is it a good ground for transferring such

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—S. 526—*Grounds—Discussion outside—Magistrate having outside knowledge of case.*

Where a Magistrate has outside knowledge in respect of matters which form the subject-matter of the proceedings before him, the accused may reasonably apprehend that the Magistrate may be betrayed by such outside knowledge into taking a view that evidence might not support it, and it will not be right to reject an application for transfer of the case to another Magistrate, even though the application is made at a late stage. In considering applications for transfer, the law has regard not so much to the motives which might be supposed to bias the Judge as to the susceptibilities of the accused. *Satindra Nath Sen v. Emperor.*

31 Cr. L. J. 805 :
125 I. C. 275 : A. I. R. 1929 Cal. 809.

—S. 526—*Grounds—Erroneous order.*

Merely fact that certain orders are erroneous or illegal, is by itself no sufficient ground. If procedure is such as to justify reasonable apprehension, it is sufficient ground. *Hari Chand v. Emperor.*

32 Cr. L. J. 253 (2) :
129 I. C. 193 : I. R. 1931 Lah. 129 :
A. I. R. 1931 Lah. 59.

—S. 526—*Grounds—Erroneous refusal to accept bail.*

Where a Magistrate erroneously refuses to accept bail and unnecessarily prolongs proceedings, the procedure adopted by him is likely to raise apprehension in the mind of the accused, and transfer of the case is justifiable. *Natha Singh v. Emperor.*

34 Cr. L. J. 89 :
141 I. C. 43 : 33 P. L. R. 416 (1) :
I. R. 1933 Lah. 52 : A. I. R. 1932 Lah. 440.

—S. 526—*Grounds—Expediency—Apprehension that fair and impartial trial cannot be had.*

Where during the pendency of a case against the accused for the alleged cutting of a band, the Magistrate went to the scene of occurrence accompanied by a partisan of the complainant and held a local inquiry into a matter which though not the subject of complaint against the accused, could nevertheless be imagined by the accused to be such : *Held*, that though there were no reasons to suppose, that the Magistrate would not bring to the trial a fair and impartial mind, still under the circumstances of the case, it was desirable that the trial should be held by some other Magistrate. *Karban Ullah v. Azmat Mahi.*

7 Cr. L. J. 510 :
12 C. W. N. 748.

—S. 526—*Grounds—Expediency—Apprehensions of accused—Test—Interests of justice.*

In applications for transfer of a criminal case, the state of the mind of the accused has to be considered, and if there is a real fear of injustice in the mind of the accused, having regard to the ordinary standard of honesty and fair dealing, the case should be transferred. A criminal case may be transferred from one district to another if it is in

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the interest of ensuring confidence in good Government, which is the essence of all proper administration and which it is duty of the High Court to maintain. *N. A. W. Chanderkar v. Emperor.*

26 Cr. L. J. 163 :
83 I. C. 723 : 7 N. L. J. 155 :
A. I. R. 1924 Nag. 223.

—S. 526—*Grounds—Expression of adverse opinion.*

Magistrate expressing opinion adverse to petitioner before hearing evidence—Case should be transferred. *Maung Po Thit v. Maung Pyy.*

32 Cr. L. J. 938 :
132 I. C. 556 : 8 Rang. 654 :
I. R. 1931 Rang. 188 :
A. I. R. 1931 Rang. 87.

—S. 526—*Grounds—Expression of opinion.*

A District Magistrate in making over a case for disposal to another Magistrate made the remark that the case was quite clear and that the defence was ridiculous. He further directed that the Government Pleader should conduct the case and press for a severe sentence : *Held*, that this expression of opinion on the part of the District Magistrate was a sufficient ground for directing that the case should be transferred to some other district. *Mohammad Yakub v. Emperor.*

26 Cr. L. J. 1525 :
90 I. C. 309 : 2 O. W. N. 688 :
A. I. R. 1925 Oudh 690.

—S. 526—*Grounds—Favour—Magistrate making remarks adverse to prosecution, whether ground for transfer.*

That in the course of the examination of the prosecution witnesses, the Magistrate trying the case has made observations which go to show that he is not favourable to the prosecution is a sufficient ground for the transfer of the case to the Court of another Magistrate. *Shoodhari Rai v. Jhingir Rai.*

26 Cr. L. J. 1249 :
88 I. C. 993 : 7 P. L. T. 49 :
A. I. R. 1925 Pat. 818.

—S. 526—*Grounds—Harassment.*

Accused residing in one district—Complainant resident of that district—Incident leading to defamation taking place in that district—Complaint in another district was held for harassing accused. Where the accused were residents of one district and the complainant himself originally resided in that district and the incident which has led to the prosecution of the accused for defamation, also took place in that district : *Held*, that the case has been instituted in another district in order to harass the accused and should be transferred to the former district. *Gurdit Singh v. Emperor.*

28 P. L. R. 211 :
A. I. R. 1927 Lah. 271.

—S. 526—*Grounds—Harassment—Bail-application—Vindictive conduct of Magistrate.*

Where a Magistrate in a proceeding under S. 107, Cr. P. C., demanded a very heavy amount of security for granting bail, and the conduct of the Magistrate during the trial was characterised by vindictiveness and a desire

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———S. 526—Ground—What is not—District Magistrate, opinion of, that there is *prima facie* case, where ground for transfer.

The mere fact that a District Magistrate has come to the conclusion that there is a *prima facie* case against an accused person which ought to be inquired into by a Criminal Court, is no ground for transfer of the case from the District unless it is shown that the District Magistrate is attempting to influence the result of the case directly or indirectly. *Jawala Singh v. Emperor*. 28 Cr. L. J. 190 : 99 I. C. 862 : A. I. R. 1927 Lah. 164.

———S. 526—Ground—What is not—Error of judgment.

The mere fact that a trial Court has committed an error of judgment in admitting evidence is no ground for transferring a case from such Court. *Bashir Ali v. Emperor*.

20 Cr. L. J. 609 : 52 I. C. 273 : A. I. R. 1919 Pat. 493.

———S. 526—Ground—What is not—Bias—Evidence judicially recorded in another case—Opinion formed therefrom.

The accused applied for a transfer of his case on the ground that in another criminal case arising out of the same transaction, the Magistrate expressed decided opinions, not only on the facts, but as to the credibility of certain witnesses and that he could not, therefore, try the present case with an unbiased mind : *Held*, that interest or bias is not to be inferred from the opinions formed on evidence judicially recorded, and the Magistrate was not, therefore, disqualified to try the case. *Crown v. Kamil*.

9 Cr. L. J. 275 : 1 S. L. R. 37.

———S. 526—Ground—What is not—Expression of adverse opinion by Magistrate after completion of case.

Expression of an adverse opinion by a Magistrate after the entire evidence has been recorded and the case argued by the parties, does not entitle a party to a transfer of the case. *Tek Chand v. Emperor*.

29 Cr. L. J. 429 : 108 I. C. 608.

———S. 526—Ground—What is not—F frivolous application.

Transfer urged on ground that in previous case Magistrate has made observations derogatory to applicant : *Held*, there was no ground for transfer. *In re : Shamdasani*. (F. B.)

32 Cr. L. J. 394 : 129 I. C. 584 : 32 Bom. L. R. 1123 : 54 Bom. 553 : I. R. 1931 Bom. 184 : A. I. R. 1930 Bom. 477.

———S. 526—Ground—What is not—Grave aspersions against trying Magistrate—Apprehension of not having fair and impartial trial.

A criminal case should not be transferred where the apprehension of not having a fair and impartial trial is created by the accused himself by casting in his application for transfer

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grave aspersions on the character of the trying Magistrate. *Lachmi v. Emperor*.

27 Cr. L. J. 939 : 96 I. C. 395 : 8 L. L. J. 303 : 2 Lah. Cas. 297 : 27 P. L. R. 491 & 570 : A. I. R. 1926 Lah. 470.

———S. 526—Ground—What is not.

It is no ground for transferring a case that the Magistrate, from a *bona fide* mistaken view of law, disallowed cross-examination of the prosecution witnesses by the accused. *Ashirbad Muchi v. Maju Muchini*. 1 Cr. L. J. 838 : 8 C. W. N. 838.

———S. 526—Ground—What is not—Impartiality of Magistrate not doubted.

N and four persons were put on their trial, the former under S. 411, and the latter under S. 381, Penal Code. The case of N was subsequently separated from that of the other four accused. The Magistrate proceeded first to dispose of the case under S. 381, which resulted in conviction. The case under S. 411 was then taken up : *Held*, that as there was nothing to find that the Magistrate would not try the case with perfect impartiality, the case could not be transferred. *Nathi Mal v. Emperor*. 15 Cr. L. J. 253 (b) : 23 I. C. 205 : A. I. R. 1914 All. 378.

———S. 526—Ground—What is not—Inquiry before commitment by Deputy Magistrate—Opinion formed by District Magistrate in extra-judicial proceeding.

The mere fact that the District Magistrate has formed an opinion as to the guilt of the accused in an extra-judicial proceeding is no ground for transferring an inquiry before commitment which is being conducted by a Deputy Magistrate. *Uma Nath Sukla v. Emperor*.

27 Cr. L. J. 551 : 93 I. C. 1047 : 2 O. W. N. 847 : A. I. R. 1926 Oudh 731.

———S. 526—Ground—What is not—Magistrate acquainted with enmity between prosecution and accused.

The circumstance that a Magistrate in his capacity of a Sub-Divisional Officer knows the existence of enmity between the prosecution and the accused and that the accused desires to cite the Magistrate to depose to that enmity, cannot be held to be a sufficient ground for transfer of the case to another Magistrate. *Lal Hari Har Bakhsh Singh v. Emperor*.

28 Cr. L. J. 65 : 99 I. C. 97 : 3 O. W. N. 944 : A. I. R. 1927 Oudh 31.

———S. 526—Ground—What is not—Magistrate and Advocate quondam class-fellows.

The mere fact that the trying Magistrate was a class-fellow at a distant time of the complainant respondent or an Advocate in the case, is no ground for transferring the case from him. *Gokul Prasad v. Emperor*.

30 Cr. L. J. 522 : 115 I. C. 641 : I. R. 1929 All. 417 : 1929 A. L. J. 616 : A. I. R. 1930 All. 262.

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supposing that the Magistrate was in any way biased or influenced, yet local feeling at the place where the case was tried was excited over the case and nearly every high official stationed there had given evidence against the applicant for transfer: *Held*, that it was desirable to try the case elsewhere. *Gurdial Singh v. Emperor*.

I. R. 1932 Lah. 654 (1).

—S. 526—Grounds—Magistrate acting under police influence.

Great alarm in district—Transfer of case to another district, held very necessary. *Maung Saw Hlaing v. Emperor*.

34 Cr. L. J. 1195 :
146 I. C. 23 : 6 R. Rang. 70 :

A. I. R. 1933 Rang. 165.

—S. 526—Grounds—Magistrate's action in other capacity—Trying Magistrate, expression of opinion by, in his executive capacity—Transfer on ground of enmity with superior officer.

An expression of opinion by the trying Magistrate on the merits of the case prejudicial to the accused even in his executive capacity, is a good ground for transfer. The High Court will not transfer a case outside a sub-division merely on the ground that the Sub-Divisional Magistrate is on inimical terms with the accused and the trying Magistrate who is subordinate to him is likely to be influenced by the alleged enmity of the Sub-Divisional Magistrate. *Motumal Morandmal v. Mohamed Ramzan*.

27 Cr. L. J. 802 :
95 I. C. 466 : 19 S. L. R. 117 :
A. I. R. 1926 Sind 253.

—S. 526—Grounds—Magistrate's action in other capacity.

Where a Magistrate has been taking steps as an Executive Officer to put down picketing of shops, it is desirable that such a Magistrate should not, as far as possible, hear cases arising out of picketing, in his judicial capacity. *Asanand v. Emperor*.

32 Cr. L. J. 491 :
130 I. C. 330 (1) : I. R. 1931 Lah. 266 :
32 P. L. R. 272 : A. I. R. 1931 Lah. 30 (1).

—S. 526—Grounds—Magistrate necessary witness for defence.

In applying for the transfer of a case on the ground that the Magistrate before whom it is pending, is a witness for the defence, the accused must satisfy the High Court that the Magistrate will be a necessary and essential witness for the defence. *Srilal Chamarai v. Emperor*.

19 Cr. L. J. 632 :
45 I. C. 680 : A. I. R. 1918 Cal. 175.

—S. 526—Grounds—Magistrate not conversant with language of evidence.

Where in a case there is a good deal of evidence, both oral and documentary, in English, and the Magistrate in whose Court the case is pending, does not know English, it may be necessary and perhaps advisable to transfer the case to some Magistrate who knows that language. *Mohammad v. Ali Raza*.

16 Cr. L. J. 73 :
26 I. C. 665 : A. I. R. 1915 All. 50.

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—S. 526—Grounds—Magistrate taking prominent part in Police investigation.

Where a Magistrate has taken more than a formal part in the Police investigation of a case, he is disqualified from trying the case, and if he proceeds to try it, the case ought to be transferred from his Court to the Court of some other Magistrate. *Nga Po Tha v. Emperor*.

26 Cr. L. J. 1317 (a) :
89 I. C. 261 : 4 Bur. L. J. 65 :
A. I. R. 1925 Rang. 219.

—S. 526—Grounds—Miscarriage of justice—Apprehension of miscarriage of justice, effect of.

It is well-established that in support of an application for transfer, it is sufficient for an applicant to prove circumstances likely to give rise to a reasonable apprehension in his mind that he will not get a fair trial and it is not necessary for him to prove any actual bias or prejudice in the mind of the Judge. An examination of accused under S. 342, Cr. P. C., amounting practically to a lengthy cross-examination of the accused directed to elicit his defence is a circumstance likely to create such apprehension and is a good ground for transfer of the case. *Faqir Singh v. Emperor*.

29 Cr. L. J. 769 :
110 I. C. 801 : 30 P. L. R. 305 :
10 Lah. 223 : A. I. R. 1929 Lah. 382.

—S. 526—Grounds—Opinion expressed.

Where in a case of rioting, a Magistrate before the trial commenced had expressed a decisive opinion upon the question of possession of the property in relation to which the riot was said to have taken place: *Held*, that the question of possession being the most important question in the case, it is expedient for the ends of justice that the case should be transferred to the file of some other Magistrate. *Sita Nath Mondal v. Emperor*.

1 Cr. L. J. 630 :
8 C. W. N. 641.

—S. 526—Grounds—Opinions formed.

Case and counter-case—Judge not in a position to approach counter-case with open mind—Case should be transferred. *Maula Khan v. Emperor*.

34 Cr. L. J. 46 :
140 I. C. 685 : 9 O. W. N. 963 :
I. R. 1933 Oudh 8 : A. I. R. 1933 Oudh 21.

—S. 526—Grounds—Opinion formed.

Where a Magistrate in a counter-case has clearly formed an opinion strongly against a party, the High Court will, in the interests of justice, transfer the case to some other Court. *Abdul Aziz v. Emperor*.

11 Cr. L. J. 702 (a) :
8 I. C. 721 : 1 M. W. N. 735.

—S. 526—Grounds—Opinion formed.

Where in framing charges against the accused, the Magistrate uses the expression "*Jurm sabit hai*" (the offence is established), it is sufficient to entitle the accused to get the case transferred to some other Magistrate. *Siri Kishan v. Gokal Chand*.

23 Cr. L. J. 168 :
65 I. C. 632.

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that as the application for transfer was not based on any allegation against the Magistrate in whose Court the proceedings were being conducted, an order of transfer could not be made; (2) that if the unreasonable restraints which hampered the accused in his defence were not removed by the superior officers of Police, it would be necessary for the High Court to consider whether pending the removal of the restraints, the criminal proceedings against the accused should not be stayed. *Harihar Roy v. Emperor*.

20 Cr. L. J. 230 :

49 I. C. 854 : 23 C. W. N. 479 :

A. I. R. 1919 Cal. 156.

S. 526—Ground—What is not.

Trial of another case by same Magistrate against same accused is no ground for transfer. *Sadasheo Suryabhanji Kunbi v. Emperor*.

34 Cr. L. J. 1035 :

145 I. C. 445 : 6 R. N. 50 :

29 N. L. R. 338 :

A. I. R. 1933 Nag. 201.

S. 526—Ground—What is not—Trying Magistrate subordinate to District Magistrate, whether ground for transfer.

The mere fact that a Magistrate in whose Court a case is pending trial is in his executive capacity subordinate to the District Magistrate who has taken a strong view with regard to the merits of the case, is by itself not a sufficient ground for transferring the case under S. 526, Cr. P. C., to some other Magistrate outside the district. *Chandi Missir v. Shyama Charan Ghosh*.

22 Cr. L. J. 257 :

60 I. C. 657.

S. 526—Ground—What is not.

Two complaints—One against and other by, accused—Parties same—Complaint of accused dismissed—There is no ground for transfer of complaint against him. *Ghulz mali v. Emperor*.

36 Cr. L. J. 866 :

155 I. C. 994 : 7 R. S. 220 :

A. I. R. 1935 Sind 72.

S. 526—Ground—What is not.

Where certain strikers against a Navigation Company are placed on their trial under Ss. 506 and 148, Penal Code, before the District Magistrate, it is no ground for the transfer of the case that the District Magistrate has been taking precautions against the intimidation and illegal picketing indulged in by the strikers likely to result in a breach of the peace. *Nogendra Chandra Das v. Rehan Ali*.

23 Cr. L. J. 88 :

65 I. C. 440.

S. 526—Ground—What is not, whether good ground.

The mere fact that a Magistrate has, in a previous case, expressed an opinion adverse to the accused, is not *ipso facto* a sufficient ground for transfer. *Dayaram v. Emperor*.

29 Cr. L. J. 589 :

109 I. C. 605 : A. I. R. 1928 Nag. 217.

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S. 526—Grounds—Witness disbelieved—Magistrate, power of, to record note concerning demeanour of witness.

S. 363, Cr. P. C., empowers a Magistrate to record such remarks, if any, as he thinks material, respecting the demeanour of a witness whilst under examination. During the examination of a witness, the Magistrate recorded the following remark with regard to his demeanour:—"The witness falters and from his demeanour, it appears that he has not told the truth." On an application for transfer: *Held*, that the Magistrate having signified that he altogether disbelieved the witness, it was desirable that the case should be transferred to some other Magistrate. *Golam Bari Gazi v. Yar Ali Khan*.

26 Cr. L. J. 852 :

86 I. C. 708 : 29 C. W. N. 316 :

A. I. R. 1925 Cal. 480.

S. 526—Grounds for transfer—Transfer—Communal cases.

In cases of transfer where communal interests are involved, a transfer should be granted with considerable hesitation. In a case for transfer, the matter is not to be decided in the abstract whether a certain Magistrate would deal with a matter impartially or not. The question always would be whether through some error or unfortunate accident, the Magistrate has behaved in a way to give legitimate ground for fear to one party or the other. *Ghassoo v. Emperor*.

31 Cr. L. J. 555 :

123 I. C. 685 : 1930 A. L. J. 606 :

A. I. R. 1930 All. 737.

S. 526—Grounds for transfer—Transfer of criminal case—Reasonable apprehensions.

In order to test what is a reasonable apprehension, the Court ought to place itself in the position of the accused to consider the facts and circumstances attending his position. In the present constitution of the criminal judicial administration of the country, a Sub-Divisional Magistrate has to perform some of the functions of the Police as also those of a Judge and a well-balanced mind may not find any bias in the mind of the Judge however incongruous his actions may be. But the appreciation of a mind properly constituted cannot be the standard to judge of the feelings of an ordinary man accused of an offence. If the words used by and the actions of a Judicial Officer, though susceptible of explanation and traceable to a superior sense of duty, are calculated to create in the mind of the accused an apprehension that he may not have an impartial trial, it is expedient for the ends of justice to transfer the case to another Judge for trial. *Kali Charan Ghose v. Rajjab Ali*.

3 Cr. L. J. 477 :

10 C. W. N. 793 : 3 C. L. J. 637.

S. 526 (8)—Illegality of proceedings—Refusal to grant opportunity to accused to apply for transfer.

The refusal by the Magistrate to grant a reasonable opportunity for the accused to

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—S. 526—Grounds—Refusal to call defence witness—Refusal to call particular defence witness is no ground for transfer.

Refusal of a Magistrate to call a particular person as a defence witness is no reason for transferring the case. *Jaffar Beg v. Emperor*.

41 Cr. L. J. 948 :
190 I. C. 561 : 13 R. L. 215 :
A. I. R. 1940 Lah. 354.

—S. 526—Grounds—Refusal to grant interview—Application for transfer—Materials to be considered.

What the Court has to consider on an application for transfer is not merely the question whether there has been a real bias in the mind of the presiding Magistrate against the accused but also the further question whether incidents may not have happened which, though they may be susceptible of explanation and may have happened without any real bias in the mind of the Magistrate, are nevertheless such as are calculated to create in the mind of the accused a reasonable apprehension that he may not have a fair and impartial trial. Where a District Magistrate cancelled the license for arms held by an accused and refused to grant an interview to him: *Held*, that the circumstances were sufficient grounds for transfer of the case from the district. *Ram Kishan Das v. Emperor*.

13 Cr. L. J. 823 :
17 I. C. 567 : 10 A. L. J. 357 : 30 All 5.

—S. 526—Grounds—Relation—Advocate appearing in case being official superior of Magistrate's brother.

Where an advocate appearing in the case is the official superior of the Magistrate's brother, the matter as to whether he should or should not try the case himself should better be left to the good sense of the Magistrate and if he feels that in the particular case, by reason of the relationship of his brother to the Advocate, he feels himself in any way embarrassed in dealing with the matter, he should send the papers to the superior Court which can, in the inquiry held by itself, make any necessary complaint. *Jethanand Hemandas v. Emperor*.

40 Cr. L. J. 750 :
183 I. C. 195 : 12 R. S. 47 :
A. I. R. 1939 Sind 181.

—S. 526—Grounds—Relation—Engagement of near relation of Magistrate as Counsel—Practising in Court of near relation, propriety of.

Where the case is a Crown case and the prosecution is being conducted by the Court Inspector, engagement of a Counsel who is a brother of the Magistrate by the complainant to simply watch the proceedings is no ground for transfer of the case. But the case would be otherwise if such counsel took any active part in the conduct of the prosecution. It is not very seemly or suitable that a practising lawyer should pursue his practice in the Court of a near relative. *Dwarika Singh v. Emperor*.

27 Cr. L. J. 844 :
95 I. C. 764 : 7 P. L. T. 770 :
1926 Pat. 383 : A. I. R. 1926 Pat 464.

—S. 526—Grounds—Relation.

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It is undesirable that a member of the legal profession should practice in a Court presided over by a near relation. Where one of the lawyers engaged in a case is a near relation of the presiding Magistrate, the case should be transferred from the Court of that Magistrate to that of some other competent Magistrate. *Nityaranjan Mondal v. Emperor*.

26 Cr. L. J. 1183 :
88 I. C. 607 : 29 C. W. N. 648 :
A. I. R. 1925 Cal. 806.

—S. 526—Grounds—Trial impartial—Expression of opinion on same facts in previous case whether ground for transfer.

The policy of law relating to transfer of criminal cases is to inspire confidence in the minds of accused persons in the administration of justice and in the integrity of the Magistracy. The superior Courts are expected to have due regard to the susceptibilities of the accused persons, and if they are satisfied that there are reasonable grounds for entertaining an apprehension that the accused will not have a fair and impartial trial in the Court of a Magistrate, then an order for transfer should be made. The mere fact that in a previous case against other accused under the same section and almost on identical facts the Magistrate convicted the accused then before him is no ground for transferring a case. *Amar Nath v. Emperor*.

29 Cr. L. J. 295 :
107 I. C. 783 : A. I. R. 1928 Lah. 460.

—S. 526—Grounds—Transfer—Magistrate accepting hospitality of complainant's son.

A Magistrate's accepting hospitality of the complainant's son is a circumstance which would naturally raise a reasonable apprehension in the mind of the accused that he would not have a fair trial though the Magistrate may have been quite ignorant of the fact that his host was the son of the complainant. *Narain Singh v. Emperor*.

27 Cr. L. J. 565 :
94 I. C. 133 : A. I. R. 1926 Lah. 347.

—S. 526—Grounds—Unfair trial.

Magistrate examining accused on detailed instructions of Counsel for prosecution—Transfer of case is expedient. *Krishna Murarilal v. Emperor*.

34 Cr. L. J. 1172 :
146 I. C. 149 (1) : 16 N. L. J. 158 :
6 R. N. 75 (1) : A. I. R. 1933 Nag 269.

—S. 526—Grounds—Unlawful refusal of bail and unnecessary adjournment.

Where the application for bail by the accused is unlawfully refused and the trial of the case is deliberately postponed by granting unnecessarily lengthy adjournments, there is sufficient cause for the transfer of the case to some other Magistrate competent to try it. *M. A. Azeez v. The King*.

41 Cr. L. J. 252 :
186 I. C. 147 : 12 R. Rang. 258 :
A. I. R. 1940 Rang. 26.

—S. 526—Ground—Unnecessary adjournment—False charge of offence made with intent

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clear away everything which might engender suspicion and distrust of the Tribunal and so to promote the feeling of confidence in the administration of justice which is so essential to social order and security. The fact that the Magistrate trying a case appears to have been influenced by a private individual with regard to the disposal of the case, is a sufficient ground for directing that the case be transferred from the Court of that Magistrate to some other Court competent to try the same. *Awadh Singh v. Puran Kandu*. 22 Cr. L. J. 726 : 64 I. C. 38 : 2 P. L. T. 198 : A. I. R. 1921 Pat. 413.

———S. 526—Object of—Justice should appear to have been done.

It is of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done. One important object is to clear away everything which might engender suspicion and distrust of the Tribunal, and so to promote the feeling of confidence in the administration of justice which is so essential to social order and security. *Hemanta Kumar Sarkar v. Nanda Kumar Singh*. 38 Cr. L. J. 344 : 167 I. C. 251 : 41 C. W. N. 188 : 9 R. C. 660 : 64 C. L. J. 532 : A. I. R. 1937 Cal. 64.

———S. 526—Powers of High Court—Case before village Panchayat.

The High Court has jurisdiction under S. 526 read with S. 5 to transfer a case pending before a village Panchayat. *Basdeo Misra v. Badal Misra*. 28 Cr. L. J. 94 : 99 I. C. 126 : 49 All. 188 : 25 A. L. J. 157 : A. I. R. 1927 All. 199.

———S. 526—Powers of High Court.

Case triable both by First Class Magistrate and Sessions Court—Likelihood of case embracing within it charges for offences exclusively triable by Sessions Court—Difficult questions of law likely to arise—Transfer of case to Court of Session is proper. *Botting v. Emperor*. 35 Cr. L. J. 928 : 149 I. C. 235 : 11 O. W. N. 780 : 6 R. O. 532 : A. I. R. 1934 Oudh 349.

———S. 526—Powers of High Court—Commitment to Sessions Court having jurisdiction.

When a case has been committed for trial to a Sessions Court which has no jurisdiction to try it, it is open to the High Court to transfer it from that Court to another Court having jurisdiction to try the case. *Wahid Bux Bhutto v. Emperor*. 30 Cr. L. J. 1121 : 120 I. C. 81 : I. R. 1929 Sind 225 : A. I. R. 1929 Sind 250.

———S. 526—Powers of High Court.

Local Government naming a Judge to try particular case and directing him to hold his Court at particular place—Such order is valid, but the High Court has power to transfer the case. *Emperor v. Lakshman Chanji Narangekar*. (F. B.) 32 Cr. L. J. 1147 : 134 I. C. 347 : 33 Bom. L. R. 652 : 55 Bom. 576 : I. R. 1937 Bom. 459 : A. I. R. 1931 Bom. 313.

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———S. 526—Powers of High Court—No apprehension on part of applicant that Magistrate will not deal fairly and honestly in deciding questions in dispute—Case cannot be transferred.

The High Court can, of its own motion, under Sub-s. (3) of S. 526, Cr. P. C., transfer a case : it can, if it thinks proper, act upon the application of a witness, and would certainly do so if it is satisfied that the process of the Court is being abused, that the proceedings are sham or bogus proceedings instituted or continued for some ulterior purpose, for a purpose not within the intention and provisions of the relevant sections of the Code. Where, however, no useful purpose, public or private, can be served by the transfer of the case nor is there any reasonable ground for apprehension on the part of the applicant that the Magistrate will not deal fairly and honestly in his final order with the questions under the provisions of the Cr. P. C. before him for his decision, the case cannot be transferred. *Om Radhe v. Emperor*. 40 Cr. L. J. 803 : 183 I. C. 460 : 12 R. S. 55 : A. I. R. 1939 Sind 238.

———S. 526—Powers of High Court.

Order of transfer under S. 526—Change of place of trial or change from Jury to Assessors or *vice versa*—Such change is no bar to the exercise of High Court's powers under S. 526. *Emperor v. Lakshman Chanji Narangekar*. (F. B.) 32 Cr. L. J. 1147 : 134 I. C. 347 : 33 Bom. L. R. 675 : 55 Bom. 576 : I. R. 1931 Bom. 459 : A. I. R. 1931 Bom. 313.

———S. 526—Powers of High Court.

Powers given to High Court under S. 526 are not limited by the provisions of S. 107 or S. 110. *Wahid Ali v. Emperor*. 11 Cr. L. J. 412 : 6 I. C. 874.

———S. 526—Powers of High Court—Proceedings instituted in Court having no jurisdiction—Transfer, whether can be directed.

Proceedings instituted in a Court which has no jurisdiction in respect of them cannot be regarded as legally instituted at all, and the High Court has no power to transfer them to any other Court. The High Court can, however, in such a case, in the exercise of its inherent powers of superintendence, direct the Court not to proceed further in the matter. *In re : Sikka Goundan*. 24 Cr. L. J. 351 : 72 I. C. 351 : 17 L. W. 69 : A. I. R. 1923 Mad. 326.

———S. 526—Powers of High Court.

The High Court will exercise the powers given to it under S. 526 (6-A), in all frivolous or vexatious applications for transfer. *In re : Damodar Bapuji Padval*. 32 Cr. L. J. 805 : 131 I. C. 891 : 33 Bom. L. R. 311 : I. R. 1931 Bom. 315 : A. I. R. 1931 Bom. 206 (1).

———S. 526—Powers of High Court.

Where a Presidency Magistrate had made up his mind regarding a case, the High Court on the case coming under its revisional jurisdiction

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appeals for trial by another Sessions Judge.
Jagrup v. Emperor. 22 Cr. L. J. 416 :
 61 I. C. 656 : 2 U. P. L. R. 421.

—S. 526—Ground—What is not.

Applications for transfer cannot be lightly granted where they are based on fanciful and sentimental grounds or are supported by false affidavits. *Mashar Khan v. Emperor.*

29 Cr. L. J. 220 :

107 I. C. 108 : A. I. R. 1928 Lah. 276.

—S. 526—Ground—What is not—Apprehension of conviction in cross-complaint.

It is desirable that cross-complaints should ordinarily be disposed of by the same Magistrate. Therefore, the mere fact that the petitioner's complaint has been dismissed and he is apprehensive of a conviction in the cross-complaint is no ground for transfer of the cross-complaint. *Walidat v. Nizam-ud-din.*

29 Cr. L. J. 934 :

111 I. C. 854 : A. I. R. 1929 Lah. 48.

—S. 526—Ground—What is not—Apprehension that Magistrate would not give effect to certain legal objections—Transfer.

A case cannot be transferred on the sole ground that it is apprehended that in the ultimate judgment which the Magistrate would deliver in the case, he would not give effect to certain legal objections which might be taken at the trial. *Muhammad Azim v. Niaz Muhammad.*

29 Cr. L. J. 289 :

107 I. C. 773 : A. I. R. 1928 Lah. 317.

—S. 526—Ground—What is not—Bias—Impressions based upon evidence.

Where the impressions recorded in a judgment by a Magistrate, are derived from evidence, however erroneous they may be, they cannot be classed with instances of the personal bias, which is regarded as disqualifying the Magistrate from trying the case. *In re : Vadiat Ulla Ram.*

1 Cr. L. J. 1108 :

6 Bom. L. R. 1092.

—S. 526—Ground—What is not—Cognizable case—Complainant applying for transfer—Crown opposing—Transfer shall not be granted—Magistrate already being in house of accused as tenant long before case started.

Though the complainant in a cognizable case is entitled to apply for transfer under S. 526, Cr. P. C., his rights must be subordinate to those of the Crown, and in the case of conflict between the two, the right of the Crown must prevail. Where, therefore, such an application is opposed by the Crown, it shall not be granted. The mere fact that the Magistrate lives in the house of the accused which he had taken on rent long before the case was instituted, is not a ground for transfer of the case at the instance of the complainant in a cognizable case, especially if the Crown opposes the transfer. *Emperor v. Dhanu.*

39 Cr. L. J. 853 (b) :

177 I. C. 187 : 40 P. R. 468 : 11 R. L. 274 :

A. I. R. 1938 Lah. 569.

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—S. 526—Ground—What is not—Complainant related to a friend of the Magistrate—Increasing of bail during trial.

The fact that a Magistrate is a friend of a remote relative of the complainant is not *per se* a ground for transferring a case to another Court. A Magistrate is justified in increasing the amount of bail, if by further proceedings, the case turns out to be more serious than he first imagined. *Sita Ram v. Gobind Sahai.*

13 Cr. L. J. 474 :

15 I. C. 314 : 4 P. W. R. 1912 Cr. :

66 P. L. R. 1912.

—S. 526—Ground—What is not—Conviction of accused—Remand to same Magistrate, whether desirable—Magistrate having tried similar case between parties previously—Subsequent case, transfer of.

Where a Magistrate has already convicted an accused person of an offence and the latter, for some reason or other, has to be re-tried, that Magistrate is competent to try the case over again. But, where it is possible, it is desirable that such a re-trial should not be taken by an officer who has already expressed his final opinion upon the matter. The mere fact, that a Magistrate has tried some other case involving somewhat similar facts possibly between the same parties, does not by itself necessarily constitute any ground why a case should not be tried by that Magistrate. *Mahadeb Marwari v. Kishun Lal Marwari.*

24 Cr. L. J. 339 :

72 I. C. 339 : 3 P. L. T. 147 :

A. I. R. 1922 Pat. 60.

—S. 526—Ground—What is not—Conviction of one set of accused by Presidency Officer, whether ground for transferring subsequent trial of another set of accused.

While it is sound doctrine that a reasonable apprehension in the mind of an accused that he will not have a fair trial, is a sufficient ground for transfer, yet in applying the doctrine, regard must be had to the circumstances in each case. The mere fact that in another case the presiding officer had convicted one set of accused is not in itself a ground for transferring a subsequent case in which another set of accused are put on trial on the same set of circumstances. *Ramyad Singh v. Emperor.*

31 Cr. L. J. 732 :

124 I. C. 846 : 11 P. L. T. 248 :

A. I. R. 1930 Pat. 337.

—S. 526—Ground—What is not—Discharge of cross-case.

The fact that a Magistrate has discharged a cross-case between the same parties is not *per se* sufficient ground for transferring a case from his Court. When the Magistrate has heard evidence in both cases, which he is not keeping distinct in his own mind, and has discharged the one case on the evidence that he has heard in both cases, that is not a sufficient reason for transferring the other case from his Court. *Emperor v. Mahram Dhanibuk.*

13 Cr. L. J. 532 :

15 I. C. 804 : 5 S. L. R. 264.

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other Court. *Shamshad Ali Khan v. Mohammad Amin Khan*. 34 Cr. L. J. 383 :

142 I. C. 696 (1) : 33 P. L. R. 1032 :
14 Lah. 201 : I. R. 1933 Lah. 245 (1) :
A. I. R. 1933 Lah. 96.

—S. 526—Reasonable apprehension.

The transfer of a criminal case should not necessarily be ordered simply because an accused person thinks that he would not get an impartial trial, but the real question to be considered is whether on the facts disclosed in the application for transfer, there arises a reasonable inference that the Magistrate who is seized of the case may be prejudiced willingly or unwillingly against the accused. *Sumeshwar v. Emperor*. 14 Cr. L. J. 666 :

21 I. C. 906 : 12 A. L. J. 33 :
A. I. R. 1914 All. 241.

—S. 526—Remand—Accused, whether entitled to transfer to another Court.

Where an Appellate Court after setting aside a conviction, remands the case to the same Court for re-trial, the accused is not entitled to transfer of the case from such Court on the mere ground that it has already expressed its opinion against him. It is not obligatory on an Appellate Court remanding a case for re-trial to always send the case to a Magistrate different to the one who tried the case originally. *Muhammad Shafi v. Emperor*. 28 Cr. L. J. 647 :

103 I. C. 103 : A. I. R. 1927 Lah. 546.

—S. 526—Remand.

It is advisable when a case is remanded on appeal that it should be sent to some other Magistrate. *Mishri Lal v. Emperor*.

37 Cr. L. J. 459 :
161 I. C. 317 (a) : 18 N. L. J. 199 :
8 R. N. 210.

—S. 526—Re-transfer—Transfer by District Magistrate, without notice to accused, legality of.

A District Magistrate before passing an order of transfer of a criminal case, should give an opportunity to the accused to show cause why transfer should not be made. Where he fails to do so, the order is liable to be set aside in revision by the High Court. An order of transfer is not a final order. If sufficient grounds are shown, a case once transferred can be re-transferred to the same Magistrate or transferred to any other Magistrate who, in the opinion of the District Magistrate, would be the proper person to try the case. *In re : Ramaling Odayar*. 29 Cr. L. J. 734 :

110 I. C. 590 : 51 Mad. 610 :
55 M. L. J. 217 : 28 L. W. 303 :
A. I. R. 1928 Mad. 560.

—S. 526—Re-trial—Magistrate having already expressed final opinion on the matter should not try the case.

A re-trial should not take place before the Magistrate who has already expressed his final opinion upon the matter. *Muhammad Kaiser v. Emperor*. 38 Cr. L. J. 229 :

166 I. C. 466 : 3 B. R. 170 (2) : 9 R. P. 299 (1).

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—S. 526—De novo trial—Re-trial.

The question as to whether a trial before a particular Magistrate is expedient for the ends of justice or not is a question which has got to be considered from the point of view of the accused person as well and unless it is impossible to get a Magistrate other than the one who has already convicted the accused person on the same charge at a previous trial or unless there be circumstances which would necessitate the trial of the same case before the same Magistrate, it is desirable that the trial should not be held before the same Magistrate. *Bali Ram Kalwar v. Sita Ram Kalwar*. 27 Cr. L. J. 1188 :

97 I. C. 948 : 30 C. W. N. 1002 :
A. I. R. 1926 Cal. 1173.

—S. 526—Revision.

Revision to pronounce order of transfer as improper is not incompetent. *Udhomal Karmumal v. Majnibai Udhomal*.

34 Cr. L. J. 861 :
144 I. C. 881 : 6 R. S. 14 :
A. I. R. 1933 Sind 205.

—S. 526—Right of accused—Convenience and expedition.

While it is true that convenience and expedition are factors to be considered in the trial of a case, it must be remembered that beyond these considerations even more important consideration is that justice should be done, and the necessity for expedition should not be allowed to deprive the accused of a reasonable opportunity to call evidence in defence on a charge of an offence of which, at the outset of the proceedings, he had no knowledge he would be called upon to meet. *Jashanmal (J) Gulrajani v. Emperor*. 40 Cr. L. J. 818 (b) :

183 I. C. 619 : 12 R. S. 64 : 1940 Kar. 95 :
A. I. R. 1939 Sind 222.

—S. 526—Right of accused—Conviction under S. 360, Penal Code.

Where an Appellate Court sets aside the conviction under S. 360, Penal Code, and remands the case for re-trial holding that there is a *prima facie* case under S. 360 or S. 360-A, and on a conviction after the remand, the accused files an appeal before the same Appellate Court, his application for transfer of the appeal to another Court is justified, and in the interest of justice, it should be allowed. *Allahbakhsh v. Emperor*. 39 Cr. L. J. 28 (b) :

171 I. C. 912 : 10 R. Rang. 201 :
A. I. R. 1937 Rang. 391.

—S. 526—Right of Private Prosecutor to apply for transfer—Cognizable case sent up for trial by Police—Transfer by District Magistrate without notice—Legality.

Even in a cognizable case sent up for trial by the Police, the private prosecutor is entitled to apply for transfer of the case under S. 526, Cr. P. C., only his rights are subordinate to those of the Crown, so that in case of a conflict between him and the Public Prosecutor in the

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———S. 526—Ground—What is not—Magistrate displeased.

The fact that a Magistrate by his attitude shows that he is displeased with an accused person is not a sufficient ground for transferring a case. *Sital Pande v. Emperor*.

21 Cr. L. J. 809 :

58 I. C. 681 :

A. I. R. 1919 All. 29.

———S. 526—Ground—What is not—Magistrate expressing opinion against one party on evidence in one case.

Two parties having been put upon their trial for the offences of rioting before the same Magistrate, the Magistrate on the trial of one of the parties expressed an opinion that the members of the party were aggressors : *Held*, that such expression of opinion was no sufficient reason for transferring the case of the other party to some other Magistrate. *Emperor v. Hargobind*.

12 Cr. L. J. 564 (a) :

12 I. C. 652 : 33 All. 583.

———S. 526—Ground—What is not—Opinion of Judge on evidence in prior counter-case.

It is not a sufficient ground for the transfer of a criminal case that the Judge, in a former proceeding arising out of a counter-case, expressed certain views upon the evidence as to which of two versions was correct. Judges, must be presumed to be upright men, who will approach a case from the point of view of that case alone and not permit their minds to be affected in any way by anything that has gone before that case. *Amrit Mondal v. Emperor*.

18 Cr. L. J. 95 :

37 I. C. 159 : 1 P. L. J. 399 :

1917 Pat. 30 : 3 P. L. W. 70 :

A. I. R. 1916 Pat. 33.

———S. 526—Ground—What is not—Sensational nature of case.

The fact that a case is a sensational one cannot, without qualification, be accepted as a ground for the transfer of a case at all. *Sugnomal Tahilram v. Pralandas Relumal*.

38 Cr. L. J. 133 (b) :

166 I. C. 83 (2) : 9 R. S. 120 :

30 S. L. R. 327 : A. I. R. 1936 Sind 237.

———S. 526—Ground—What is not.

The conduct of the Police even if it be unjustifiable is no ground for transferring the case from the District. *Badle v. Emperor*.

150 I. C. 1095 : 36 P. L. R. 240 :

7 R. L. 91 : A. I. R. 1934 Lah. 516.

———S. 526—Ground—What is not.

The fact that a Magistrate trying a case proposes to conduct that portion of the proceedings in which the complainant, who is a very old man and for many years, has not left the precincts of his residence, is a witness, at the latter's residence, giving the accused every opportunity of being represented and conducting his case there, does not call for a transfer of the case, as the circumstances would, in no way, prejudice the trial. *Ishwar Das v. Emperor*.

27 Cr. L. J. 344 :

92 I. C. 856 : A. I. R. 1926 Oudh 290.

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———S. 526—Ground—What is not.¹

The fact that the Magistrate is a personal friend of the complainant is no ground for transferring the case. *In re : Damodar Bapuji Padval*.

32 Cr. L. J. 805 :

131 I. C. 891 : 33 Bom. L. R. 311 :

I. R. 1931 Bom. 315 :

A. I. R. 1931 Bom. 206 (1).

———S. 526—Ground—What is not.

The petitioner filed a complaint in the Court of the Senior Assistant Commissioner and 1st Class Magistrate, Bangalore, that the counter-petitioners had committed criminal trespass and mischief with the countenance of the *taluk* authorities. The case was referred to the *taluk* Amildar for investigation and report. On this, the petitioner preferred a petition to the District Magistrate praying that, as the said order was prejudicial to his case, the Senior Assistant Commissioner himself or some other Magistrate may be directed to investigate the case. The District Magistrate declined to interfere. The petitioner applied to the Chief Court under S. 526. Cr. P. C. : *Held*, that the proper course for the petitioner was to represent his objections to the 1st Class Magistrate who had acted within his jurisdiction in ordering the investigation and that no case had been made out for a transfer. *M. K. Krishna Murthi Rao v. Emperor*.

9 Cr. L. J. 534 :

13 M. C. C. R. 82.

———S. 526—Ground—What is not.

The suggestion that the Police Superintendent and the Magistrate cannot meet and break bread together without exposing themselves to the imputation that they were engaged in some nefarious machination, is a suggestion which a Court should decline to entertain as a ground for transfer of the case. *Abdullah Khan Khair Mohamed Khan v. Emperor*.

33 Cr. L. J. 908 :

139 I. C. 791 : 26 S. L. R. 255 :

I. R. 1932 Sind 151 : A. I. R. 1933 Sind 17.

———S. 526—Ground—What is not.

There is no provision in the Code for granting adjournment for the trial of questions of law in revision during a trial, and refusal to grant such an adjournment is no ground for transfer. *Abdullah Khan Khair Mahomed Khan v. Emperor*.

33 Cr. L. J. 908 :

139 I. C. 791 : 26 S. L. R. 255 :

I. R. 1932 Sind 151 : A. I. R. 1933 Sind 17.

———S. 526—Ground—What is not—Transfer of case—Magistrate, allegations against, absence of—Restraints imposed by Police; whether ground for transfer.

The accused, who was a Havildar of Police, was placed on his trial on charges of extortion under S. 384, Penal Code. As pending the trial, certain unreasonable restraints were imposed upon him by the superior officers of Police which hampered him in his defence, he made an application to the High Court for the transfer of the proceedings against him to another district : *Held*, (1)

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—S. 526—Transfer—Principles.

In dealing with the application for transfer, what the Court has to consider is not merely the question whether there has been any real bias in the mind of the Presiding Judge against the applicant, but also a further question whether incidents may not have happened which though they may be susceptible of explanation and may have happened without there being a real bias in the mind of the Judge are nevertheless such as are calculated to create in the mind of the applicant a justifiable apprehension that he would not have an impartial trial. One important object is to clear away everything which might engender suspicion and distrust of the Tribunal and so to promote the feeling of confidence in the administration of justice which is essential to social order and security. *Amar Singh v. Sadhu Singh*.

26 Cr. L. J. 853 :
86 I. C. 709 : 2 L. C. 28 :
6 Lah. 396 : 7 L. L. J. 241 :
A. I. R. 1925 Lah. 361.

—S. 526—Transfer, principles underlying—Want of confidence.

The position of an accused person must always be one of great anxiety and suspense. Any incident, moreover, giving rise to such a suggestion, is especially in this country, liable to react upon witnesses appearing in the case. Ordinarily before a transfer is granted, it is well that we should be satisfied, if want of confidence is alleged, that there is foundation for such want of confidence. *In re : Virji Tricumji*.

1 Cr. L. J. 934 :
6 Bom. L. R. 856.

—S. 526—Transfer.

Trying Magistrate required by accused as defence witness, ground for a transfer.

1 Cr. L. J. 338 :
26 All. 536 : 24 A. W. N. 24.

—S. 526—Transfer for second time—Case already transferred once.

When a case has already been transferred, very strong grounds are required to transfer it a second time. If accused or his Counsel are so unfortunate as to have a reasonable apprehension that the second Magistrate will not give them justice and want to get their case transferred to a third Magistrate, it may well be supposed that the accused or his Counsel are to blame in part. *Jaffar Beg v. Emperor*.

190 I. C. 561 : 13 R. L. 215 :
A. I. R. 1940 Lah. 354.

—S. 526—Transfer of case—Good grounds for transfer, what are.

The refusal by a Magistrate to permit the cross-examination of the prosecution witnesses after all of them have been examined in chief, the cancellation of bail-bonds of an accused made after an application for stay of proceedings pending an application for transfer of the case, and the refusal to furnish the accused with copies of depositions of witnesses for the prosecution are good grounds

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for directing the transfer of a case. *Titu Sabu v. Emperor*.

21 Cr. L. J. 630 :
57 I. C. 454 : 1920 Pat. 283 :
1 P. L. T. 652 : A. I. R. 1920 Pat. 492.

—S. 526—Transfer of case.

In a complaint of mischief and house trespass, the Magistrate took bail from the accused, and then fixed a date for hearing, but, when the peon went to take the accused's signature, he declined to sign the order of hearing on the plea that he was busy. Before he was again approached for his signature, he had started for another place. The Magistrate accordingly issued a warrant for his apprehension, and he was brought back and compelled to give further bail. He accordingly applied for the transfer of the case: *Held*, that though the Magistrate had failed to exercise his discretion wisely, he had done nothing at all illegal or at all malicious, that a case for transfer could be considered to have been made out; that in all such applications, the question was not so much whether there was bias but rather whether there was in the mind of the accused a reasonable apprehension that he might not have a fair and impartial trial. *Malck Bapjiraj Bapjikan v. Emperor*.

5 Cr. L. J. 39.

—S. 526—Transfer of case—Grounds for.

Where a Magistrate made an order during the trial of a case that he would examine only one witness a day and thus protracted the proceedings inordinately: *Held*, that this was sufficient ground for directing that the case should be transferred from the Court of that Magistrate to the Court of some other competent Magistrate. *Narain Das v. Emperor*.

26 Cr. L. J. 1363 :
89 I. C. 451 : 1 L. C. 525 :
A. I. R. 1926 Lah. 78.

—S. 526—Transfer of case—Grounds for.

Where on account of the weakness of a Magistrate it was apprehended that a case under S. 110, would take a very long time if it were allowed to remain in that Magistrate's Court, the High Court transferred the case to another Magistrate. *Gobind Sahai v. Emperor*.

15 Cr. L. J. 363 :
23 I. C. 731 : 12 A. L. J. 262 :
A. I. R. 1914 All. 430.

—S. 526—Transfer of case—Principles underlying.

One of the most important duties of a High Court is to create and maintain confidence in the administration of justice, and this can only be done by giving to every citizen an assurance, that so far as practicable, he will never be forced to undergo a trial by a Judge or Magistrate whom he has reasonable grounds of suspecting to be prejudiced against him. Magistrate should not only preserve an outward appearance of impartiality, but should maintain the internal freedom from bias incumbent on judicial Officers, and if they allow their executive zeal to appear to outrun their judi-

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apply for a transfer before putting him on his defence is illegal under S. 526 (8), Cr. P. C., and the proceedings subsequent to such refusal are also illegal. *Emperor v. Shewa Uka*.

10 Cr. L. J. 570 :
4 I. C. 379 : 3 S. L. R. 155.

———S. 526—*Jurisdiction — Extra-judicial knowledge of important men and their characters, whether Magistrate is deprived of jurisdiction by.*

Merely by reason of extra-judicial information about men of importance and position in his sub-division and their characters, an administrative officer cannot be deprived of jurisdiction as Magistrate. *Baqirdee v. Emperor*.

31 Cr. L. J. 764 :
125 I. C. 32 : A. I. R. 1930 All. 495.

———S. 526—*Jurisdiction—Whether of 'equal jurisdiction' with the Court of any other Presidency Magistrate.*

The Court of the Chief Presidency Magistrate is of 'equal jurisdiction' to the Court of any other Presidency Magistrate within the meaning of S. 526, Cr. P. C. Two Courts are of equal jurisdiction when they are empowered by law to entertain the same class of cases and to dispose of them in the same way. The High Court has power, both under S. 526, and under the Charter Act, to transfer a case from the file of the Chief Presidency Magistrate to that of any other Presidency Magistrate. *In re : Venkateswara Sastri*.

12 Cr. L. J. 451 :
11 I. C. 795 : 10 M. L. T. 518 :
22 M. L. J. 114.

———S. 526—*Legality of conviction—Conviction based on evidence recorded before transfer.*

Evidence recorded by a Magistrate who had no jurisdiction, cannot be legally considered by the Magistrate having jurisdiction to whom the case is ultimately transferred. A conviction based partly on evidence recorded by a Magistrate who had no jurisdiction and partly on evidence recorded by a Magistrate having jurisdiction is illegal. *Budha Tatwa v. Emperor*.

29 Cr. L. J. 464 :
109 I. C. 175 : 47 C. L. J. 122 :
I. L. T. 40 Cal. 72 :
55 Cal. 65 : A. I. R. 1928 Cal. 183.

———S. 526—*Miscellaneous.*

It is highly improper on the part of the trying Magistrate to send for a party to a case pending in his Court to his house and then to press upon him the desirability of a compromise. *Rahim Bakhsh v. Dula*.

32 Cr. L. J. 537 :
130 I. C. 430 : 32 P. L. R. 358 ;
I. R. 1931 Lah. 302 :
A. I. R. 1931 Lah. 32.

———S. 526—*Miscellaneous.*

Necessity for amending S. 526 pointed out. *Bhupendra Nath Sinha v. Girdharilal Nagar*.

34 Cr. L. J. 958 :
145 I. C. 416 (b) : 37 C. W. N. 982 :
60 Cal. 1316 : 6 R. C. 106 :
A. I. R. 1933 Cal. 582.

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———S. 526—*Miscellaneous.*

The High Court will not encourage the public belief that the Judicial and Magistrate Benches can be dragged into the arena of political and personal strife by means of applications, the foundation of which, is a deliberate attempt to involve members of the local Bench who have a public duty to perform, in local land and personal controversies. No Court ought to interfere with the course of judicial proceedings by an order for transfer unless it is satisfied by clear and unimpeachable evidence that the Court, or individual, from whom it is proposed to transfer the case, has by some personal conduct rendered himself unfit, or unlikely to give the accused a fair trial. Subject to that salutary provision, local people must take the local Courts as they find. *Raza Hassain v. Emperor*.

28 Cr. L. J. 73 :
99 I. C. 105 : A. I. R. 1927 All. 184.

———S. 526—*Miscellaneous — Transfer on Magistrate's whim—Effect.*

For a Magistrate to transfer a case from one Court to another at his whim and caprice would be seriously to interfere with the working of the Courts and would shake the confidence of the public in those Courts. *Sugnomal Tahliram v. Prolandas Rehmal*.

38 Cr. L. J. 133 (b) :
166 I. C. 83 (2) : 9 R. S. 120 :
30 S. L. R. 327 : A. I. R. 1936 Sind 237.

———S. 526—*Notice.*

A case should not be transferred without notice to the parties. *In re : Shripad v. Ohandavarkar*.

29 Cr. L. J. 317 :
108 I. C. 27 : 52 Bom. 151 :
30 Bom. L. R. 70 :
I. L. T. 40 Bom. 116 :
A. I. R. 1928 Bom. 184.

———S. 526—*Notice—Transfer of a criminal case—Notice of transfer application not given—Order made—Whether valid.*

As a general rule, notice should be given of an application for transfer, but failure to give notice does not render the order of transfer illegal. Under special circumstances, such order can be made without notice. *In re : Masha Sabjee Sahib*.

11 Cr. L. J. 533 :
7 I. C. 856 : 8 M. L. T. 222,

———S. 526—*Notice, necessity of.*

An order for transfer from one Court to another passed by the District Magistrate, should give reasons for such transfer and though notice to the party concerned is not strictly necessary in law, yet, as a matter of practice, an order of this kind should be preceded by notice. *Mohammad Din v. Unna*.

I. R. 1932 Lah. 649 (1).

———S. 526—*Object of.*

In making provision for the transfer of cases, the law has regard not so much to the motives which might be supposed to bias the Judge as to the susceptibilities of the litigant public. One object of this provision is to

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under S. 526 and the Magistrate holding that the former application was a commencement of the hearing refused this application also: *Held*, that the action of the Magistrate was illegal and his proceedings were *ultra vires*. It was obligatory on him to postpone the case under S. 526, for an application under S. 344 is an application to postpone the commencement of the inquiry and is not a commencement of the hearing. *Emperor v. Ali Raza Shah*.

1 Cr. L. J. 109 :
5 P. L. R. 85.

———Ss. 526, 439, 110 — Jurisdiction—
Transfer of security proceedings from one Magistrate to another—Revision.

Under the provisions of S. 526, Cr. P. C., it is not competent to the Chief Court of the Punjab to transfer from the Court of one Magistrate to the Court of another Magistrate proceedings under S. 110. Nor has it jurisdiction to transfer such proceedings in virtue of the general powers of superintendence and supervision conferred upon it by S. 33, Punjab Courts Act, inasmuch as the general power conferred upon the Chief Court by that section relates to the administrative control which it exercises over subordinate Courts and cannot be interpreted as enlarging the powers which are specifically granted to it for a particular purpose by the provisions of S. 526, Cr. P. C. *Ahmad Bakhsh v. Emperor*.

15 Cr. L. J. 563 :
24 I. C. 971 : 5 P. L. R. 1914 Cr. :
154 P. L. R. 1914 :
A. I. R. 1914 Lah. 281.

———Ss. 526, 497 (1) — Grounds of refusal to grant bail—Non-bailable offence—Bail, grant of—Discretion.

A refusal to grant bail in a non-bailable offence not punishable with death or transportation for life, is no ground for transfer, as the granting of the bail in such a case is a matter of discretion with the Court. *Jumo v. Emperor*.

27 Cr. L. J. 859 :
95 I. C. 939 : 20 S. L. R. 136 :
A. I. R. 1926 Sind 257.

———Ss. 526, 528—Grounds — Apprehension of partiality.

In deciding applications for transfer of criminal cases, the law has regard not so much to the motives, which might be supposed to bias the Judge, as to the susceptibilities of the litigant parties. Where there is anything in the case likely to create in the mind of the accused a reasonable apprehension that he may not have a fair and impartial trial, the case should be transferred to another Magistrate. To decide what is reasonable, regard must be had to the degree of intelligence possessed and the standard of honesty and impartiality observed by the accused. *Machal v. Matru*.

15 Cr. L. J. 196 :
22 I. L. 980 : 10 N. L. R. 15 :
A. I. R. 1914 Nag. 6.

———Ss. 526, 528—Grounds — Communal question—Case between two communities—Communal question becoming very prominent issue.

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Ordinarily, the Court would not accept the proposition that merely because the case is between Hindus and Muhammadans, either a Hindu or a Muhammadan Judge or Magistrate is *ipso facto* debarred from hearing it. But where a case has reached a stage in which the unfortunate question of communalism has become a very prominent issue owing to the transfer petitions, it would be desirable in the interests of everybody concerned, that the case should be transferred. *Ama Prashad v. Imam Ali*.

40 Cr. L. J. 79 :
178 I. C. 507 : 11 R. L. 461 :
A. I. R. 1938 Lah. 706.

———Ss. 526, 528—Miscellaneous — Application by Crown—Procedure—Suspension of sentence, meaning of—Parties, whether entitled to choose forum.

The Crown is as much a party before the Sessions Judge as an accused person. Any motion that has to be made before the Sessions Judge on behalf of the Crown should, therefore, be through the Government Pleader and not by an official or *de mi-official* letter from the District Magistrate as representing the Crown. When an Appellate Court or a Court hearing a Revision admits the appellant or the applicant to bail or orders that a fine should not be paid up during the disposal of the case, it thereby orders the suspension of the sentence. The officers of the Crown in the majority of cases are bound to be either Hindus or Muhammadans, and if parties to a case are allowed to choose their Courts on a communal basis, it would not be possible to please them all. *Bhagwan Das v. Emperor*.

26 Cr. L. J. 367 :
84 I. C. 719 : 22 A. L. J. 1103 :
A. I. R. 1925 All. 218.

———Ss. 526, 528—Procedure — Transfer application.

The High Court will not ordinarily entertain an application for a relief which could equally well be granted by a subordinate Court until recourse has first been had to that Court. It will not, therefore, entertain an application for transfer unless the District Magistrate or the Sessions Judge has been moved in the first instance. Where, however, notices have been issued and the matter has been argued, the matter may be dealt with on the merits in order to avoid unnecessary repetition. *Ravi Chander Sahai v. Sundar Singh*.

26 Cr. L. J. 960 :
87 I. C. 112 : A. I. R. 1925 All. 640.

———Ss. 526, 528—Right of accused to adjournment—Intention to move District Magistrate for transfer—Trial Court, whether bound to adjourn—More than one adjournment, right to.

An accused is entitled as of right to have his case adjourned if he desires to move the High Court under S. 526, Cr. P. C., for its transfer but no such right exists where the accused's intention is to apply to the District Magistrate under S. 528 of the said Code. Once a case has been adjourned under

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tion transferred it to another Magistrate for re-trial. *Emperor v. Harischandra*.

7 Cr. L. J. 194 :
10 Bom. L. R. 201.

—S. 526—Powers of High Court.

Where the High Court interferes on the revision side, it has the same powers in dealing with orders as would be possessed by an Appellate Court if such orders were open to appeal. Therefore, it has jurisdiction to revise orders passed in security proceedings under S. 118, Cr. P. C. *Ahmed Baksh v. Emperor*.

15 Cr. L. J. 563 :
24 I. C. 971 : 5 P. R. 1914 Cr. :
154 P. L. R. 1914 : A. I. R. 1914 Lah. 281.

—S. 526—Powers of High Court to interfere.

If a Magistrate convicts an accused on a minor charge, when he should have committed him to Sessions on a graver charge, there is a remedy provided by the law, but it would be a very dangerous thing for the High Court to interfere in a pending case and transfer it from the Court which is seised of it, because the Court during the hearing of the case, takes a particular view of the law or the facts. On a charge instituted on a Police report and in which the prosecution is in the hands of the Public Prosecutor, exceptionally strong grounds would have to be shown before the High Court would exercise its power of transfer at the instance of a private complainant when the responsible authorities are satisfied that there is no ground for withdrawing the case from the Court which is hearing it. *Emperor v. Bhik Chand*.

27 Cr. L. J. 454.
93 I. C. 246 : A. I. R. 1926 All. 307.

—S. 526—Powers of Sessions Judge—Evidence of Police Investigating Officer interpolated during cross-examination of prosecution witness—Accused held not prejudiced.

During the trial, the evidence of the Police Investigation Officer was interpolated during the cross-examination of the prosecution witness. Complaint was made of this in the affidavit supporting the transfer petition: *Held*, that although the Sessions Judge might better have waited till the investigating officer came to be called, he was entirely within his rights in putting this witness in the box and this could not be said to have prejudiced the accused. *Brahmaya v. The King*.

40 Cr. L. J. 265 :
179 I. C. 783 : 11 R. Rang. 347 :
A. I. R. 1938 Rang. 442.

—S. 526—Practice—Application under—Court from whom transfer is sought should be given opportunity to instruct Government Advocate on the matter raised in transfer affidavit.

As a matter of practice, the better course to adopt is that when an application for transfer of the case is made, the Judge from whose Court the transfer is sought to be obtained, should be given an opportunity of instructing the Government Advocate on the matters raised in the affidavits, but any formal explanation which is subsequently incorporated

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in the proceedings is not desirable. *Brahmaya v. The King*.

40 Cr. L. J. 265 :
179 I. C. 783 : 11 R. Rang. 347 :
A. I. R. 1938 Rang. 442.

—S. 526—Practice.

Ordinarily the High Court does not transfer a case pending before a Magistrate unless the party applying for transfer has moved the District Magistrate before coming to the High Court. A Magistrate trying an accused person ought not to import his own knowledge of, or as regards the accused into the case. *In re : A. Fonseca*.

1 Cr. L. J. 582 :
6 Bom. L. R. 486.

—S. 526—Practice.

The practice which prevails in the High Court in applications for transfer, of furnishing the applicant with a copy of any report which the Court may receive from the subordinate Court from which it is sought to transfer the case, should be followed in the Chief Presidency Magistrate's Court. *In re : Damodar Bapuji Padval*.

32 Cr. L. J. 805 :
131 I. C. 891 : 33 Bom. L. R. 311 :
I. R. 1931 Bom. 315 :
A. I. R. 1931 Bom. 206 (1).

—S. 526—Procedure.

Application for transfer by complainant—Stay asked and granted on furnishing security bond—Applicant following Sind Court practice applying to Sub-Divisional Magistrate for transfer of case to another Magistrate and not to another district—Application rejected—Suit compromised—Proceedings under S. 514 against applicant for failure to apply to High Court for transfer is not legal. *Muhammad Ramzan v. Emperor*.

37 Cr. L. J. 792 :
162 I. C. 985 : 8 R. S. 178 :
A. I. R. 1936 Sind 51.

—S. 526—Procedure.

The omission to record reasons for transfer of a case under S. 526 is merely an irregularity and does not furnish a ground for interference in revision. *Hari Chand v. Emperor*.

34 Cr. L. J. 1174 :
146 I. C. 166 : 6 R. L. 179 :
A. I. R. 1933 Lah. 807.

—S. 526—Procedure—Transfer of case—District Magistrate, whether must be moved.

Ordinarily, the High Court will not transfer a case pending before a Magistrate unless the party applying for transfer has moved the District Magistrate before coming to the High Court. *Ghulam Nabi v. Jamal*.

24 Cr. L. J. 466 :
72 I. C. 882 : A. I. R. 1923 Lah. 685.

—S. 526—Procedure.

Where a Magistrate was found to have examined, on his own admission, certain witnesses after 9 p. m. in contravention of the directions of the High Court Circular Letter No. 2107-G, dated 2nd April, 1924: *Held*, that the case might be transferred to some

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———S. 526 (e)—*Procedure—Complaint dismissed in default—Fresh complaint in another Court—Transfer to Court dismissing original complaint.*

Where a case has been dismissed in default by a particular Magistrate, a fresh complaint based on the same facts should be transferred to the same Magistrate for trial. *Dhari Mal v. Emperor.* 27 Cr. L. J. 719 :

94 I. C. 911 : A. I. R. 1926 Lah. 445.

———S. 526 (1)—*Grounds—Apprehension of unfair trial—Criterion—Magistrate belonging to different religion, whether good ground—Intricate case—Trial by stipendiary Magistrate, desirability of.*

If a criminal case is difficult or intricate, it is desirable that it should be tried by a stipendiary Magistrate rather than by an Honorary Magistrate. The accused in the case of a communal or quasi-communal nature is not entitled to a transfer of the case from the file of a Hindu Magistrate merely because he is a Muhammadan or *vice versa*. The criterion for a transfer under Cl. (1) of S. 526, Cr. P. C., is that the Court must be of opinion that the applicant will not receive a fair and impartial trial in the Court from which a transfer is sought, and the mere fact that the accused entertains an unreasonable belief that he will not have a fair trial, is not a sufficient ground for a transfer. *Pandurang Krishna Deotale v. Emperor.*

28 Cr. L. J. 898 :
105 I. C. 226 : 10 N. L. J. 184 :
A. I. R. 1928 Nag. 21.

———S. 536 (1)—*Transfer, principles underlying—Reasonable apprehension of accused.*

On an application for transfer of a case, it is not necessary for the petitioners to establish that the Magistrate is actually prejudiced against them. All that is necessary for them to establish is that circumstances have arisen which have afforded a reasonable apprehension in their minds that they would not receive justice in his Court; in other words, that the Magistrate has conducted himself in such a manner that there is a reasonable apprehension in their mind that he would not approach the case with an impartial mind. The apprehension must be such as a reasonable person placed in the situation in which the accused persons are placed, would entertain. *Sahib Ram v. Emperor.* 31 Cr. L. J. 1172 :

127 I. C. 150 : A. I. R. 1930 Lah. 877.

———Ss. 526 (1), 177—*Power of High Court—Commitment to High Court in respect of offence over which Sessions Court has jurisdiction.*

Where a commitment is made to the High Court over which the Sessions Court of a Division has local jurisdiction, the High Court can, on grounds of expediency and convenience, direct the trial to proceed in the High Court itself. *In re: Ganapathy Chetty.* 20 Cr. L. J. 484 :

51 I. C. 468 : 37 M. L. J. 60 :
26 M. L. T. 64 : 10 L. W. 263 :
42 Mad. 791 : 1919 M. W. N. 808 :
A. I. R. 1920 Mad. 824.

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———S. 526, Cls. (1) (a) and 8—*Grounds—Apprehension.*

Where an application was made by the accused to the trying Magistrate, before the commencement of the hearing, notifying his intention to move the High Court under S. 526, Cr. P. C., for transfer and praying for an adjournment for that purpose, but the application was rejected and some condemnatory remarks were made in a superfluous order by the Magistrate against the accused: *Held*, that the Magistrate was bound to grant the adjournment and that as these irregularities coupled with the condemnation of the accused appeared to have created a reasonable apprehension in the mind of the accused that a fair and impartial inquiry could not be had, the case ought to be transferred. *Olandas Dwarkadas v. Emperor.* 16 Cr. L. J. 476 :

29 I. C. 108 : 8 S. L. R. 341 :
A. I. R. 1914 Sind 83.

———S. 526 (1) (e)—*Powers of High Court.*

Transfer of case from one Court to another by High Court under S. 526 is not open to interference by Local Government. *Emperor v. Lakshman Chanji Narangekar.* (F. B.)

32 Cr. L. J. 1147 :
134 I. C. 347 : 33 Bom. L. R. 675 :
55 Bom. 576 : I. R. 1931 Bom. 459 :
A. I. R. 1931 Bom. 313.

———S. 526 (1) (I)—*Powers of High Court—Complaint filed in wrong Court.*

Where an offence is being inquired into and tried by a Court contrary to the provisions of S. 117, Cr. P. C., the High Court has jurisdiction to direct the transfer of the case under S. 526 (1) (i) to a Court having jurisdiction to try the case. *Mubarak Ali v. Abdul Haq.* 26 Cr. L. J. 577 :

85 I. C. 721 : 1 O. W. N. 615 :
A. I. R. 1925 Oudh 490.

———S. 526 (3)—*Application for transfer, who is entitled to.*

A person at whose instance a criminal case is lodged, is a party interested within the meaning of Cl. (3) of S. 526, Cr. P. C., and is entitled to apply for transfer of the case, but his rights are subordinate to those of the Crown; in other words, if the Public Prosecutor or the person who is conducting the prosecution on behalf of the Crown is unwilling to have the case transferred, the person at whose instance the case was started, has no power to get the case transferred. *Shoodhari Rai v. Jhingur Rai.*

26 Cr. L. J. 1249 :
88 I. C. 993 : 7 P. L. T. 49 :
A. I. R. 1925 Pat. 818.

———S. 526 (3)—*Scope of—“Party interested,” whether includes Police informant—Conflict between party interested and Public Prosecutor.*

The expression ‘a party interested’ in S. 526 (3), Cr. P. C., does not necessarily mean only a complainant, *i. e.*, a person presenting a ‘complaint’ as defined in S. 4 (h) of the Code,

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matter of transfer, the right of the latter prevails. *Bagh Ali v. Muhammd Din.*

27 Cr. L. J. 411 :
93 I. C. 75 : 6 Lah. 541 : 27 P. L. R. 80 :
A. I. R. 1926 Lah. 156.

—S. 526—Scope of—*Mere apprehension of accused, if sufficient.*

S. 526 does not say that a transfer may be ordered in any case where it is made to appear to the accused that a fair and impartial enquiry or trial cannot be had, but where this is made to appear to the High Court. Therefore, what is contemplated is that the Court itself should be satisfied on that point and the real test is not what the accused may reasonably or unreasonably have been led to think about it. *Sugnomal Tahilram v. Phatandas Relumal.*

38 Cr. L. J. 133 (b) :
166 I. C. 83 (2) : 9 R. S. 120 :
30 S. L. R. 327 : A. I. R. 1936 Sind 237.

—S. 526—Scope of.

Scope of S. 526, Cr. P. C., has now been considerably enlarged by Act XVIII of 1923, and every case tried by a Criminal Court comes within the purview of the amended section. *Lakshmi Narain v. Raini.*

27 Cr. L. J. 476 :
93 I. C. 700 : 27 P. L. R. 225 :
A. I. R. 1926 Lah. 199.

—S. 526—Scope of—Transfer of case before Village Magistrate—Right of accused to be granted adjournment pending application for transfer to High Court.

The provisions of the Cr. P. C. relating to transfers of criminal cases and the right of accused to obtain an adjournment of the case pending an application to a superior Court for transfer of the case against him do not apply to proceedings before Village Magistrates. *In re : Thoea Narayadu.*

12 Cr. L. J. 407 :
11 I. C. 591 : 21 M. L. J. 755.

—S. 526—Scope of.

Where the applicants reasonably fear that they might not obtain impartial justice if criminal proceedings are continued before a particular Magistrate, an order of transfer should be made. *Vellu Thevar v. Emperor.*

33 Cr. L. J. 550 :
137 I. C. 675 : 10 Rang. 180 :
I. R. 1932 Rang. 152 : A. I. R. 1932 Rang. 90.

—S. 526—Scope of.

Under S. 526 an application for transfer can be made even after the defence is closed and the case has been adjourned for argument and judgment only. *Niamal Sha v. Hanuman Buksha.*

33 Cr. L. J. 31 (2) :
134 I. C. 1057 : 35 C. W. N. 1112 :
55 C. L. J. 34 : 59 Cal. 478 :
I. R. 1932 Cal. 17 : A. I. R. 1931 Cal. 626.

—S. 526—Transfer—Accused pardanashin ladies—Refusal to exempt personal attendance.

Refusal to dispense with personal attendance of pardanashin ladies under S. 205, Cr. P. C.,

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may be sufficient ground for transfer of case. *Raj Rajeshwari Debi v. Emperor.*

15 Cr. L. J. 281 (b) :
23 I. C. 489 : 17 C. W. N. 1248.

—S. 526—Transfer—Accused not able to satisfy Magistrate that witnesses named by him would give material evidence—Magistrate wrongly rejecting application—Whether ground for transfer of case.

It may be that the accused is not able to satisfy the Magistrate that witnesses named by him are definitely going to give evidence which is material in the case, but that does not necessarily show that the application is made for the purpose of defeating the ends of justice. Nevertheless, the fact that the Magistrate was under a misapprehension as to the purpose for which the witnesses were called, and as to his being justified under S. 257, Cr. P. C., in refusing to issue summons, should not indicate to any reasonable person, in the absence of any other factor, that the Magistrate is prejudiced against him. *M. T. R. Suppyya Chettiar v. S. A. S. S. Karuppaya Pillay.*

39 Cr. L. J. 211 :
172 I. C. 937 : 10 R. Rang 291 :
A. I. R. 1937 Rang. 528.

—S. 526—Transfer—Application for transfer—Error of judgment, whether ground for directing transfer.

Mere errors of judgment, as refusing to summon a prosecution witness for cross-examination and insisting on his being summoned as a witness for the defence, or disallowing objections as to the fitness of a person to serve as an assessor, or permitting the prosecution to examine a witness-in-chief on the substantive case of the prosecution after the defence has disclosed its case in the cross-examination of the witness,—are insufficient, in the absence of prejudice in the Judge, to direct a transfer of the case for trial by some other Court, in such circumstances as the foregoing, however, the accused is entitled to a *de novo* trial. *Shivadhin Singh v. Emperor.*

22 Cr. L. J. 262 :
60 I. C. 662 : 3 P. L. T. 32 :
A. I. R. 1923 Pat. 116.

—S. 526—Transfer—Expression of opinion in miscellaneous proceedings—Main case, transfer of.

In the course of trial under Ss. 147 and 328, Penal Code, after a charge had been framed against the accused, the Magistrate received a Police report and passed an order under S. 144. The accused applied for a transfer of the case on the ground that by passing the aforesaid order, the Magistrate had formed his conclusions with regard to the case against the accused : *Held*, that inasmuch as the Magistrate had jurisdiction to entertain the report, he was justified in taking action under S. 144. *Jang Bahadur v. Emperor.*

25 Cr. L. J. 433 :
77 I. C. 721 : 11 O. L. J. 54 :
A. I. R. 1924 Oudh 338.

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an adjournment to apply for transfer in the absence of fresh grounds or incidents. *Peshori Lal v. Emperor*. 32 Cr. L. J. 1229 :

134 I. C. 770 (b) : 12 Lah. 668 :
32 P. L. R. 941 : I. R. 1931 Lah. 978 (2) :
A. I. R. 1931 Lah. 274.

—S. 526 (8)—Applicability of.

S. 526 (8), Cr. P. C. has no application where the application for transfer is sought to be made, not at the commencement of the hearing, but after the Magistrate has finished the case for the prosecution. The words "commencement of the hearing" mean the commencement of hearing in the Court objected to. *Esteves v. Emperor*. 12 Cr. L. J. 474 :

12 I. C. 82 : 4 Bur. L. T. 213.

—S. 526 (8)—Applicability of.

Sub-s. (8) of S. 526, Cr. P. C., applies only where the complainant or the accused notifies to the Court before which the case is pending his intention to make an application under S. 526 to the High Court for transfer and the onus is on the applicant to show that the information required by S. 526, Sub-s. (8) was given to the Magistrate. *Ram Kunwar v. Emperor*. 32 Cr. L. J. 363 :

129 I. C. 259 : 1930 A. L. J. 1320 :
I. R. 1931 All. 131 :
A. I. R. 1930 All. 835.

—S. 526, Cl. (8)—Delay in applying for transfer—Supplementary trials—Disqualifications of Judges and Magistrates to hold.

Where in a trial before a Sessions Judge the accused had a reasonable time for applying to the High Court, before they were required to enter upon their defence, and they abstained from doing so: *Held*, that the proceedings of the Sessions Judge were not void. A trial is good and valid in every case up to the close of the case for the prosecution. Unreasonable delay or total abstention from moving the High Court might well be taken into account in considering the *bona fides* of the accused in notifying his intention to the trying Court. Supplementary trials are very common and it would cause much public inconvenience if Magistrates and Judges, who tried one batch of persons, should be debarred thereby from trying a subsequent batch on the same facts. *Joharuddin Sarkar v. Emperor*. 1 Cr. L. J. 804 :

I. L. R. 31 Cal. 715 : 8 C. W. N. 910.

—S. 526 (8)—Duty of Court—Adjournment, Court when bound to grant.

Under S. 526 (8), Cr. P. C. a Court is only bound to give such an adjournment as will afford reasonable time for an application for transfer being made and an order obtained thereon before the accused is called on for his defence. But where, before he is called on for his defence, he has ample time to make such an application and does not do so, the legality of the proceedings of the Magistrate cannot be questioned. The fact that a Magistrate exhibits haste in recording the statement of an accused person before all the evidence for the prosecution is concluded,

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is sufficient to create an apprehension in the mind of the accused that he will not have a fair trial and to entitle him to a transfer of the case to some Magistrate. *Abdul Rab v. Azimat Ali*. 22 Cr. L. J. 88 :

59 I. C. 376 : 18 A. L. J. 1145.

—S. 526 (8)—Duty of Court—Mandatory nature of—Refusal to stay proceedings—Whether sufficient ground for transfer—Costs.

S. 526 (8), Cr. P. C. is mandatory. The Court is bound to stay the case after intimation has been given that an application for transfer is to be made to the High Court. The action of a Magistrate in refusing to stay the proceedings in his Court on the filing of such an application must be construed as deliberate, and by such action, even if it be precipitate, it gives the accused persons reasonable ground for apprehension that he will not be unprejudiced in the conduct of the trial and is sufficient ground for transfer of the case from his Court: *Held*, also that as it was the hasty action of the Magistrate that had resulted in the transfer of the case, the costs of the complainant in the future trial should be borne by the Crown. *Baliram v. Marubai*. 37 Cr. L. J. 1054 :

164 I. C. 1065 : 9 R. N. 51 (2) :

I. L. R. 1936 Nag. 219 :

A. I. R. 1936 Nag. 233.

—S. 526 (8)—Duty of Court.

The provisions of law contained in S. 526, Sub-s (8), is imperative in its terms, and where the Magistrate does not grant an adjournment as provided in the said provision all the subsequent proceedings are illegal. *Pandurang Pundlik Shanbhog v. Emperor*.

32 Cr. L. J. 1161 :

134 I. C. 361 : 33 Bom. L. R. 661 :

I. R. 1931 Bom. 473 : A. I. R. 1931 Bom. 411.

—S. 526 (8)—Duty of Magistrate—Full opportunity not given—Proceedings void.

After an application for transfer has been made under S. 526 (8), Cr. P. C., a Magistrate is competent to hear and record all the evidence for the prosecution, if he considers that the grounds set forth as reasons for the transfer are insufficient and unlikely to be acceded to by a superior Court. But when the evidence for the prosecution is completed, it is the duty of the Magistrate to allow a fair and reasonable opportunity to the accused to apply for a transfer before calling upon him for his defence. Unless full opportunity is given to an accused who has made an application for a postponement of the case in order to enable him to apply for transfer before he is called upon for his defence, the proceedings are void. *Baggu Mal v. Emperor*. 13 Cr. L. J. 746 :

17 I. C. 58 : 254 P. L. R. 1912 :

42 P. W. R. 1912 Cr. : 1 P. R. 1913 Cr.

—S. 526 (8)—Duty of Magistrate—Magistrate doubtful whether person asking for adjournment is 'party' within meaning of Cl. (8).

Where a Magistrate is doubtful whether a person applying for stay of proceedings

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cial discretion, a transfer of the case is desirable not necessarily on the ground that the Judicial Officer is adjudged to be incapable of performing his duty, but simply to allay the reasonable apprehensions of an applicant for transfer. *Crown v. Mohamedshah*.

9 Cr. L. J. 251 :
1 S. L. R. 8.

—S. 526—Transfer of case—Propriety of.

The accused were convicted by a Magistrate, but on appeal, the Sessions Judge set aside the conviction on the ground that the provisions of S. 342, Cr. P. C., had not been complied with and directed that the case should be retried from the stage where the irregularity had accrued. The accused had no more evidence and prayed that the case might be transferred as a conviction by the same Magistrate was a foregone conclusion, the evidence being the same: *Held*, that under the circumstances, the case might be transferred to another Magistrate with a direction to take up the trial at the stage where the original irregularity took place. *Taj Muhammad v. Emperor*.

31 Cr. L. J. 727 :
124 I. C. 679 : A. I. R. 1930 Lah 153.

—S. 526—Transfer of case by High Court—High Court, power of, to transfer a Sessions case from a Jury district to a non-Jury district.

There being no legal prohibition against the trial being otherwise than by Jury if held in any other district not affected by a notification under S. 269, the High Court has power under S. 526 to transfer a Sessions case from a Jury district to a non-Jury district. *Emperor v. Jumo*.

18 Cr. L. J. 51 :
37 I. C. 35 : 10 S. L. R. 54 :
A. I. R. 1917 Sind 42.

—S. 526—Transfer—Reasonable apprehension, whether sufficient.

It is enough for the transfer of a case that the applicant for transfer has 'reasonable grounds for apprehension that he will not receive proper justice at the hands of the trying Magistrate. It is not for the Court to decide whether the apprehensions of the accused are true or not. *Chhanu Prasad Singh v. Emperor*.

29 Cr. L. J. 229 :
107 I. C. 160.

—Ss. 526, 110—Ground—What is not.

Where a Magistrate refused to admit to bail a person against whom proceedings were pending under S. 110, Cr. P. C. on the ground that "the accused is said to be a dangerous and violent man who might use his liberty for the purpose of intimidating witnesses," the High Court declined to direct a transfer of the proceedings. *In the matter of the Petition of: Mithu Khan*.

1 Cr. L. J. 807 :
24 A. W. N. 206 : I. L. R. 27 All 172.

—Ss. 526 and 110—Scope of.

Proceedings under S. 110, Cr. P. C. cannot be transferred to any Court outside the district within which such proceedings have been

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lawfully instituted. *Emperor v. Mahendra Singh*.
7 Cr. L. J. 214 :
27 A. W. N. 268.

—Ss. 526, 145—Applicability of—Criminal Cases.

Proceedings under S. 145, Cr. P. C. are "criminal cases" within the meaning of the words as used in S. 526 of the Code and therefore S. 526 applies to such proceedings. *Sardar Karam Singh v. Mr. L. Hearsey*.

7 Cr. L. J. 423 :
11 O. C. 61.

—Ss. 526, 255-A—Procedure—Irregularity in recording evidence under S. 255-A—Accused not likely to benefit by transfer.

Where the Court recorded evidence under S. 255-A, Cr. P. C. with irregularity, creating apprehensions in the mind of the accused who applied for transfer of the case, but it appeared that transfer would not be of any benefit to the accused, the best course would be to expunge the evidence irregularly recorded and not to transfer the case. *Ishar Singh v. Shama Dusadh*.

38 Cr. L. J. 484 :
167 I. C. 881 : 17 P. L. T. 627 :
3 B. R. 379 : 9 R. P. 449 :
A. I. R. 1937 Pat. 131.

—Ss. 526, 257—Grounds—Transfer of case on the plea that the trying Magistrate is to be summoned as a witness.

As the law now stands, an accused person can enforce the appearance as a witness even of the trying Magistrate, under the provisions of S. 257, Cr. P. C., unless the Magistrate considers that the application should be refused on the ground that it is made for the purpose of vexation, &c. Therefore where the accused alleges that he requires to examine the trying Magistrate as a witness, it is inexpedient to place the Magistrate in the awkward position of rejecting the accused's application as vexatious, and the case ought to be transferred to the file of some other Magistrate. *Emperor v. Abdul Latif*.

1 Cr. L. J. 338 :
24 A. W. N. 94 : I. L. R. 26 All 536.

—Ss. 526, 257—Transfer—Mistake by Magistrate—Whether enough to induce belief that he is prejudiced against accused.

Magistrates must inevitably make mistakes sometimes in the course of the trial of one or other of the cases before them. The fact that they have made a mistake cannot possibly in itself induce any reasonable person to believe that the Magistrate is prejudicial against the accused. There must be some other circumstance in the light of which the apprehension in the accused's mind arises. *M. T. R. Suppaya Chettyar v. S. A. S. Karuppaya Pillay*.

39 Cr. L. J. 211 :
172 I. C. 937 : 10 R. Rang. 291 :
A. I. R. 1939 Rang. 528.

—Ss. 526, 344—Duty of Magistrate—Magistrate declining to postpone hearing of case—Commencement of hearing.

Where Counsel for accused made an application for adjournment under S. 344, Cr. P. C., on this being refused, made an application

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earliest time. The words "commencement of the hearing" in the section mean the commencement of the hearing in the Court objected to, or in other words, in the Court to which the notification subsequently referred to in the section applies or is made. *Kishori Gir v. Ram Narayan Gir.*

1 Cr. L. J. 46 :
8 C. W. N. 77.

—S. 526 (8)—Refusal to adjourn, effect of—Application for adjournment with a view to move for transfer.

S. 526 (8), Cr. P. C., is absolutely imperative in its terms, and confers on an applicant absolute right to adjournment when he intends to move the High Court for a transfer at any stage in the course of the trial. Denial of this right vitiates the whole proceedings. *In re : T. M. A. Nathan.*

31 Cr. L. J. 715 :
124 I. C. 501 : 57 M. L. J. 763 :
30 L. W. 883 : 1930 M. W. N. 78 :
53 Mad. 165 : A. I. R. 1930 Mad. 187.

—S. 526 (8)—Scope of—Application for transfer made after writing and signing of judgment—Whether maintainable.

S. 526 (8), Cr. P. C., clearly lays down that intimation of an intention to make an application for transfer of case must be made before the defence closes its case. Where an application for transfer is made not only after the defence has closed its case but after the judgment has been written and signed by the Magistrate, it is not maintainable. *Gian Singh-Nunsha Singh v. Amar Singh-Jaimal Singh.*

40 Cr. L. J. 288 :
179 I. C. 990 : 40 P. L. R. 996 :
I. L. R. 1938 Lah. 567 : 11 R. L. 656 :
A. I. R. 1939 Lah. 21.

—S. 526 (8)—Scope of.

By granting application for adjournment to enable party to apply to High Court, Magistrate is not rendered incapable of even disposing of miscellaneous application for grant of copies, etc. *Hari Chand v. Emperor.*

32 Cr. L. J. 253 (2) :
129 I. C. 193 : I. R. 1931 Lah. 129 :
A. I. R. 1931 Lah. 59.

—S. 526 (8)—Scope of.

S. 526 (8), Cr. P. C., does not require any application for adjournment. *Neamat Sha v. Hanuman Buksha.*

33 Cr. L. J. 31 (2) :
134 I. C. 1057 : 35 C. W. N. 1112 :
59 Cal. 478 : 55 C. L. J. 34 :
I. R. 1932 Cal. 17 :
A. I. R. 1931 Cal. 626.

—Ss. 526 (8), 537—Duty of Magistrate—Application for adjournment for purpose of transfer—Omission to adjourn—Validity of proceedings.

Under S. 526 (8), Cr. P. C., where an accused notifies to the Court before which the case is pending, his intention to make an application under this section, the Court is bound to adjourn the case for such a period as will afford a reasonable time for an application to be made to the High Court,

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and an order obtained thereon. This rule is imperative, and if a Magistrate proceeds with the trial in contravention of this rule, the progress of the case after the date of the application will be illegal and not a mere irregularity curable by S. 537, Cr. P. C. *Luttur v. Emperor.*

31 Cr. L. J. 590 :
124 I. C. 17 : 1930 A. L. J. 547 :
A. I. R. 1930 All. 263.

—Ss. 526 (8), 537—Refusal to adjourn—Effect of.

The refusal of a Magistrate to give a reasonable opportunity to an accused person to apply for a transfer of a case, is an illegality which vitiates the whole proceeding. *Devi Chand v. Emperor.*

22 Cr. L. J. 717 :
63 I. C. 877.

—S. 527.

See also (i) Cr. P. C., S. 197.
(ii) Privy Council.

—S. 528.

—Applicability.

—Costs.

—Duty of District Magistrate.

—Duty of Magistrate.

—Duty of Magistrate of superior jurisdiction.

—Ground for transfer.

—Jurisdiction.

—Jurisdiction of District Magistrate to transfer.

—Notice.

—Object of.

—Order of transfer.

—Power of District Magistrate.

—Power of High Court to interfere.

—Practice.

—Procedure.

—Pronouncing of judgment.

—Record of reasons.

—Scope of.

—Transfer, legality of.

—Transfer of case.

—Transfer of part-heard cases.

—Transfer on communal grounds.

—Withdrawal of case.

—S. 528.

See also (i) Cr. P. C., 1898, Ss. 10, 114, (4), 145, 162, 162 (1), 192, 200, 201, 235 (1), 350, 476 528.

(ii) Criminal trial.

—S. 528.

A filed a complaint against B for robbery and defamation before a Sub-Divisional Magistrate who transferred the case to a First Class Magistrate. The complaint relating to defamation was dropped in this Court and B was charged on the accusation of robbery. A's Vakil applied to the Sub-Divisional Magistrate to proceed with the complaint as to defamation, and the latter did so and convicted the accused. Held, that the conviction was illegal. *Gohsu Appalanarasiah v. Emperor.*

31 Cr. L. J. 895 :
125 I. C. 557 : 1930 M. W. N. 413 :
A. I. R. 1930 Mad. 705.

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S. 526 and the accused has failed to take advantage of the adjournment to move the High Court, he is not entitled to another adjournment to give him another opportunity to move the High Court. *Kishorec Rae v. Emperor*.

29 Cr. L. J. 935 :
111 I. C. 855 : 1929 A. L. J. 60 :
A. I. R. 1928 All. 753.

—Ss. 526, 528—Right to apply.

Where a party to a criminal case pending before a Presidency Magistrate desires to apply for transfer, he is not bound to apply first to the Chief Presidency Magistrate under S. 528, Cr. P. C. He is entitled to apply under S. 526 to the High Court direct. *In re : P. D. Shamdasani*.

32 Cr. L. J. 338 :
129 I. C. 399 : 32 Bom. L. R. 1128 :
I. R. 1931 Bom. 175 :
A. I. R. 1930 Bom. 480.

—Ss. 526, 531—Jurisdiction.

With regard to stay applications in criminal matter, the stay order operates only from the date on which the order is communicated to the Court whose proceedings are stayed. The order of prohibition does not take away the jurisdiction of the trial Court, it merely suspends it. If, therefore, the order has not been received, the Court does not lose its jurisdiction because the order has been passed. This reasoning would not, however, apply to an application for transfer. The ordinary rule is that any order operates from the date on which it is passed, the rule with regard to stay proceedings and injunctions being exceptions to that general rule. Hence the Magistrate acts without jurisdiction when he convicts the accused after the order of transfer but before its communication. Nevertheless it does not follow from the mere fact that the Magistrate had no jurisdiction, that his order is void. S. 531, Cr. P. C., would apply to a case of this kind and so prevent the passing of this order without jurisdiction from being void. *T. N. Borai Goundar v. Commissioner, Octacamund Municipality*.

39 Cr. L. J. 987 :
178 I. C. 40 : 48 L. W. 287 :
1938 M. W. N. 830 :
(1938) 2 M. L. J. 394 : 11 R. M. 398 :
I. L. R. 1938 Mad. 1003 :
A. I. R. 1938 Mad. 832.

—Ss. 526 and 540—Ground—What is not—Inspection of locality by Magistrate.

A Magistrate visited the place where the assault complained of was alleged to have taken place, after the case for both sides had been closed: *Held*, that though an inspection of the locality was not necessary to decide the case, S. 540 of the Code gave the Magistrate very wide powers in this respect and the fact of such inspection was not sufficient ground for an application for transfer of the case to another Magistrate. *Bommakka v. Rammakka*.

9 Cr. L. J. 355 :
12 M. C. C. R. 153.

—S. 526—Grounds—What is not—Action**Cr. P. CODE (1898), S. 526**

of Police unjustifiable—Failure to take action under S. 552—Effect of.

The conduct of the Police even if it be unjustifiable, is no ground for transferring the case from the District. Failure of a District Magistrate to take action under S. 552, Cr. P. C., cannot cause a reasonable apprehension in the mind of the petitioner that he will not get justice in the District. *Badle v. Emperor*.

150 I. C. 1095 :
7 R. L. 91 : 36 P. L. R. 240 :
A. I. R. 1934 Lah. 516.

—S. 526—Duty of Magistrate—Magistrate himself discovering existence of crime and directing institution of complaint—Principle of law—Susceptibilities of litigants.

As a general rule, it is undesirable that a Magistrate, who, by local investigation while on tour, having himself discovered the existence of crime and collected or ascertained the evidence in support of it, thereafter directs, recommends or invites the institution of judicial proceedings against it, should try the supposed criminal. Wherever the circumstances are such as to indicate in a reasonable way that the Magistrate has formed even a *prima facie* opinion on question of fact which he would have to try, the subsequent trial of such matters by him becomes a mere form and a pretence. In dealing with applications for transfer of cases, the law has regard not so much to the motives which might be supposed to bias the Judge, as to the susceptibilities of the litigant parties. One important object is to clear away everything which might engender suspicion and distrust of the Tribunal. *Bhop Singh v. Karmoti*.

13 Cr. L. J. 236 :
14 I. C. 428 : 8 N. L. R. 1.

—S. 526-A—Duty of Court.

Where the Magistrate refused time to the accused and fixed the next day for his appearance, and on his failing to appear, forfeited the recognizance bonds, it was held that the order of forfeiture was contrary to law. *Pandurang Pundlik Shanbhag v. Emperor*.

32 Cr. L. J. 1161 :
134 I. C. 361 : 33 Bom. L. R. 668 :
I. R. 1931 Bom. 473 :
A. I. R. 1931 Bom. 411.

—S. 526 (e)—Ground—What is not—Accused known to Magistrate, whether ground for transfer—Transfer to Magistrate unacquainted with parties.

Complainant applied for the transfer of his case from a Bench of Magistrates on the ground that one of the Magistrates was a friend of the accused and that it would be better if the case were tried by some Magistrate who knew nothing about the parties and that justice was more likely to be obtained from such an officer: *Held*, that this was not a sufficient ground for ordering a transfer of the case from the Bench. *Mewa Ram v. Narain Das*.

19 Cr. L. J. 702-A :
46 I. C. 158 : 16 A. L. J. 490 :
A. I. R. 1918 All. 391.

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transfer a case from the file of a Subordinate Magistrate to whom it has been remanded by the Sessions Judge for further enquiry, and less so if he gives no notice to the other side. *Akhil Dome v. Ram Chandra*.

8 Cr. L. J. 386 :
8 C. L. J. 241.

—————**S. 528—Notice—Effect of omission.**

A District Magistrate has power to transfer a case from the Court of a Magistrate, to whom it has been made over, before a decision to issue process against the accused has been reached. It is necessary to issue notice to the other party before a transfer is ordered. Where a complaint was transferred without notice to the complainant but the complainant allowed four weeks to elapse before he even applied for a copy of the order of transfer and examined witnesses in the Court of the second Magistrate, whose order was not attacked on the merits: *Held*, that as the proceedings of the second Magistrate were not shown to have prejudiced the complainant in any way, the proceedings should not be set aside. *Asaram v. Bhagirathi*.

12 Cr. L. J. 437 :
11 I. C. 621 : 7 N. L. R. 97.

—————**S. 528—Notice.**

A transfer application should be supported by an affidavit testifying to the correctness of the allegation made therein. Before a District Magistrate can transfer a case under S. 528, it is necessary for him to issue notice to the opposite side. *Gowardhan Das Kapur v. Abbas Ali*.

31 Cr. L. J. 257 :
121 I. C. 374 : A. I. R. 1930 Lah. 168.

—————**S. 528—Notice.**

Application by party is not necessary—Notice is desirable but failure does not make order illegal. *Udhomal Karmumal v. Majnibai Udhomal*.

34 Cr. L. J. 861 :
144 I. C. 881 : 6 R. S. 14 :
A. I. R. 1933 Sind 205.

—————**S. 528—Notice—Application for transfer—Notice to opposite party, whether necessary—Application made late—Transfer without notice propriety of.**

Although S. 528, Cr. P. C. does not provide for the giving of a notice to the opposite party, still, on general principles, notice should be given to the party to be affected before an order for transfer is made. The question of a notice is one of propriety rather than of legality, to be decided on the facts of each particular case. District Magistrates have to be careful whenever they are called upon by one party only to a criminal case to exercise the power of transferring it and should not transfer it without notice to the other side, when the application has been made at a late stage of the case. *Karnachandra v. Emperor*.

28 Cr. L. J. 517 :
102 I. C. 213 :
A. I. R. 1927 Nag. 244.

—————**S. 528—Notice—Audi alteram partem.**

S. 528, Cr. P. C., does not expressly require notice to be given before passing the final

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order but notice should be given to the opposite party in accordance with the recognised maxim *audi alteram partem*. *Fakira v. Goma*.

37 Cr. L. J. 861 :
163 I. C. 694 : 18 N. L. J. 279 : 9 R. N. 15.

—————**S. 528—Notice.**

It is desirable that a notice should be given to the opposite party before an order of transfer is passed. But the omission is a mere irregularity and is not a sufficient ground for setting aside the order of transfer. *Chhotey Lal v. Dr. Tinke Lal*.

36 Cr. L. J. 918 :
156 I. C. 163 : 1935 A. L. J. 1063 :
7 R. A. 1059 : 1935 A. W. R. 799 :
A. I. R. 1935 All. 815.

—————**S. 528—Notice.**

Notice to opposite party is not necessary though advisable. Non-issue of notice does not make order bad in law. Omission to record reasons for transfer is mere irregularity. *Hari Ram v. Allah Bakhs*.

34 Cr. L. J. 630 :
143 I. C. 474 : 34 P. L. R. 577 :
I. R. 1933 Lah. 358 : A. I. R. 1933 Lah. 385.

—————**S. 528—Notice.**

S. 528, Cr. P. C., does not make it incumbent on a Magistrate to issue notice before making an order. But in many cases it would be improper to take action under the section without issuing notice. *Dur Mahomed v. Allahdino*.

13 Cr. L. J. 32 :
13 I. C. 224 : 5 S. L. R. 190.

—————**S. 528—Notice.**

The discretion conferred by S. 528, Cr. P. C., should only be exercised where it is absolutely necessary to meet the demands of justice, and before an order of transfer is made, it is proper and just that the notice of the application for transfer together with a copy of the affidavit, if any, should be served upon the opposite party and an opportunity afforded to the latter to show cause why the application for the transfer should not be granted. *Jageshar v. Emperor*.

31 Cr. L. J. 30 :
120 I. C. 261 : 1930 A. L. J. 148 :
A. I. R. 1929 All. 932.

—————**S. 528—Notice—Transfer by District Magistrate.**

Although, strictly speaking, it is not necessary to issue notice before transferring a case under S. 528, Cr. P. C., the practice is to do so. *Sardara v. Emperor*.

24 Cr. L. J. 187 :
71 I. R. 603 : 5 L. L. J. 230 :
A. I. R. 1923 Lah. 380.

—————**S. 528—Notice—Transfer of case after prosecution witnesses were examined—Notice to accused before transfer.**

There may be cases in which the want of notice should not be made a ground for setting aside an order of transfer under S. 528, Cr. P. C., but where a transfer is ordered after all the witnesses for the prosecution have been examined, it is only right that notice should be given to the accused and he should be heard before passing the final order of transfer. *In re : Syed Lala Mian Sahib*.

9 Cr. L. J. 407 :
1 I. C. 889 : 6 M. L. T. 14.

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but may include a Police informant. But where the conduct of a case is in the hands of a Public Prosecutor, and where there is a conflict between the Public Prosecutor and the 'party interested', the right of the former must prevail. *Juppalli Rajagopala Rao v. Puthell Narayana Reddi*. 30 Cr. L. J. 1163 : 120 I. C. 80 : 57 M. L. J. 547 : 30 L. W. 640 : I. R. 1929 Mad. 1040 : A. I. R. 1929 Mad. 844.

—S. 526 (3)—Who can apply.

A person who has lodged the complaint and moved the machinery of the Police and the Criminal Courts continues to be a party interested and he is entitled to move the High Court in certain circumstances for the transfer of the case. *Sardar Shah v. Gurdit Singh*. 36 Cr. L. J. 222 : 152 I. C. 1053 : 35 P. L. R. 567 : 7 R. L. 359 : A. I. R. 1934 Lah. 612.

—S. 526 cls. (3), (8)—Miscellaneous—
Person making report to Police of certain offence—Whether person interested—Public Prosecutor conducting prosecution on behalf of Crown unwilling for transfer—Case, if can be transferred at instance of person who started the case.

A person at whose instance a criminal case is lodged is a party interested within the meaning of cl. (3) and cl. (8) of S. 526, Cr. P. C., and is entitled to apply for transfer of the case, but his rights are subordinate to those of the Crown; in other words if the Public Prosecutor or the person who is conducting the prosecution on behalf of the Crown is unwilling to have the case transferred, the person at whose instance the case was started, has no power to get the case transferred. *In re : Abdul Naseer*.

39 Cr. L. J. 33 : 171 I. C. 934 : 1937 A. L. J. 845 : 10 R. A. 349 : 1937 A. W. R. 729 : A. I. R. 1937 All. 664.

—S. 526 (4)—Affidavit—Penal Code
Ss. 191, 193, false statement in, effect of.

A person making a false statement in an affidavit filed in support of an application for transfer of a criminal case as required by the provisions of S. 526 (4), Cr. P. C., is guilty of an offence under S. 191, Penal Code. *Sanwal v. Emperor*. 28 Cr. L. J. 133 : 99 I. C. 341 : A. I. R. 1927 Sind 113.

—S. 526 (6-A)—Costs.

Costs under S. 526 (6-A) cannot be granted when the application is not frivolous or vexatious. *Bodle v. Emperor*.

150 I. C. 1095 : 7 R. L. 91 : 36 P. L. R. 240 : A. I. R. 1934 Lah. 516.

—S. 526 (6-A)—Ground—What is not—
Subordination to officer making complaint.

The fact that the Magistrate trying a case is subordinate to the officer who has made the complaint is no ground for transferring the case from his file. *Wasudeo v. Emperor*.

26 Cr. L. J. 1425 (a) : 89 I. C. 897 : A. I. R. 1925 Nag. 433.

—S. 526 (6) (a)—Scope.

The word "person" in S. 526 (6) (a), Cr. P. C. includes the Local Government. There is no cast-iron rule in the Common Law of England

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that the Crown neither receives nor pays costs. Exceptions may be grafted upon this rule by local statute and the peculiar circumstances of the case may also necessitate a departure from the said rule. *Emperor v. Kanver Sen*.

31 Cr. L. J. 485 : 123 I. C. 330 : 1930 A. L. J. 209 : 52 All. 263 : A. I. R. 1930 All. 206.

—S. 526 (6) (a)—Scope of.

When application is vexatious and made with a view to cause delay or hinder course of justice, order under S. 526 (6) (a) should be passed. *Sadasheo Suryabhanji Kunbi v. Emperor*.

34 Cr. L. J. 1035 : 145 I. C. 445 : 29 N. L. R. 338 : 6 R. N. 50 : A. I. R. 1933 Nag. 201.

—S. 526 (8)—Adjournment—Transfer,
application for—Magistrate, duty of.

Under Sub-s. (8) of S. 526, Cr. P. C., a Magistrate is bound, when an application is made by an accused person for adjournment of the case in order to enable him to make an application for transfer, to adjourn the case at once. It is not competent to the Magistrate after such an application has been made to record any evidence at all. *Sartaj Singh v. Emperor*.

26 Cr. L. J. 139 : 83 I. C. 699 : 22 A. L. J. 430 : A. I. R. 1924 All. 533.

—S. 526 (8)—Adjournment—Sessions trial—
Application for adjournment—Application made after reading the charge.

For the purposes of S. 526 (8), Cr. P. C., the hearing or trial must be taken to include all the proceedings taken to determine a case, and the first step in the hearing at a Sessions trial is the reading and explaining of the charge to the accused. Where, at a Sessions trial, the accused applied for an adjournment under S. 526 (8), to enable him to apply for a transfer of the case after the charge was read out and explained to him : *Held*, that this was not an application made before the commencement of the hearing and that the Court was not bound to grant the adjournment. *Kali Mudaly v. Emperor*.

12 Cr. L. J. 271 : 10 I. C. 380 : 1911 2 M. W. N. 311.

—S. 526 (8)—Adjournment.

When before the commencement of the hearing, an application is made to a Magistrate under S. 526 (8), Cr. P. C., to adjourn the case for the purpose of enabling a party to apply to the High Court for transfer, the Magistrate is bound to postpone the hearing of the case, and his refusal to do so, renders the subsequent proceedings voidable, if not void. The proceedings may, however, go on until they arrive at a stage from which if the proceedings are carried on further, the accused might be prejudiced in his defence. *Kali Charan Ghose v. Rajjab Ali*.

3 Cr. L. J. 477 : 10 C. W. N. 793 : 3 C. L. J. 637.

—S. 526 (8)—Adjournment.

Where there are several accused, all the accused are not one by one entitled to have

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himself prejudiced to go first to the District Magistrate. *Muneshar v. Raghubir*.

14 Cr. L. J. 555 :
21 I. C. 155 : 11 A. L. J. 741.

—S. 528—Practice.

Where the Magistrate himself considers that the case is a fit one to give the accused an opportunity to show cause against an order under S. 528, no order should be passed unless the accused has had sufficient time to make an effective representation in the matter. *Dur Mahomed v. Allahdino*.

13 Cr. L. J. 32 :
13 I. C. 224 : 5 S. L. R. 190.

—S. 528—Procedure—Transfer of case—Formal application for transfer, necessity of—Nature of transfer proceedings.

Though a District Magistrate can transfer a case *suo moto*, yet when action is taken at the instance of a party, a proper application should, as a rule, be insisted upon, specially when allegations are made against the trial Magistrate. The functions of the District Magistrate under S. 528, Cr. P. C., which empowers him to transfer cases from the Courts of the Magistrates subordinate to him, are judicial functions and must consequently be exercised with due observance of the procedure and formalities which have to be followed in all other judicial matters. He must be moved by a proper application, openly presented in Court by the aggrieved party personally or through a person duly authorised by him for the purpose. *Gowardhan Das Kapur v. Abbas Ali*.

31 Cr. L. J. 257 :
121 I. C. 374 : A. I. R. 1930 Lah. 168.

—S. 528—Pronouncing of Judgment.

The pronouncing of judgment is not a part of the enquiry or trial, and therefore, where a Magistrate is transferred after he has completed the trial but before pronouncing judgment, the case cannot be transferred to him for the purpose of pronouncing judgment, however convenient this course may be in practice. *In re: Murugappa Thevan*.

37 Cr. L. J. 223 :
160 I. C. 104 : 1935 M. W. N. 1281 :
43 L. W. 257 : 70 M. L. J. 244 :
8 R. M. 305 : A. I. R. 1936 Mad. 163.

—S. 528—Record of reasons.

An order of a transfer of a criminal case, even for the ends of justice, must be for recorded reasons. *Vcnkatachalam Chetty v. Chairman, Municipal Council*.

16 Cr. L. J. 626 :
30 I. C. 450 : A. I. R. 1916 Mad. 657.

—S. 528—Record of reason.

It is also necessary that the Magistrate should record his reason for the transfer so as to bring out the fact that it was not an autocratic move or an arbitrary order but was a judicial pronouncement, in view of the peculiar facts of the case with the object of meeting the ends of justice. *Jageshar v. Emperor*.

31 Cr. L. J. 30 :
120 I. C. 261 : 1930 A. L. J. 148 :
A. I. R. 1929 All. 932.

Cr. P. CODE (1898), S. 528**—S. 528—Record of reasons—Duty of Magistrate.**

Where a Magistrate transfers a case from one Court to another, he must hear the opposite party and give his reasons for passing the order of transfer. *Ahmad Chidhir v. Chellaram Tekchand*.

37 Cr. L. J. 545 :
161 I. C. 939 (1) : 8 R. S. 162 (1) :
A. I. R. 1936 Sind 42.

—S. 528—Record of reasons—Omission, effect of.

The order of a District Magistrate transferring a case under S. 528, Cr. P. C. without recording reasons for the transfer is bad and is liable to be set aside. *Sardara v. Emperor*.

24 Cr. L. J. 187 :
71 I. C. 603 : 5 L. L. J. 230 :
A. I. R. 1923 Lah. 380.

—S. 528—Record of reasons—Transfer of case—Omission to record reasons for transfer—Irregularity—Magistrate transferring to his own file.

The omission of a Magistrate, transferring a case under S. 528, Cr. P. C. to record his reasons for doing so is only an irregularity and is not a sufficient ground for setting aside the order of transfer unless it is shown to have prejudiced a party to the proceedings. A Magistrate authorised, under S. 528, to transfer a case is competent to withdraw it to his own file. *In re: Susai Lazar Fernandes*.

9 Cr. L. J. 310 :
1 I. C. 553.

—S. 528—Record of reasons by reference to other papers.

Giving reasons by reference to other papers is not proper. But High Court does not interfere if order is not capricious or arbitrary. *Udhomal Karmumal v. Majnibai Udhomal*.

34 Cr. L. J. 861 :
144 I. C. 881 : 6 R. S. 14 :
A. I. R. 1933 Sind 205.

—S. 528—Record of reasons, effect of omissions.

Mere omission to record reasons as required by S. 528 (3) does not necessarily invalidate the subsequent proceedings. *Asaram v. Bhagirathi*.

12 Cr. L. J. 437 :
11 I. C. 621 : 7 N. L. R. 97.

—S. 528—Scope of.

Discretion to transfer is not fettered. But there must be reason for transfer and they must be satisfactory from point of view of principle—Previous knowledge instead of being qualification is disqualification. *Shantaram Sharma v. Kanai Lal Jatia*.

35 Cr. L. J. 597 (b) :
148 I. C. 121 : 58 C. L. J. 214 :
6 R. C. 426 : A. I. R. 1934 Cal. 137.

—S. 528—Transfer, legality.

A transfer under S. 528, Cr. P. C., is not illegal

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under S. 526 (8) is or is not a party within the meaning of that Sub-section. the safe course for him is to grant an adjournment of the case because if he refuses the adjournment and it is afterwards found that such person is 'party' within the meaning of S. 526 (8), all proceedings from the date of refusal would be illegal. *Om Radhe v. Emperor.*

40 Cr. L. J. 803 :
183 I. C. 460 : 12 R. S. 55 :
A. I. R. 1939 Sind 238.

————S. 526 (8)—*Duty of Magistrate to adjourn—Accused notifying his intention to apply for transfer—Magistrate's refusal to adjourn, effect of, on subsequent proceedings.*

Under S. 526 (8), Cr. P. C., when an accused notifies to the Court before which his case is pending his intention to make an application for transfer, it is the duty of the Magistrate to grant an adjournment; he has no power to proceed with the hearing of the case until a reasonable postponement has been granted. *Ghulam Rasul v. Emperor.*

29 Cr. L. J. 536 :
109 I. C. 60 : A. I. R. 1928 Lah. 850.

————S. 526 (8)—*Duty of Magistrate to adjourn notification of intention to apply for transfer.*

Flagrant disobedience of the statutory mandate contained in Cl. (8) of S. 526, Cr. P. C., that a Magistrate shall adjourn a case if the accused notifies his intention to make an application for transfer under the section, is sufficient to entitle the accused to obtain a transfer of the case. *Walidad Khan v. Emperor.*

29 Cr. L. J. 671 :
110 I. C. 223 : 26 A. L. J. 1321 :
A. I. R. 1928 All. 660.

————S. 526 (8)—*Grounds—Refusal to adjourn—Bona fide mistake of law by Magistrate—Whether good ground for transfer—Accused absent—Plea of illness disbelieved—Application for adjournment refused—Held, case should be transferred.*

A bona fide mistake of law on the part of a Magistrate is not a good ground of transfer. Similarly, no apprehension should arise from the ordinary acts of the Magistrate performed in the course of a case even if the decision is against the accused. Where the accused who remained absent for some time on the plea of illness but the Magistrate disbelieved the plea and did not accept the medical certificate produced by them and the application for adjournment under S. 526 (8) was also refused: *Held*, that a flagrant disobedience of the obligation to adjourn the case under S. 526 (8) was sufficient reason for granting a transfer and although the disobedience in the present case may have been inadvertent, yet in view of the fact that the accused declared that they would not claim a *de novo* trial, the case should be transferred. *Narayen v. Bala.*

37 Cr. L. J. 1146 :
165 I. C. 425 : 9 R. N. 78 :
A. I. R. 1936 Nag. 146.

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————S. 526 (8)—*Grounds—Refusal to adjourn—Opportunity of applying to High Court for transfer, to be given to accused—Re-trial.*

Where the accused notified, when the trial was about to begin, their intention to apply for transfer of the case and asked for an adjournment, and the Magistrate refused to grant it, urgently proceeded with the case and convicted and sentenced the accused, but it was found that the adjournment could not have been asked for earlier: *Held*, that the Magistrate ought to have under S. 526 (8), Cr. P. C., granted the adjournment so as to allow the accused an opportunity of making an application for transfer before the High Court: *Held*, also, that the case should be sent for re-trial to some other Magistrate. *Ramanand Singh v. Emperor.*

15 Cr. L. J. 507 :
24 I. C. 595 : 1 O. L. J. 218.

————S. 526 (8)—*Miscellaneous—Intimation of intention to move for transfer after case is closed but before judgment is pronounced—Magistrate not bound to adjourn case—"Trial," meaning of.*

The word 'trial,' as used in the Cr. P. C., does not include the pronouncing of judgment. A Magistrate's refusal to adjourn a case when an application is made to him after the case is closed but before the pronouncing of the judgment, for stay of proceedings with a view to obtain an order for transfer of the case, does not, therefore, violate the provisions of S. 526 (8), and will not invalidate the trial. *Public Prosecutor, Madras v. Chockalingam Ambalam.*

30 Cr. L. J. 908 :
118 I. C. 274 : 29 L. W. 108 :
1929 M. W. N. 60 : 52 Mad. 355 :
56 M. L. J. 216 : I. R. 1929 Mad. 770 :
A. I. R. 1929 Mad. 201.

————S. 526 (8)—*'Party,' meaning of.*

The word "party" within the meaning of S. 526 (8), Cr. P. C., does include an informant under S. 107. *Om Radhe v. Emperor.*

40 Cr. L. J. 803 :
183 I. C. 460 : 12 R. S. 55 :
A. I. R. 1939 Sind 238.

————S. 526, Cl. (8)—*Refusal of application, effect of—Trying Magistrate transferred after framing charge—Case transferred by the District Magistrate to his own file—Application for adjournment made to the District Magistrate.*

After the charges had been framed against the accused under Ss. 147, 380 and 448, Penal Code, the trying Magistrate was transferred from the district. On the District Magistrate taking up the case, an application, purporting to be under S. 526, Cr. P. C., was made on behalf of the prosecution for the adjournment of the case, in order that the prosecution might move the High Court for a transfer of the case. The District Magistrate rejected the application, and proceeding with the hearing of the case, acquitted all the accused: *Held*, that the application should not have been rejected. S. 526 (8) was intended to apply to a case of this kind and to apply to a case in which an application for transfer is made at the very

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-----Ss. 528, 556—Duty of Magistrate—
Transfer of case — Disqualification of Magistrate.

The accused applied to the District Magistrate, under S. 528, Cr. P. C., to transfer the case from the Magistrate of the second class before whom he was being tried, on the ground that the latter was corrupt and had demanded money from him. The District Magistrate, after inquiry, found that the allegation was false and rejected the application. The Magistrate then applied for leave to prosecute the accused and at the same time proceeded with the trial, which had been stayed, and convicted the accused: *Held*, the Magistrate after he had sent in his application for leave to prosecute the accused should have taken the further orders of the District Magistrate as to whether he was to go on with the case, but that accused was not entitled to a fresh trial as he had endeavoured to procure the transfer by making a charge found to be false. *Ram Lall v. Emperor.*

1 Cr. L. J. 735 :
2 L. B. R. 220.

-----Ss. 528, 488—Withdrawal by District Magistrate—*Transfer or withdrawal of maintenance proceedings by District Magistrate during iddat—Right of divorced Muhammadan wife to claim.*

A District Magistrate is competent under the very general terms of S. 528 (1), Cr. P. C., to transfer to his own Court the maintenance proceedings, under S. 488 of the Code, pending before a Magistrate subordinate to him. A divorced Muhammadan wife is entitled to be awarded maintenance during the period of her iddat. *Ghulam Rukia v. Niaz Ali.*

2 Cr. L. J. 40 :
5 P. R. Cr. 1905 : 6 P. L. R. 335.

-----S. 528 (1)—Ex parte order.

An *ex parte* order under S. 528, Cr. P. C., is not illegal because made *ex parte*, but ordinarily an order under Cl. (1) of that section ought not to be made on application of either party, without giving the opposite party whether, he be complainant or accused, an opportunity of showing cause against it. *Ma Hnil v. Maung Pe To.*

1 Cr. L. J. 549 :
15 U. B. R. 1904 1st Qr. Cr. P. C.

-----S. 528 (1)—‘Case,’ meaning of.

The word “case” in S. 528 (1), Cr. P. C., includes a proceeding upon a complaint as soon as the complaint has been received by the Magistrate who takes cognizance of offence complained of. *Asaram v. Bhagirathi.*

12 Cr. L. J. 437 :
11 I. C. 621 : 7 N. L. R. 97.

-----S. 528 (1)—Scope of.

Powers of transfer of the Sessions Judge are expressly set out in S. 528 (1), it is impossible to allow any further “inherent” powers of transfer. *Daulat Ram v. Emperor.*

33 Cr. L. J. 158 :
135 I. C. 252 : 1931 A. L. J. 591 :
I. R. 1932 All. 76 :
A. I. R. 1931 All. 435.

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-----S. 528 (2)—Jurisdiction.

While it is true the District Magistrate has not appellate jurisdiction under S. 528 (2), Cr. P. C., he has a concurrent jurisdiction, and that jurisdiction is not barred merely because it has been exercised by the Sub-Divisional Magistrate in the first instance. *Sugnomal Tahilram v. Phatandas Relumal.*

38 Cr. L. J. 133 (b) :
166 I. C. 83 (2) : 9 R. S. 120 :
30 S. L. R. 327 : A. I. R. 1936 Sind 237.

-----S. 528 (2)—Notice—Transfer of case.

The rule that notice should be given before a criminal case is transferred at the instance of a party does not apply when the District Magistrate *suo motu* withdraws it to his own file or transfers or re-transfers it from one Court to another Court under his control. *Abdulla v. Emperor.*

11 Cr. L. J. 150 :
4 I. C. 1025 : 35 P. W. R. 1909 Cr. :
3 P. R. 1910 Cr.

-----S. 528 (2)—Notice, object of—Transfer without notice to accused, legality of—Practice of Madras High Court.

Although S. 528 (2), Cr. P. C., does not in terms require that notice shall be given to the accused when an application for transfer that concerns him is made, the practice of the Madras Courts is to hold that it is advisable in the interests of justice that an opportunity should be given to the accused to show cause why the transfer should not be made and an order of transfer without such notice to the accused is liable to be set aside by the High Court. *In re : Kamatchi Ammal.*

30 Cr. L. J. 1043 :
119 I. C. 385 : 30 L. W. 401 :
1929 M. W. N. 265 :
I. R. 1929 Mad. 929 :
A. I. R. 1929 Mad. 511.

-----S. 528 (2)—Power of District Magistrate — District Magistrate, whether Appellate Court.

The provisions of S. 528 (2), Cr. P. C., provide that the District Magistrate and the Sub-Divisional Magistrate shall have equal authority in withdrawing cases from a Subordinate Magistrate. The District Magistrate, therefore, cannot exercise powers of an Appellate Court as regards orders passed by the Sub-Divisional Magistrate. *Kishori Lal v. Emperor.*

30 Cr. L. J. 654 :
116 I. C. 751 : I. R. 1929 All. 607 :
A. I. R. 1928 All. 546.

-----S. 528 (3)—Record of reasons—Effect of omission.

Under S. 528 (3) ‘reasons’ for transfer should be recorded, but omission to record reasons does not necessarily vitiate the order of transfer and the superior Court can call for the reasons. *Abdullah v. Emperor.*

11 Cr. L. J. 153 :
4 I. C. 1025 : 35 P. W. R. 1909 Cr. :
3 P. R. 1910 Cr.

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—S. 528—Applicability.

S. 528 of the Code has no application to proceedings submitted to a Sub-Divisional Magistrate by a Second Class Magistrate under S. 349. *Emperor v. Vinayak Narayan Arle*.

16 Cr. L. J. 273 :
28 I. C. 321 : 38 Bom. 719 :
16 Bom. L. R. 598 :
A. I. R. 1914 Bom. 217.

—S. 528—'Costs', if can be awarded.

A Magistrate has no power to award costs in application under S. 528, Cr. P. C. *District Magistrate, Kurnool v. Chandra Tirumal Reddy*.

40 Cr. L. J. 46 :
178 I. C. 126 (2) : 48 L. W. 381 :
(1938) 2 M. L. J. 531 (1) :
1938 M. W. N. 1105 (1) : 11 R. M. 413 :
A. I. R. 1938 Mad. 909.

—S. 528—Duty of District Magistrate—Principles to be followed—Case ready for argument—Whether expedient to transfer.

Although S. 528, Cr. P. C., does not fix the limit of time within which the transfer application is permitted as S. 526, Sub-s. 8 does, still the District Magistrate is bound to act generally on the principle underlying S. 526. If it is not open to a party to move the High Court for transfer of a criminal case after the defence closes its case *a fortiori* it would not be open to him to do so by applying to the District Magistrate. It is inexpedient to transfer the case when it is mature for judgment unless it be for purely administrative reasons. *Fakira v. Goma*.

37 Cr. L. J. 861 :
163 I. C. 694 : 18 N. L. J. 279 :
9 R. N. 15.

—S. 528—Duty of Magistrate—Transfer—Magistrate having little time to dispose of case, whether good ground for transfer.

Although a District Magistrate has very wide powers of transfer conferred upon him by S. 528, Cr. P. C., he must, in the exercise of these powers, act in a judicial manner and not capriciously or arbitrarily. The fact that a Magistrate before whom a case is pending is also the Treasury Officer and has very little time at his disposal by virtue of his duties as a Treasury Officer is not a sufficient reason for directing a transfer of the case from his Court. *Ghulam Mohiuddin v. Emperor*.

20 Cr. L. J. 402 :
51 I. C. 162 : A. I. R. 1919 Pat. 250.

—S. 528—Duty of Magistrate of superior jurisdiction—Transfer, order of, by competent Magistrate—Cancellation of order by superior Magistrate without notice to party who obtained original order, legality of.

When a complainant has obtained from a competent Magistrate an order of transfer of a case made after hearing both the parties, a Magistrate of superior jurisdiction should not cancel the order and re-transfer the case to the original Magistrate without hearing the

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complainant in support of the order of transfer. *In re : Manikkam Pillai*. 22 Cr. L. J. 199 :
60 I. C. 55 (a) : 12 L. W. 633 :
1920 M. W. N. 767 : 39 M. L. J. 714 :
A. I. R. 1920 Mad. 740 (1).

—S. 528—Ground for transfer—Transfer of case—Magistrate having expressed opinion in previous case, whether sufficient ground for transfer.

The opinion expressed by the Magistrate in a previous case in which the accused was tried and convicted on a separate and distinct charge, is in itself no ground for the transfer of the case. *Hayat Khan v. Emperor*.

19 Cr. L. J. 121 (b) :
43 I. C. 409 : 4 P. L. W. 21 :
A. I. R. 1918 Pat. 165.

—S. 528—Jurisdiction—Order for transfer made by Sub-Divisional Magistrate.

A District Magistrate cannot set aside an order of transfer passed by a Sub-Divisional Magistrate. *Ilaf Husain v. Emperor*.

13 Cr. L. J. 782 :
17 I. C. 414.

—S. 528—Jurisdiction—Transfer of case by District Magistrate—Delay, whether ground for transfer.

Accused was being tried before a Subordinate Magistrate for offences under Ss. 500 and 504, Penal Code. On an application under S. 528, Cr. P. C., the District Magistrate transferred the case to his own file on the grounds that no offence under S. 500 was disclosed, that the offence under S. 504 was triable summarily and that trial before the Subordinate Magistrate had already become protracted: *Held*, (1) that it was for the Subordinate Magistrate to determine whether a case under S. 500 or 504, Penal Code, was made out and that the District Magistrate was not at that stage competent to decide whether an offence under S. 500 was or was not committed; (2) that delay in disposing of the case could not be a ground for taking action under S. 528. *Jewraj Ramjidas v. Duttanji Howji*.

19 Cr. L. J. 119 :
43 I. C. 407 : 1918 Pat. 78 :
A. I. R. 1918 Pat. 152.

—S. 528—Jurisdiction—Transfer of case by Magistrate of co-ordinate jurisdiction.

Where a Magistrate acts on his own initiative in transferring a case, his order is not vitiated by the fact that another Magistrate of co-ordinate authority had refused it, but if he examines the reasons given by the co-ordinate authority and finds that that authority is wrong, his interference must be deemed to be by way of appeal which he has no jurisdiction to entertain, and the order of transfer must be set aside. *Narayanadasamy Aiyar v. Kuppusamy Aiyar*.

18 Cr. L. J. 57 :
37 I. C. 41 : 5 L. W. 372 :
A. I. R. 1918 Mad. 1366.

—S. 528—Jurisdiction of District Magistrate to transfer—Case remanded by Sessions Judge—Notice to accused person.

The District Magistrate has no jurisdiction to

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———S. 529—Miscellaneous.

Power to take cognizance and power to dismiss a complaint go together. *Chunnu Sonar v. Kripa Sankar Misra* 34 Cr. L. J. 923 : 145 I. C. 280 : 6 R. P. 150.

———S. 529—Omission to explain accused's right to benefit of doubt—*Trial, whether vitiated.*

The omission to tell the Jury that the accused is entitled to the benefit of any reasonable doubt is not a misdirection vitiating the trial, though, as a matter of practice, it is as well to always end the charge with these words. *Rahimbeg v. Emperor.*

27 Cr. L. J. 217 :
92 I. C. 169 : 7 N. L. J. 208 :
A. I. R. 1925 Nag. 154.

———S. 529—Transfer of case by Magistrate not authorised to transfer—*Irregularity covered by S. 529.*

Transfer by a Sub-Divisional Magistrate of a case under S. 192 when the case has already been transferred to him by the District Magistrate is a mere irregularity covered by S. 529. *Yusuf Ali Khan v. Emperor.*

21 Cr. L. J. 96 :
54 I. C. 496 : A. I. R. 1920 Pat. 518.

———S. 529 (a).

S. 529 (a) saves the proceedings before a Magistrate taken on a complaint of which cognizance is taken without authority; but this will not have the effect of making the complainant liable for prosecution for a false complaint by reason of the Magistrate's having taken cognizance of it without power to do so. *Bengal Gope v. Emperor.*

27 Cr. L. J. 704 :
94 I. C. 896 : 7 P. L. T. 335 : 5 Pat. 447 :
A. I. R. 1926 Pat. 400.

———S. 529 (e)—*Irregularity—'Erroneously and in good faith.'*

Magistrate erroneously but in good faith taking cognizance of case he is not empowered to take cognizance—*Proceedings are not vitiated.* *Chuni Lal v. Emperor.*

34 Cr. L. J. 761 :
144 I. C. 380 : 1933 A. L. J. 735 :
I. R. 1933 All. 426 :
A. I. R. 1933 All. 399.

———Ss. 529 (e), 530 (k), 531—*Failure of justice—Proceedings wrongly held.*

Unless it appears that proceedings wrongly held have, in fact, occasioned a failure of justice, they ought not to be set aside. *Lalit Chandra v. Emperor.* 13 Cr. L. J. 433 : 15 I. C. 65 : 39 Cal. 119.

———S. 529 (f)—*Applicability of—Case transferred to Magistrate, First Class—Such Magistrate transferring case to Third Class Magistrate—Trial of case by Third Class Magistrate, legality of.*

Where a Magistrate of the First Class to whom a case has been transferred by a Sub-Divisional Magistrate, in his turn,

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erroneously but *bona fide* believing that he has power to do so, transfers that case to a Magistrate of the Third Class, S. 529 (f), Cr. P. C., applies and the trial of the case by such Third Class Magistrate is not invalidated. *Hasan Ali v. Emperor.*

30 Cr. L. J. 467 :
115 I. C. 399 : 30 Bom. L. R. 653 :
I. R. 1929 Bom. 303 :
A. I. R. 1928 Bom. 286.

———S. 530.

See also Cr. P. C., 1898, Ss. 190, 263.

———S. 530—*Conviction—Bench of Magistrates, conviction by—Quorum, whether necessary—Each member whether bound to hear whole evidence.*

For a conviction by a Bench of Magistrates to be legal, it must be by a *quorum* of the Magistrates as required by the rules, each member of which has heard the whole evidence in the case. *Emperor v. Nihal.*

20 Cr. L. J. 769 (b) :
53 I. C. 609 : 13 S. L. R. 166 :
A. I. R. 1919 Sind 66.

———S. 530—*Conviction by Bench of Magistrates, some of whom not hearing evidence.*

A conviction by a Bench of Magistrates, some of whom have not heard the evidence is vitiated and must be set aside. *In re : Subramania Ayyar.*

16 Cr. L. J. 489 :
29 I. C. 329 : 38 Mad. 304 :
A. I. R. 1916 Mad. 810.

———S. 530—*Irregularity—According to prosecution evidence case under Ss. 148, 395, Penal Code—Conviction by Second Class Magistrate under S. 147, 379—Trial, validity of.*

Where the prosecution evidence discloses a case under Ss. 148 and 395, Penal Code, which a Second Class Magistrate is not empowered to try, but the Magistrate tries and convicts the accused *bona fide* under Ss. 147 and 379, Penal Code, without any objection by or prejudice to the accused, the trial is irregular but not void. *Balgabind Thakur v. Emperor.*

27 Cr. L. J. 1017 :
96 I. C. 873 : 7 P. L. T. 496 :
A. I. R. 1926 Pat. 393.

———S. 530—*Order of Appellate Court without jurisdiction—Void proceedings—Duty of High Court in revision.*

The accused was convicted of an offence under the Burma Municipal Act and sentenced to pay a fine of Rs. 20 by a First Class Magistrate. He applied for revision to the Sessions Judge, who treated the application as an appeal and reversed the conviction, although no appeal lay and the order was not one that he could have passed in revision: *Held*, that as the Sessions Judge was not authorized by law to try the appeal, his order was void, but, *held further*, that an order which is void for want of jurisdiction must nevertheless be regarded as valid unless and until it is set aside by a Court of competent jurisdiction. *Held further*, that it is not imperative on the High Court

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———S. 528—*Notice—Transfer of case by District Magistrate—Absence of notice to opposite party, effect of.*

A transfer of a case by a District Magistrate without notice to the opposite party though not proper is not illegal. *Rahm Chani v. Fazal Elahi.* 28 Cr. L. J. 38 :

99 I. C. 70 : A. I. R. 1927 Lah. 80.

———S. 528—*Notice—Transfer of case—Notice to opposite party, whether mandatory—Magistrate not competent to try one of two offences mentioned in complaint—Trial of one case—Prosecution evidence closed.*

The omission to issue a notice upon the accused before ordering the transfer of a case against him, though not illegal, is certainly irregular. S. 528, Cr. P. C., which is general in its terms empowers a Magistrate to make an order of transfer only after issuing notice to the person affected, and although, as a rule of practice, it is desirable that notice should be issued, the law is not mandatory upon the point and the omission to issue notice is in itself not a reason for setting aside an order of transfer. *Gobind Swain v. Emperor.*

25 Cr. L. J. 1385 :

83 I. C. 345 : 1923 Pat. 47 : 2 Pat. 333 :

A. I. R. 1923 Pat. 228.

———S. 528—*Notice—Transfer of case—Notice to opposite party, whether necessary—Procedure.*

An order under S. 528, Cr. P. C., transferring a case from the Court of one Magistrate to that of another is not illegal merely because it is made without notice to the other party. The question of notice is one of propriety rather than of legality, and should be decided on the facts of each particular case. Where a case, which had been pending before a Magistrate for two months and eleven hearings and in which charges had been framed, was transferred on the motion of the accused without notice to the complainant : *Held*, that the order of transfer was improper and should be set aside. *In re : Hawaji Sakham Mhalaskar.*

20 Cr. L. J. 320 :

50 I. C. 496 : 21 Bom. L. R. 276 :

A. I. R. 1919 Bom. 161.

———S. 528—*Object of.*

It is not the object of S. 528, Cr. P. C., that a case should be transferred merely because it is going against a particular party. Where, therefore, a complaint alleges two offences one of which the Magistrate is not competent to try, and the prosecution evidence in the one triable by the Magistrate is practically closed, no transfer of the case should be ordered, as it is open to the complainant after the disposal of the case, which is being investigated by the Magistrate, to move the officer empowered to take cognizance thereof to proceed with the trial of the charge under the other offence. *Gobind Swain v. Emperor.* 25 Cr. L. J. 1385 :

83 I. C. 345 : 1923 Pat. 47 : 2 Pat. 333 :

A. I. R. 1923 Pat. 228.

———S. 528—*Order of transfer.*

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circumstances of case. *Shantaram Sharma v. Kanai Lal Jatia.* 35 Cr. L. J. 597 (b) :

148 I. C. 121 : 58 C. L. J. 214 :

6 R. C. 426 : A. I. R. 1934 Cal. 137.

———S. 528—*Power of District Magistrate—Transfer of criminal case—Sub-Divisional Magistrate, refusal of.*

The fact that a Sub-Divisional Magistrate has refused to transfer a case at the request of a party does not preclude a District Magistrate from making an order of transfer on his own initiative. The distinction drawn between orders passed by a District Magistrate *suo motu* and orders passed on petitions by parties is without foundation. *Santhappa Sethuram v. Govindaswamy Kandiyar.* 18 Cr. L. J. 335 :

38 I. C. 447 : 5 L. W. 501 : 21 M. L. T. 281 :

40 Mad. 791 : A. I. R. 1918 Mad. 1122.

———S. 528—*Power of High Court to interfere—Order of transfer—Apprehension of want of fair and impartial trial—Inconvenience of accused.*

Although it is not the practice of the High Court to interfere with an order under S. 528, Cr. P. C., made by a lower Court in the exercise of its jurisdiction, still it will interfere when there are reasons for interfering with the order of transfer. The convenience of the accused must be regarded in considering the question whether a fair and impartial trial is likely to be held. *Jagdamba Sahay v. Emperor.*

29 Cr. L. J. 373 :

108 I. C. 329 : A. I. R. 1928 Pat. 347.

———S. 528—*Power of High Court to interfere—Order of transfer without giving reasons and before issuing notice to other side—Legality.*

When the District Magistrate transfers a case from one Honorary Magistrate to another, and no reasons for the transfer are given in the order and no notice has been issued to the other side before the order is passed, the order although irregular, may not be wholly illegal. But the High Court can interfere in revision even with a legal order where it appears just to do so : *Held*, the order was unsatisfactory and as there was nothing to show that the discretion of the lower Court was exercised properly, and that the other side ought to be given a chance to advance its objections, the order of transfer should be set aside. *Chotemiya v. Asrafmiya.* 37 Cr. L. J. 1006 :

164 I. C. 692 : I. L. R. 1936 Nag. 87 :

9 R. N. 23 (1) : A. I. R. 1936 Nag. 181.

———S. 528—*Practice—Transfer of case—Case triable by Sessions—Grounds of transfer—Magistrate making inquiry expressing strong views or to be called as witness.*

Where a case is triable by the Court of Sessions, it is no ground for transfer of a case that the Magistrate inquiring into the offence had expressed certain strong views against a party or that he was going to be called as a witness. When an order of transfer can be passed by the District Magistrate under S. 528, it is the duty of the person who considers

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See also Cr. P. C., 1898, Ss. 179, 526.

-----S. 531—Irregularity in matter of forum
—Interference by High Court.

Even if there is any irregularity in matter of the place where the case ought to have been tried, S. 531 bars the interference by the High Court in the matter on revision. *Mahadeo v. Emperor*. 11 Cr. L. J. 372 : 6 I. C. 563 : 7 A. L. J. 319.

-----S. 531—Applicability.

S. 531 applies where finding of Criminal Court has taken place in wrong Sessions Division, etc., where the Code applies. *Ali Mohamed Kassim v. Emperor*. 32 Cr. L. J. 1120. 134 I. C. 209 : 9 Rang. 338 : I. R. 1931 Rang. 273 : A. I. R. 1931 Rang. 164.

-----S. 531—Commitment to wrong Court—Revision.

A point of jurisdiction can be raised at any stage. An order of committal to the Sessions Courts is an order under S. 531 of the Cr. P. C. The High Court can interfere in revision to set aside an order of committal to a Sessions Court which has no jurisdiction to try the offence committed. *Bhagwatia v. Emperor*. 26 Cr. L. J. 49 : 83 I. C. 577 : 3 Pat. 417 : A. I. R. 1925 Pat. 187.

-----S. 531—Failure of justice.

In the absence of prejudice, or of a failure of justice, the conviction of an accused person for an offence under S. 408, Penal Code, by a Magistrate outside whose territorial jurisdiction the offence was committed, is a mere irregularity cured by S. 531 of the Cr. P. C. The mere objection by an accused person to the jurisdiction of a Magistrate is not conclusive proof that the accused was prejudiced. An accused is liable to conviction by a Magistrate of an offence under S. 408, Penal Code, which has been proved to have been committed by him, even though the offence was also one under S. 447-A, Penal Code, triable only by a Court of Session. *Kall Charan Kundu v. Emperor*. 22 Cr. L. J. 666 : 63 I. C. 458 : 34 C. L. J. 200 : A. I. R. 1921 Cal. 114.

-----S. 531—Interference—Jurisdiction of trying Magistrate—Revision—Interference by the High Court.

S. 531 is imperative and the Court is to see in every case, in which it is asked to set aside a conviction on the ground that the trying Magistrate had no jurisdiction to try the case, where there has in fact been a failure of justice. *Bimal Chandra Banerjee v. Tez Chandra Banerjee*. 19 Cr. L. J. 896 : 47 I. C. 92 : A. I. R. 1918 Cal. 305.

-----S. 531—Local area—Meaning of.

The expression "local area" used in S. 531, is not confined to a Province but includes all local areas governed by the Code of Cr. P. which extends to the whole of British India. Where the Magistrate who tried the case was com-

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mitted to try the case, the conviction cannot be reversed for the simple reason that the trial took place within a local area other than the one where the offence was committed. *Dewan Singh Mastoon v. Emperor*, 37 Cr. L. J. 474 (2) : 161 I. C. 635 : 8 R. N. 219 : A. I. R. 1936 Nag. 55.

-----S. 531—Prejudice.

S. 531 cures any defect due to want of legal jurisdiction unless there has been a failure of justice by the exercise of such irregular jurisdiction. *Lakhan Singh v. Emperor*. 35 Cr. L. J. 973 : 149 I. C. 533 : 11 O. W. N. 534 : 6 R. O. 572 : A. I. R. 1934 Oudh 200.

-----S. 531—Scope.

S. 531 covers cases which the Magistrate has power to try, the only defect in the jurisdiction being one of locality. *Maung Waing v. Ma Chit*. 1 Cr. L. J. 545 : 10 Bur. L. R. 319 : 4 B. R. 1904 Cr. Pro. 10.

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-----S. 531—Scope.

S. 531 operates wherever in British India any finding, sentence or order of any Criminal Court has been arrived at or passed "in a wrong Sessions Division, District, Sub-Division or other local area" *ejusdem generis*, with a Sub-Division provided that in such area, the Cr. P. C. runs. *Ali Mohamed Kassim v. Emperor*. 32 Cr. L. J. 1120 : [134 I. C. 209 : 9 Rang. 338 : I. R. 1931 Rang. 273 : A. I. R. 1931 Rang. 164.

-----S. 531—Scope.

S. 531 relates only to proceedings in a wrong place and cures defects as to local jurisdiction. *In re : Mir Husen Abdul Rahiman*. 15 Cr. L. J. 295 (b) : 23 I. C. 503 : 16 Bom. L. R. 84 : A. I. R. 1914 Bom. 3.

-----S. 531—Scope.

Under S. 531 no finding of a Criminal Court can be set aside solely on the ground that the Magistrate has no local jurisdiction to hear the case. *Palli Ram v. Emperor*. 32 Cr. L. J. 1177 : 134 I. C. 477 : 8 O. W. N. 827 : I. R. 1931 Oudh 381 : A. I. R. 1931 Oudh 277.

-----S. 531—Scope—Want of jurisdiction, whether ground for setting aside order of commitment according to S. 531.

Even if it be held that the Committing Magistrate had no territorial jurisdiction at the time of the commitment and it were considered that he had, on that account, no jurisdiction to make the commitment, such want of jurisdiction would not be a good ground for setting aside the order of commit-

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for want of notice to the opposite party.
Bagh Ali v. Muhammad Din.

27 Cr. L. J. 411 :

93 I. C. 75 : 6 Lah. 541 :

27 P. L. R. 80 : A. I. R. 1926 Lah. 156.

—S. 528—Transfer of case—Proceeding with transferred case without withdrawing or recalling it, legality of.

Once a case is transferred by a Sub-Divisional Magistrate or District Magistrate to another, a Subordinate Magistrate, he cannot proceed with that case without withdrawing or transferring it back again, and if he wrongly proceeds to try the case without such withdrawal or transfer, his proceedings are not merely irregular but void. A Magistrate trying a case which has not been taken cognizance of by him or has not been sent to him in the proper way or withdrawn by him in the proper way has no jurisdiction to try it. *Golusu Appalarasiah v. Emperor.*

31 Cr. L. J. 895 :

125 I. C. 557 : 1930 M. W. N. 413 :

A. I. R. 1930 Mad. 705.

—S. 528—Transfer of case—Duty of Magistrate.

In cases transferred under S. 528, Cr. P. C., it is desirable that the Magistrate who succeeds the Magistrate originally trying or enquiring into the case, should commence the hearing *de novo*. *Ganga Chetty v. Emperor.*

20 Cr. L. J. 496 :

51 I. C. 480 : 12 Bur. L. T. 55 :

A. I. R. 1919 L. Bur. 50.

—S. 528—Transfer of case, ground for—Discussion of case at Club before Sessions Judge likely to try case.

Discussion of a criminal case at a Club by Civil Surgeon or any of the other officers who are likely to be concerned in the disposal of it before a Sessions Judge who is to try the case, is a sufficient ground for transfer of the case from the Court of that Sessions Judge. *Muhammad Daraz Khan v. Emperor.*

23 Cr. L. J. 126 :

65 I. C. 558 : 19 A. L. J. 946.

—S. 528—Transfer of part-heard cases.

Where the trial of the accused has proceeded in one Court, where the complainant and his witnesses have been examined, where these witnesses have been tried and tested by cross-examination and the trial Court has framed a charge against the accused presumably on the ground that a *prima facie* case has been made out, the case ought not to be removed from the file of the trial Court and transferred to another Magistrate unless a very strong case has been made out to justify the transfer. *Jageshar v. Emperor.*

31 Cr. L. J. 30 :

120 I. C. 261 : 1930 A. L. J. 148 :

A. I. R. 1929 All. 932.

—S. 528—Transfer on communal grounds.

The party who pleads prejudice and bias in a particular Judge or Magistrate, must prove affirmatively that such, bias and prejudice do, as a matter of fact exist. A case of a

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communal or quasi-communal nature should not be transferred from the Court of Hindu Magistrate merely because the accused is Muhammadan or *vice versa*. *Gowardhan Das Kapur v. Abbas Ali.*

31 Cr. L. J. 257 :

121 I. C. 374 : A. I. R. 1930 Lah. 168.

—S. 528—Withdrawal of case—Chief Presidency Magistrate, whether can withdraw case transferred by Additional Chief Presidency Magistrate.

The Additional Chief Presidency Magistrate is subordinate to the Chief Presidency Magistrate and the latter has power, under S. 528, Cr. P. C., to withdraw a case from the file of a Presidency Magistrate to whom it had been made over for disposal by the Additional Chief Presidency Magistrate and to transfer it to his own file. *Mohini Mohan Roy v. Punam Chand.*

26 Cr. L. J. 101 :

83 I. C. 661 : 39 C. L. J. 595 :

28 C. W. N. 903 : 51 Cal. 820 :

A. I. R. 1924 Cal. 911.

—S. 528—Withdrawal of case—Transfer of case by District Magistrate—Sub-Divisional Magistrate, power of, to re-transfer case.

Under S. 528, Cr. P. C., a Sub-Divisional Magistrate has the power to withdraw a case pending before a Subordinate Magistrate. But the section cannot be so read as to imply that after a District Magistrate has transferred a case from the file of one Magistrate to that of another, a Sub-Divisional Magistrate has jurisdiction to nullify that order by ordering a fresh transfer of the case to his own file. *Muhammad Akbar v. Emperor.*

26 Cr. L. J. 538 :

85 I. C. 378 : 23 A. L. J. 133 :

47 All. 288 : A. I. R. 1925 All. 283.

—Ss. 528 and 537—Record of reasons, effect of omission.

A complaint was made in the Court of a Deputy Magistrate accusing a Sub-Inspector of Police of offences under Ss. 323 and 384, Penal Code. The Deputy Magistrate brought the complaint to the notice of the District Magistrate who without recording his reasons for so doing, but in obedience to an order of Government, transferred the case to his own file. The District Magistrate also called upon the officer accused to report as to any reasons which he knew for the complaint having been made against him. This report was placed on the record, and was used, as the Magistrate stated in his order, to supply grounds for cross-examining the witnesses produced by the complainant: *Held*, that the omission on the part of the Magistrate to record his reasons for transferring the case was not, under the circumstances, more than an irregularity, and that his action in calling for a report from the Sub-Inspector and the use made of that report were not improper. *In re : Dukhi Kewat.*

3 Cr. L. J. 327 :

26 A. W. N. 76 : 3 A. L. J. 224 :

I. L. R. 28 All. 421.

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—S. 532—Commitment, whether can be quashed by Sessions Judge.

S. 532 applies only to a case where a Magistrate or other authority purporting to exercise powers duly conferred, which are not so conferred, commits an accused person to a Court of Session. It has no application to a case where the Court of Session considers that a commitment made by a competent Court is illegal. *Emperor v. Madhav Laxman*. 20 Cr. L. J. 71 (b) :

48 I. C. 871 : 20 Bom. L. R. 607 :
43 Bom. 147 : A. I. R. 1918 Bom. 117.

—S. 532—Scope.

S. 532 does not deal with cases in which the defect in the committal order arises from want of territorial jurisdiction. *In re : Rathinam Pillai*. 20 Cr. L. J. 416 :

51 I. C. 176 : A. I. R. 1919 Mad. 229.

—S. 533.

—Applicability.

—Curable irregularity.

—Defect curable.

—Defect in certificate.

—Error.

—Examination of Magistrate.

—Fatal defect.

—Interpretation.

—Prejudice.

—Record of confession.

—Scope.

—S. 533.

See also Cr. P. C., 1898, Ss. 148, 164, 164 (3), 233, 339-A, 350, 360.

—S. 533—Applicability.

Even if a statement is not recorded strictly according to S. 164 and even after it has been received in evidence, S. 533 can be resorted to on evidence of Magistrate. *Ba Yin v. Emperor*. 31 Cr. L. J. 297 :

121 I. C. 782 : 7 Rang. 759 :
A. I. R. 1930 Rang. 53.

—S. 533—Applicability.

Obiter.—S. 533 of the Cr. P. C. can be invoked when there is some written record but is defective through some error in not strictly following the provisions of S. 164 or S. 361, the object being to take such records out of the excluding provisions of S. 91 of the Evidence Act. *In re : Tangedypalle Pedda Obigadu*. 23 Cr. L. J. 680 :

69 I. C. 264 : 14 L. W. 542 :
1921 M. W. N. 779 : 20 M. L. T. 107 :
42 M. L. J. 37 : 45 Mad. 230 :
A. I. R. 1922 Mad. 40.

—S. 533—Applicability.

S. 533 of the Code does not apply to a case where no record whatever has been made of such a confession. *Emperor v. Gulabu*. 14 Cr. L. J. 211 :

19 I. C. 307 : 11 A. L. J. 286 :
35 All. 260.

—S. 533—Curable irregularity.

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Confession not recorded by Magistrate according to law—Magistrate examined as witness—Defect is cured. *Ngo Po Duc v. Emperor*. 35 Cr. L. J. 823 :

148 I. C. 1002 : 6 R. Rang. 265 :
A. I. R. 1934 Rang. 78.

—S. 533—Curable irregularity.

Confession recorded in English but not in language of accused—Defect curable under S. 533. *Emperor v. Kannoji Brahman*. 41 Cr. L. J. 533 :

188 I. C. 57 : 19 Pat. 301 :
6 B. R. 577 : 12 R. P. 674 :
A. I. R. 1940 Pat. 163.

—S. 533—Curable irregularity.

Magistrate complies with provisions of S. 164 but fails to record the necessary certificate ; S. 533 cures the defect on evidence of Magistrate of such compliance. *Jog Raj v. Emperor*. 32 Cr. L. J. 290 :

129 I. C. 289 : I. R. 1931 Lah. 177 :
A. I. R. 1930 Lah. 534.

—S. 533—Curable irregularity.

Where a Magistrate records the statement of an accused in English in a narrative form, after the Police is removed from the Court-room, and he is satisfied that the accused is not tutored by anybody and the statement is translated to the accused who admits it to be correct and fixes his thumb-mark thereto, the statement is admissible in evidence and any formal defects that might have been made in the recording of it are cured by S. 533. *Deo Datt v. Emperor*. 24 Cr. L. J. 6 :

71 I. C. 54 : 20 A. L. J. 915 :
45 All. 166 : A. I. R. 1923 All. 90.

—S. 533—Defect—Curable.

If the memorandum does not appear or is defective, the document is inadmissible unless the defect can be cured by the examination of the Magistrate who recorded it under S. 533, Cr. P. C. *Partab Singh v. Emperor*. 27 Cr. L. J. 514 :

93 I. C. 978 : 2 Lah. Cas. 72 :
6 Lah. 415 : 7 L. L. J. 482 :
A. I. R. 1925 Lah. 605.

—S. 533—Defect in certificate.

In statements made by the accused to the trying Deputy Magistrate on the 12th January and 6th February, respectively, the certificate required by S. 364 appeared on the 1st page of the record only. The record of the examination of the 12th January alone extended over two pages, and that of the 6th February, was written entirely on the second page : *Held*, that this defect is cured by the evidence of the Deputy Magistrate. *Emperor v. Rajani Kanto Koer*. 1 Cr. L. J. 10 :

8 C. W. N. 22.

—S. 533—Defect in certificate.

Under S. 164 defect is curable on evidence of compliance by Magistrate recording confession. *Rahmat v. Emperor*. 30 Cr. L. J. 49 :

113 I. C. 65 : I. R. 1929 Lah. 134 :
11 L. L. J. 5.

Cr P. CODE (1898), S. 528

———S. 528 (5)—*Record of reasons.*

Before a District Magistrate orders the transfer of a case pending in a subordinate Court, he must give notice to the respondent. He should also give reasons for making the transfer. *Dwarka Das v. Emperor.*

32 Cr. L. J. 492 :

130 I. C. 330 (2) : 32 P. L. R. 356 :

I. R. 1931 Lah. 266 : A. I. R. 1931 Lah. 29.

———S. 528 (5)—*Record of reasons.*

S. 528 (5), Cr. P. C., makes it incumbent on the District Magistrate to record his reasons before transferring the case. It is doubtful whether a District Magistrate when ordering the transfer of a case can impose the condition that a *de novo* trial will not be asked for either with or without the assent of the accused whose right to claim a *de novo* trial is recognised by proviso (a) to S. 350 (1), Cr. P. C. *Gowardhan Das Kapur v. Abbas Ali.*

31 Cr. L. J. 257 :

121 I. C. 374 : A. I. R. 1930 Lah. 168.

———S. 528 (5)—*Record of reasons—Transfer of case—Failure to give reasons—Order, validity of.*

An order of transfer of a criminal case by a District Magistrate without stating reasons as required by S. 528 (5), Cr. P. C., is bad and must be set aside. *In re : Vankata Reddi.*

26 Cr. L. J. 221 :

83 I. C. 1005 : 20 L. W. 384 :

A. I. R. 1924 Mad. 873.

———S. 528-A—*Applicability of.*

Sub-s. (1) of S. 528-A, Cr. P. C., is applicable to all cases before all Magistrates either in Presidency Towns or in the *mufassal*, to which the special provisions of Ch. XXXIII of the Code do not apply. Sub-s. (2) contemplates such cases only in which the Magistrate commits the claimant to trial to the Court of Session after rejection of the claim. Sub-s. (3) applies to all Courts in which trials (not inquiries) are held of the claimant after rejection of his claim. S. 528-B, Cr. P. C., by its very terms relates to 'any such case,' which expression must mean any case to which S. 528-A (1) is applicable. *Emperor v. Harendra Chandra Chakravarty.*

26 Cr. L. J. 385 :

84 I. C. 929 : 51 Cal. 980 : 29 C. W. N. 384 :

A. I. R. 1925 Cal. 384.

———Ss. 528-A, 528-B—*Claim—When to be made—European British subject—Claim to be tried as such when to be made.*

A claim to be tried as a European British subject under Ss. 20-A, 528-A and 528-B must be made before the trial or enquiry has actually commenced, and if it is not then made, it cannot be made at any subsequent stage. *Carmen v. O'Brien.*

29 Cr. L. J. 245 :

107 I. C. 353 : 54 Cal. 1041 :

A. I. R. 1928 Cal. 97.

———S. 528-A, B—*Claim, when can be made.*

An Indian British subject claiming to be dealt with as such must put in his claim before the Magistrate before whom he is brought for the

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purpose of inquiry or trial. This applies to Presidency Magistrates as well as to Magistrates in the *mufassal*. If the Magistrate rejects the claim and tries him, the decision shall form a ground of appeal from the sentence or order passed in such appeal. This applies to Presidency Magistrates as well as to Magistrates in the *mufassal*. If the Magistrate rejects the claim and commits him to the Court of Session, he may repeat the claim before the said Court. Such repetition may only be made in a Court of Session and not in the High Court exercising Original Criminal Jurisdiction. If the Court of Session rejects the claim and tries him, the decision shall form a ground of appeal from the sentence or order passed in such trial. If a claim is made before a Presidency Magistrate and rejected by him, and the accused is committed to the High Court, there is no provision for repetition of the claim before the High Court, and the accused will not be entitled to put in, under S. 275, Cr. P. C., before the High Court, a further claim for being tried by a Jury, the majority of whom should be Indians. *Emperor v. Harendra Chandra Chakravarty.*

26 Cr. L. J. 385 :

84 I. C. 929 : 51 Cal. 980 : 29 C. W. N. 384 :

A. I. R. 1925 Cal. 384.

———S. 528-B—*'Subsequent stage'—Revision before High Court on conviction by trial or appellate Court if subsequent stage.*

Proceedings in revision before the High Court on a conviction by a trial Court or an Appellate Court are a subsequent stage of the case for the purposes of S. 528-B. *In re : H. B. Babington.*

38 Cr. L. J. 336 :

167 I. C. 160 : 1936 M. W. N. 1091 :

44 L. W. 755 : 71 M. L. J. 827 : 9 R. M. 430 :

I. L. R. 1937 Mad. 339 : A. I. R. 1937 Mad. 14.

———S. 528-D—*Applicability—Powers of Sessions Court in British Baluchistan.*

Court of Sessions in British Baluchistan have the same powers over European British subjects and other persons as are held by Courts of Session in British India. Therefore, a Court of Session in British Baluchistan can hear such appeals as the Cr. P. C. prescribes. *Bombardier I. E. Barnsfield v. Emperor.*

30 Cr. L. J. 918 :

118 I. C. 438 : I. R. 1929 Lah. 774 :

A. I. R. 1929 Lah. 187.

———5. 529.

See also Cr. P. C., Ss. 150, 190, 246.

———S. 529—*Irregularity.*

When a Magistrate having no power to transfer a case under S. 110, Cr. P. C., transfers the case erroneously and in good faith to another Magistrate, the proceedings before the latter Magistrate will not be void, as such transfer would only amount to an irregularity which would be covered by the provisions of S. 529, cl. (f), Cr. P. C. *Chintawan Singh v. Emperor.*

7 Cr. L. J. 146 :

7 C. L. J. 177 : 12 C. W. N. 299 : 35 Cal. 243.

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—S. 533—Scope.

In cases where S. 21, Evidence Act, does apply, i. e., when the confession has been reduced to writing but S. 164 has not been fully complied with, then of course S. 533, Cr. P. C., becomes in terms a "special provision" referred to in S. 1 (2), Cr. P. C., and prevents the confession being ruled out as entirely incapable of proof. *Nga Teein Maung v. Emperor.*

37 Cr. L. J. 920 :
164 I. C. 162 : 9 R. Rang. 64 :
A. I. R. 1936 Rang. 350.

—S. 533—Scope.

It is impossible to construe S. 533 so as to render it inadmissible to give evidence that the confessional statements, was duly recorded, i. e., that the statement was voluntarily made and represents what was said. *Baliram Singh v. Emperor.*

40 Cr. L. J. 937 :
184 I. C. 274 : 12 R. N. 106 :
1939 N. L. J. 442 :
A. I. R. 1939 Nag. 295.

—S. 533—Scope.

S. 533 applies to all cases in which the direction of the law have not been fully complied with and would apply to omissions to comply with the law as well as to infractions of the law. *Rama Kriyappa Pichi v. Emperor.*

31 Cr. L. J. 97 :
120 I. C. 350 : 31 Bom. L. R. 565 :
A. I. R. 1929 Bom. 327.

—S. 533—Scope.

The evidence made admissible by S. 533 is the confession itself and not the evidence of the Magistrate of the contents. *Rama Kariyappa Pichi v. Emperor.*

31 Cr. L. J. 97 :
120 I. C. 350 : 31 Bom. L. R. 565 :
A. I. R. 1929 Bom. 327.

—S. 533—Scope.

Under S. 533 a defect in the compliance with the provisions of S. 164 can be cured by evidence taken by the Court before which the confession is tendered. *Ghinua Uraon v. Emperor.*

19 Cr. L. J. 135 :
43 I. C. 423 : 4 P. L. W. 14 :
1918 Pat. 27 : 3 P. L. J. 291 :
A. I. R. 1918 Pat. 179.

—S. 533—Scope.

Under S. 533, a defect of form can be removed, but not a defect of substance. *Emperor v. Kannoji Brahman.*

41 Cr. L. J. 533 :
188 I. C. 57 : 19 Pat. 301 :
6 B. R. 577 : 12 R. P. 674 :
A. I. R. 1940 Pat. 163.

—S. 533—Scope.

Under S. 533, Cr. P. C., however, only a defect in form is curable and not a defect in substance. *Partab Singh v. Emperor.*

27 Cr. L. J. 514 :
93 I. C. 978 : 2 Lah. Cas. 72 :
6 Lah. 415 : 7 L. L. J. 482 :
A. I. R. 1925 Lah. 605.

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—S. 534.

See also Cr. P. C., 1898, S. 234.

—S. 535.

See also (i) Arms Act, 1878, S. 19.
(ii) Cr. P. C., 1898, Ss. 235, 236,
242, 247, 535.

—S. 535—Applicability.

S. 535 is not limited in its application to a trial where no charge at all has been framed. It is also applicable to cases in which no charge has been framed of the offence of which an accused person have been convicted. *Abdul Rahim v. Emperor.*

26 Cr. L. J. 1279 :
88 I. C. 1055 : 41 C. L. J. 474 :
A. I. R. 1925 Cal. 926.

—S. 535—Error in charge.

Omission to explain what rioting means in charge-sheet in charge of rioting and voluntarily causing simple hurt is cured if no prejudice is caused to accused. *Deep Chand v. Emperor.*

36 Cr. L. J. 1260 :
157 I. C. 915 : 1935 A. W. R. 685 :
1935 A. L. J. 666 : 8 R. A. 236 :
A. I. R. 1935 All. 627.

—S. 535—Error in charge.

Two persons were jointly tried and convicted under S. 506 of the Penal Code, but a charge was framed against one of them and no charge was framed against the other: *Held*, that the omission to frame a charge did not prejudice the latter in any way and was covered by S. 535 of the Cr. P. C. *Ganga Prasad v. Emperor.*

25 Cr. L. J. 200 :
76 I. C. 568 : A. I. R. 1923 All. 476.

—S. 535—Proceedings void.

Failure to record reasons for conviction under S. 263 (h) is fundamental defect not curable under S. 535. *Nisar Ali v. Secretary, Municipal Committee, Nagpur.*

28 Cr. L. J. 495 (a) :
101 I. C. 671 : A. I. R. 1927 Nag. 250.

—S. 535—Summary trial—Framing charge—Necessity of.

It is very doubtful whether the framing of a charge is compulsory in a summary trial even though the sentence passed is appealable. *Madhab Chandra Saha v. Emperor.*

27 Cr. L. J. 1295 :
98 I. C. 191 : 53 Cal. 738 :
A. I. R. 1926 Cal. 1202.

—Ss. 535, 537—Effect of.

Where an accused who was a previous convict, was convicted of theft and sentenced to enhanced punishment under S. 75, Penal Code, but the charge-sheet did not specify the previous convictions as required by S. 221 (7), Cr. P. C.: *Held*, that the defect was cured by Ss. 535 and 537, Cr. P. C., inasmuch as there had been no failure of justice nor had the accused been prejudiced in his defence. *Bisakhi v. Emperor.*

18 Cr. L. J. 875 :
41 I. C. 987 : 29 P. R. 1917 Cr. :
37 P. W. R. 1917 Cr. ; A. I. R. 1918 Lah. 397.

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to set aside in every case an order of acquittal or discharge made on appeal by a Court without jurisdiction. *Emperor v. Yena*.

6 Cr. L. J. 287 :
4 L. B. R. 49.

———S. 530—Practice—Void order—Setting aside, if necessary.

On conviction by the Sub-Divisional Magistrate the accused appealed to the Sessions Judge who dismissed the appeal on merits. Subsequently learning that the Sub-Divisional Officer was exercising powers of a Magistrate of the Second Class he then filed an appeal in the Court of the District Magistrate. On reference to the High Court: *Held*, that although the proceedings before the Sessions Judge were void, it was not imperative on the High Court to set aside an order made on appeal, without jurisdiction. Therefore, strictly speaking before filing his appeal in the Court of the District Magistrate, the accused ought first to have applied to the High Court to set aside the order of the Sessions Judge. But *held*, also that to avoid waste of time, the order of the Sessions Judge should be set aside and the District Magistrate directed to hear the appeal. *Rakhu Sarif v. Pauchanon Mondal*.

38 Cr. L. J. 688 :
169 I. C. 34 : 9 R. C. 888 :
I. L. R. (1937) 2 Cal. 116 :
A. I. R. 1937 Cal. 256.

———S. 530—Procedure—Trial by Magistrate for offence within his jurisdiction—Facts disclosing offence triable by Court of Session—Conviction by Magistrate, whether illegal.

Where the facts disclose an offence within the jurisdiction of a Magistrate, it is not correct to say that he is not empowered by law to try the person charged for the offence which is within his jurisdiction, because the facts disclose a more serious offence which is beyond his jurisdiction. Where a Magistrate in trying an offence for an offence which he is empowered to try discovers that there is a *prima facie* case of an offence triable by the Court of Session, the proper course for the Magistrate to adopt is to commit the case to the Court of Session, and if he fails to do so, his proceedings may have to be set aside but they cannot be regarded as being absolutely void. *Dawson v. Emperor*.

26 Cr. L. J. 1108 :
88 I. C. 276 : 2 Rang. 455 :
A. I. R. 1925 Rang. 45.

———S. 530—Trial by Magistrate issuing warrant, effect of.

An accused is materially prejudiced by the trial of the case by the very Magistrate who had issued the warrant. This is especially so in a case under the Gambling Act. *Syam Behari v. Emperor*.

36 Cr. L. J. 293 :
153 I. C. 146 (1) : 7 R. A. 450 (1) :
4 A. W. R. 345 : A. I. R. 1934 All. 987 (2).

———Ss. 530, 260—Summary trial—Charges under Ss. 147 and 452, Penal Code—Summons only under S. 448—Case tried summarily and conviction under S. 452—Trial held void.

The accused persons were charged with offences under S. 147 and 452, Penal Code.

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The summons issued to them was, however, only under S. 448, Penal Code. The Magistrate held a summary trial and convicted the accused under S. 452. ; *Held*, that the Magistrate was not empowered by law to hold a summary trial in such a case and the proceeding was void under S. 530 (q), Cr. P. C. *Balwant Singh v. Emperor*.

41 Cr. L. J. 91 :
184 I. C. 712 : 1939 A. L. J. 783 :
I. L. R. 1939 All. 931 :
12 R. A. 277 1939 A. W. R. 710 :
A. I. R. 1939 All. 693.

———Ss. 530, 350, Proviso (b)—Non-compliance with request that a witness should be re-summoned and re-heard—Whether vitiates trial.

Non-compliance with the demand that a witness should be re-summoned and re-heard is not an irregularity which vitiates the trial ; and where all the witnesses were further cross-examined before the Magistrate who decided the case, the accused cannot be said to have been prejudiced by the refusal to re-summon and re-hear the witnesses, and the conviction cannot be set aside on this ground. *In re : Pedda Ramamuni Reddi*.

39 Cr. L. J. 932 :
177 I. C. 598 : 1938 2 M. L. J. 41 :
1938 M. W. N. 820 :
48 L. W. 248 : 11 R. M. 358 (2) :
A. I. R. 1938 Mad. 724.

———Ss. 530, 561-A—Fresh trial—Necessity of—Magistrate having no jurisdiction to try under S. 477, Penal Code.

Where the fact disclosed in the complaint under S. 420 constitutes an offence under S. 477 and it is found that the Magistrate trying the case and acquitting the accused under the former section had no jurisdiction to try the same under the latter section, the proceedings before him are void and the accused should be re-tried under the latter section but he should not be allowed to adduce fresh evidence so as to fill in gaps under S. 561-A, Cr. P. C. *Rampershad v. Dhanna*.

41 Cr. L. J. 184 :
185 I. C. 415 : 41 P. L. R. 198 :
12 R. L. 308 : A. I. R. 1939 Lah. 513.

———S. 530 (q)—Applicability—Magistrate trying offence under S. 4, Bombay Prevention of Gambling Act (IV of 1887), summarily—S. 530 (q) if applies.

Trying an offender summarily under S. 530 (q), Cr. P. C., means trying the particular offender in a particular case summarily and trying that offender for that offence of which he is accused. Where, therefore, a Magistrate tries an offence under S. 4, Bombay Gambling Act summarily, S. 530 (q), Cr. P. C., applies. *Emperor v. Mahanand Kherajmal*.

41 Cr. L. J. 190 :
185 I. C. 543 : 1940 Kar. 123 :
12 R. S. 169 : A. I. R. 1939 Sind 341.

———S. 530 (r)—Magistrate.

The word "Magistrate" in S. 530 (r) of the Cr. P. C., includes a Sessions Judge. *In re : Abdulla*.

26 Cr. L. J. 293 :
84 I. C. 437 : 2 Rang. 386 :
A. I. R. 1925 Rang. 39.

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procedure arising out of mere inadvertence and not substantive errors of law. It does not apply to cases of disregard or disobedience of mandatory provisions of the Code. *Tirkha v. Nanak*.

28 Cr. L. J. 291 :
100 I. C. 371 : 25 A. L. J. 377 :
49 All. 475 : A. I. R. 1927 All. 350.

—S. 537—Applicability—Examination of witnesses—Procedure—Deposition, previous, read out—Illegality.

In a criminal trial, it is entirely illegal to read out to the witnesses their depositions made on a previous occasion, to put a few additional questions and then to tender them for cross-examination, and the illegality is not cured by the provisions of S. 537. *Lyme v. Emperor*.

25 Cr. L. J. 377 :
77 I. C. 425 : 4 Lah. 382 :
A. I. R. 1924 Lah. 17.

—S. 537—Applicability.

S. 537, Cl. (a) cannot avail to cure the disobedience to an express provision as to a mode of trial. *Nathu Rewa v. Emperor*.

16 Cr. L. J. 824 :
31 I. C. 1000 : 17 Bom. L. R. 1074 :
A. I. R. 1915 Bom. 149.

—S. 537—Applicability.

Though S. 537 applies in terms to orders made in appeal or revision, the principle contained therein should guide Courts in dealing with applications under S. 215. *Emperor v. Jhamandas*.

12 Cr. L. J. 320 :
10 I. C. 616.

—S. 537—Applicability of.

The fact that the accused does not take objection to the trial on the ground that the Court has no jurisdiction to proceed with it, would not debar him from raising the same point in a petition for revision before the High Court. The defect is not cured by S. 537 of the Code. *Abdul Hamid v. Emperor*.

24 Cr. L. J. 872 :
75 I. C. 72 : 1923 Pat. 239 :
2 Pat. 793 : 2 P. L. R. 1 Cr. :
A. I. R. 1924 Pat. 46.

—S. 537—Consent or waiver.

The consent of the accused or his Counsel cannot validate a course of procedure which the law does not authorise. S. 537 does not apply to an infringement of a statutory requirement. It only applies to errors, omissions, or irregularities of a formal and technical nature which may occur by accident or oversight and does not cover a substantial departure from the mode of conducting criminal trials laid down by law; (2) that the consent of the accused did not cure the illegality. *Allu v. Emperor*.

25 Cr. L. J. 68 :
75 I. C. 980 : 4 Lah. 376 :
6 L. L. J. 103 : A. I. R. 1924 Lah. 104.

—S. 537—Consent or waiver.

The consent or acquiescence of the accused would not, in such a case, cure the defect or

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want of jurisdiction. *Parashuram Dataram Shamdasani v. Hugh Golding Cocke*.

31 Cr. L. J. 333 :
122 I. C. 61 : 53 Bom. 716 :
31 Bom. L. R. 925 :
A. I. R. 1929 Bom. 404.

—S. 537—Conviction partly set aside, legality of.

Where an offender is convicted of several offences in one trial and a joint sentence is passed against him for all the offences, and in appeal the conviction for some of the offences is set aside and is upheld as regards the rest, it is not illegal to maintain the sentence in full and it does not amount to enhancement of the sentence, provided the sentence maintained does not exceed the maximum punishment which could be awarded for the offences for which conviction is upheld. *Ishar Das v. Emperor*.

8 Cr. L. J. 75 :
3 P. W. R. Cr. 37.

—S. 537—Curable irregularity.

An error which in no way prejudices a person convicted and is not fatal to the validity of the decision and is concerned with the proceedings, rather than the mode of trial, may be condoned under the provisions of S. 537, Cr. P. C. *Bechu Chaube v. Emperor*.

24 Cr. L. J. 67 :
71 I. C. 115 : 20 A. L. J. 874 :
54 All. 124 : A. I. R. 1923 All. 81.

—S. 537—Curable irregularity.

Defect of not strictly complying with provisions of Ss. 164, 364 is curable by examination of the Magistrate recording the confession. *Bala v. Emperor*.

35 Cr. L. J. 1382 :
151 I. C. 745 : 7 L. R. 189 :
A. I. R. 1934 Lah. 18.

—S. 537—Curable irregularity.

Even assuming that it is obligatory on the Magistrate to give his reasons before he pronounces his order of discharge, under S. 253, his omission to do so is only an irregularity which can be cured by S. 537. *In re: Govindaraj*.

39 Cr. L. J. 335 (b) :
173 I. C. 417 : 47 L. W. 128 :
1938 M. W. N. 38 :
10 R. M. 583 : (1938) 1 M. L. J. 110 :
A. I. R. 1938 Mad. 396.

—S. 537—Curable irregularity.

Omission to ask approver to plead whether he has or has not complied with the terms of his pardon, is an irregularity curable under S. 537. *Gurdit Singh v. Emperor*.

40 Cr. L. J. 614 :
181 I. C. 924 : 11 R. L. 899 :
41 P. L. R. 290 :
I. L. R. 1939 Lah. 216 :
A. I. R. 1939 Lah. 66.

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ment, according to S. 531, Cr. P. C. *Emperor v. Sayeruddin Pramanik*. 40 Cr. L. J. 270 : 179 I. C. 805 : I. L. R. 1938 2 Cal. 357 : 11 R. C. 618 : A. I. R. 1939 Cal. 159.

—S. 531—Trial in wrong place.

Where the offence was committed within the jurisdiction of the Sub-Divisional Magistrate of Negapatam, Tanjore District, and the Trichinopoly Magistrate tried the case: *Held*, that the irregularity of this trial by the Trichinopoly Magistrate was cured by the provisions of S. 531. There is nothing in the language of S. 531 to confine its operation to that limited class of cases where the offence committed within the jurisdiction of a Court is tried by that Court outside the limits of the local area of its jurisdiction. *The Public Prosecutor v. Duraisamy Mudali*. 4 Cr. L. J. 500 : 1 M. L. T. 345.

—S. 531—Failure of justice.

S. 531 must be deemed to give jurisdiction to a Court which would otherwise lack it unless it appears that such lack of jurisdiction has in fact occasioned a failure of justice. Clearly it is not competent for a Court not acting under the provisions of S. 531, to say whether a failure of justice has or has not been occasioned. *Dhingano Khoso v. Gulsher Kambir Khan*. 38 Cr. L. J. 959 : 170 I. C. 314 : 10 R. S. 57 : A. I. R. 1937 Sind 179.

—Ss. 531, 403—Scope.

Ss. 403 and 531 must be read together. *Dhingano Khoso v. Gulsher Kambir Khan*. 38 Cr. L. J. 959 : 170 I. C. 314 : 10 R. S. 57 : A. I. R. 1937 Sind 179.

—Ss. 531, 537—Applicability—Commitment to Sessions Court without sanction to prosecute in case where sanction required—Sessions Court, jurisdiction of, to acquit, for want of sanction—Applicability of Ss. 531, 537.

An order of commitment to the Sessions Court cannot be quashed on the ground that the Magistrate took cognizance of the complaint without the sanction required by Ss. 195 and 107, Cr. P. C. Ss. 531 and 537, Cr. P. C., apply to such cases, and their applicability is not affected by the fact that objection to want of sanction was taken at the earliest possible opportunity. *Seemle*.—Sessions Court has power to acquit the accused in a case committed to it on the ground of want of sanction. *In re : Sessions Judge of Tanjore*.

20 Cr. L. J. 514 : 51 I. C. 674 : 35 M. L. J. 259 : A. I. R. 1919 Mad. 190.

—Ss. 531, 538—Object of—Enquiry by Court having no local jurisdiction—Defect, whether curable.

The policy of the Cr. P. C., as shown by Ss. 531 to 538, is to uphold, in most cases, orders passed by a Criminal Court, lacking in local jurisdiction or committing illegalities or irregularities, unless there is or is likely to be

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a failure of justice through such want of jurisdiction or such illegalities or irregularities. *In re : Ganapathy Chetty*. 20 Cr. L. J. 484 : 51 I. C. 468 : 37 M. L. J. 60 : 26 M. L. T. 64 : 10 L. W. 263 : 42 Mad. 791 : 1919 M. W. N. 808 : A. I. R. 1920 Mad. 824.

—Ss. 531, 538—Object and Scope of.

The policy of the Code as shown by Ss. 531 and 538 is to uphold orders passed by the Criminal Court which lacked local jurisdiction or which had committed illegalities or irregularities unless failure of justice has been occasioned or is likely to be occasioned thereby. *Kali Charan Kundu v. Emperor* (2) and *In re : Ganapathy Chetty* (3), relied on. *Bhagwatia v. Emperor* (1), distinguished. *Achanja Singh v. Emperor*. 163 I. C. 518 : 2 B. R. 629 : 9 R. P. 22 : 15 Pat. 418 : 17 P. L. T. 543 : A. I. R. 1936 Pat. 410.

—S. 532.

See also (i) Cr. P. C., 1898, Ss. 193, 202, 215, 316, 346, 441, 556.

—S. 532—Absence of complaint by Court—Jurisdiction.

Conviction based on private complaint under S. 139, Penal Code, is not protected by S. 532. *In re : Ravanappa Reddi*. 33 Cr. L. J. 361 : 136 I. C. 779 : 35 L. W. 180 : 1931 M. W. N. 1314 : 55 Mad. 343 : 62 M. L. J. 735 : I. R. 1932 Mad. 315 : A. I. R. 1932 Mad. 253.

—S. 532—Applicability—Local Government authorizing complaint for prosecution of certain offences—Jurisdiction of Magistrate to commit under other section.

Where the Government authorized a police officer to prefer a complaint of offences under Ss. 121-A, 122, 123 and 124 of the Penal Code "or under any other section of the said Code which may be found to be applicable to the case: *Held*, that the order did not authorise a complaint under S. 121 of the Penal Code, and a commitment under that section was illegal and that the defect was not cured by a subsequent order obtained from the Government when the case was pending before the Sessions Court and that S. 532 of the Cr. P. C., did not apply to the case. *Barindra Kumar v. Emperor*. 11 Cr. L. J. 453 : 7 I. C. 359 : 37 Cal. 467.

—S. 532—Applicability.

No question whether Magistrate had power to commit accused S. 532 has no application. *Mohammad Medhi v. Emperor*. (F. B.) 36 Cr. L. J. 137 : 152 I. C. 667 : 1934 A. L. J. 965 : 4 A. W. R. 524 : 7 R. A. 365 : A. I. R. 1934 All. 963.

—S. 532—Applicability.

S. 532 applies only to a commitment to a Sessions Court. *Emperor v. Saktharam Pandu*. 11 Cr. L. J. 543 : 7 I. C. 934 : 12 Bom. L. R. 667.

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and the defect is not cured by S. 537.
Hammirmal v. Vinayakrao. 32 Cr. L. J. 896 :
 132 I. C. 457 : 27 N. L. R. 167 :
 I. R. 1931 Nag. 105 : A. I. R. 1931 Nag. 98.

—S. 537—Error in complaint.

Mukhtiarakar empowered to take action under S. 188, I. P. C.—Complaint filed by *tapedar* is without authority and jurisdiction and person held prejudiced thereby—Defect is not cured by S. 537. *Rasoolbux Gazi v. Emperor.*

35 Cr. L. J. 26 :
 146 I. C. 407 : 6 R. S. 63 :
 A. I. R. 1933 Sind 276.

—S. 537—Error in complaint.

One Mathura Singh was sent for trial before a Deputy Magistrate charged with offences under Ss. 353 and 147, Penal Code. The case had been taken up by the police in consequence of a letter addressed to them by a Civil Court *Amin* making certain allegations against the accused. The result of the trial was that Mathura was convicted of an offence under S. 186, Penal Code : *Held*, that this conviction was illegal inasmuch as the complaint or sanction required by S. 195, Cr. P. C., was wanting and the defect was not cured by S. 537 of the Code. *Emperor v. Mathura Singh.*
 1 Cr. L. J. 1046 :
 24 A. W. N. 266.

—S. 537—Error in complaint.

S. 537 (a) applies to complaint under S. 476. Pure technical irregularity in the heading of complaint may be cured. *Brahm Dall v. Emperor.*
 36 Cr. L. J. 402 :
 153 I. C. 547 : 16 Lah. 153 :
 37 P. L. R. 534 : 7 R. L. 446 :
 A. I. R. 1934 Lah. 981.

—S. 537—Error in empanelling jury.

In certain cases the failure to choose a jury is not fatal. Assessors may be chosen instead of a Jury and *vice versa*, and a failure to take objection at the time is an answer to a subsequent objection that a case triable by a jury was tried with assessors, but this is the result of special statutory provisions, and S. 536 presumably contemplates a jury lawfully empanelled. S. 537 also makes provision for errors in the jury list, but an irregularity in the constitution of the jury is not an irregularity in the proceedings before or during the trial within the meaning of S. 537, for the words "other proceedings" must, be read *ejusdem generis* with the words which precede these. S. 537 refers to a Court of competent jurisdiction. It does not refer to anything done in the matter of the constitution of the trial Court, and in a trial by Judge and jury, the Court is the Judge and Jury. Any material irregularity in the constitution of the Jury affects the constitution of the Court and its competence. It must be in the public interest that a body of persons in whom lies the power to give a verdict of guilty or not guilty should be constituted strictly according to law. *Shewaram Jethanand Shivdasani v. Emperor*

41 Cr. L. J. 28 :
 184 I. C. 474 : 1940 Kar. 249 :
 12 R. S. 107 : A. I. R. 1939 Sind 209.

Cr. P. CODE (1898), S. 537**—S. 537—Error in empanelling jury.**

The defect, if any, caused by not selecting Jurymen by lot in a Sessions case triable by Jury is curable by the application of S. 537, the accused's failure to make timely use of the safeguards provided by law, the rights of challenge and objection, is a bar to his relying on the improper constitution of the Court in the stage of appeal. The Judge's omission to refer, in his charge, to the failure of the Village Magistrate to send the first occurrence report to the Police or the Magistrate will not amount to a misdirection, where it did not prejudice the accused by reason of other independent evidence, or mislead the Jury on any material point. *In re : Anipe Palladu.*

18 Cr. L. J. 15 :
 36 I. C. 847 : 1917 M. W. N. 1 :
 5 L. W. 327 : A. I. R. 1917 Mad. 770.

—S. 537—Error in judgment.

An irregularity in the mode in which a Magistrate has written his judgment, where it does not amount to an 'absence' of a judgment, can legitimately be brought within the provisions of S. 537, Cr. P. C. *Patilbhiva Raojibala Gavli v. Emperor.*

27 Cr. L. J. 1153 :
 97 I. C. 737 : 28 Bom. L. R. 1029 :
 A. I. R. 1926 Bom. 512.

—S. 537—Error in judgment.

The failure of the Magistrate to sign a judgment which he has written with his own hand is a mere irregularity curable by S. 537. *Ram Sukh v. Emperor.*
 26 Cr. L. J. 688 :
 86 I. C. 64 : 23 A. L. J. 8 :
 47 All. 284 : A. I. R. 1925 All. 299.

—S. 537—Error in procedure.

A complaint was made before a Magistrate. The Magistrate, without at once examining the complainant, sent for the papers of the Police investigation and summoned the accused and fixed a date asking the complainant to proceed with the case independently on that date. On the date so fixed, the accused appeared, but the complainant did not. The Magistrate discharged the accused. Subsequently on the same date the complainant appeared and explained the cause of his delay. The Magistrate again without examining the complainant, fixed another date giving the complainant opportunity to examine his witnesses. On the date so fixed, the complainant and his witnesses were examined and a process was issued against the accused. Subsequently, the accused were convicted of the offences complained of : *Held*, that there was no sufficient cause to set aside the conviction on the ground of irregularity. *Bateshar v. Emperor.*

16 Cr. L. J. 669 :
 30 I. C. 653 : 13 A. L. J. 840 :
 37 All. 628 : A. I. R. 1915 All. 417.

—S. 537—Error in procedure.

A Court cannot send an exhibit to a Chemical Examiner and get a report from him merely to satisfy its own mind. The only way in which this could be done is by taking evidence in a regular manner, and if a report is received, it

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—S. 533—Error.

Under S. 533 non-compliance with provisions of S. 164 is curable only if error does not injure accused. *Daulat Ram v. Emperor*.

35 Cr. L. J. 10 :
146 I. C. 465 : 10 O. W. N. 466 :
8 Luck. 518 : 6 R. O. 129 :
A. I. R. 1933 Oudh 315.

—S. 533—Examination of Magistrate.

S. 533 requires evidence to be taken as to whether the Magistrate before recording the confession questioned the accused and, upon so questioning him, formed the belief that the confession was made voluntarily and whether the record made by the Magistrate contained a full and true account of the statement made by the accused. *Semble*, even oral evidence of the terms of the confession would be admissible. S. 533 has no reference to a confession alleged to have been made to a Magistrate but not recorded in any way. *Nga We v. Emperor*.

1 Cr. L. J. 1126 :
2 L. B. R. 317.

—S. 533—Fatal defect.

Magistrate's failure to question the accused as to his making confession voluntarily under S. 164 is not curable under S. 533. *Ranbir Singh v. Emperor*.

33 Cr. L. J. 242 :
136 I. C. 19 : 33 P. L. R. 241 :
I. R. 1932 Lah. 195 :
A. I. R. 1932 Lah. 204.

—S. 533—Interpretation.

The words 'notwithstanding anything contained in the Evidence Act, 1872, S. 91' occurring in S. 533, Cr. P. C., do not indicate that a confession must, in every case, be recorded in the first instance. *Jog Raj v. Emperor*.

32 Cr. L. J. 290 :
129 I. C. 289 : I. R. 1931 Lah. 177 :
A. I. R. 1930 Lah. 534.

—S. 533—Prejudice.

A defect which was one of substance, and which prejudicially affected the accused as to his defence on the merits, cannot be cured by S. 533. *Daulat Ram v. Emperor*.

35 Cr. L. J. 10 :
146 I. C. 465 : 10 O. W. N. 466 :
8 Luck. 518 : 6 R. O. 129 :
A. I. R. 1933 Oudh 315.

—S. 533—Prejudice.

Defect in recording confession by Magistrate under S. 164 is cured under S. 533 provided accused has not been prejudiced thereby. *Kishan Chand Kewal Ram v. Emperor*.

39 Cr. L. J. 448 :
174 I. C. 449 : 10 R. Pesh. 64 :
A. I. R. 1938 Pesh. 5.

—S. 533—Prejudice.

Remand of accused for two days without giving reasons—Prejudice to accused—Defect, cannot be cured. *Daulat Ram v. Emperor*.

35 Cr. L. J. 10 :
140 I. C. 465 : 10 O. W. N. 466 :
8 Luck. 518 : 6 R. O. 129 :
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—S. 533.

Record of confession does not contain memorandum required under S. 164, but Magistrate is examined and proves that confession was recorded in accordance with provisions of S. 164 and that he had cautioned the accused. S. 533 cures the irregularity. *Bawa Singh v. Emperor*.

26 Cr. L. J. 1458 :
89 I. C. 1026 : 7 L. L. J. 250.
A. I. R. 1925 Lah. 448.

—S. 533—Scope.

Any defect in recording such confession is curable under S. 533 (1) provided the accused is not prejudiced. *Lal Singh v. Emperor*.

40 Cr. L. J. 132 :
178 I. C. 694 : 1938 A. W. R. 642 :
I. L. R. 1938 All. 875 : 11 R. A. 327 :
A. I. R. 1938 All. 625.

—S. 533—Scope—Confession — Certificate of voluntariness omitted—Defect cured by evidence of Magistrate.

Where a Magistrate inadvertently omits to certify the voluntariness of a confession recorded by him under S. 164, Cr. P. C., the defect may be cured by the evidence of the Magistrate. *Ram Sanchi v. Emperor*.

12 Cr. L. J. 15 :
9 I. C. 148.

—S. 533—Scope.

Confession recorded under S. 164 fulfilling all ingredients of certificate except failure to append certificate in terms of S. 164 (8) is curable under S. 533. *Maroti v. Emperor*.

41 Cr. L. J. 553 :
188 I. C. 146 : 1940 N. L. J. 210 :
12 R. N. 333 : A. I. R. 1940 Nag. 230.

—S. 533—Scope—Failure of Magistrate to ask whether confession made voluntarily—Illegality.

The omission to question an accused person before recording his confession as to whether he is making it voluntarily is a material omission which prejudices him and the defect is a fatal one not curable by S. 533. Such a confession is not, therefore, admissible in evidence. *Farid v. Emperor*.

23 Cr. L. J. 149 :
65 I. C. 613 : 2 Lah. 325 :
4 U. P. L. R. Lah. 33 :
5 P. W. R. 1922 Cr. :
A. I. R. 1922 Lah. 237.

—S. 533—Scope.

In cases where a Magistrate has made no attempt to comply with the requirements of Ss. 164 and 364, Cr. P. C., in recording the confession of an accused person, such a confession is not admissible in evidence. Where such attempt has been made, but there is a formal defect in the procedure thereof, then it will become curable under S. 533. *The King v. Saw Min*.

40 Cr. L. J. 691 :
182 I. C. 705 : 1939 Rang. 97 :
12 R. Rang. 25 : A. I. R. 1939 Rang. 219.

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—S. 537—Failure of justice.

Application under S. 476 rejected—Appeal—Remand—Conviction—Illegality in order of remand not leading to failure of justice held covered by S. 537. *Rajabali Hassanali v. Emperor*.

32 Cr. L. J. 521 :
130 I. C. 442 : 24 S. L. R. 446 :
A. I. R. 1930 Sind 315.

—S. 537—Failure of justice—Conviction under S. 211, Indian Penal Code—Want of sanction under S. 195, Criminal Procedure Code—Proceedings not vitiated—Objection taken before the first Court.

The absence of sanction even where objection was taken before the first Court, does not vitiate a conviction under S. 211, Penal Code, unless it has occasioned a failure of justice. *In re : Abdul Razack Sahib*.

12 Cr. L. J. 406 :
11 I. C. 590 : 10 M. L. T. 82 :
21 M. L. J. 753.

—S. 537—Failure of justice.

Even though the statement to Police under S. 162 in question was wrongly admitted by Courts in India, their Lordships followed the rule of the Patna High Court expressed in S. 537, Cr. P. C., refused to set aside the conviction, since there was ample evidence to establish the guilt of the accused and because the admissibility did not result in failure of justice. *Pakala Narayana Swami v. The King-Emperor*.

40 Cr. L. J. 364 :
180 I. C. 1 : 1939 M. W. N. 185 :
1939 O. W. N. 282 : 20 P. L. T. 265 :
49 L. W. 349 : 43 C. W. N. 473 :
1939 O. L. R. 134 : 11 R. P. C. 166 :
41 Bom. L. R. 428 : 41 P. L. R. 272 :
69 C. L. J. 273 : 5 B. R. 449 :
1939 I. M. L. J. 756 : 18 Pat. 234 :
66 I. A. 66 : 1939 A. W. R. 35 P. C. :
A. I. R. 1939 P. C. 47.

—S. 537—Failure of justice.

In order that the infringement of a mandatory provision of the Cr. P. C., may amount to an illegality sufficient to vitiate the proceedings, it is necessary that the impugned procedure must be one that is not only prohibited by the Code but also works actual injustice to the accused. *Ramaraju Tevan v. Emperor*.

32 Cr. L. J. 30 :
127 I. C. 654 : 1930 M. W. N. 377 :
I. R. 1930 Mad. 1038 : 53 Mad. 937 :
32 L. W. 894 : 59 M. L. J. 945 :
A. I. R. 1930 Mad. 857.

—S. 537—Failure of justice—Sanction to prosecute not in force at date of trial—Conviction, legality of—Failure of justice, absence of.

Where a person is sentenced upon conviction for an offence mentioned in S. 195, the sentence is not liable to be reversed or altered on appeal or revision, on the ground that the sanction required by that section was not in force at the time when the prosecution was instituted, unless it is established that this has in fact occasioned a failure of justice within the meaning of S. 537. *Khetra Mohan Das v. Emperor*.

23 Cr. L. J. 310 :
66 I. C. 662 : 48 Cal. 867.

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—S. 537—Failure of justice.

There is no distinction between illegality and irregularity. The sole criterion given by S. 537 is whether the accused person has been prejudiced or not. The object of procedure is to enable the Court to do justice but if in spite of even a total disregard of the rules of procedure justice has been done, there would exist no necessity for setting aside the final order which is just and correct simply because the procedure adopted was wrong. Where the misjoinder of persons is contrary to S. 239 (e), it is an illegality and not a mere irregularity, but even so it is yet curable by S. 537, if it has not in fact occasioned injustice. *Emperor v. Mathuri*.

37 Cr. L. J. 794 :
163 I. C. 253 : 1936 A. L. J. 518 :
8 R. A. 928 (2) : 58 All. 695 :
A. I. R. 1936 All. 337.

—S. 537—Failure of justice—Trial by Jury—Reference to High Court—Powers of Courts—Sanction to prosecute, absence of, effect of.

When hearing a reference under S. 307, the whole case is open to the High Court, and in dealing with the reference it exercises all the powers which it exercises on appeal. Under S. 537, therefore, it is not competent to the High Court, when dealing with such a reference, to take any action in consequence of a want of any sanction required by S. 195, which would take the form of an order quashing the whole of the proceedings and directing a re-trial, unless such want has occasioned a failure of justice. *Emperor v. Shankar Balkrishna*.

25 Cr. L. J. 315 :
76 I. C. 1035 : 24 Bom. L. R. 484 :
47 Bom. 31 : A. I. R. 1922 Bom. 368.

—S. 537—Failure of justice.

When the decision of a Criminal Court in substance appears to be correct, an Appeal Court should endeavour to uphold the decision even in cases where the rules of procedure by which the trial is to be regulated had been transgressed except where the breach of the prescribed rules is of so grave a nature that the form of trial was substantially different from that provided by law for the offence charged, or where, although the violation of the rules was not so profound as radically to alter the mode of trial, it is proved that thereby in the event a failure of justice has in fact been occasioned. The test to be applied in cases where the prescribed rules of procedure have not been followed, to ascertain whether there has been a mis-trial is always essentially the same, namely, whether there has been a miscarriage of justice. Rules and Regulations are intended to be the handmaid and not the mistress of the law, and in criminal proceedings, it is of the utmost importance that a decision just and reasonable on the merits should not be disturbed because in the course of the proceedings some flaw can be detected that is not fundamental, and which is not proved to have worked injustice to the accused, although it may constitute a breach of the rules of criminal procedure. Whether a particular breach of the procedure prescribed in the Code vitiates the proceedings or not,

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———S. 536 (2)—Curable defect.

Obiter.—Even if an accused is tried without Jury for offences for which he is entitled under law to be tried by a Jury, the defect is curable under S. 536 (2). *Sonia Koshti v. Emperor*.

28 Cr. L. J. 177 :

99 I. C. 849 : A. I. R. 1927 Nag. 117.

———S. 536 (2) Revision.

Under S. 536, Cr. P. C., where an offence triable with the aid of Assessors is tried by a Jury, no conviction or sentence passed in such a case can be set aside or interfered with in revision unless it is clear that the irregularity has led to some miscarriage of justice. *Arumuga Kone v. Emperor*. 29 Cr. L. J. 351 :

108 I. C. 214 : 1927 M. W. N. 299 :

A. I. R. 1928 Mad. 275.

———S. 536 (2)—Trial of accused person with Jury—Verdict of not guilty but of guilty in respect of other offences triable with Assessors—Conviction, legality of.

Certain accused persons were tried for offences triable by a Jury who returned a verdict of not guilty in respect of them but found them guilty of an offence triable with Assessors, with which the accused were not, however, charged. The Assistant Sessions Judge accepted the verdict and convicted the accused without any separate judgment beyond the original charge to the Jury. It did not, however, appear that the irregularity did lead to any miscarriage of justice. On reference to the High Court by the Sessions Judge : *Held*, that the High Court should not interfere. *Arumuga Kone v. Emperor*. 29 Cr. L. J. 351 :

108 I. C. 214 : 1927 M. W. N. 299 :

A. I. R. 1928 Mad. 375.

———S. 537.

———Applicability.

———Consent or waiver.

———Conviction partly set aside, legality of.

———Curable irregularity.

———Defect, whether curable.

———Effect of.

———Error in charge.

———Error in complaint.

———Error in empanelling jury.

———Error in Judgment.

———Error in procedure.

———Error in summons.

———Error in warrant.

———Error of Jurisdiction.

———Essentials for vitiation.

———Examination of accused.

———Examination of complainant.

———Failure of Justice.

———Failure to make record of local inspection.

———Fatal irregularity.

———Ground for interference.

———Hearing accused.

———Interpretation.

———Irregularity.

———Miscarriage of Justice.

———Misdirection to Jury.

———Misjoinder of charges.

———Mode of trial.

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———Object and scope of.

———Object of.

———Objection.

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———Proceedings void.

———Procedure.

———Scope.

———Scope of.

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See also (i) Child Marriage Restraint Act, 1929, S. 11 (I).

(ii) Cr. P. C., Ss. 4 (I) (h), 13 (3), 93, 107, 110, 112, 133, 138 (I) (a), 145, 145 (1), 154, 162, 164, 177, 171, 188, 190, 191, 192, 195, 195 (1), 195 (I) (a) (b) (c), 195 (b), 195 (c), 197, 200, 201, 202, 203, 211, 220, 221, 222 (2), 225, 227, 233, 234, 235, 236, 237, 239, 239 (d), 242, 250, 253, 256, 257, 263, 263 (b), 264, 265, 274, 276, 279, 284, 297, 298, 326, 337 (I) (a), 337 (2-A), 342, 342 (I), 346, 350, 353, 360, 361, 367, 369, 370 (i), 423, 423 (2), 428, 436, 439, 476, 476-B, 498, 499, 526 (8), 528, 535, 537, 539-B.

(iii) Criminal trial.

(iv) Emigration Act.

(v) Factories Act, 1911, S. 42.

(vi) Government of India Act, 1935, S. 270.

(vii) Penal Code, 1860, S. 43, 141, 147, 149.

(viii) Railways Act, 1890, S. 84.

(ix) Stamp Act, 1899, Ss. 30, 65, 70.

(x) U. P. Municipalities Act, 1910, Ss. 314, 333.

(xi) U. P. Prevention of Adulteration Act, 1912, Ss. 4, 5, 15.

———S. 537.

Appointing Jury under S. 138 without using independent discretion is an illegality vitiating a trial and is not a mere irregularity. *In re : V. R. Kothari*. 30 Cr. L. J. 785 :

117 I. C. 333 : 31 Bom. L. R. 79 :

I. R. 1929 Bom. 381 : A. I. R. 1929 Bom. 79.

———S. 537.

S. 537 (a) is wide enough to cover an omission to frame a charge properly and also an omission to frame distinct and separate charges. *Kumaramathu Pillai v. Emperor*. 20 Cr. L. J. 354 :

50 I. C. 834 : 1919 M. W. N. 199 :

25 M. L. T. 379 : 10 L. W. 239 :

A. I. R. 1919 Mad. 487.

———S. 537.

The section applies only to mere errors of

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and even if it is so, it is curable under S. 537. *Akbar Ali v. Emperor*.

28 Cr. L. J. 881 :
104 I. C. 897 : 8 P. L. T. 800 :
7 Pat. 61 : A. I. R. 1928 Pat. 1.

—S. 537—Irregularity.

In a case, before sanction under S. 197 was received, Magistrate issued process for attendance but after sanction was received, he did not issue a fresh process: *Held*, that cognizance taken after the sanction was received is valid and the omission to issue fresh process is merely an irregularity curable under S. 537. *Arjan Singh v. Emperor*.

41 Cr. L. J. 65 :
184 I. C. 680 : 42 P. L. R. 51 :
I. L. R. 1940 Lah. 102 :
12 R. L. 241 (2) : A. I. R. 1939 Lah. 479.

—Ss. 537, 289—Irregularity.

Omission to call upon an accused to enter on his defence is an irregularity covered by S. 537 provided the accused has not in any way been prejudiced by it. *Premgir v. Emperor*.

19 Cr. L. J. 209 (b) :
43 I. C. 785 : 16 A. L. J. 41 :
A. I. R. 1918 All. 298.

—S. 537—Irregularity.

Omission to record substance of evidence in judgment is not a mere irregularity within S. 537. *Nurudin Sheikh Adam v. Emperor*.

29 Cr. L. J. 1005 :
112 I. C. 221 : 30 Bom. L. R. 954 :
A. I. R. 1928 Bom. 433.

—S. 537—Irregularity—Oudh Criminal Rules, r. 14—Selection of Jurors without second ballot—No objection by accused—Legality of trial.

Where a Judge instead of conducting a second ballot out of the Jurors present in Court as required by r. 14 of the Oudh Criminal Rules chose the required number from amongst them and the accused on being asked whether he had any objection, stated that he had none and the trial proceeded; *Held*, that there was no illegality vitiating the trial but only an irregularity which was covered by S. 537, Cr. P. C. *Ram Adhin v. Emperor*.

30 Cr. L. J. 384 :
114 I. C. 814 : 6 O. W. N. 97 :
I. R. 1929 Oudh 206 :
A. I. R. 1929 Oudh 154.

—S. 537—Irregularity—Prosecution witnesses, re-call of, for cross-examination—Discretion, improper exercise of.

The refusal of a Judge to re-call prosecution witnesses for cross-examination, amounts to an improper exercise of discretion, sufficient to vitiate the trial. *Pat Teka Ahir v. Emperor*.

22 Cr. L. J. 219 :
60 I. C. 331 : 5 P. L. J. 706.

—S. 537—Irregularity—Prosecutor, asking witness declared hostile, if he made certain statements to Police—Section, if infringed—Trial, if vitiated.

S. 162 is designed to keep out evidence which it is suggested is not of a free and of a fair

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nature but may have been induced by some form of Police duress. But it is stretching the principle a very long way to say that the trial and conviction of certain persons must be vitiated, because an unsuccessful attempt made by a Government Prosecutor anxious to put his whole case before the Court, fringes on a technical breach of this rule. Where the Prosecutor in cross-examining its own witnesses declared hostile, merely asks them if they made certain statements to Police which they deny, there is no infringement of S. 162 and trial is not vitiated. *Delbar Mandal v. Emperor*.

37 Cr. L. J. 1117 :
164 I. C. 350 : 9 R. Rang. 122 :
A. I. R. 1936 Rang. 382.

—S. 537—Irregularity—Trial by Jury—Jurors, omission to choose by lot—Irregularity, whether curable under S. 537.

Omission to choose the Jurors by lot under S. 276, Cr. P. C., is a mere irregularity curable under S. 537 (a), Cr. P. C. *Sonia Koshto v. Emperor*.

28 Cr. L. J. 177 :
99 I. C. 849 : A. I. R. 1927 Nag. 117.

—S. 537—Irregularity.

Under new Cr. P. C. omission to sign judgment duly is not a mere irregularity. *In re: Velivalli Bralumaiah*.

32 Cr. L. J. 430 :
129 I. C. 633 : 32 L. W. 280 :
1930 M. W. N. 787 :
59 M. L. J. 674 : 54 Mad. 252 :
60 M. L. J. 692 : I. R. 1931 Mad. 297 :
A. I. R. 1930 Mad. 867.

—S. 537—Miscarriage of justice.

Opinions of Assessors given in writing instead of orally, does not affect legality of trial unless there is miscarriage of justice. *Begu v. Emperor*.

26 Cr. L. J. 1059 :
88 I. C. 3 : 48 M. L. J. 643 :
2 O. W. N. 447 : 41 C. L. J. 437 :
27 Bom. L. R. 707 :
3 Pat. L. R. 95 Cr. : 6 Lah. 26 :
23 A. L. J. 636 : 1925 M. W. N. 418 :
7 L. L. J. 324 : 52 I. A. 191 :
30 C. W. N. 581 (P. C.) :
A. I. R. 1925 P. C. 130.

—S. 537—Miscarriage of justice—Reference to previous statement of witness to Police, propriety of.

Where the Judge referred to a previous statement made by a witness to the Police under S. 161 and asked the Jury if they thought proper, to infer that his statement in Court was correct and uncontradicted by his previous statement: *Held*, that the reference to the statement made to the Police was at the most somewhat injudicious but was not material enough to have led to a miscarriage of justice. *Ramsarup Singh v. Emperor*.

32 Cr. L. J. 72 :
128 I. C. 121 : 9 Pat. 606 :
11 P. L. T. 867 : I. R. 1931 Pat. 9 :
A. I. R. 1930 Pat. 513.

—S. 537—Misdirection to Jury.

By the provisions of S. 537 (d) the Appellate Court cannot set aside the verdict

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—S. 537—*Curable irregularity—Sanction to prosecute given to the serishtadar—No application for sanction—Effect of sanction.*

Where sanction to prosecute was granted to a *serishtadar* without any application and the procedure laid down in S. 476 was not followed, but the complaint against the petitioners was heard and a preliminary inquiry held which showed that there was a *prima facie* case against the petitioner: *Held*, that the defect in the procedure in granting sanction was cured by S. 537. *Emperor v. Jhamaudas.*

12 Cr. L. J. 320 :
10 I. C. 616.

—S. 537—*Defect—Whether curable.*

The absence of sanction required by S. 195, Cr. P. C., is not a defect curable under S. 537. *Jaswant Singh v. Emperor.*

25 Cr. L. J. 721 :
81 I. C. 209 : 1 L. C. 429 :
A. I. R. 1925 Lah. 139.

—S. 537—*Effect of.*

A misdirection in the order of sanction of the officer granting sanction to prosecute a person does not vitiate the sanction accorded and S. 537, Cr. P. C., covers the irregularity. *Manla Bakhsh v. Lal Chand.*

18 Cr. L. J. 121 :
37 I. C. 473 : 23 P. R. 1916 Cr. :
A. I. R. 1917 Lah. 277.

—S. 537—*Effect of.*

After a conviction a breach even of a statutory provision can be remedied by the application of S. 537, Cr. P. C., where no failure of justice has in fact been occasioned. *Gangadhar Pradhan v. Emperor.*

17 Cr. L. J. 146 :
33 I. C. 626 : 20 C. W. N. 63 :
43 Cal. 173 : A. I. R. 1916 Cal. 867.

—S. 537—*Effect of.*

S. 537, Cr. P. C., does not condone an infringement of statutory requirement, which does not amount to a mere irregularity in procedure. *Chandu v. Emperor.*

I. R. 1932 Lah. 664.

—S. 537—*Error in charge.*

A misjoinder of charges and an error in the statement of a charge otherwise lawful must be distinguished. Such an error in charge can be cured under S. 537. *Emperor v. Bahumal Hotchand.*

39 Cr. L. J. 890 :
177 I. C. 346 : 11 R. S. 58 :
A. I. R. 1938 Sind 171.

—S. 537—*Error in charge.*

Before any verdict of the Jury can be set aside on the ground of a mistake in the charge, the Court has to be satisfied that such verdict is erroneous owing to a misdirection by the Judge. *Aziz Khan v. Emperor.*

36 Cr. L. J. 612 :
154 I. C. 1019 : 4 A. W. R. 1419 :
7 R. A. 850 : A. I. R. 1935 All. 103.

—S. 537—*Error in charge.*

S. 537 protects errors, omissions or irregularities in a charge from interference on appeal

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or revision unless such error, omission or irregularity has in fact occasioned a failure of justice. *Ghousbux Mahomed Amin Khan v. Emperor.*

36 Cr. L. J. 598 :
154 I. C. 915 : 28 S. L. R. 304 :
7 R. S. 174 : A. I. R. 1935 Sind 34.

—S. 537—*Error in charge.*

The appellant and his other persons were charged with being members of an unlawful assembly armed with deadly weapons and that in pursuance of a common object and in furtherance of a common intention, one of the members, namely, the appellant, caused the death of one G and that all were thereby, under Ss. 149 and 34, Penal Code, guilty of causing the death of the said G and thereby committed an offence punishable under Ss. 302, 149, 148 and 34, Penal Code. At the beginning of the trial, the charge (as above) was read out and explained to the accused. The Sessions Judge found the appellant guilty of being the intentional cause of the death of G and convicting him under S. 302, Penal Code, for the murder of G, passed sentence of death: *Held*, that though there was no specific mention in the charge of S. 300, Penal Code, as the section under which the appellant was being proceeded against, there was no infringement of the statutory requirements of the Cr. P. C., as to stating and explaining to the appellant the particular charge that he had to meet and as the nature of the charge was quite sufficiently known to him and he was not by reason of the omission of S. 300 from the charge misled in any way as to his true position or deprived of proper opportunity of raising defences appropriate to the charge on which he was tried, the conviction was not illegal. *Atta Mohammad v. Emperor.* 31 Cr. L. J. 378 :
122 I. C. 17 : 31 P. L. R. 150 : 31 L. W. 306 :
32 Bom. L. R. 529 : 7 O. W. N. 299 :
51 C. L. J. 455 : 58 M. L. J. 363 :
34 O. W. N. 565 : 11 Lah. 192 P. C. :
A. I. R. 1930 P. C. 57.

—S. 537—*Error in charge.*

Under the Cr. P. C. defects in the form of charge are immaterial unless they lead to failure of justice. *Sambasiva Mudali v. Emperor.*

32 Cr. L. J. 753 :
131 I. C. 458 : 1930 M. W. N. 1041 :
I. R. 1931 Mad. 522 : A. I. R. 1931 Mad. 225.

—S. 537—*Error in charge.*

When the accused does not suffer any prejudice, the defect in the frame of the charge is curable by the provisions of S. 537. *Balaram Kundu v. Emperor.*

25 Cr. L. J. 1186 :
82 I. C. 50 : A. I. R. 1925 Cal. 160.

—S. 537—*Error in charge.*

Where there is ample evidence of the common intention of an assembly, the mere omission to mention it in the charge is curable under S. 537. *Lachho Singh v. Emperor.*

18 Cr. L. J. 382 :
38 I. C. 766 : A. I. R. 1917 Pat. 456.

—S. 537—*Error in complaint.*

Complaint by wrong person is not a complaint

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-----S. 537—Mode of trial.

A Sessions Judge is not justified in ignoring the provisions of S. 537, Cl. (b) in setting aside on appeal, without going into the merits of the case, a conviction for an offence under S. 182, Penal Code, on the ground that the facts alleged disclosed the commission of an offence punishable under S. 211, Penal Code, for which no sanction as required by the Code was taken. It is perfectly legal to prosecute for the minor offence under S. 182, Penal Code, when it is doubtful whether the facts alleged constitute a graver offence under S. 211, Penal Code. *Gur Baksh Singh v. Kashi Ram*. (Clause (b) has since been omitted.)

16 Cr. L. J. 159 :
27 I. C. 223 : 13 A. L. J. 53 : 37 All. 110 :
A. I. R. 1915 All. 119.

-----S. 537—Mode of trial.

Charge under S. 304, Penal Code—Trial and conviction under S. 302. S. 537 does not cure illegality. *Satnarain Lal v. Emperor*.

36 Cr. L. J. 1506 :
158 I. C. 1129 : 16 P. L. T. 526 :
2 B. R. 42 : 8 R. P. 238 :
A. I. R. 1935 Pat. 431.

-----S. 537—Mode of trial.

Cross-cases—Joint trial—Irregularity is cured by S. 537, when no prejudice is caused to accused. *Ganga Singh v. Emperor*.

36 Cr. L. J. 76 :
155 I. C. 541 : 7 R. A. 937 :
1935 A. L. J. 423 :
1935 A. W. R. 333 :
A. I. R. 1935 All. 647.

-----S. 537—Mode of trial.

S. 537 does not cure the illegality of a joint trial where the accused could not be jointly tried. *Saudagar Singh v. Emperor*.

29 Cr. L. J. 619 :
109 I. C. 811.

-----S. 537—Mode of trial

There is an express direction in the Cr. P. C., as to which person may be tried jointly if this can be done without prejudice and in the absence of any evidence bringing the case under the provisions of S. 239 (f), Cr. P. C., a Magistrate has no jurisdiction to try persons jointly. The disregard of an express provision of law as to the mode of trial is not a mere irregularity such as can be remedied by S. 537, Cr. P. C. *Ram Khelwan Kahar v. Emperor*.

39 Cr. L. J. 739 :
176 I. C. 525 : 11 R. C. 113 :
42 C. W. N. 729 :
A. I. R. 1938 Cal. 525.

-----S. 537—Mode of trial.

Trying a warrant case as a summons case is a mere irregularity and will vitiate the trial only if it has actually caused a failure of justice. *Maluk v. Emperor*. 31 Cr. L. J. 123 :
120 I. C. 526 : A. I. R. 1930 Sind 53.

-----S. 537—Mode of trial.

Where a Sessions Judge tries a case with the

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aid of number of Assessors less than that fixed by law, there is no trial at all, and the defect cannot be cured by S. 537. *Jairam Kumbi v. Emperor*.

25 Cr. L. J. 459 :
77 I. C. 811 : 20 N. L. R. 129 :
A. I. R. 1924 Nag. 287.

-----S. 537—Mode of trial.

Where the accused plead guilty and petitions are presented on their behalf embodying the plea, the action of the Magistrate in questioning them as to whether the plea was voluntary, and taking the opinion of the Assessors, is not illegal; and even if there is an irregularity, it is cured by S. 537. *Shyama Charan v. Emperor*.

35 Cr. L. J. 1322 :
151 I. C. 393 : 7 R. P. 85 (2) :
A. I. R. 1934 Pat. 330.

-----S. 537—Mode of trial.

Where the Judge never applies his mind to the question whether it is practicable to have nine jurors, there is an illegality which vitiates the whole trial even in respect of persons not charged under S. 302, Penal Code, but who are jointly tried with the person charged under S. 302. *Shahab Ali v. Emperor*.

33 Cr. L. J. 129 :
135 I. C. 435 : 58 Cal. 1272 : 35 C. W. N. 711 :
54 C. L. J. 307 : I. R. 1932 Cal. 115 :
A. I. R. 1931 Cal. 793.

-----S. 537—Mode of trial—Cross-cases—Mixing of evidence.

A Court has no right to consider at all the evidence given in one case for the purpose of reaching his conclusions in another. If the two cases deal with separate issues, even although they arise out of the same set of circumstances, and to some extent, raise the same controversy, and if also the parties claim that the evidence in the first case is irrelevant to the issues in the second case, the matter is clear. But if the reception of the evidence required to enable the point to be decided in the second case is merely a formal repetition of evidence, which has already been given and heard and possibly also decided by the same Tribunal and it is directed to the same issue or issues of fact, its vain repetition may be reasonably waived. If the parties for their own convenience and other obvious motives, consent to treat the evidence in the former case as though it had been repeated in the latter case, such evidence is by implication and for all practical purposes brought on to the record of the second case, although not actually recorded. *Sukhai Amir v. Emperor*.

30 Cr. L. J. 337 :
114 I. C. 721 : L. R. 9 All. 16 Cr. :
9 A. I. Cr. R. 122 : 26 A. L. J. 176 :
50 All. 457 : I. R. 1929 All. 257 :
A. I. R. 1928 All. 59.

-----S. 537—Mode of trial—Mixing evidence.

The very use of evidence which is not part of the record is by itself proof of prejudice to the accused and the use in a case, of evidence produced in another case, is not a mere

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should be formally put in as evidence. But the mere fact that a Magistrate adopted such an irregular procedure will not vitiate a conviction where the other evidence on record is sufficient for convicting the accused. *Tan Kyi Lin v. Emperor*!

27 Cr. L. J. 1281 :
98 I. C. 177 : 5 Bur. L. J. 100 :
A. I. R. 1926 Rang. 193.

S. 537—Error in procedure.

A mere error of procedure arising out of inadvertance will amount to no more than an irregularity. *Sarju v. Emperor*.

33 Cr. L. J. 124 :
135 I. C. 226 : 1932 A. L. J. 523 :
I. R. 1932 All. 50 : A. I. R. 1932 All. 28.

S. 537—Error in procedure.

In a criminal trial after the evidence for the defence had closed, the Magistrate examined certain witnesses for the prosecution giving at the same time full liberty to the accused to cross-examine them: *Held*, that in revision it was not proper for the High Court, having regard to Ss. 537 and 540 to interfere with the Magistrate's order on this ground. *Gur Bakhsh Tewari v. Emperor*.

19 Cr. L. J. 630 :
45 I. C. 678 : 21 O. C. 95 :
A. I. R. 1918 Oudh 142.

S. 537—Error in procedure.

The adoption of a procedure which is positively prohibited by the Cr. P. C., would not *ipso facto* invalidate a trial even if no objection had been taken at the hearing of the case. But where the defect has occasioned an injustice in the sense that the accused were embarrassed in their defence in having to meet a multifarious accumulation of evidence upon a diversity of counts, several of which were illegally joined in the trial, the defect cannot be cured by S. 537, and the trial is illegal. *Emperor v. Bishen Sahai Vidyarthi*.

39 Cr. L. J. 38 :
171 I. C. 994 : 1937 A. L. J. 1073 :
I. L. R. 1937 All. 779 : 10 R. A. 350 :
1937 A. W. R. 748 : A. I. R. 1937 All. 714.

S. 537—Error in procedure.

Trial is not vitiated by the mere fact that an imperative statutory rule of procedure has been broken. The Court must also consider whether such failure has in fact occasioned a failure of justice. *Natho Khan v. Emperor*.

34 Cr. L. J. 216 :
141 I. C. 628 : 26 S. L. R. 353 :
I. R. 1933 Sind 67 : A. I. R. 1932 Sind 145.

S. 537—Error in summons.

The defect of not serving on the accused a copy of Magistrate's preliminary order along with the summons to appear in security proceedings is at the most a defect cured by S. 537. *Narain Sao v. Emperor*.

25 Cr. L. J. 682 :
81 I. C. 170 : A. I. R. 1925 Nag. 33.

S. 537—Error in warrant.

S. 537 cannot give legal effect to a defective warrant. *Rash Behari Lal v. Emperor*.

8 Cr. L. J. 235 :
12 C. W. N. 1075 : 35 Cal. 1076.

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The omission to notify the person arrested, of the order for his arrest, is an irregularity covered by S. 537. *Rangpal v. Emperor*.

18 Cr. L. J. 666 :
40 I. C. 314 : A. I. R. 1917 All. 85.

S. 537—Error of jurisdiction.

An infringement of the provisions of the Cr. P. C. vitiating the proceedings must, in effect amount to an assumption by the Court of jurisdiction which it does not possess, or a failure to exercise a jurisdiction which it does possess. *Nga U. Khine v. Emperor*.

36 Cr. L. J. 665 :
155 I. C. 66 : 13 Rang. 1.
7 Rang. 332 : A. I. R. 1935 Rang. 98.

S. 537—Essentials for vitiation.

It is well settled that every irregularity or illegality does not *ipso facto* vitiate a trial or call for the exercise of the powers of interference by the Appellate or Revisional Court. *Rajabali Hassanali v. Emperor*.

32 Cr. L. J. 521 :
130 I. C. 442 : 24 S. L. R. 446 :
A. I. R. 1930 Sind 315.

S. 537—Essentials for vitiation.

Mere failure to comply with a mandatory provision of the Cr. P. C. is not necessarily an illegality that vitiates proceedings. *In re : Tirumana Goundan*.

30 Cr. L. J. 623 (a) :
116 I. C. 366 : I. R. 1929 Mad. 558 :
1929 M. W. N. 506 : A. I. R. 1929 Mad. 544.

S. 537—Essentials for vitiation.

There is no universal rule that disobedience of a mandatory provision in a Statute has the consequence of nullification of all proceedings, irrespective of any question of prejudice. *Khushal Jeram v. Emperor*.

27 Cr. L. J. 1151 :
97 I. C. 671 : 28 Bom. L. R. 1026 :
50 Bom. 680 : A. I. R. 1926 Bom. 534.

S. 537—Examination of accused.

Statement of accused taken after examination and before cross-examination of prosecution witnesses—No further examination of accused—Trial is vitiated. *Moharrum Mahammad v. Emperor*.

32 Cr. L. J. 623 :
130 I. C. 845 (1).

S. 537—Examination of complainant.

The failure to examine a complainant under S. 200 is not mere irregularity curable by S. 537 but an illegality vitiating the entire proceedings. *Mangu Noeri v. Emperor*.

20 Cr. L. J. 481 :
51 I. C. 465 : 1 P. L. T. 346 :
A. I. R. 1920 Pat. 670.

S. 537—Examination of complainant.

The omission to examine the complainant is cured by S. 537. *Emperor v. Nga Po Kan*.

14 Cr. L. J. 420 :
20 I. C. 404 : U. B. R. 1913 I, 162.

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—S. 537—*Prejudice.*

Failure to enter value of stolen property under S. 203 (f) is a defect curable under S. 537 unless there is prejudice to accused. *Mohsin v. Emperor.* 41 Cr. L. J. 283 :

186 I. C. 312 : 6 B. R. 347 :
12 R. P. 503 : A. I. R. 1940 Pat. 272.

—S. 537—*Prejudice.*

Failure to follow the mandatory provisions of S. 102 vitiates the trial and the accused is entitled to have a re-trial. In such a case, the provisions of S. 537, Cr. P. C., cannot be called into aid by the prosecution because unless the statements of the witnesses before the Police have been furnished to the accused or have been seen by the Court itself, the High Court is unable to say that the accused has not been prejudiced and where there is a violation of the plain directions in the statute as to the mode in which the trial of the accused should be conducted, the High Court is bound to assume prejudice to the accused. *Dinanath Sahay v. Emperor.* 40 Cr. L. J. 509 :

180 I. C. 845 : 17 Pat. 622 :
20 P. L. T. 70 : 5 B. R. 501 :
11 R. P. 545 : A. I. R. 1939 Pat. 174.

—S. 537—*Prejudice.*

Failure to sign memorandum in summary trial of a warrant case is a defect curable under S. 537 unless there is prejudice to accused. *Mohsin v. Emperor.*

41 Cr. L. J. 283 :
186 I. C. 312 : 6 B. R. 337 :
12 R. P. 503 : A. I. R. 1940 Pat. 272.

—S. 537—*Prejudice—Irregularity—Prejudice, absence of—Procedure.*

In the absence of any prejudice to the accused, the improper admission of evidence in contravention of the provisions of S. 102, Cr. P. C., is not a ground for a new trial or for reversal of the judgment of the lower Court. *Ramyad Dusadh v. Emperor.* 27 Cr. L. J. 753 :

95 I. C. 273 : 1926 Pat. 13 :
7 P. L. T. 673 : A. I. R. 1926 Pat. 211.

—S. 537—*Prejudice.*

No distinction can be introduced between an illegality and an irregularity and the sole criterion given by S. 537 is whether the accused person had been prejudiced or not. Where the accused are not prejudiced by the joint trial (though not legal), no re-trial should be ordered. *Bhawani Pathak v. Emperor.*

37 Cr. L. J. 496 :
161 I. C. 869 : 1935 A. W. R. 1308 :
8 R. A. 295 : A. I. R. 1936 All. 253.

—S. 537—*Prejudice.*

Omission to state reasons for tender of pardon under S. 337 is irregularity curable unless there is prejudice to accused. *Emperor v. Dukhu.* 30 Cr. L. J. 1157 :

120 I. C. 126 : 1929 A. L. J. 227 :
I. R. 1930 All. 14 : A. I. R. 1929 All. 321.

—S. 537—*Prejudice—Police diary containing statements by witness to Police Officer during investigation—Whether can be used to*

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corroborate such witness—Superior Court, interference by.

The Magistrate is not entitled to use the Police notes of what the witness said to the Sub-Inspector during investigation to corroborate the evidence given by the witness in Court. On the other hand, such improper admission of evidence will not, in all cases, compel interference by the superior Court unless the error has led to substantial injustice or has prejudiced the accused. *Sanmon Tiwari v. Emperor.* 38 Cr. L. J. 102 :

165 I. C. 761 : 3 B. R. 78 : 9 R. P. 211 :
A. I. R. 1936 Pat. 581.

—S. 537—*Prejudice—Police investigation—Statements made before the Police—Use of such statements by the Magistrate.*

A Magistrate while trying several accused, confined his attention only to those whose names were mentioned before the Chief Constable during the Police inquiry. He used the statements without complying with the provisions of S. 102. Those accused whose names were not mentioned were acquitted : and Magistrate considered the ease against the rest and convicted and sentenced them : *Held*, that the prejudice to the accused was clear when, as a result of the perusal of the statements made to the Chief Constable, some of the accused were acquitted because their names did not appear in them and the rest were convicted. The necessary inference was that as to the latter, the Magistrate was influenced by the fact that the statements of the witnesses examined before him were corroborated by the statements made before the Chief Constable, whereas the law directs that they cannot be used in evidence unless they are admitted in accordance with the provisions of the Indian Evidence Act and of the Cr. P. C. *Emperor v. Babaji.*

5 Cr. L. J. 353 :
9 Bom. L. R. 366.

—S. 537—*Prejudice caused to accused—Defect, if curable.*

If questions had in fact been put, the failure to record them would be curable under S. 537 of the Cr. P. C., provided that the error had not injured the accused as to his defence on the merits, but in this case, as the questions were not put at all, S. 537 did not apply. *Sardar Miya v. Emperor.*

38 Cr. L. J. 987 :
170 I. C. 868 : 20 N. L. J. 128 :
10 R. N. 83 : I. L. R. 1937 Nag. 416 :
A. I. R. 1937 Nag. 257.

—S. 537—*Prejudice.*

S. 105, Cr. P. C., places the question whether a witness shall be prosecuted for giving false evidence or not in the hands of the Court before which the witness has given evidence. The discretion is given to it and in the present case, assuming that the Magistrate had jurisdiction, he chose a certain portion of the accused's evidence on which he considered he had given false evidence, and, as he chose particular words on which he might be prosecuted, it must be assumed

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must depend upon the gravity of the breach and consequences that are presumed or proved to have flowed from it. *Emperor v. Erman Ali*. (F. B.)

31 Cr. L. J. 536 :
123 I. C. 664 : 34 C. W. N. 296 :
54 C. L. J. 171 : A. I. R. 1930 Cal. 212.

—S. 537—Failure of justice.

Whether an irregularity can be cured by S. 537 depends on whether the Court can hold that there had or had not been a failure of justice owing to the irregularity. *Dhondhu Kondoo v. Sitaram*.

34 Cr. L. J. 1036 :
145 I. C. 664 : 1933 A. L. J. 1244 :
55 All. 886 : 6 R. A. 139 :
A. I. R. 1933 All. 660.

—S. 537.

Failure to make record of local inspection under S. 539-B is a defect curable under S. 537 if there is no prejudice to accused. *Ton Kyi Lin v. Emperor*.

27 Cr. L. J. 128 :
98 I. C. 177 : 5 Bur. L. J. 100 :
A. I. R. 1926 Rang. 193.

—S. 537—Fatal irregularity.

The absence of sanction of the High Court, required by S. 339, Sub-s. (3) to a prosecution for giving false evidence in respect of a statement made by a person who has accepted a tender of pardon, is an illegality which invalidates the trial. *Emperor v. Huktalwe*.

1 Cr. L. J. 1021 :
2 L. B. R. 302.

—S. 537—Fatal irregularity.

The absence of sanction required under S. 29, Arms Act, is a defect fatal to any proceedings held without such sanction inasmuch as the defect is not curable under S. 537. *Nga Po Chein v. Emperor*.

17 Cr. L. J. 209 :
34 I. C. 321 : 8 L. B. R. 452.

—S. 537—Fatal irregularity—Magistrate following summons case procedure in warrant case—Trial, if vitiated—Irregularity, if curable under S. 537.

The irregularity of following the summons case procedure instead of the procedure for warrant case, is not a mere matter of form. The difference between the two forms of trial is of sufficient importance to lead to an almost indefensible presumption of prejudice to the accused, and the trial is not in accordance with law, and must, therefore, be set aside, the irregularity being of such a character as not to be curable by S. 537, or by any of the other curative provisions of the Code. *Sufal Golai v. Emperor*.

39 Cr. L. J. 438 :
174 I. C. 454 : 42 C. W. N. 222 :
10 R. C. 674 : A. I. R. 1938 Cal. 205.

—S. 537—Ground for interference.

Mere omission to set out the previous conviction is no ground for interfering with the sentence unless it has caused failure of justice. *In re : Abdul*.

11 Cr. L. J. 217 :
5 I. C. 743 : 7 M. L. T. 77.

—S. 537—Hearing accused.

Omission to call upon the accused to enter

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on his defence is a mere irregularity covered by S. 537, and the trial was, therefore, not bad. *In re : Thoppa*.

37 Cr. L. J. 45 :
159 I. C. 30 : 1935 M. W. N. 1091 (2) :
8 R. M. 467 : A. I. R. 1936 Mad. 82.

—S. 537—Hearing accused.

Where a Magistrate delivered judgment without allowing the accused's counsel to address the Court on behalf of his client: *Held*, that it is an elementary principle of law that no order should be made to a man's prejudice, especially in a Criminal Case, without hearing him, and the very object of the Legislature in allowing parties to be represented at trials by Counsel is that Counsel must be heard before a final opinion is formed by the Court. It is not a question of indulgence but of right, when the Counsel for accused does not ask the Magistrate to hear him for his client, even then it is the duty of the Magistrate to give him the usual opportunity to be heard in the case. *Emperor v. Iboo*.

1 Cr. L. J. 769 :
6 Bom. L. R. 665.

—S. 537—Interpretation.

Want of sanction under S. 195, Cr. P. C., is no ground for setting aside a conviction after trial. The words "subject to the provisions hereinbefore contained" in S. 537 cannot be construed in such a way as to nullify the express provisions contained in the latter part of the section that no sentence passed by a Court of competent jurisdiction shall be reversed on appeal "for want of any sanction required by S. 195." *In re : Perumal Naidu*.

6 Cr. L. J. 382 :
2 M. L. T. 493 : 17 M. L. J. 533 :
31 Mad. 80.

—S. 537—Irregularity.

A violation of Imperative procedure in S. 276 is a defect not curable under S. 537. *Bradshaw v. Emperor*.

12 Cr. L. J. 46 (b) :
9 I. C. 278 : 33 All. 385 :
8 A. L. J. 182.

—S. 537—Irregularity.

Although sanction to prosecute for an offence under S. 182, Penal Code, is necessary, the absence of such sanction, unless a failure of justice is occasioned thereby, is a mere irregularity under S. 537, Cr. P. C., and would not vitiate the prosecution. *Nagappan Mudaliar v. Emperor*.

24 Cr. L. J. 755 :
74 I. C. 259 : A. I. R. 1923 Rang. 135.

—S. 537—Irregularity.

An omission to comply with the provisions of S. 221 (7) is an irregularity curable by S. 537 if it has not actually prejudiced the accused. *Nga Hla v. Emperor*.

18 Cr. L. J. 79 :
37 I. C. 63 : 8 L. B. R. 461 :
10 Bur. L. T. 169 :
A. I. R. 1917 L. Bur. 58.

—S. 537—Irregularity.

Five jurors present out of ten summoned, and selection of those five by lot is no irregularity

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Municipal Act, debars any Court from taking cognizance of any offence punishable under the Act except on the complaint of, or upon information received from the Committee or some person authorized by the Committee to complain or to give information. Therefore, a complaint by a person not authorized to complain under this section in respect of an offence punishable under the Act, is no complaint at all, and where a person has been convicted on the basis of such a complaint, the conviction is bad, and the defect is not curable under S. 537, Cr. P. C. *Ahmad Din v. Emperor*.

18 Cr. L. J. 511 :
39 I. C. 479 : 4 P. R. 1917 Cr. :
A. I. R. 1917 Lah. 233.

—S. 537—Scope.

The provisions of S. 537 are mandatory and no Court is entitled to set aside a finding, sentence or order of a subordinate Court in direct contradiction of the terms of the section. The words "subject to the provisions hereinbefore contained" must refer to the other sections in that Chapter unless there is any specific provision in any other section of the Code which says that any particular error will vitiate proceedings in spite of the fact that no failure of justice has been occasioned by such error. *Quaere*:—It is doubtful whether a distinction can be made between irregularities which may be cured under the provisions of S. 537 and illegalities which may not be so cured. The procedure in India is governed by statute and it is doubtful whether it is admissible for a Court to go outside the statute and proceed in a manner contrary to its provisions merely on general principles. *Bhajja v. Emperor*.

40 Cr. L. J. 549 :
181 I. C. 537 : 11 R. A. 573 : 1939 A. L. J. 81 :
1939 A. W. R. 1 : A. I. R. 1939 All. 238.

—S. 537—Scope.

The provisions of S. 537, Cr. P. C., are applicable merely to errors of procedure arising out of mere inadvertence and not to substantive errors of law. It has no application to cases where there has been a disregard of mandatory provisions of the Code. *Bhoora v. Tara Singh*.

28 Cr. L. J. 159 :
99 I. C. 415 : 29 All. 270 : 25 A. L. J. 155 :
A. I. R. 1927 All. 267.

—S. 537—Scope.

The section cannot cure an illegality vitiating a trial for non-compliance under S. 191. *Narain Das v. Emperor*.

27 Cr. L. J. 325 :
92 I. C. 741 : A. I. R. 1926 All. 395.

—S. 537—Scope.

Want of sanction or complaint under S. 195, Cr. P. C., vitiates the whole proceedings and the defect is not cured by S. 537 of the Cr. P. C. *Ram Samu'ah v. Emperor*.

27 Cr. L. J. 969 :
96 I. C. 521 : 3 O. W. N. 614 :
A. I. R. 1926 Oudh 485.

—S. 537—Scope.

When offence of cheating triable by First Class Magistrate is tried by Second Class

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Magistrate, irregularity is not covered by S. 537. *Khuda Bakhsh v. Emperor*.

35 Cr. L. J. 514 :
147 I. C. 737 : 35 P. L. R. 289 :
6 R. L. 444 : A. I. R. 1933 Lah. 1009.

—S. 537—Scope.

Where the officer who granted sanction had a dual capacity being both a 1st class Munsif and a 1st class Magistrate, and he erroneously described himself as "Magistrate" when he should have written "Munsif": Held, that it was only an irregularity which was cured by S. 537, Cr. P. C. *Maula Bakhsh v. Lal Chand*.

18 Cr. L. J. 121 :
37 I. C. 473 : 23 P. R. 1916 Cr. :
A. I. R. 1917 Lah. 277.

—S. 537—Scope—Disregard of express provision of law.

The disregard of an express provision of law as to the mode of trial is not a mere irregularity such as can be remedied by S. 537, Cr. P. C. nor can it be cured by the consent of the accused. *Mohammad Shah v. Emperor*.

23 Cr. L. J. 268 :
66 I. C. 332.

—S. 537—Scope.

Examination of accused before all the witnesses for prosecution have been examined is a fatal defect and cannot be cured by operation of S. 537, Cr. P. C. *Tilak Gope v. Bhaya Ram*.

22 Cr. L. J. 598 :
62 I. C. 870.

—S. 537—Scope of—Restriction on reversal or alteration of finding—Competent jurisdiction, meaning of.

The term "competent jurisdiction" in S. 537, Cr. P. C. refers to the character and the status of the Court which has decided the case. The restriction imposed by S. 537, Cr. P. C., not to reverse or alter a finding or order or sentence on the ground of any absence of sanction unless it has occasioned a failure of justice, clearly indicates that a Court may be of competent jurisdiction to try a case in the absence of sanction; and, therefore, a sanction is not a condition of the competency of the Tribunal, but only a condition precedent for the institution of proceedings before a Tribunal. S. 537 only cures the want of sanction in those cases which are covered by S. 195, Cr. P. C., the absence of sanction required by any other provision of the law cannot be remedied. *Emperor v. Mengraj Devi Das*.

23 Cr. L. J. 305 :
66 I. C. 657 : 16 S. L. R. 1 :
A. I. R. 1921 Sind 137.

—S. 537—Scope of.

S. 537 deals merely with irregularities in procedure so far as such irregularities involve breaches of the rules of procedure provided by the Code itself. *Harnarain Halwai v. Kariman Ahir*.

21 Cr. L. J. 621 (b) :
57 I. C. 285 : 5 P. L. J. 61 :
1 P. L. T. 609 : A. I. R. 1920 Pat. 655.

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of the Jury merely because there was a misdirection unless it finds that the misdirection had in fact occasioned a failure of justice. *Hari Mahto v. Emperor*.

37 Cr. L. J. 320 :
160 I. C. 675 : 2 B. R. 233 : 8 R. P. 375 :
A. I. R. 1936 Pat. 46.

—————**S. 537—Misdirection to Jury.**

Held, there was no misdirection to Jury and High Court could not interfere in revision. *Emperor v. Tehri*.

36 Cr. L. J. 1467 :
158 I. C. 913 : 8 R. O. 135 :
1935 O. L. R. 624 : 1935 O. W. N. 1153 :
A. I. R. 1936 Oudh 108.

—————**S. 537—Misdirection to Jury.**

When a witness for the prosecution was allowed to give hearsay evidence as to the guilt of one of the accused, and statements made by the accused when they were in Police custody were recorded as confessions and the Jury was misdirected by being told that confessions to the Police if followed up by the production of stolen property were admissible and the Judge did not warn the Jury to take the case of each accused separately and that a confession by one accused involving himself alone, could not be used against the other accused: *Held*, that a new trial must be ordered. *In re: Acchabba Beori*.

7 Cr. L. J. 358 :
3 M. L. T. 263 : 18 M. L. J. 250.

—————**S. 537—Misjoinder of charges.**

Action under S. 537 cannot be taken if there is misjoinder of charges. *K. Meeriah v. Emperor*.

32 Cr. L. J. 930 :
132 I. C. 548 : 9 Rang. 632 :
I. R. 1931 Rang. 180 :
A. I. R. 1931 Rang. 90.

—————**S. 537—Misjoinder of charges.**

If an accused is charged at one trial with three separate offences under the same section, and the complainant is a different person in each case, it is an irregularity, as for the purposes of S. 234, Cr. P. C., offences are not of the same kind when the complainants are different, and it is also an irregularity to pass one sentence for three separate offences and both these irregularities fall under S. 537, Cr. P. C. *Khavas v. Vasu Monji*.

1 Cr. L. J. 489.

—————**S. 537—Misjoinder of charges.**

The accused was convicted at one trial of (1) house-breaking by night with intent to commit theft on the night of the 27th August under S. 457; (2) theft at the same time in the verandah in a different part of the same building under S. 379, and (3) theft in a building used for the custody of property on the night of the 29th August, under S. 380: *Held*, that the separate sentence for theft of the shoes was not legal: *Held also*, that the joinder of the two charges under Ss. 457 and 380, Penal Code, was illegal: *Held also*, that the misjoinder

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could not be cured by S. 537. *Emperor v. Asgar Ali*.

1 Cr. L. J. 537 :
U. B. R. 1904 1st Qr. Cr. P. C. 2.

—————**S. 537—Misjoinder of charges.**

The accused was tried and convicted at one trial of causing hurt and of abetment of theft at a different place on the same day. The Sessions Judge on appeal noticed that the two offences ought not to have been tried together but considered that the error was cured by S. XV of the Schedule to the Upper Burma Criminal Justice Regulation: *Held*, that the trial of the offences together was an illegality which is not curable either by the Criminal Justice Regulation or any other provision of law. *Emperor v. Nga Tok Gyi*.

1 Cr. L. J. 872 :
U. B. R. 1904 2nd Qr. Cr. P. C. 9.

—————**S. 537—Misjoinder of charges.**

The infringement of the provisions of S. 239 (a) would, if made out, constitute an illegality as distinguished from an irregularity, so that the conviction would require to be quashed, and that S. 537 can be of no avail to remedy the defect. *Nathu Chaudhury v. Emperor*.

41 Cr. L. J. 452 :
187 I. C. 361 : 6 B. R. 461 : 12 R. P. 615 :
A. I. R. 1940 Pat. 499.

—————**S. 537—Misjoinder of charges.**

The joinder of charges under Ss. 414 and 380, Penal Code, being opposed to S. 233, Cr. P. C., is not merely irregular within the meaning of S. 537 of the Code, but illegal. *Emperor v. Wassanji Dayal*.

1 Cr. L. J. 834 :
6 Bom. L. R. 725.

—————**S. 537—Misjoinder of charges.**

When one accused is charged with having murdered a certain person at a certain place, and another accused is charged with having murdered the same person at the same time and place, and both those accused are being prosecuted because there is evidence against both, but the evidence is of such a character that both of them cannot be convicted, and if one set of evidence is believed, one of the accused will have to be convicted, whereas if the other set of evidence is believed, the other accused will have to be convicted; it cannot be said that those persons are charged with the same offence committed in the course of the same transaction within the meaning of S. 239. "The same offence" means an offence arising out of the same act or series of acts and can mean nothing else. When the prosecution evidence against two persons is mutually exclusive, there is no provision of the Code under which those persons can be tried together; and the joint trial of the two persons is an illegality which goes to the very root of the trial. *Nga Sar Kee v. The King*.

41 Cr. L. J. 153 :
185 I. C. 303 : 1940 Rang. 203 :
12 R. Rang. 189 :
A. I. R. 1939 Rang. 390.

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not seisin of the case, cannot be used in the High Court. *Ramchandra Modak v. Emperor.*

27 Cr. L. J. 499 :
93 I. C. 963 : 5 Pat. 110 :
1926 Pat. 304 : A. I. R. 1927 Pat. 214.

—S. 539—Admissibility.

Affidavits sworn before a Presidency Magistrate of Calcutta are not admissible in the Patna High Court. *Bengal Nagpur Railway Co. v. Mokbul.*

27 Cr. L. J. 313 :
92 I. C. 697 : 1926 Pat. 76 :
7 Pat. L. T. 343 : A. I. R. 1925 Pat. 755.

—S. 539—Affidavit—Contents of.

An affidavit must contain nothing but bare facts known to the person who makes the affidavit either personally or upon information from a source which he believes to be a correct source and one on which reliance can be placed. As human beings are liable to make mistakes in reciting facts, the law requires that the contents of affidavits should be carefully read over to the deponents in a language which they understand and should be vouched by them to be correct. *Mangal v. Emperor.*

15 Cr. L. J. 164 :
22 I. C. 740 : 11 A. L. J. 986 :
36 All. 13 : A. I. R. 1914 All. 197.

—S. 539—Affidavit sworn before officer of District Court—Whether sufficient.

Application for transfer—Affidavit sworn before officer of District Court is not sufficient. *Makim Chanda v. Amjad Ali.*

33 Cr. L. J. 61 :
134 I. C. 1278 (a) : I. R. 1932 Cal. 62 (1) :
A. I. R. 1931 Cal. 710 (1).

—S. 539—Interpretation.

The expression, in S. 539, Cr. P. C., "any Commissioner for taking affidavits in any Court of Record in British India" does not mean any Commissioner for taking affidavits for use in any Court of Record in British India. The Commissioner referred to in S. 539, Cr. P. C. is a person who is actually sitting in the Court precincts where he is entitled to sit and who has been authorized to administer oaths within the Court precincts. Where an affidavit is sworn before a Commissioner of Oaths appointed under S. 139, C.P.C., it cannot be said to have been sworn before a person who is authorized to administer the oath. *Ramditta Mal-Duni Chand v. Emperor.*

40 Cr. L. J. 847 :
184 I. C. 10 : 12 R. Pesh. 22 :
A. I. R. 1939 Pesh. 38.

—S. 539-A—Prosecution for false statements.

A Nazir of a Subordinate Judge's Court has no authority to administer an oath for the purpose of an affidavit or statement to be used in a Criminal Court and a statement made in an affidavit sworn before him for being used in a Magistrate's Court cannot,

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therefore, sustain a conviction under S. 193, Penal Code. *Ganpat Devaji Patil v. Emperor.*

30 Cr. L. J. 593 :
116 I. C. 248 : 31 Bom. L. R. 144 :
I. R. 1919 Bom. 344 :
A. I. R. 1929 Bom. 136.

—S. 539-A—Prosecution for false statements.

A person who in an affidavit filed under S. 539-A, Cr. P. C., makes a false statement as of a fact within his personal knowledge, can be convicted of an offence under S. 199, Penal Code, even though he has not separately stated in the affidavit facts which are within his personal knowledge and facts which are merely believed by him to be true as required by S. 539-A (3) of the Code. *Ram Sarup Singh v. Emperor.*

30 Cr. L. J. 645 :
116 I. C. 755 : I. R. 1929 Pat. 323 :
A. I. R. 1929 Pat. 156.

—S. 539-A—Prosecution for false statement.

False allegations in affidavit of accused person in support of application for transfer—He is liable to be prosecuted. *Badri Prasad v. Jhamman.*

34 Cr. L. J. 457 :
142 I. C. 900 : 1932 A. L. J. 1076 :
55 All. 114 : I. R. 1933 All. 140 :
A. I. R. 1933 All. 47.

—S. 539-B—Assessor—Right of to inspect.

Case triable by Assessors—Spot inspection by Judge alone—Inspection note must be ruled out. *Raj Bahadur v. Emperor.*

35 Cr. L. J. 1496 :
152 I. C. 103 : 1934 O. L. R. 810 :
11 O. W. N. 1309 : 7 R. O. 182 :
A. I. R. 1934 Oudh 499.

—S. 539-B—Case before Bench of Magistrates—Inspection by all, necessity of.

If a case is tried by a Bench of Magistrates the local inspection under S. 539-B must be made by all the Magistrates, and the memorandum drawn up by some of the Magistrates would be of no use or finality to a Magistrate who has not seen the spot and consequently cannot be in a position to state whether the description therein is correct. The local inspection is an essential part of the proceedings of the Court, and if one of the two Magistrates who preside over a Court does not join in any of the proceedings, the trial cannot be said to be proper. *Vihal Amar Singh v. Madho Tul Singh.*

17 N. L. J. 269 : A. I. R. 1935 Nag. 77.

—S. 539-B—Duty of Court—Local inspection, result of, when to be recorded—Procedure.

If a Magistrate holds a local inspection, he should record the result of his inspection and ask the parties before delivering his judgment to adduce, if they desire, evidence and arguments regarding what he has recorded. It is irregular if he records in the order-sheet the result of his inspection after he has delivered his judgment. But a conviction will not be

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irregularity covered by S. 537, but an illegality.
Beni Madho v. Emperor. 41 Cr. L. J. 816 :
 190 I. C. 71 : 1940 O. W. N. 923 :
 1940 O. L. R. 521 : 13 R. O. 125.

—S. 537—Non-compliance with S. 491.

The failure of the Magistrate to inform the accused that he is entitled to have the case transferred to another Magistrate renders all subsequent proceedings before the Magistrate void and this is an illegality which is not curable by S. 537. *Arjan Singh v. Emperor.*

41 Cr. L. J. 65 :
 184 I. C. 680 : 42 A. L. R. 51 :
 I. L. R. 1940 Lah. 102 : 12 R. L. 241 (2) :
 A. I. R. 1939 Lah. 479.

—S. 537—Non-compliance with S. 539-B—Onus.

This provision is mandatory, and the failure to comply with this express direction of law, is an illegality and not an irregularity which can be cured. *Hriday Govinda Sur v. Emperor.*

25 Cr. L. J. 1375 :
 82 I. C. 767 : 40 C. L. J. 149 :
 A. I. R. 1924 Cal. 1035.

—S. 537—Non-compliance with S. 540.

Failure to afford opportunity to cross-examine Court witness called under S. 540 is a defect not curable under S. 537. *Shugan Chand v. Emperor.*

26 Cr. L. J. 1035 (a) :
 87 I. C. 923 : A. I. R. 1925 Lah. 531.

—S. 537—Non-compliance with S. 540.

The special powers conferred upon a Court by S. 540 may be exercised under proper circumstances, but the recording of evidence on behalf of the prosecution after the defence evidence is closed cannot be justified. It is an irregularity which ought to be avoided. *Alex Pimento v. Emperor.*

22 Cr. L. J. 58 :
 59 I. C. 202 : 22 Bom. L. R. 1224 :
 A. I. R. 1920 Bom. 339.

—S. 537—Non-compliance with S. 540-A.

Attendance of accused represented by Pleader can be dispensed with only if Court is satisfied that he is incapable of remaining before Court. But if dispensation is at request of accused though not incapable of remaining before Court, irregularity can be cured under S. 537 unless there is failure of justice. *Emperor v. Radha Raman Mittra.*

32 Cr. L. J. 364 :
 129 I. C. 260 : 1930 A. L. J. 1076 :
 I. R. 1931 All. 132 : A. I. R. 1930 All. 817.

—S. 537—Object and scope of—Irregularity curable.

Where an offence is inquired into and tried by a Court within whose jurisdiction it has not been committed, the error is only an irregularity curable under S. 537, Cr. P. C., unless it has occasioned a failure of justice. *Mohammad Hayat Mulla v. Emperor.*

30 Cr. L. J. 1166 :
 120 I. C. 225 : 7 Rang. 370 :
 I. R. 1930 Rang. 17 : A. I. R. 1930 Rang. 77.

Cr. P. CODE (1898), S. 537**—S. 537—Object of.**

S. 537 of the Code can only be used to repair irregularities which have not occasioned any failure of justice. It cannot make legal that which is illegal. *Gopal v. Emperor.*

16 Cr. L. J. 289 :
 28 I. C. 513 : 11 N. L. R. 36 :
 A. I. R. 1915 Nag. 58.

—S. 537—Objection—Omission to take—Effect of.

A person was tried and convicted under S. 211, Penal Code, without any sanction, as contemplated by S. 195, Cr. P. C. The accused took no objection as to the want of sanction before the Magistrate who convicted him : *Held*, that the case was covered by S. 537, Cr. P. C., and the conviction could not be set aside for want of sanction. The objection as to want of sanction should have been raised at an early stage of the proceedings. S. 537, Cr. P. C., contemplates not only irregularities, but errors and omissions as well. *Ochhan v. Emperor.*

14 Cr. L. J. 607 :
 21 I. C. 479 : 11 A. L. J. 809.

—S. 537—Prejudice.

Also—that to convict an approver on evidence taken before he was put back into the dock, is an irregularity calculated to prejudice him ; and where the particular points on which it was alleged that an approver had given false evidence and so forfeited his pardon were not clearly put before him, so as to give him a fair opportunity of meeting the allegation : *Held*, that he was prejudiced in his defence. *Nga Po Hnan v. Emperor.*

7 Cr. L. J. 245 :
 U. B. R. Cr. 1907—09 Cr. P. C. 7.

—S. 537—Prejudice, absence of.

Apart from the question of real prejudice, therefore, it is of no avail in revision for a petitioner merely to show that during trial certain witnesses were cross-examined with reference to statements made by them to Police during investigation under S. 161, Cr. P. C., contrary to the provisions of S. 162. *Sajjad Mirza v. Emperor.*

28 Cr. L. J. 446 :
 101 I. C. 478 : 45 C. L. J. 199 :
 A. I. R. 1927 Cal. 372.

—S. 537—Prejudice—Denial of right—Irregularity, if curable—Prejudice to accused.

A denial of accused's right to the statements ordinarily constitutes an illegality which cannot be cured, because the extent of the prejudice caused cannot be gauged. *Vishwanath Pandurang Kunbi v. Emperor.*

38 Cr. L. J. 936 :
 170 I. C. 638 : I. L. R. 1937 Nag. 178 :
 10 R. N. 70 : A. I. R. 1936 Nag. 249.

—S. 537—Prejudice.

Failure to enter the date of commission of offence under S. 263 (b) is a defect curable under S. 537 unless there is prejudice to accused. *Mohsin v. Emperor.*

41 Cr. L. J. 283 :
 186 I. C. 312 : 6 B. R. 337 :
 12 R. P. 503 : A. I. R. 1940 Pat. 272.

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understanding the evidence but for the purposes of obtaining information which does not appear from the evidence of the witnesses, he goes beyond the powers which are granted to him by the Cr. P. C. and the whole trial becomes vitiated. *Hari Mohan Biswas v. Emperor*. 30 Cr. L. J. 491 : 115 I. C. 556 : I. R. 1929 Pat. 200.

—S. 539-B—Record of inspection—Extent of use.

Unless a sketch prepared by a Magistrate at the time of making local inspection is proved in the witness-box, it is impossible to use it as evidence or to say what value should be attached to it. *Dalu Ghose v. Emperor*.

40 Cr. L. J. 795 :
183 I. C. 431 : 43 C. W. N. 896 :
12 R. C. 157 : A. I. R. 1939 Cal. 487.

—S. 539-B—Record of inspection—Extent of use.

Where the Magistrate received in evidence at the time of the local inspection certain *utaras* which he did not place on the record and the judgment, which was ultimately delivered acquitting the non-applicant, was based mostly on the spot inspection note and these *utaras*—*Held*, it cannot be said to be a legal judgment. *Vithal Amar Singh v. Madho Sudsingh*.

17 N. L. J. 269 :
A. I. R. 1935 Nag. 77.

—S. 539-B—Record of inspection—How and when to be made.

Under S. 539-B, memorandum of local inspection should be drawn without unnecessary delay and should be signed by all the Magistrates taking part in the judgment. *Sebastian Lobo v. Mingel D'Souza*.

33 Cr. L. J. 655 (2) :
138 I. C. 608 : 37 L. W. 149 :
1932 M. W. N. 645 : I. R. 1932 Mad 596 :
A. I. R. 1932 Mad. 676.

—S. 539-B—Record of inspection—Necessity of.

A Judicial Officer conducting a local investigation should place upon record the result of his inspection at once so that the parties may have an opportunity of seeing what the facts are which the Judicial Officer considered to be established by the local investigation. Where a Magistrate has failed to record a memorandum of his local inspection and to supply the petitioner with a copy of the record, the result of such inspection cannot be used against the accused. The object of a local inspection is to allow the Magistrate properly to appreciate the evidence given at the enquiry or trial and not for the purpose of the Magistrate becoming the principal witness in the case on a question of fact. *Jowala Singh v. Emperor*.

29 Cr. L. J. 719 :
110 I. C. 463 : 10 Lah. 138 :
A. I. R. 1928 Lah. 479.

—S. 539-B—Record of inspection—Necessity of.

A Magistrate is entitled to make a local inspection for the purpose of explaining the evidence that has been given before him, but the law casts an obligation on him to

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make an accurate note on the record of what he has seen and the impression that has been created on his mind relative to the evidence already given. *Mural Lal v. Emperor*.

19 Cr. L. J. 92 :
43 I. C. 252 : 3 P. L. W. 261 :
A. I. R. 1917 Pat. 1.

—S. 539-B—Record of inspection—Necessity of—Inspection of spot—Duty of Court to make memorandum.

Under S. 539, a Court inspecting a spot is bound to record a memorandum of inspection noting briefly the facts observed at the inspection, and if the Court has omitted to record such a memorandum, the portions of the judgment which are based on the impression received at the spot on such inspection should not be taken into consideration by the Appellate Court in deciding the guilt of the appellant. *Musa v. Emperor*.

30 Cr. L. J. 333 :
114 I. C. 609 : I. R. 1929 Nag. 81 :
A. I. R. 1929 Nag. 233.

—S. 539-B—Record of inspection—Necessity of.

It is obligatory on a Magistrate under the second clause of S. 539-B to make his inspection a part of the record. *Hriday Govinda Sur v. Emperor*.

25 Cr. L. J. 1375 :
82 I. C. 767 : 40 C. L. J. 149 :
A. I. R. 1924 Cal. 1035.

—S. 539-B—Record of inspection—Necessity of.

Magistrate should prepare a memorandum of facts observed on local inspection and place it on the record as required by S. 539-B, Cr. P. C., but failure to do so is not an illegality but a mere irregularity covered by S. 537, Cr. P. C., where no prejudice is caused. *Tan Kyi Lin v. Emperor*.

27 Cr. L. J. 1281 :
98 I. C. 177 : 5 Bur. L. J. 100 :
A. I. R. 1926 Rang. 193.

—S. 539-B—Record of inspection—Omission to make—Effect of.

An omission on the part of the Magistrate who has made a local inspection to make a note of his observation and to place it on the record would vitiate the trial if the omission has, in fact, occasioned a failure of justice; otherwise, the omission is condoned. *Sarju v. Emperor*.

33 Cr. L. J. 124 :
135 I. C. 226 : 1932 A. L. J. 523 :
I. R. 1932 All. 50 :
A. I. R. 1932 All. 28.

—S. 539-B—Record of inspection—Omission to make—Effect of.

Held, that the omission to make inspection note as required by S. 539-B was not fatal to the case. The local inspection had not much bearing on the case at all, and the omission to record the note could have had no practical effect on the decision. *Jamna Prasad v. Emperor*.

39 Cr. L. J. 427 (b) :
174 I. C. 523 : 10 R. N. 417 :
A. I. R. 1938 Nag. 325.

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that in the exercise of his discretion he considered that the statements which he chose were statements and the only statements on which he should be prosecuted, and a charge on statement or statements totally different to that on which the original Magistrate sanctioned a prosecution is unlawful. *Ahmed Esoof Bhaymeah v. Crown*.

1 Cr. L. J. 370 :
10 Bur. L. R. 77.

—S. 537—Prejudice.

The omission to record reasons for conviction is, however, an irregularity which would be cured by S. 537 where the prejudice has been caused to the accused. *In re : Thurman*.

25 Cr. L. J. 1084 :
81 I. C. 908 : 20 L. W. 330 :
A. I. R. 1924 Mad. 799.

—S. 537—Prejudice.

Where the inquiry in a case has proceeded far enough to enable the test required by S. 476 to be applied, S. 537 will cure any defect not prejudicing the accused. *Emperor v. Jhamandas*.

12 Cr. L. J. 320 :
10 I. C. 616.

—S. 537—Prejudice.

Where the provisions of S. 326, Cr. P. C., are not complied with, the defect is not curable by S. 537, Cr. P. C. *Emperor v. Tamizud-Din Ahmad*.

31 Cr. L. J. 426 :
122 I. C. 558 : 33 C. W. N. 1054.

—S. 537—Prejudice.

Whether the refusal of the Court to supply the accused with copy of the statement of an approver before the Police and to allow his cross-examination has or has not vitiated the trial, depends upon the circumstances of each case and the extent of the prejudice caused to accused. *Hazara Singh v. Emperor*.

29 Cr. L. J. 348 :
108 I. C. 167 : 9 Lah. 391 :
A. I. R. 1928 Lah. 257.

—S. 537—Prejudice—Burden of proof.

The question of prejudice is always a question of fact to be proved by the person raising the question, where there is no prejudice even if there is an irregularity, the matter is completely covered by the provisions of S. 537. *Emperor v. Therumalai Reddy* (6), relied on. *Emperor v. Pahl*.

41 Cr. L. J. 55 :
184 I. C. 549 : I. L. R. 1939 Lah. 243 :
41 P. L. R. 731 :
A. I. R. 1939 Lah. 475.

—S. 537—Proceedings void—Summary trial of offence not triable summarily—Conviction of offence triable summarily—Legality of trial.

A summary trial for an offence which is not triable summarily is illegal and void even though it has resulted in a conviction only for an offence triable summarily. *Ganu Sadu v. Emperor*.

29 Cr. L. J. 492 :
109 I. C. 220 : 30 Bom. L. R. 371 :
52 Bom. 254 : A. I. R. 1928 Bom. 142.

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—S. 537—Procedure—Order awarding compensation, whether can be made after order of discharge—Failure to embody order in original judgment—Provisional order of imprisonment.

An order awarding compensation must, as a rule, be part of the original judgment directing the discharge of the accused, and before the order of discharge is read out, the Magistrate should make up his mind to call upon the complainant to pay compensation. But there is nothing in S. 250 to show that the levy cannot be made after the order of discharge. Failure to embody an order awarding compensation to the accused in the original judgment is merely an irregularity curable by S. 537. *Dhanukodi Asari v. Muthuswamy Aiyar*.

17 Cr. L. J. 314 :
35 I. C. 490 : 4 L. W. 32 :
1916 2 M. W. N. 159 :
A. I. R. 1917 Mad. 628.

—S. 537—Scope.

A Magistrate taking action in respect of an offence notified to him extra-judicially commits an illegality not curable by S. 537 of the Code. *Gopal v. Emperor*.

16 Cr. L. J. 289 :
28 I. C. 513 : 11 N. L. R. 36 :
A. I. R. 1915 Nag. 58.

—S. 537—Scope—Judgment at variance with directions given by law—Defect, not cured.

S. 537, Cr. P. C., does not cure the defects in a judgment which is clearly at variance with the directions given in Ss. 367 and 424 of the Code and which materially prejudices the accused in the trial of their appeal. *Kanhai Singh v. Emperor*.

13 Cr. L. J. 859 :
17 I. C. 795 : 10 A. L. J. 435.

—S. 537—Scope.

Omission to follow the procedure under S. 191 in a case under S. 190 (1) (c) is not a mere irregularity curable by the provisions of S. 537, but is an absolute illegality which vitiates the whole trial. *Bodha v. Emperor*.

22 Cr. L. J. 96 :
59 I. C. 384 : 16 P. L. R. 1921 :
4 P. W. R. 1921 Cr. : A. I. R. 1921 Lah. 235.

—S. 537—Scope.

S. 537 applies to mere errors of procedure arising out of inadvertence and does not apply to cases of disregard of a mandatory and imperative provision of the Code. *Banka Singh v. Gokul*.

28 Cr. L. J. 231 :
99 I. C. 1031 : 25 A. L. J. 246 :
49 All. 325 : A. I. R. 1927 All. 286.

—S. 537—Scope.

S. 537, Cr. P. C., may be taken to cover an irregularity in the widest sense of that term, provided there has been no failure of justice. *In re : Annai Errappa*.

31 Cr. L. J. 827 :
125 I. C. 253 : 1929 M. W. N. 898 :
31 L. W. 386 : A. I. R. 1930 Mad. 186.

—S. 537—Scope.

S. 537 only covers errors, omissions or irregularities in a complaint, but does not refer to a total absence of complaint. S. 228, Punjab

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- Duty of Court.
- Material witness.
- Miscellaneous.
- Notice to parties.
- Object and scope.
- Opportunity to cross-examine.
- Power of Court.
- Scope.

-----S. 540.

- See also (i) Cr. P. C., 1898, S. 342.
 (ii) Criminal trial.
 (iii) Evidence Act, 1872, S. 154.
 (iv) Magistrate.

-----S. 540—*Local inspection by Magistrate, when permissible—Results, whether can be embodied in the testimony of witnesses.*

A Magistrate can make a local inspection for the purpose of enabling him to understand the evidence laid before him and to use the evidence of his own eyes to test the truth of the witnesses, and it is immaterial that the result of such inspection is not at once put on record and laid open to the scrutiny of parties; nor is it necessary that the accused or their representatives should invariably be present at a local inspection. Where, after a local inspection, the Magistrate recalls the prosecution witnesses under S. 540, Cr. P. C., and really embodies the results of his inspection in the examination of such witnesses on re-call and the accused are afforded a full opportunity of cross-examining them with reference to the facts then elicited, the procedure adopted is not illegal nor prejudicial to the accused. *In re: Thackroth Hydron.*

25 Cr. L. J. 7 :
 75 I. C. 695 : 18 L. W. 113 :
 45 M. L. J. 279 : 1923 M. W. N. 860 :
 A. I. R. 1923 Mad. 694.

-----S. 540.

S. 139-A does not exclude the exercise of the Court's inherent powers under S. 540. *Kishori Mohan Pramanik v. Krishnabihari Basok.*

32 Cr. L. J. 1187 :
 134 I. C. 574 (a) : I. R. 1931 Cal. 862 :
 58 Cal. 461 : A. I. R. 1931 Cal. 527.

-----S. 540—Applicability.

S. 540 is not confined to documents overlooked by the prosecution. It is equally available to the defence and the section is mandatory if the evidence appears to the Court to be essential to a just decision of the case.

36 Cr. L. J. 381 (1) :
 153 I. C. 627 (1) : 40 L. W. 681 :
 1934 M. W. N. 993 : 7 R. M. 365 :
 A. I. R. 1934 Mad 735 (1).

-----S. 540—Court witness.

Court can call any material witness at any time—Such evidence must be considered while passing order under S. 254. *Diwan Singh v. Emperor.*

34 Cr. L. J. 735 :
 144 I. C. 331 : 34 P. L. R. 719 :
 I. R. 1933 Lah. 446 :
 A. I. R. 1933 Lah. 561.

Cr. P. CODE (1898), S. 540**-----S. 540—Court witness.**

Examination of Chemical Examiner after recording of opinions of Assessors. Procedure is not proper, but when Assessors do not alter their opinion, accused is not prejudiced. *Shanta Singh v. Emperor.* 35 Cr. L. J. 1002.
 149 I. C. 442 : 35 O. L. R. 390 :
 6 R. L. 677.

-----S. 540—Court witness—Calling of—Stage for.

After both sides to a case had closed their respective cases and after arguments had been heard and a date had been fixed for delivery of judgment, two witnesses who were named by the prosecution were examined by the Magistrate under S. 540 : *Held*, that the procedure adopted by the Magistrate was entirely unjustifiable, and the trial must be set aside. The power conferred by S. 540 of the Cr. P. C. on Magistrates is very wide, but the wider the power, the more cautious should be the exercise of discretion on the part of the Magistrate. *Natabar Ghose v. Adya Nath Biswas.*

24 Cr. L. J. 957 :
 75 I. C. 54 : 37 C. L. J. 415 :
 27 C. W. N. 675 : A. I. R. 1923 Cal. 690.

-----S. 540—Court witness.

If the Public Prosecutor produces new witness at the Sessions trial, and if he is not allowed to examine him as his own witness, then it would be the duty of the Court to examine him as a Court witness and an opportunity of cross-examining must be allowed both to the prosecutor and to the accused. *Muhammad Panah v. Emperor.*

35 Cr. L. J. 1170 :
 150 I. C. 917 : 7 R. S. 33 :
 A. I. R. 1934 Sind 78 (2).

-----S. 540—Court witness.

S. 540, authorises a Magistrate to summon and examine, or re-call and examine, any person at any stage of the case if his evidence appears to him essential to the just decision of the case. *Mangal Ram v. Emperor.*

29 Cr. L. J. 740 :
 110 I. C. 676 : 10 L. L. J. 262 :
 29 P. L. R. 703 : A. I. R. 1928 Lah. 647.

-----S. 540—Court witness—Calling of—Stage for.

It is not improper for a Court to call a Court-witness under S. 540, after the case for prosecution and defence has been closed. Although a Court has to exercise proper discretion in calling Court-witnesses, the terms of S. 540 are extremely wide and the Court may at any stage of any inquiry, trial or other proceedings summon any person as a Court-witness if his evidence appears to it essential to the just decision of the case. *In re: P. O. Perumal.*

25 Cr. L. J. 354 :
 77 I. C. 290 : 19 L. W. 272 :
 46 M. L. J. 325 : 1924 M. W. N. 303 :
 34 M. L. T. 165 : A. I. R. 1924 Mad. 587.

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———S. 537 (a)—Error in complaint.

Although it is no longer possible to apply the provisions of S. 537 in the case of want of sanction required by S. 195 an irregularity in a complaint made by one Court to another is curable under Sub-s. (a), since a complaint made by a Court is, for the purposes of S. 537 in no wise different from a complaint made by a private individual. *Vithoo v. Emperor*.

40 Cr. L. J. 388 :
180 I. C. 577 : 1938 N. L. J. 285 :
11 R. N. 373 : I. L. R. 1939 Nag. 338 :
A. I. R. 1939 Nag. 487.

———S. 537 (a)—Error in complaint.

S was prosecuted under S. 505, I. P. C., on the strength of a letter from the Commissioner to the Deputy Commissioner conveying sanction of the Local Government under S. 196, Cr. P. C., to prosecute *S* and *W* but no formal complaint was filed: *Held*, that the proper and regular course to have pursued undoubtedly would have been for the Deputy Commissioner either to have made a complaint himself before some other Magistrate or to have had complaint made by some person authorized under S. 196, Cr. P. C., to make the complaint but his failure to do so was a mere irregularity cured by S. 537 (a) of the Code. *Swami Dayal v. Emperor*.

7 Cr. L. J. 353 :
3 P. W. R. Cr. 30 : 8 P. R. Cr. 1908 :
9 P. L. R. 448.

———S. 537—Error in warrant.

The omission by a Magistrate to record, in the first instance, his reasons for issuing a warrant of arrest against the alleged abducted woman in a case under S. 498, Penal Code, amounts to a mere irregularity within S. 537 (a), Cr. P. C. *Mahar Singh v. Emperor*.

22 Cr. L. J. 111 :
59 I. C. 415 : 18 A. L. J. 1149 :
A. I. R. 1920 All. 245.

———S. 537 (a)—Sanctions.

Want of sanction to the institution of proceedings, when such sanction is necessary, is a defect fatal to any proceedings instituted without such sanction. Want of sanction is curable, if it can be cured at all, only under Ss. 537 (b), 537 (a) has no application to such cases. *Nga Po Chein v. Emperor*.

18 Cr. L. J. 357 :
38 I. C. 741 : 9 Bur. L. T. 217 :
A. I. R. 1917 L. Bur. 96.

———S. 537 (a)—Scope.

Clause (a) of S. 537, which speaks of, "errors in proceedings before or during trial", does not cover cases where the trial itself is defective. *Public Prosecutor v. Kottaparambath*.

16 Cr. L. J. 593 :
30 I. C. 145 : 29 M. L. J. 101 :
18 M. L. T. 95 : 1915 M. W. N. 504 :
A. I. R. 1916 Mad. 110.

———S. 537 (a)—Scope.

S. 537 (a) cannot be invoked in a case in which the Court is concerned not with any

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omission or irregularity in a judgment but with the absence of a judgment. *Devendra Shivappa Limbenavar v. Emperor*.

16 Cr. L. J. 832 :
31 I. C. 1008 : 17 Bom. L. R. 1085 :
A. I. R. 1915 Bom. 139.

———S. 537 (b).

General provisions of S. 195, Cr. P. C., should not be so construed as to nullify the special provisions of S. 537 (b), Cr. P. C. *Ismal Rowther v. Shanmugavallu Nandan*.

3 Cr. L. J. 419 :
I. L. R. 29 Mad. 149.

———S. 537 (d)—Applicability.

The total absence of direction by the presiding Judge as to the law cannot be cured under S. 537, Cr. P. C. It is true that that section refers to any misdirection but the whole section is subject to the provisions therein before contained. One of those provisions is the laying down of the law for the guidance of the Jury. The section is intended to apply to minor errors and irregularities, it cannot be intended to avoid total omissions of express provisions. *Briscoe Birch v. Emperor*.

11 Cr. L. J. 340 (b) :
5 I. C. 981 : 5 L. Bur. R. 149.

———S. 537 (d)—Misdirection to Jury—
Trial by Jury—Irrregularity in charging Jury.

A conviction obtained on a trial by Jury would not be bad merely because the charge to the Jury was not happily expressed or there was misdirection in the charge, if otherwise there has been no failure of justice. S. 537 (d) would cover such a case. *Hooper v. Emperor*.

14 Cr. L. J. 638 :
21 I. C. 686 : 12 A. L. J. 149 :
A. I. R. 1914 All. 207 (b).

———S. 537 (d)—Procedure—Admission of
improper questions—Court's duty to warn Jury—
Charge, contents of—De novo trial, when should
be had.

If improper questions have been admitted at a trial, it is for the Crown to show that their improper effect has been set right by the Court. Either the Jury should be told at once to disregard the statement, or else the charge should contain a similar warning to them and they should be expressly told that they are not to consider the statement as involving a contradiction or otherwise damaging the evidence of the witness. If the Judge is of opinion that it will be difficult for the Jury to do so, and the evidence is material, it is preferable that there should be a new trial. *Kutubuddinkhan Ashrafkhan v. Emperor*.

27 Cr. L. J. 481 :
93 I. C. 881 : 28 Bom. L. R. 281 :
A. I. R. 1926 Bom. 238.

———S. 539—Admissibility—Affidavit sworn
before Magistrate used in High Court.

A Magistrate is a Judge only when he is exercising jurisdiction in a suit or in a proceeding. Therefore, an affidavit sworn before him in connection with a case when he has

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persons who, according to complainant, saw the dacoity, and whom the Police did not call as witnesses. *Nga Win v. Emperor*.

35 Cr. L. J. 1362 :
151 I. C. 615 : 7 R. Rang. 98 :
A. I. R. 1934 Rang. 105.

—S. 540—Duty of Court.

If the Magistrate thinks that certain evidence is necessary, he is bound to bring that evidence upon the record. He should not, of course, examine any witness under S. 540, merely because the complainant chooses to suggest the witness ; but if he himself thinks that the evidence of the witness is essential, he is not only allowed to examine the witness but is by law bound to do so. *Ram Bharosey v. Emperor*.

37 Cr. L. J. 522 :
162 I. C. 47 : 1936 A. L. J. 303 :
1936 A. W. R. 71 : 8 R. A. 817 :
A. I. R. 1936 All. 269.

—S. 540—Duty of Court.

S. 540 gives a Judge the fullest discretion to re-call a witness at any stage of a trial and makes it imperative for him to do so, if he considers further evidence essential to the just decision of the case. Therefore, where an essential document has been overlooked by the prosecution, it is the Judge's duty to have it admitted in evidence although the result is fatal to the accused. *Kesava Pillai v. Emperor*.

31 Cr. L. J. 768 :
125 I. C. 77 : 30 L. W. 642 : 57 M. L. J. 681 :
1929 M. W. N. 901 : 53 Mad. 160 :
A. I. R. 1929 Mad. 837.

—S. 540—Material witness—Calling of, by defence—Legality of.

Where an accused person has exhausted his right of summoning witnesses for the defence, he cannot summon any other witness except by moving the Magistrate under the powers vested in the Magistrate under S. 540. An order for summoning witnesses cannot be passed by a Magistrate, who is not seized of the case, on the ground that the trying Magistrate is absent from the station. *Mangal v. Emperor*.

15 Cr. L. J. 164 :
22 I. C. 740 : 11 A. L. J. 986 : 36 All. 13 :
A. I. R. 1914 All. 197.

—S. 540—Miscellaneous.

For the purpose of S. 540, omissions may be contradictions. *In re : Tadepalli Subbiah*.

36 Cr. L. J. 381 (1) :
153 I. C. 627 (1) : 40 L. W. 681 :
1934 M. W. N. 993 : 7 R. M. 365 :
A. I. R. 1934 Mad. 735 (1).

—S. 540—Miscellaneous.

It is unlawful for a witness to leave the Court when he has been asked to stay and it is not necessary that such a direction should be in writing. *Seshagiriah v. Government of Mysore*.

7 Cr. L. J. 175 :
12 M. C. C. R. 46.

—S. 540—Notice to parties—Necessity of.

Under S. 540, a Magistrate may summon any

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person as a Court witness at any stage of the proceedings, but in fairness to the parties and with a view to afford them an opportunity of proper cross-examination, he must (save under exceptional circumstances) inform them beforehand of the names, etc., of these witnesses. *Udho Ram v. Emperor*.

31 Cr. L. J. 346 :
122 I. C. 95 : 10 Lah. 790 :
31 P. L. R. 39 : A. I. R. 1929 Lah. 120.

—S. 540—Object and Scope.

S. 540 is expressed in the widest possible terms and the intention is not to limit the discretion of the trying Court in any way. At the same time the Courts ought to remember that the purpose of S. 540 is not to enable one party or the other to fill up the gaps in his case and to improve it by new matter at a late stage, but to enable the Court to act in the interest of justice when it considers such action necessary. Where the accused has already been examined at the proper time after the prosecution case had closed, and the Court takes additional evidence after the close of the defence evidence under S. 540, it is not necessary to re-examine him under S. 342. *Ramchandra Prasad v. Emperor*.

38 Cr. L. J. 657 :
168 I. C. 979 : 3 B. R. 508 : 9 R. P. 522 :
18 P. L. T. 483 : A. I. R. 1937 Pat. 246.

—S. 540—Opportunity to cross-examine—Necessity of.

After the close of the defence evidence in a criminal case, the Magistrate called the Sub-Inspector of Police as a Court witness as he considered him a material witness to help in the elucidation of the case. After recording the evidence of this witness in the absence of the Counsel of the accused, who were not asked as to whether they wished to rebut this additional evidence, the Magistrate proceeded to deliver judgment on the same day without hearing any further arguments : *Held*, that the omission of the Magistrate to give an opportunity to the accused to call evidence in rebuttal of the additional evidence and to hear arguments thereon, was an illegality which was not curable under S. 537, Cr. P. C., and which vitiated the trial. *Shugan Chand v. Emperor*.

26 Cr. L. J. 1035 :
87 I. C. 923 : A. I. R. 1925 Lah. 531.

—S. 540—Opportunity to cross-examine—Necessity of.

The prosecution may be allowed to produce rebutting evidence even at a late stage, for the purpose of contradicting the evidence adduced on behalf of the defence if such rebutting evidence appears to be essential for the just decision of the case. *Nayan Mandal v. Emperor*.

31 Cr. L. J. 918 :
125 I. C. 746 : 34 C. W. N. 170 :
A. I. R. 1930 Cal. 134.

—S. 540—Opportunity to cross-examine—Necessity of.

Where a witness is called under S. 540 of the Cr. P. C., both sides have a right to cross-examine that witness freely. It is entirely wrong to describe as cross-examination that

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set aside if it is based on documentary and oral evidence on the record and the local inspection is used only to confirm that evidence. *Bhola Nath Nandi v. Kedar Nandi*.

25 Cr. L. J. 705 :

81 I. C. 193 : A. I. R. 1925 Cal. 353.

—S. 539-B—Extent of Jurisdiction.

In making a local inspection it is not competent to a Magistrate to make enquiries from the neighbours or spectators as to truth of the matter in dispute and to act upon their opinion. *Udo Ram v. Emperor*.

31 Cr. L. J. 346 :

122 I. C. 95 : 10 Lah. 790 :

31 P. L. R. 39 : A. I. R. 1929 Lah. 120.

—S. 539-B—Local inspection—Object of.

A local inspection by a Magistrate is only permitted by S. 539-B, to appreciate the evidence in the case and cannot take the place of evidence itself. *Tirkha v. Emperor*.

28 Cr. L. J. 291 :

100 I. C. 371 : 43 All. 475 : 25 A. L. J. 377 :

A. I. R. 1927 All. 350.

—S. 539-B—Local inspection, object of—Duty of Magistrate.

In making a local inspection, a Magistrate should, in accordance with the provisions of S. 539-B, record a memorandum of any relevant facts observed by him at the time of inspection. *Tirkha v. Nanak*.

28 Cr. L. J. 291 :

100 I. C. 371 : 25 A. L. J. 377 :

49 All. 475 : A. I. R. 1927 All. 350.

—S. 539-B—Local inspection—Statements at—Value of.

It is irregular, on local inspection, to take into account the evidence of witnesses not recorded on oath. *Nisarali v. Secretary, Municipal Committee*.

28 Cr. L. J. 671 :

101 I. C. 671 : A. I. R. 1927 Nag. 250.

—S. 539-B—Mode of recording.

A Magistrate has no power while making a local inquiry to question the crowd and get answers without examining them regularly as witnesses and recording their evidence after allowing the parties an opportunity to cross-examine them. The illegality of following such a procedure cannot be cured by calling one out of the many as a witness and recording his evidence alone. *In re : Mangru Phku Momin*.

27 Cr. L. J. 1289 :

98 I. C. 185 : 28 Bom. L. R. 302 :

A. I. R. 1926 Bom. 245.

—S. 539-B—Non-compliance, effect of.

A Magistrate made inspection of a site without giving notice to the parties. The accused was, however, present by chance. The Magistrate made a compensation order in favour of the accused and it appears that the Magistrate has been largely influenced in his judgment not only by personal inspection of the site but by local inquiries made by him. No memorandum of facts observed was recorded: *Held*, that the Magistrate had so neglected the provisions of S. 539-B, Cr. P. C., that he could not be said

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to have acted under the section at all, and the irregularities disclosed could not be cured under S. 537. Failure of justice had been occasioned as far as the order for compensation was concerned and the order should hence be set aside. *Jumo Sileman v. Hashim Umer*.

38 Cr. L. J. 783 :

169 I. C. 431 : 31 S. L. R. 51 : 10 R. S. 3 :

A. I. R. 1937 Sind 125.

—S. 539 (b)—Notice of inspection—Necessity of.

Under S. 539 (b), it is necessary to give due notice to the parties before embarking on local inspection. The object of local inspection is to enable the Magistrate to understand and test the evidence of witnesses examined in the Court and not to obtain additional information or to extract admission from the accused. *Ajodhia Prosad Sonar v. Municipal Committee, Khurai*.

37 Cr. L. J. 837 :

163 I. C. 413 : 18 N. L. J. 320 : 9 R. N. 1.

—S. 539-B—Notice of inspection—Omission to give—Effect of.

An order of discharge passed by a Magistrate after local inspection cannot be held to be illegal on the ground that notice of the inspection was not given to the parties as required by S. 539-B, Cr. P. C., when previous notice was given and the accused's Pleader and the Public Prosecutor were present at the time of the inspection. *Emperor v. Jodhraj*.

28 Cr. L. J. 180 :

99 I. C. 852 : A. I. R. 1927 Nag. 397.

—S. 539-B—Proceedings under S. 145—Local inspection—Legality of.

The right of a Magistrate to make a local inspection has now been declared and recognized by S. 539-B. Where in an inquiry under S. 145, the Magistrate finds difficulty in following the plans put in by the parties and therefore he, after notice to the parties, makes a local inspection in order better to understand the evidence and the topographical conditions and the inspection note is made in the presence of the parties and no objection is taken, there is no irregularity in procedure followed by the Magistrate. *Gurditta v. Taja*.

40 Cr. L. J. 519 :

181 I. C. 59 : I. L. R. 1938 Lah. 611 :

41 P. L. R. 217 : 11 R. L. 741 :

A. I. R. 1939 Lah. 108.

—S. 539-B—Record of inspection.

There is no compliance with the imperative provisions of S. 539-B, where there is no separate record made by the Sessions Judge concerning the inspection he made of the locality. *Wilayat Husain v. Emperor*.

33 Cr. L. J. 225 :

136 I. C. 218 : 8 O. W. N. 857 : 7 Luck. 208 :

I. R. 1932 Oudh 90 : A. I. R. 1931 Oudh 388.

—S. 539-B—Record of inspection—Extent of use—Local inspection, decision based on, legality of.

Where a Magistrate makes local enquiry and uses that, not for the purpose of

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incurred any expenses except the expenses of attending Court as witnesses. Nor did it appear that these persons had suffered any injury beyond the loss of the sums which they paid to the accused: *Held*, that the order directing the whole of the fines to be paid as compensation was not supported by S. 545. *Emperor v. Maung Thin*. 10 Cr. L. J. 78 : 2 I. C. 542 : 5 L. B. R. 50.

S. 545—Granting compensation—Full amount not realised—Procedure.

It is quite competent to a Court, when ordering compensation to be paid out of the fine imposed, to provide by its order for the proportionate distribution of the amount realised. In the absence of any such direction, an order providing for payment of compensation out of the fine imposed ought not to be construed as meaning that nothing was payable until the full amount of fine was realised, but as meaning that compensation will have priority over the claims of revenue. *In re: Khaddam Venkata Rao*. 16 Cr. L. J. 58 : 26 I. C. 650 : 2 L. W. 22 : A. I. R. 1915 Mad. 1135.

S. 545—Granting compensation—Validity of.

An order imposing fines on the convicts for the purpose of compensation to the nearest heirs of the murdered person is bad if no evidence has been taken to show that the convicts can pay the fines imposed. An order of compensation to the nearest heirs without specifying who those heirs may be is not a sufficient compliance with law. *Chuha v. Emperor*. 14 Cr. L. J. 522 : 20 I. C. 1001 : 18 P. R. 1913 Cr. : 41 P. W. R. 1913 Cr.

S. 545—Granting compensation—Nature of.

There is no provision in Ch. XLIII or S. 545 for ordering the payment of a sum of money to the owner of the article stolen by way of indemnity. *Bhura v. Emperor*. 26 Cr. L. J. 1495 : 90 I. C. 151 : A. I. R. 1926 Nag. 89.

S. 545—Granting compensation—Validity of.

Accused dishonestly induced the complainant to part with her ornaments, and these he pledged with D. He was convicted under S. 420, Penal Code, and sentenced to imprisonment and fine, and the Magistrate directed that out of the fine, a sum should be paid to D as compensation under S. 545, Cr. P. C. : *Held*, that the order under S. 545 could not be sustained, as under it compensation is only awardable to a person for the injury caused by the offence committed, and that as the offence committed in this case was cheating, no injury was caused to D thereby. *Emperor v. Ramchandra Bapuji Deshmukh*. 23 Cr. L. J. 341 : 66 I. C. 997 : 24 Bom L. R. 382 : 46 Bom 893 : A. I. R. 1923 Bom. 22.

S. 545—Granting compensation—Validity of.

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An innocent purchaser of a stolen article cannot be compensated under S. 545. *The District Magistrate of Nellore*. 10 Cr. L. J. 290 : 3 I. C. 437.

S. 545—Granting compensation—Appeal—Notice to complainant—Necessity of.

Although an Appellate Court cannot be said to be netting without jurisdiction in not sending notice to the complainant, yet nevertheless an Appellate Court should, in the exercise of a proper discretion, give notice of the hearing of the appeal from a conviction to the complainant when an order of compensation has been made in his favour under S. 545. *Motilal v. Bakwant Ganesh Marathe*. 38 Cr. L. J. 76 : 165 I. C. 641 : 19 N. L. J. 140 : I. L. R. 1936 Nag 147 : 9 R. N. 93 (2) : A. I. R. 1936 Nag. 144.

S. 545—Granting compensation—Cancellation of an appeal.

Where upon conviction of the accused an order under S. 545 (1) (b) is passed against him directing payment of compensation and the conviction is set aside on appeal, the necessary consequence of the setting aside of the conviction is the setting aside of the sentence of which the necessary consequence is the extinguishment of the order made under S. 545 (1) (b). There is no provision of law which requires notice of an appeal by the accused to be issued to the complainant in the trial Court. The most that can be said is that inasmuch as the appeal might end in an order of acquittal which would involve the extinguishment of an order under S. 545, Cr. P. C., in favour of the complainant in the original trial, it is desirable that a notice of the appeal should be given to him. But this view of the matter will not justify the statement that, owing to the omission to issue such a notice in such a case, the Court has acted illegally or without jurisdiction. *Hlanda Meah v. Anamale Chettyar*. 37 Cr. L. J. 832 : 163 I. C. 242 (2) : 9 R. Rang 6 : A. I. R. 1936 Rang. 247.

S. 545—Granting compensation—Validity of.

A Magistrate, who convicts and sentences an accused person to a fine, has no power to award compensation to the complainant in addition to the fine, although he might direct that a part of the fine, if recovered, be paid to the complainant as compensation. *Manik Chandra Roy v. Ismail Kahu*. 20 Cr. L. J. 398 : 50 I. C. 1006 : 23 C. W. N. 387 : A. I. R. 1919 Cal. 93.

S. 545—Granting compensation—Validity of.

An award under S. 545 to the widow of a deceased person whose death was caused by a wrongful act of the accused is not illegal. *Per Krishna Rao, J. (dissenting)*. *In the matter of: Malliah*. 9 Cr. L. J. 342 : 12 M. C. C. R. 128.

Cr. P. CODE (1898), S. 539

———S. 539-B—*Record of inspection—Omission to make—Effect of.*

Mere omission to record a memorandum of a local inspection under S. 539-B of the Cr. P. C. is not an illegality vitiating the proceedings. *Nurudin Sheikh Adam v. Emperor.*

29 Cr. L. J. 1005 :
112 I. C. 221 : 30 Bom. L. R. 954 :
A. I. R. 1928 Bom. 433.

———S. 539-B—*Record of inspection—Omission to make—Effect of.*

Non-compliance with the direction in S. 539-B, to make a memorandum of local inspection does not vitiate the trial, such an omission is an irregularity, unless it is proved that the accused is prejudiced, and where the conviction is not based on the local inspection, it cannot be set aside. *Shakura v. Nasira.*

39 Cr. L. J. 630 (a) :
175 I. C. 259 : 1938 O. W. R. 290 :
10 R. O. 319 : 1938 O. W. N. 595 :
A. I. R. 1938 Oudh 182.

———S. 539-B—*Record of inspection—Omission to make—Effect of.*

Omission to make a memorandum of local inspection will not vitiate the proceedings unless it has occasioned a failure of justice. *Raghunandan Prasad v. Emperor.*

33 Cr. L. J. 331 :
136 I. C. 621 : 1931 A. L. J. 912 :
53 All. 706 : I. R. 1932 All. 237 :
A. I. R. 1931 All. 433.

———S. 539-B—*Record of inspection—Omission to make—Effect of.*

Omission to make a memorandum of a local inspection as required by S. 539-B will not vitiate the trial where the order of the Magistrate is based on the evidence in the case and not on what he saw on his local inspection. *Todar Mal v. Emperor.*

32 Cr. L. J. 309 :
129 I. C. 441 (1) : 1930 A. L. J. 1437 :
I. R. 1931 All. 169 :
A. I. R. 1931 All. 14.

———S. 539-B—*Record of inspection—Omission to make—Effect of.*

The failure to make a record of the relevant facts observed at a local inspection by a Magistrate under S. 539-B, Cr. P. C., is not an illegality vitiating the whole trial, but only an irregularity covered by S. 537, Cr. P. C., where no prejudice has been caused. A Court ought to be careful to comply with the provisions of S. 539-B, Cr. P. C. *Khushal Jaram v. Emperor.*

27 Cr. L. J. 1151 :
97 I. C. 671 : 28 Bom. L. R. 1026 :
50 Bom. 680 : A. I. R. 1926 Bom. 534.

———S. 539-B—*Record of inspection—Omission to make—Effect of.*

Where the Appellate Court has not relied on anything it saw or heard at the time of inspection, there is no prejudice caused to the accused by the non-recording of inspection notes; it is only a curable irregularity. *Jagannath Rao Dani v. Emperor.*

A. I. R. 1935 Nag. 23.

Cr. P. CODE (1898), S. 540

———S. 539-B—*Record of inspection—Use of.*

Complaint under S. 133—Inspection of locality by Magistrate—Magistrate should place memorandum of what he observed but is not expected to base his judgment on his own inspection note—At least complainant should be examined. *Emperor v. Rajjon Lal.*

35 Cr. L. J. 708 :
148 I. C. 615 : 6 R. A. 740 :
4 A. W. R. 1608 : 1934 A. L. J. 1179 :
A. I. R. 1934 All. 325.

———S. 539-B—*Record of inspection—When to be made.*

Human memory being what it is, unless a memorandum is recorded at once, there is no certainty that the Magistrate's materials will be in any way reliable. It is, therefore, dangerous to neglect to record memorandum when making local inspection. *Dahu Ghose v. Emperor.*

40 Cr. L. J. 795 :
183 I. C. 431 : 12 R. C. 157 :
43 C. W. N. 896 :
A. I. R. 1939 Cal. 487.

———S. 539-B—*Record of inspection—When to be made.*

The Magistrate had to determine whether he was prepared to accept the evidence of identification, the defence being that the case was one of mistaken identity. He visited the spot one evening and came to the conclusion that there was sufficient light to enable anybody to mark closely the features of a stranger. He assumed that the condition of the light and atmosphere were the same on the night that he went to the spot as they were at the time of the occurrence. The Magistrate did not, however, record a memorandum of his observations upon which he based his decision: *Held*, that the Magistrate had gone beyond the scope of S. 539-B. Human memory being what it is, it was very difficult to place any reliance upon what the Magistrate found, unless a memorandum had been made almost immediately. Such local inspection could not, therefore, be made the basis of conviction. *Badal Ali v. Emperor.*

40 Cr. L. J. 624 :
181 I. C. 990 : 11 R. C. 885 (1) :
43 C. W. N. 392 :
A. I. R. 1939 Cal. 304.

———S. 539-B—*Scope.*

S. 439-B which empowers the Court to make a local inspection does not contemplate a procedure by which the presiding officer would, to all intents and purposes, put himself in the position of a witness in the case. *Akhil Kishore Ram v. Emperor.*

39 Cr. L. J. 442 :
174 I. C. 635 : 19 P. L. T. 375 :
10 R. P. 541 : 4 B. R. 466 :
A. I. R. 1938 Pat. 185.

———S. 540.

———Applicability.

———Court witness.

———Cross-examination, meaning of.

———Discretion.

Cr. P. CODE (1898), S. 552

A first report stands more or less on the same footing as a complaint made directly to a Magistrate. It is a very valuable document and the accused is entitled to know what was said in that report to connect him with the offence, so that he may be in a position to protect his interests by cross-examining the prosecution witnesses with reference to additions and alterations in the story which might subsequently be made in evidence. *Bherumal Khanchand v. Emperor*.

39 Cr. L. J. 57 :
171 I. C. 993 : 10 R. S. 134 :
A. I. R. 1937 Sind 303.

—S. 548—Granting copies—Who can get.

Copy of judgment or order—Only persons affected can obtain—Any member of public is not entitled to obtain it. *In re, Pandurao Bhailal Desai*.

34 Cr. L. J. 141 :
141 I. C. 338 (1) : 34 Bom. L. R. 1445 :
I. R. 1933 Bom. 76 (1) :
A. I. R. 1932 Bom. 636.

—S. 548—Record—Meaning of.

Record means Magisterial record—In proceedings under S. 107, it begins with order under S. 112 except where Magistrate not empowered under S. 107 wishes to have proceedings taken under it. *Anantapadmanabhaiah v. Emperor*.

32 Cr. L. J. 217 :
129 I. C. 70 : 32 L. W. 784 :
59 M. L. J. 914 : I. R. 1931 Mad. 214 :
54 Mad. 422 : 1930 M. W. N. 1100 :
A. I. R. 1930 Mad. 975.

—S. 550—Extent of power.

S. 550 no doubt gives the Police very wide powers with regard to the seizure of cattle alleged or suspected to have been stolen, but it does not extend to the taking away other cattle simply because they are mixed up with the stolen ones. *Emperor v. Sada*.

11 Cr. L. J. 99 :
4 I. C. 980 : 14 P. W. R. 1909 Cr.

—S. 551.

See also Cr. P. C., 1898, S. 195 (1).

—S. 552.

See also Cr. P. C., 1898, S. 4 (1) (b).

—S. 552—Applicability.

S. 552 does most certainly apply to cases in which a father refused to let his daughter go back to her husband and threatens to re-marry her. *Tulsidas Janglyadas Koshta v. Chetandas Domadas*.

35 Cr. L. J. 404 (2) :
147 I. C. 275 : 16 N. L. J. 310 :
30 N. L. R. 76 : 6 R. N. 117 :
A. I. R. 1933 Nag. 374.

—S. 552—Applicability.

Where a husband complained to the District Magistrate that his father-in-law was wrongfully detaining his wife and refused to send her to his house, without alleging that she was being so detained contrary to her own wish, and the District Magistrate passed an order under S. 552 directing her restoration to the husband without making any inquiry

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into the matter of the complaint : *Held*, that on the facts the case was not one to which the provisions of S. 552 should be applied and that, if the husband had any grievance, he should seek his remedy in the Civil Court. *Nathu Mistry v. Nari Lal Mistry*.

15 Cr. L. J. 712 :
26 I. C. 160 : A. I. R. 1915 Cal. 686.

—S. 552—Enforcement of order.

An order of restitution under S. 552, can be enforced by warrant, if necessary, but in cases where an order only will meet the purpose, the Magistrate should not make an order for the *ex parte* issue of warrant. *Om Radhe v. Emperor*.

40 Cr. L. J. 698 :
182 I. C. 710 : 12 R. S. 28 : 1939 Kar. 760 :
A. I. R. 1939 Sind 152.

—S. 552—Object and Scope.

The main purpose of S. 552 is to protect women and girls from detention for immoral purposes, although no doubt the section would be appropriate to cases where the purpose of the detention was clearly unlawful although not necessarily immoral. The powers given to District Magistrate by S. 552, are exceptional powers to be used with caution and only when the conditions of the section are satisfied. Taking the word 'unlawful' in its ordinary meaning of 'contrary to or prohibited by law' in particular cases, there cannot be much difficulty in determining whether the purpose is or is not unlawful. The Magistrate cannot assume jurisdiction, which in the absence of allegations of unlawful purpose he does not possess, to give a relief which it is the function of another Court to grant. *Om Radhe v. Emperor*.

40 Cr. L. J. 698 :
182 I. C. 710 : 12 R. S. 28 : 1939 Kar. 760 :
A. I. R. 1939 Sind 152.

—S. 552—Procedure.

District Magistrate calling back papers before enquiry is finished and dismissing application is not proper. *Tulsidas Janglyadas Koshta v. Chetandas Domadas*.

35 Cr. L. J. 404 (2) :
147 I. C. 275 : 16 N. L. J. 310 : 30 N. L. R. 76 :
6 R. N. 117 : A. I. R. 1933 Nag. 374.

—S. 552—Procedure.

District Magistrate before whom application is filed, has no power to order preliminary inquiry by Sub-Divisional Magistrate. If it is found necessary, District Magistrate should himself conduct it. *Tulsidas Janglyadas Koshta v. Chetandas Domadas*.

35 Cr. L. J. 404 (2) :
147 I. C. 275 : 16 N. L. J. 310 : 30 N. L. R. 76 :
6 R. N. 117 : A. I. R. 1933 Nag. 374.

—S. 552—Restoration—Grounds for.

Where a girl was living voluntarily in another man's house but against the will of her mother, who was lawfully entitled to have charge of her : *Held*, that the question whether an order under S. 552 should issue or not

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—S. 540—*Court witness—Calling of—Stage for.*

No doubt the provisions of S. 540, Cr. P. C., are very wide and a witness can be summoned and examined by the Court at any stage of an enquiry or trial, still it is not proper to examine witnesses under that section after a case is practically finished and without examining the accused again under S. 342, Cr. P. C. The first portion of S. 342 (1) gives the Court power to examine the accused at any stage of an inquiry or trial for the purpose of enabling the accused to explain any circumstances appearing in the evidence against him and where the witnesses under S. 540 are examined at the end of the case, the Magistrate should record the statements of the accused again after examining those witnesses. *Beni Madho v. Emperor.*

41 Cr. L. J. 816 :

190 I. C. 71 : 1940 O. W. N. 923 :

1940 O. L. R. 521 : 13 R. O. 125.

—S. 540—*Court witness—Selection of.*

Magistrates should always be chary of taking upon themselves the duties of deciding on behalf of the parties which witnesses should be examined. *Duggirala Venkatappaya v. Mulpuri Venkataramanaya.*

16 Cr. L. J. 156 :

27 I. C. 220 : 28 M. L. J. 134 :

A. I. R. 1915 Mad. 825.

—S. 540—*Cross-examination—Meaning of.*

When a witness is called by the Court under S. 540, Cr. P. C., his cross-examination by the parties cannot, under the law, be restricted to the points on which he has been examined by the Court. *Chintaman Singh v. Emperor.*

7 Cr. L. J. 146 :

7 C. L. J. 177 : 12 C. W. N. 299 : 35 Cal. 243.

—S. 540—*Discretion.*

Examination of witness under S. 540—Evidence not favourable to accused—Accused is not entitled to further opportunity to produce more evidence, unless justice requires it. *Ram Bharosey v. Emperor.*

37 Cr. L. J. 522 :

162 I. C. 47 : 1936 A. L. J. 303 :

1936 A. W. R. 71 : 8 R. A. 817 :

A. I. R. 1936 All. 269.

—S. 540—*Discretion.*

S. 540 confers very wide powers upon the Court to summon any material witness at any stage of a proceeding. The exercise of the powers so conferred is, however, objectionable where the action of the Magistrate in so summoning enables a party to the proceedings to obtain subsequently, to the prejudice of the other party, evidence of persons who might have been included in its list of witnesses. *In re : Manikkath Kulappura Veetil Bhargani Amma.*

28 Cr. L. J. 251 :

100 I. C. 123 : 25 L. W. 151 :

52 M. L. J. 118 : 38 M. L. T. 39 :

A. I. R. 1927 Mad. 361.

—S. 540—*Discretion.*

S. 540, Cr. P. C., simply provides that a Magistrate may summon any witness whose

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evidence appears to be necessary, but the power to summon a witness does not by any means imply a power to discover such witness by personal inquiry out of Court. One of the basic principles of the Indian judicial system is that a cause shall be determined on evidence given on oath in Court and in the presence of the parties. Where a Magistrate makes a personal inquiry in a case out of Court without notice to the parties, and as a result, summons certain witnesses, his action is improper and not in accordance with law, and disqualifies him from conducting the trial. *Fakir Muhammad v. Emperor.*

27 Cr. L. J. 1084 :

97 I. C. 60 : 4 Rang. 106 :

A. I. R. 1926 Rang. 180.

—S. 540—*Discretion.*

The first part of S. 540 is an enabling provision whereby a Court, in the exercise of its discretion, is empowered, at any time before it actually pronounces judgment, to take further evidence, either for the prosecution or for the defence, and for the purpose it may adjourn the hearing of a case in order to procure the attendance of the proper persons. In many instances it happens that new light is thrown on the case by a witness for the defence and it then becomes desirable, sometimes in the interest of the accused himself, that fresh evidence should be called for. Where this fresh evidence is likely to prove prejudicial to the accused, the Court should proceed with the utmost circumspection. It should not exercise its power under the section merely because the prosecution desires it to do so. The second part of the section, on the other hand, is imperative. If the new evidence appears to the Court essential to the just decision of the case, and this must depend entirely on the particular circumstances of each case, the Court has no choice but is bound to take the evidence. *Maung Po Hmyin v. Emperor.*

25 Cr. L. J. 217 :

76 I. C. 649 : 2 Bur. L. J. 127 :

1 Rang. 308 : A. I. R. 1923 Rang. 216.

—S. 540—*Discretion, meaning of.*

The word 'discretion' in itself implies vigilant circumspection and care ; where the Legislature concedes wide discretion, it also imposes a heavy responsibility. *Ibrahim v. Emperor.*

34 Cr. L. J. 591 :

143 I. C. 351 : I. R. 1933 Sind 128 :

A. I. R. 1933 Sind 49.

—S. 540—*Duty of Court.*

If the trying Magistrate was of opinion that the evidence of certain witnesses was essential, then S. 540 imposes upon him the obligation of summoning them. Even if the evidence, though not essential, was yet expedient, the Magistrate does not exceed his authority in putting those witnesses into the box. *Ibrahim v. Emperor.*

34 Cr. L. J. 591 :

143 I. C. 351 : I. R. 1933 Sind 128 :

A. I. R. 1933 Sind 49.

—S. 540—*Duty of Court.*

It is the duty of the Magistrate in a case of dacoity to summon and examine h

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endeavoured to procure the transfer by making a charge found to be false. *Ram Lal v. Emperor.*

1 Cr. L. J. 735 :

S. C. 2 L. B. R. 220.

—S. 556—Extent of disqualification.

A Magistrate who is disqualified by S. 556 from trying a case is equally debarred from interfering in revision to the prejudice of the accused under S. XII of the Schedule to the Upper Burma Criminal Justice Regulation. *Emperor v. Nataraj Ayer.*

2 Cr. L. J. 468 :

11 Bur. L. R. 379 : U. B. R. 1905 :

Cr. P. C. 37.

—S. 556—Interest of Magistrate.

Under S. 556, pecuniary interest even to a small extent is a sufficient disqualification independently of the question whether the Magistrate is really biased or likely to be biased. A Magistrate who is a share-holder in a Company is, therefore, disqualified from trying a case against the auditors of the Company under S. 282 of the Companies Act. *Parashuram Dalaram Shamdasani v. Hugh Golding Cocke.*

31 Cr. L. J. 333 :

122 I. C. 61 : 31 Bom. L. R. 925 :

53 Bom. 716 : A. I. R. 1929 Bom. 404.

—S. 556—Interpretation.

The words "try any case" in S. 556 are comprehensive enough to include the hearing of an appeal. Where upon the allegation of an Official Receiver, a District Judge presents a complaint against an insolvent under S. 69 (5), Provincial Insolvency Act, he is a party to the case, although he has little or nothing to do with the prosecution. Consequently, in the event of the insolvent being convicted, the District Judge would be disqualified under S. 556, Cr. P. C., from hearing an appeal against the conviction as Sessions Judge. The consent of a party concerned cannot affect the absolute disqualification imposed by S. 556. *Mamoon v. Emperor.*

23 Cr. L. J. 446 :

67 I. C. 622 : 61 P. L. R. 1922 :

4 L. L. J. 452 : 14 P. W. R. 1922 Cr. :

A. I. R. 1922 Lah. 30.

—S. 556—Local inspection—Effect of.

A Magistrate does not make himself a witness in the case by incorporating into it the results of his inspection of a spot where something connected with the commission of the crime is alleged to have happened. Having visited the spot expressly for the purpose of the trial, he is fully justified in noting what he sees and in drawing reasonable inferences therefrom. *Ahmad Yar Khan v. Emperor.*

11 Cr. L. J. 171 :

5 I. C. 602 : I. P. W. R. 1910 Cr.

—S. 556—Local inspection—Effect of.

A Magistrate may hold a local investigation in order to enable him to understand the evidence that is laid before him, and for no other purpose, e. g., the purpose of testing the credibility of the witnesses examined on

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either side ; that an immediate report of what is seen should be placed on the record and laid open to the scrutiny of the parties, and that if he imports into the case his opinion, he disqualifies himself from trying the case. Both under the Cr. P. C. and apart from it, a Magistrate may visit the scene of an alleged offence in order to test the evidence he has heard in a case and he may rest upon his opinion he forms on seeing the place in adjudicating between the parties. *Babbon Shaikh v. Emperor.*

11 Cr. L. J. 121 :

5 I. C. 365 : 14 C. W. N. 422 :

11 C. L. J. 335 : 37 Cal. 340.

—S. 556—Local inspection—Effect of—Local inspection—Duty of Magistrate—Creation of fresh evidence, illegality of.

Where a Magistrate went to spot to make a local inspection for the purpose of appreciating the evidence, but himself measured up the plots and came to a certain and definite conclusion on the basis of such measurement : *Held*, that the Magistrate exceeded his jurisdiction inasmuch as he created fresh evidence himself and introduced such evidence into the case. *Haldhar Thakur v. Emperor.*

30 Cr. L. J. 652 :

116 I. C. 767 : I. R. 1929 Pat. 335 :

A. I. R. 1929 Pat. 160.

—S. 556—Party to case.

A Magistrate is not disqualified by S. 556, from trying a case based on a private complaint and which has not been filed under his direction or sanction merely and solely on the ground that the validity of certain orders passed by him in his capacity as an Executive or Revenue Officer is directly put in issue in the case and that the innocence or the guilt of the accused depends to a considerable extent on the effect of such orders. A direct personal pecuniary interest, however small, in the result of a case disqualifies a Judge, Magistrate or Justice from trying a case. Where, however, the interest is not pecuniary, the disqualifying interest should have substantially the same effect so as to create a reasonable suspicion of bias ; but a mere possibility of a bias is not enough. Where the only interest in the result of a case tried by a Magistrate is that he is concerned in it in his public-capacity, it may fairly be presumed that his interest is not so substantial as to warrant the inference that he is likely to have a real bias in the matter. It would be otherwise, if in addition to his being so interested, there are other circumstances to suggest the real likelihood of a bias. *Mohandas Joyramdas v. Emperor.*

27 Cr. L. J. 1333 :

98 I. C. 405 : 20 S. L. R. 171 :

A. I. R. 1927 Sind 98.

—S. 556—Party to case.

A Magistrate who has taken part as a member of a District Board in passing a resolution that the Police should be asked to inquire against certain officials and that such of them, as the inquiry might warrant, should be prosecuted is not competent to try the case instituted against them in pursuance of the resolu-

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which consists of certain questions being suggested by the defence to the Court and those questions being put by the Court. *Pita v. Emperor*.

26 Cr. L. J. 575 :
85 I. C. 719 : 47 All. 147 :
A. I. R. 1925 All. 285.

————S. 540 — Power of Court — Witness examined by Court—Examination of accused, whether necessary — Further cross-examination of prosecution witnesses.

S. 540, Cr. P. C., empowers a Court to summon and examine a witness if his evidence appears to the Court essential to the just decision of the case. The section is not controlled by S. 342 of the Code, which imposes upon the Court the duty of questioning the accused generally on the case after the witnesses for the prosecution have been examined and before he is called on for his defence. If a Court examines a witness under S. 540 of the Code, it is not bound to examine the accused again after recording the statement of that witness, especially if there is no apprehension of any prejudice being caused to the accused. *Fazal Karim v. Emperor*. 26 Cr. L. J. 1418 :

89 I. C. 842 : 1 L. C. 270 :
A. I. R. 1926 Lah. 154.

————S. 540—Scope—Discretion of Court.

S. 540 confers very wide powers upon a Court in the matter of summoning witnesses, but the wider the powers the greater the exercise of discretion required of the Magistrate. *Sitab Singh v. Dalganjan Singh*.

14 Cr. L. J. 682 :
21 I. C. 1002 : 12 A. L. J. 15 :
A. I. R. 1914 All. 526.

————S. 540-A—Applicability.

S. 540-A is a general section which will apply to cases of all kinds whether the accused is in jail custody or whether he is on bail or whether he is appearing in obedience to a summons. *Jagdish Narain Bajpai v. Emperor*.

41 Cr. L. J. 500 :
187 I. C. 682 : 1940 A. L. J. 104 :
12 R. A. 575 : 1940 A. W. R. 79 :
A. I. R. 1940 All. 178.

————S. 540-A — Dispensing attendance—Grounds of.

S. 540-A does not authorize the trial Magistrate to dispense with the attendance of the accused on the ground of illness. *Ko Ko Gyi v. Emperor*.

37 Cr. L. J. 436 :
161 I. C. 240 : 8 R. Rang. 460 :
A. I. R. 1936 Rang. 114.

————S. 540-A—Incapable of remaining in Court—Meaning of.

‘Incapable of remaining before the Court’,—Person not incapacitated but wishing to go to another place for private reasons—Permission cannot be granted. *M. G. Desai v. Emperor*.

34 Cr. L. J. 433 (1) :
142 I. C. 853 : I. R. 1933 All. 137 (2) :
A. I. R. 1932 All. 504.

————S. 540-A—Non-compliance—Effect of.

Normally, a trial in the absence of the accused is a nullity and it is only by virtue of

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S. 540-A, that this consequence of the absence of the accused can be avoided ; if the requirements of the section are not fulfilled, the trial remains a nullity. *Pokhar Das-Ganga Ram v. Emperor*.

39 Cr. L. J. 439 :
174 I. C. 422 : 40 P. L. R. 1 :
10 R. L. 562 : A. I. R. 1938 Lah. 216.

————S. 541—Approver—Custody of.

The Government has no power under S. 541 (1) to issue a notification which amounts to a direction that approvers shall be detained in Police custody. *In the matter of : Khairati Ram*.

32 Cr. L. J. 913 :
132 I. C. 519 : 32 P. L. R. 493 :
12 Lah. 635 : I. R. 1931 Lah. 615.
A. I. R. 1931 Lah. 476.

————S. 541—Approver—Custody of.

Where ample provision has been made by law for the detention in jails or judicial lock-up of persons liable to imprisonment or committed to custody, the Local Government has no power to issue a direction under S. 541 (1), that an approver shall be confined in a particular place in the occupation of the Police. *Kundan Lal v. Emperor*.

32 Cr. L. J. 785 :
131 I. C. 625 : 32 P. L. R. 423 :
I. R. 1931 Lah. 481 :
A. I. R. 1931 Lah. 353.

————S. 544.

See also Cr. P. C., 1898, S. 426.

————S. 544—Discretion.

S. 544 and Rule No. 11 made by the Government of Bombay under that section, regulating the payment, on the part of Government, of the expenses of complainants and witnesses in cases coming before the criminal Courts, invest the Magistrate trying a warrant case with a discretionary power exercisable by him within the limits specified in the rule itself. Such discretion, however, must be exercised according to sound judicial principles and reasonably. *Emperor v. Ganesh*.

5 Cr. L. J. 329 :
9 Bom. L. R. 353.

————S. 545—Applicability and scope.

S. 545 cannot apply to a case under S. 107, inasmuch as no fine can be imposed in such a case. An order, therefore, directing an accused person under S. 107 to pay costs to the complainant is *ultra vires*. *Shco Prasad Singh v. Mahangoo Nonia*.

25 Cr. L. J. 476 :
77 I. C. 828 : A. I. R. 1924 All. 694.

————S. 545—Compensation—Measure of.

The accused was convicted under S. 21 (e), Fisheries Act, of illegally demanding and receiving money, he was fined three times the amount of the illegal receipts. The Magistrate directed the whole of the fine to be paid to the persons from whom the accused had taken money. The prosecution was instituted without complaint on the report of an official. The aggrieved persons did not appear to have

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ence to Ss. 215 and 532, Cr. P. C. *Emperor v. Maung Lal*. 1 Cr. L. J. 477 :

2 L. B. R. 209 : 10 Bur. L. R. 224.

—————S. 556—Party to case.

S. 556 does not debar an Excise Officer from trying a case under the Excise Act, 1896, in which he himself is responsible for the prosecution. *Emperor v. Janki Das*.

7 Cr. L. J. 393 :

28 A. W. N. 95 : 5 A. L. J. 357.

—————S. 556—Party to case—Transfer—Prosecution ordered by Cantonment Magistrate acting as Secretary, Cantonment Committee—Advisability of other Magistrate to try case.

Where a prosecution is ordered by a Cantonment Magistrate in his capacity as Secretary of the Cantonment Committee, it is advisable that the case should be tried by some Magistrate other than the Cantonment Magistrate. *Hira Lal v. Emperor*.

24 Cr. L. J. 128 :

71 I. C. 256 : 20 A. L. J. 911 :

A. I. R. 1922 All. 528.

—————S. 556—Party to case.

Where a District Magistrate was not only actively concerned in the institution of proceedings under Chap. VIII, Cr. P. C., but where those proceedings originated in, and with him in the discharge of the duties as executive head : *Held*, that S. 556, Cr. P. C., was a bar to his entertaining the appeal and that mere waiver on the part of the accused could not vest him with jurisdiction : *Held*, further, that proceedings under S. 110, Cr. P. C., can be transferred to any Court outside the local limits of the district within which such proceedings have been lawfully instituted. *Emperor v. Mahomed Shah*.

8 Cr. L. J. 356 :

1 S. L. R. 98.

—————S. 556—Party to case.

Where a Judge is the sole Judge of law and fact in a case tried before himself, he cannot give evidence before himself or import matters in his judgment not stated on oath before the Court in the presence of the accused. If he does so, he makes himself a witness in the case and renders himself incompetent to try it. *Mangal Lal Marwari v. Emperor*.

20 Cr. L. J. 45 :

48 I. C. 685 : A. I. R. 1918 Pat. 373.

—————S. 556—Personal interest.

The applicants were tried and convicted of an offence under the C. P. Municipal Act for an encroachment upon Municipal land by a Magistrate, who, in his capacity as President of the Municipal Committee at whose instance the prosecution was started, took part in promoting the prosecution by concurring in the sanctioning of the same : *Held*, that the Magistrate was disqualified under S. 556 from trying the case by reason of the existence of the personal interest over and above what might be felt by every Municipal Commissioner in the affairs of the Municipality. It is highly undesirable that the President of a Municipal

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Committee should try Municipal cases. *Deendayal v. Emperor*. 18 Cr. L. J. 1017 :

42 I. C. 761 : 14 N. L. R. 14 :

A. I. R. 1917 Nag. 64.

—————S. 556—Personal interest.

The fact that a Magistrate examined himself as a witness in the case at the instance of a party does not vitiate a trial, where the evidence given is very formal, the parties are given an opportunity to examine and cross-examine him, the Magistrate is not in any way personally interested in the matter and the other party does not take steps to get the case transferred to another Court in time. *Muhammad Jan v. Emperor*.

27 Cr. L. J. 1193 :

97 I. C. 953 : 3 O. W. N. 178 Sup :

A. I. R. 1926 Oudh 557.

—————S. 556—Personal interest.

The mere fact that a Magistrate who tries an offence under the Municipal Act happens to be the President of the Town Committee gives him no personal interest in the proceedings under S. 556. A Magistrate, who, in his capacity of President of the Town Committee, merely authorises, but does not direct, a prosecution is not disqualified from trying the case under S. 556. It is extremely undesirable, however, that when other Magistrates are available, a Magistrate should try a case in which he has, in a different official capacity, given formal sanction to the prosecution. *Gopi Chand v. Emperor*.

25 Cr. L. J. 273 :

76 I. C. 865 : 1 Rang. 517 :

A. I. R. 1924 Rang. 87.

—————S. 556—Personal interest.

Where a Magistrate acting in the capacity of the President of Octroi Sub-Committee, orders prosecution of a person, he is deemed to be personally interested in the case and has no jurisdiction to try the case even with the consent of the accused. *Bisheshwar Bhattacharya v. Emperor*.

11 Cr. L. J. 447 :

7 I. C. 291 : 7 A. L. J. 749 : 32 All. 635.

—————S. 556—Personal interest—Meaning of.

A Magistrate who presided at a meeting of the Municipal Board which directed the prosecution of the accused, is disqualified from making an order for further inquiry against the accused under S. 437. The Magistrate must be deemed to be personally interested within the meaning of S. 556. *Imperator v. Bhograj*.

13 Cr. L. J. 30 :

13 I. C. 222 : 5 S. L. R. 137.

—————S. 556—Personal interest—Meaning of Meaning of "Personally interested"—Magistrate making himself a witness in a case which he is trying.

On a day when the Courts were closed for the Christmas holidays, two persons came to a Magistrate's private house, and there made an oral complaint to him. When the Courts re-opened, the same persons filed a written complaint in the Magistrate's Court, which resulted in certain persons being put upon their

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———S. 545—Granting compensation—Validity of.

Prosecution of midwife under S. 304, Penal Code—Midwife unqualified—Fact known to deceased woman—Consent given for attending on her at delivery—*Maxim volenti non fit injuria* applies—Fine by Magistrate and out of it compensation given to mother of deceased: *Held*, order for compensation illegal and without jurisdiction. *Maung Sein v. Emperor*.

37 Cr. L. J. 199 :
159 I. C. 1026 : 8 R. Rang. 307 :
A. I. R. 1935 Rang. 471.

———S. 545—Granting compensation—Validity of.

Scope of—Compensation for offences which accused may have committed but with which he has not been charged cannot be awarded. *Ram Prasad v. Emperor*.

36 Cr. L. J. 1030 :
156 I. C. 957 : 8 R. Rang. 56 :
A. I. R. 1935 Rang. 199.

———S. 545—Granting compensation—Validity of.

Where a boy is killed by the accused who is convicted under S. 304-A, Penal Code, and the accused is ordered to pay fine, the mother of the boy is entitled to compensation and the Court should order it to be paid out of the fine. *Nur Sahibi v. Emperor*.

36 Cr. L. J. 1208 :
157 I. C. 531 : 8 R. Pesh. 29 :
A. I. R. 1935 Pesh. 102.

———S. 545—Granting compensation—Validity of.

Where a fight took place between the parties owing to the encroachment made by the deceased and his family on the field of the accused, it is not proper to order a part of the fine to be paid to the family of the deceased as compensation. *Mohammad Shah v. Emperor*.

36 Cr. L. J. 389 :
153 I. C. 277 : 35 O. L. R. 370 :
7 R. L. 424 : A. I. R. 1934 Lah. 519.

———S. 545—Granting compensation—Validity of.

Where a Magistrate has not imposed any fine on the accused, an order directing payment of money compensation to the complainant is not justified under the provisions of S. 545. *Munney Mirza v. Emperor*.

25 Cr. L. J. 1116 :
81 I. C. 940 : A. I. R. 1925 Oudh 110.

———S. 545—Notice of compensation.

It is a settled practice of Calcutta High Court, in a case where compensation has been awarded to the complainant to give notice of the appeal to him and an acquittal in absence of such notice is liable to be set aside by High Court in revision. *Bharasa Naw v. Such Dev*.

27 Cr. L. J. 1086 :
97 I. C. 62 : 43 C. L. J. 583 :
53 Cal. 969 : A. I. R. 1926 Cal. 1054.

———S. 545 (1) (b) (a)—Granting Compensation—Validity of.

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K had stated in his evidence in a civil suit where one *D* had sued him for dismissal as manager of *K*'s mine that he dismissed *D* because he had been informed that *D* had arranged to sell his ore to one *S* and had borrowed money on the strength of this from *S*. This statement was made in cross-examination and again in re-examination voluntarily. This statement was not true, and not believed in good faith by *K* to be true; for it was improbable and came from persons whom he had himself described as rascals and thieves, and was not in any way verified by him: *Held*, that compensation for such defamation was not recoverable in a Civil Court and the order for compensation under S. 545 (1) (b), Cr. P. C., should be set aside though the case was a fit one under Sub-s. (1) (a). *J. M. Khan v. Emperor*.

38 Cr. L. J. 718 :
169 I. C. 245 : 9 R. Rang. 390 :
A. I. R. 1937 Rang. 192.

———S. 546-A—Granting costs—Legality of.

In the case of a non-cognizable offence, an order for payment of costs cannot be made under the provisions of S. 546-A. *Nur-ud-Din v. Emperor*.

25 Cr. L. J. 1161 :
81 I. C. 985 : A. I. R. 1925 Oudh 109.

———S. 546-A—Granting costs.

Where the complainant has not paid any process fees for the issue of process on his witnesses or on the accused or fee on the petition of complaint, he is not entitled to recover such sums under S. 546-A, Cl. (1). *Emperor v. Maung Po Hla*.

36 Cr. L. J. 1048 (1) :
156 I. C. 980 : 8 R. Rang. 58 :
A. I. R. 1935 Rang. 208.

———S. 546-A—Granting costs.

Witness fees should not be included in the costs. *Swee Ing v. Koon Han*.

36 Cr. L. J. 970 :
156 I. C. 598 : 8 R. Rang. 27 :
A. I. R. 1935 Rang. 163.

———S. 546-A—Process-fees—Levy of.

S. 546-A merely provides for the refund of process-fees in non-cognizable cases when paid, but does not authorize their payment. *Emperor v. Mg San Nyein*.

27 Cr. L. J. 415 :
93 I. C. 79 : 4 Bur. L. J. 187 :
A. I. R. 1926 Rang. 13.

———S. 547—Livestock—Applicability to.

S. 547 only provides a summary method for realising "money payable" and these words cannot be stretched so as to include livestock or other goods. *Emperor v. Phumman Ram*.

23 Cr. L. J. 157 :
65 I. C. 621.

———S. 548.

See also Cr. P. C., 1898, S. 112, 154.

———S. 548—First report—Accused, if entitled to copies of it.

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- Scope.
- Scope and object.
- Securing ends of Justice.
- Time-barred appeal.

-----S. 561-A—Exemption from personal attendance—*High Court, whether can grant such exemption.*

A High Court can, under the inherent powers as declared by S. 561-A, pass an order excusing the personal attendance of the accused and permitting him to represent himself in Court by a Pleader. The rule of holding a criminal trial in the presence of the accused is made especially for his benefit and there is nothing to prevent him from waiving the benefit if he likes, though the trial would be bad, if it is held without his consent in his absence or even in the presence of a Pleader engaged for him, if the engagement had not been made by the accused. *Saji v. Bhimi.*

31 Cr. L. J. 284 :
121 I. C. 651 : 26 N. L. R. 50 :
A. I. R. 1930 Nag. 61.

-----S. 561-A—Order under, conflicting with other provisions of Code—*Whether can be passed.*

A general proposition cannot be laid down that the provisions of S. 561-A, could not be used for passing any orders conflicting with any other provisions of the Cr. P. C. *Emperor v. Jamnadas Nathji Shah.*

38 Cr. L. J. 666 :
168 I. C. 718 : 39 Bom. L. R. 82 :
I. L. R. 1937 Bom. 263 : 9 R. B. 393 :
A. I. R. 1937 Bom. 153.

-----S. 561-A—Abuse of Process of Court.

The inherent jurisdiction of the High Court to pass any orders necessary to prevent abuse of the process of any Court is not questioned and indeed has been clearly expressed in S. 561-A. Not every immoral act is criminal and it is an abuse of the process of a Court to attempt to create new crimes in order to compel men to conform to a high standard of probity in business dealings or to force them to execute their promises. *Chidambaram Chettiar v. Shanmugham Pillai.*

39 Cr. L. J. 261 :
173 I. C. 14 : 1937 M. W. N. 999 :
46 L. W. 629 : 1937 2 M. L. J. 878 :
10 R. M. 512 : A. I. R. 1938 Mad. 129.

-----S. 561-A—Abuse of Process of Court—*High Court's inherent power to prevent abuse of process of Court—Remarks by Appellate Court about Magistrate, expunging of.*

High Court has inherent powers to make such orders as may be necessary to prevent abuse of the process of any Court or otherwise to secure the ends of justice. The power to expunge a portion of a judgment delivered by a competent Court is intended for cases of exceptional circumstances and should be sparingly exercised. There is neither any precedent nor is this desirable, that the High Court should, on the motion of a subordinate Magistrate, expunge remarks made by a lower Appellate Court relating to the conduct of judicial

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proceedings taken by the said Magistrate. *Mohammad Qasam v. Anwar Khan.*

27 Cr. L. J. 510 :
93 I. C. 974 : A. I. R. 1926 Lah. 382.

-----S. 561-A—Discretion—*Inherent power of Court—Expunging passage from judgment of lower Court—Jurisdiction of High Court, when exercised—Acquittal—Revision.*

Although a High Court has undoubted jurisdiction to set aside an order of acquittal, this power will be exercised only in rare and exceptional cases. A High Court has inherent power to order the deletion of passages in the judgments of subordinate Courts which are neither irrelevant nor inadmissible and which affect the character of witnesses or accused persons. This jurisdiction, however, can be exercised only when there is no foundation whatever for the remarks objected to and not where it is a matter of inference from evidence. *Panchanan Banerjee v. Upendra Nath Bhattacharji.*

27 Cr. L. J. 1407 :
98 I. C. 719 : 25 A. L. J. 100 :
A. I. R. 1927 All. 193.

-----S. 561-A—Discretion.

Jurisdiction under S. 561-A should be exercised sparingly and in rare cases to prevent injustice. *Sardar Khan v. Wazir Singh.*

32 Cr. L. J. 268 :
129 I. C. 273 : I. R. 1931 Lah. 161 :
31 P. L. R. 992 : A. I. R. 1930 Lah. 1048.

-----S. 561-A—Discretion.

There is no rule providing for the employment of Counsel at the expense of Government in an enquiry before a Magistrate, but on principle, there is no objection to such employment if the Crown is prepared to pay for the services of a legal practitioner. There can be no doubt, however, that when the Sessions Judge or the Magistrate engages a Counsel for the defence of an accused, he does so with the express or implied consent of the latter and that no Court has any authority to force upon a prisoner the services of a Counsel, if he is unwilling to accept them. The Court has no inherent power in the interests of justice in appointing a Pleader for an accused person without his consent and to treat such Pleader as his representative within the meaning of Ss. 353 and 540-A, Cr. P. C. The inherent jurisdiction of the Court which receives recognition in S. 561-A, cannot be invoked for the purpose of doing an act which would conflict with any of the provisions of the law or the general principles of criminal jurisprudence. The rule of law is firmly established that, when a Statute confers upon the Court a specific power, the Court cannot, by relying upon its inherent jurisdiction, extend the scope of that power. *Emperor v. Sukh Dev.*

31 Cr. L. J. 977 :
126 I. C. 72 : 11 Lah. 220 :
A. I. R. 1929 Lah. 705.

-----S. 561-A—Ex-parte order—*Securing ends of justice—Ex parte order—High Court's jurisdiction.*

Where owing to Counsel's carelessness in not

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depended entirely on the question of the girl's age. *Ma Nge v. Maung Ye.*

37 Cr. L. J. 278 :

160 I. C. 282 : 8 R. Rang. 362 :

A. I. R. 1935 Rang. 494.

—S. 552—Unlawful purpose—Meaning of.

If the "unlawful detention" is for a purpose which is an "offence" or is legally prohibited or which is a civil wrong, it would constitute an "unlawful purpose" under S. 552. *Tutsidas Janglyadas Koshta v. Chitandas Domadas.*

35 Cr. L. J. 404 (2) :

147 I. C. 275 : 16 N. L. J. 310 : 30 N. L. R. 76 :

6 R. N. 117 : A. I. R. 1933 Nag. 374.

—S. 554 (2) (c)—Rules, made under—Scope of.

No search fee can be levied along with an application for a copy of a judgment of a Tahsildar Magistrate. Order No. 173 of the Standing Orders of the Madras Board of Revenue does not apply to such an application, which is governed by Rule 188 of the Criminal Rules of Practice framed by the Madras High Court under S. 554, Sub-s. 2, clauses (c) of the Cr. P. C. *Ambalam Ibrahi v. Emperor.*

19 Cr. L. J. 973 :

47 I. C. 873 : 35 M. L. J. 401 : 8 L. W. 558 :

A. I. R. 1919 Mad. 839.

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—Appeal.

—Applicability.

—Disqualification of Magistrate.

—Extent of disqualification.

—Interest of Magistrate.

—Interpretation.

—Local inspection.

—Party to case.

—Personal interest.

—Personally interested.

—Scope of.

—S. 556.

See also (i) Arms Act, 1878, Ss. 19-F, 29.

(ii) Cr. P. C. 1898, Ss. 4 (h), 162, 190, 191, 195, 235, 476, 526, 537, 556.

(iii) Penal Code, 1860, S. 154.

—S. 556—Magistrate both Prosecutor and Judge—Explanation to S. 556—Illustration.

The Explanation to S. 556, has no application where a Magistrate himself directs a prosecution. For a Magistrate, as the principle embodies in the Illustration to the section shows, cannot be both a Prosecutor and a Judge. *Gundo Chikko Kulkarni v. Emperor.*

22 Cr. L. J. 603 :

62 I. C. 875 : 23 Bom. L. R. 842 :

A. I. R. 1921 Bom. 365.

—S. 556—Appeal—Hearing of.

Where a Forest Officer asked the Deputy Commissioner of the District to administer a warning to the accused for having made a false report to the officer, and the Deputy Commissioner directed prosecution of the accused under S. 182, Penal Code, on the ground that he was satisfied that there was a

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clear case of a report deliberately made: *Held*, that under the circumstances, the Deputy Commissioner was disqualified from hearing as District Magistrate the accused's appeal from a conviction under S. 182, Penal Code, inasmuch as such disqualification took away his jurisdiction, and such defect could not be cured by consent or want of objection on the part of the accused. *Faiz Muhammad v. Emperor.*

14 Cr. L. J. 385 :

20 I. C. 209 : 9 N. L. R. 81.

—S. 556—Applicability.

The expression "try any case" in S. 556 is wide enough to include any stage of a judicial proceeding in which the question of the guilt or innocence of an accused is finally adjudicated on. Consequently, the section applies to the proceedings under S. 437. *Imperator v. Bhojraj.*

13 Cr. L. J. 30 :

13 I. C. 222 : 5 S. L. R. 137.

—S. 556—Applicability.

The mere fact that a Magistrate has taken cognizance of a case on his own knowledge under S. 190 (c) does not bring the case under the operation of S. 556. *Nga Chit Kyaw v. Emperor.*

26 Cr. L. J. 249 (a) :

84 I. C. 249 : 3 Bur. L. J. 121 :

A. I. R. 1924 Rang. 352.

—S. 556—Applicability.

The words 'try any case' in S. 556, are wide enough to include the hearing of an appeal. Where a given case falls within the provisions of the said section is a question of fact to be determined by the circumstances of each particular case, and, therefore, it is not safe to draw any analogy from the decisions in other cases. In cases where a Deputy Commissioner, or other executive head of a District or department, orders a prosecution, because the matter before him demands elucidation by judicial inquiry, S. 556 would not be applicable. But in cases where the officer ordering a prosecution has satisfied his own mind that the accused is guilty, the section would be applicable and such officer should not try the accused. *Faiz Muhammad v. Emperor.*

14 Cr. L. J. 385 :

20 I. C. 209 : 9 N. L. R. 81.

—S. 556—Disqualification of Magistrate—Transfer of case.

The accused applies to the District Magistrate under S. 528 to transfer the case from the Magistrate of the second class before whom he was being tried, on the ground that the latter was corrupt and had demanded money from him. The District Magistrate, after inquiry, found that the allegation was false and rejected the application. The Magistrate then applied for leave to prosecute the accused and at the same time proceeded with the trial, which had been stayed, and convicted the accused: *Held*, the Magistrate after he had sent in his application for leave to prosecute the accused should have taken the further orders of the District Magistrate, as to whether he was to go on with the case, but that accused was not entitled to a fresh trial as he had

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statements of witnesses in so far as those statements are relevant to the case, yet it is equally necessary that the Court should not be allowed to make disparaging remarks upon persons who appear either as witnesses during the course of trial of a case or whose names are mentioned. *Gokaran Prasad Gupta v. Emperor.* 40 Cr. L. J. 923 : 184 I. C. 250 : 1939 O. W. N. 870 : 1939 O. L. R. 593 : 12 R. O. 90.

S. 561-A—Expunging remarks from judgment.

Under S. 561-A, the High Court has ample power to expunge any improper remarks which a Subordinate Court has made in its judgment against a witness or party. *Fazal Din v. Emperor.* 33 Cr. L. J. 534 : 137 I. C. 850 : 33 O. L. R. 608 : I. R. 1932 Lah. 362.

S. 561-A—Expunging remarks from judgment—Legality of.

The High Court has no jurisdiction to expunge passages from the judgment of an inferior Court which has not been brought before it in regular appeal or revision. *P. J. Rogers v. Shrinivas Gopal Kawale.* 41 Cr. L. J. 855 : 190 I. C. 205 : 42 Bom. L. R. 478 : I. L. R. 1940 Bom. 415 : 13 R. B. 106 : A. I. R. 1940 Bom. 266.

S. 561-A—Expunging remarks—Order expunging remarks—Notice to lower Court, whether necessary.

A High Court has inherent jurisdiction under S. 561 to act *suo motu* and order expunging of objectionable remarks in the judgment of a subordinate Court without issuing the notice to the District Magistrate or to the trying Magistrate to show cause as to why the deletion should not be made. *Gunwant Parashram Naik v. Govind Bhau.* 29 Cr. L. J. 313 : 107 I. C. 912 : A. I. R. 1928 Nag. 242.

S. 561-A—Extent of power.

High Court cannot alter or review its own judgment in a criminal case once it has been pronounced and signed except in cases where it was passed without jurisdiction or in default of appearance without an adjudication on the merits. The remedy of a person aggrieved by an order of the High Court is to apply to the Local Government to exercise its powers. *Kunji Lal v. Emperor.* 35 Cr. L. J. 1485 : 151 I. C. 714 : 1934 A. L. J. 704 : 4 A. W. R. 252 : 7 R. A. 199 : A. I. R. 1935 All. 60.

S. 561-A—Extent of power.

Inherent powers are not usually invoked when there is another remedy available. Orders in the nature of attachment before judgment not to be passed. *In re : Lloyds Bank, Ltd.* 35 Cr. L. J. 1028 : 149 I. C. 1005 : 36 Bom. L. R. 88 : 58 Bom. 152 : 6 R. B. 409 : A. I. R. 1934 Bom. 74.

S. 561-A—Extent of power—Power of High Court to amend its order made on transfer

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application with consent of parties, by way of explanation.

A transfer application was made to the High Court which directed a *de novo* trial and that the trial Magistrate was not to be bound by any order of the first trial Magistrate. The order was made after a long discussion and was except in form a consent order. The petitioner made a further application on the ground that the order was obscure and sought to have it made clear : *Held*, that the High Court had no power to amend its order by way of explanation or otherwise. *Ghansham Das Birla v. Suraj Bhan.* 41 Cr. L. J. 708 : 188 I. C. 856 : 42 P. L. R. 153 : 13 R. L. 74 : A. I. R. 1940 Lah. 192.

S. 561-A—Extent of.

S. 561-A in no way adds to the powers of the High Court. The inherent powers of the Court do not include the power to revive an order which has been made in the Criminal Appellate Jurisdiction. *Dahu Raut v. Emperor.* 34 Cr. L. J. 1100 : 145 I. C. 937 : 6 R. C. 168 : 38 C. W. N. 25 : A. I. R. 1933 Cal. 870.

S. 561-A—Extent of Power—There is no conflict between S. 369 and S. 561-A—High Court, if has power to alter or review its own judgment—Such power, when exercised.

S. 561-A does not confer upon the High Court any new powers but merely declares that such inherent powers as the Court may possess shall not be deemed to be limited or affected by anything contained in the Code. The High Court has, therefore, no power to alter or review its own judgment in a criminal case, once it has been pronounced and signed except in cases where it was passed without jurisdiction or in default of appearance without an adjudication on the merits or to correct a clerical error; nor is there any conflict between that section and S. 369 of the Code. In such a case, the only authority that can interfere is the Provincial Government. *Edward Few v. Emperor.* 40 Cr. L. J. 763 : 183 I. C. 348 : 12 R. L. 110 : 41 P. L. R. 794 : A. I. R. 1939 Lah. 244.

S. 561-A—Granting bail—Application for leave to appeal to Privy Council—Inherent Power of High Court—Scope of.

The inherent power of a Court cannot be invoked with respect to any matter which is expressly dealt with by the Code. The question of bail has been expressly dealt with, and although the matter of bail pending an appeal to the Judicial Committee is not there, its provisions on the subject must be regarded as exhaustive. Moreover, there should not be a resort to inherent power when there are other remedies available. The Local Government has ample power to suspend sentence and to release a convict on such terms as it chooses to fix. Where a convict applies for bail on the plea that he

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tion. *Hem Raj v. Emperor*. 29 Cl. L. J. 371 :
108 I. C. 271 : 9 L. L. J. 583 :
29 P. L. R. 282 : A. I. R. 1928 Lah. 114.

—S. 556—Party to case.

A Magistrate, who himself orders the prosecution of an accused in his capacity of *Tahsildar* and further orders the search of the accused's house, not on the complaint or report of Collector or Excise Officer but on that of an opium contractor, is incompetent to try the offence. *Mangal v. Emperor*.

13 Cr. L. J. 294 :
14 I. C. 758 : 5 P. W. R. 1912 Cr. :
64 P. L. R. 1912.

—S. 556—Party to case.

A member or an office-bearer of a Municipality is debarred from trying a case, whether singly or as member of a Bench, arising out of the proceedings of the Municipality or to which the Municipality is a party. *Nur Nishan v. Municipal Committee, Rawalpindi*.

23 Cr. L. J. 704 :
69 I. C. 384 : A. I. R. 1922 Lah. 72.

—S. 556—Party to case.

A Municipal Commissioner invited the attention of the Executive Officer of the Committee to the infringement of a Municipal By-law by the accused. The Executive Officer called the attention of the Health Officer, who instituted a prosecution against the accused. The case was tried and the accused convicted by a Bench of Honorary Magistrates of which that Municipal Commissioner was a member : *Held*, that the conviction could not be quashed on the ground that the Municipal Commissioner was personally interested in the success of the prosecution within the meaning of S. 556 or was a party to the prosecution in the sense that he had caused it to be instituted. *Nanoo v. Emperor*.

24 Cr. L. J. 135 :
71 I. C. 359 : A. I. R. 1923 All. 483.

—S. 556—Party to case.

A Sessions Judge is not prohibited in law from hearing an appeal from a conviction by a Magistrate in a case where, as an Insolvency Judge, he allowed the prosecution to proceed. But a Judge may object to hearing such a case if he remembers being acquainted with it before. *Sri Krishna Sonar v. Emperor*.

24 Cr. L. J. 144 :
71 I. C. 368 : 21 A. L. J. 90 :
A. I. R. 1923 All. 193.

—S. 556—Party to case.

Accused was tried at the instance of a Municipal Committee for an offence under the C. P. Municipal Act. The evidence in the case was recorded by the *Naib Tahsildar*, and the case then went to the *Tahsildar* who was also the President of the complainant Committee : *Held*, that despite the proviso to S. 556, the *Tahsildar* should not have tried the case himself. *Ramarao v. Municipal Committee, Deoli*.

20 Cr. L. J. 244 :
49 I. C. 916 : A. I. R. 1919 Nag. 131.

—S. 556—Party to case—Burma Gambling Act (I of 1899), Ss. 6, 7—Magistrate issuing

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warrant under S. 6, whether competent to try case.

A Magistrate who issues a warrant under S. 6, Burma Gambling Act, is disqualified from himself trying the case. *Chin Pin v. Emperor*.

22 Cr. L. J. 451 :
61 I. C. 835 : 13 Bur. L. T. 154 :
A. I. R. 1920 L. Bur. 85.

—S. 556—Party to case—District Magistrate, prosecution ordered by, as Inspector of Factories—District Magistrate, whether competent to try case.

Where a District Magistrate, in his capacity as Inspector of Factories, sanctions a prosecution, he is disqualified, under S. 556, from trying the case. *Lorinda Ram Sawa Ram v. Emperor*.

21 Cr. L. J. 389 :
55 I. C. 997 : 1 Lah. 35 :
75 P. L. R. 1920 : 7 P. W. R. 1920 Cr. :
A. I. R. 1920 Lah. 334.

—S. 556—Party to case.

In the absence of special circumstances, a Court which sanctions or directs a prosecution is not thereby rendered incompetent to try the offence or to hear an appeal against a conviction for it. *Pandia Mahar v. Emperor*.

26 Cr. L. J. 1481 :
89 I. C. 1049 : A. I. R. 1924 Nag. 23.

—S. 556—Party to case—Magistrate giving information to Police and directing inquiry—Jurisdiction to try case subsequently—Transfer of case.

A Magistrate who merely lays before an Inspector of Police certain information, and directs the said Inspector to make an inquiry on the basis of that information, does not thereby lose his jurisdiction under S. 556 to subsequently try the case. *Babu Ram v. Emperor*.

15 Cr. L. J. 17 (a) -
22 I. C. 161 (a) : 11 A. L. J. 852.

—S. 556—Party to case—Magistrate presiding over meeting of Municipality directing prosecution—Trial by such Magistrate, legality of.

If a prosecution has been directed in pursuance of orders passed by a local body in a meeting presided over or attended by a Magistrate in his capacity as an office-bearer or member thereof, such Magistrate is legally interested in the matter and is disqualified from trying the matter in his judicial capacity. *Muhammad Bakhsh v. Emperor*.

30 Cr. L. J. 698 :
116 I. C. 881 : I. R. 1929 Lah. 593 :
10 Lah. 718 : 30 P. L. R. 706 :
A. I. R. 1929 Lah. 718.

—S. 556—Party to case—Quashing of commitment made by Magistrate personally interested, Ss. 215, 532.

The District Magistrate, without obtaining the permission of the Court to which an appeal lay from his Court, committed to Sessions a case in the investigation of which he had taken an active part as District Superintendent of Police. Commitment quashed by the Chief Court on revision, after refer-

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and comprehensive and the High Court has jurisdiction to pass an order to set aside proceedings in a subordinate Court if the proceedings constitute an abuse of the process of the Court. *S. C. Mitra v. Kali Charan.*

29 Cr. L. J. 102 :
106 I. C. 694 : 1 Luck. Cas. 653 :
3 Luck. 287 : A. I. R. 1928 Oudh 104.

———S. 561-A—Scope—Power of Single Judge of Chief Court to quash proceedings.

Any Single Judge of the Chief Court can exercise the jurisdiction which is conferred on a High Court by S. 561-A of the Cr. P. C. *S. C. Mitra v. Kali Charan.*

29 Cr. L. J. 102 :
106 I. C. 694 : 1 Luck. Cas. 653 :
3 Luck. 287 : A. I. R. 1928 Oudh 104.

———S. 561-A—Scope.

S. 561-A does not confer any new powers, but merely declares that such inherent powers as the Court may possess shall not be deemed to be limited or affected by anything contained in the Code. *Kunj Lal v. Emperor.*

35 Cr. L. J. 1485 :
151 I. C. 714 : 1934 A. L. J. 704 :
4 A. W. R. 252 : 7 R. A. 199 :
A. I. R. 1935 All. 60.

———S. 561-A—Scope—Inherent powers of High Court.

S. 561-A, Cr. P. C., confers no new powers on the High Court, and the Court cannot, by invoking its inherent powers, extend the powers given to it by Statute: *Marudayya Thevar v. Shunmugasundara Thevar.*

27 Cr. L. J. 126.
91 I. C. 702 : 49 M. L. J. 593 :
1925 M. W. N. 772 : 22 L. W. 723 :
A. I. R. 1926 Mad. 139.

———S. 561-A—Scope—Quashing proceedings against officers.

Sanction to prosecute certain officers of a Company was granted to the Official Liquidator on the 18th November, 1924. The Official Liquidator subsequently applied for public examination, and for proceedings against them under S. 235 of the Companies Act. The Court declined to take proceedings until particulars of the charges against the officers were given. The Official Liquidator did not supply the particulars but filed a complaint against the officers in the Criminal Court on the 8th March, 1927, in pursuance of the sanction of 1924: *Held*, that the conduct of the Official Liquidator in disregarding the order of the Court to specify the particulars of the charges, and making a complaint during the pendency of proceedings under S. 235 of the Companies Act, was clear attempt to divest the Court of its jurisdiction possessed under S. 237 of the Act, and that the High Court had power under S. 561-A of the Cr. P. C. to quash the criminal proceedings instituted against the officers. *S. C. Mitra v. Kali Charan.*

29 Cr. L. J. 102 :
106 I. C. 694 : 1 Luck. Cas. 653 :
3 Luck. 287 : A. I. R. 1928 Oudh 104.

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———S. 561-A—Scope and object.

The special jurisdiction recognized by S. 561-A can be invoked only in exceptional cases for which no express provision has been made by the Code and to redress only such grievance as calls for an immediate relief which can be granted only by the High Court. The inherent jurisdiction should be exercised with due care and caution and must conform to sound general principles and precedents. It was never contemplated by the Legislature that the High Court should exercise its inherent power for making pronouncements upon questions of law in order to guide a Magistrate in conducting a preliminary enquiry. S. 561-A does not confer any new powers on the High Court but merely recognises and preserves the inherent powers previously possessed by it. The section, as its language shows, embraces three classes of orders, namely, orders which may be necessary (1) to give effect to any order passed under the Code; (2) to prevent abuse of the process of any Court; and (3) to secure the ends of justice. No legislative enactment dealing with procedure can provide for all the cases that may possibly arise, and it is an established principle that Courts must possess inherent powers apart from the express provisions of the law, "which are necessary to their existence and the proper discharge of the duties imposed upon them by law." This doctrine finds expression in S. 561-A. *Emperor v. Sukh Dev.*

31 Cr. L. J. 482 :
123 I. C. 280 : 31 P. L. R. 207 :
A. I. R. 1930 Lah. 465.

———S. 561-A—Securing ends of justice.

Assessor expressing that he is determined to help accused is not a proper person to act as Assessor—New trial ordered. *Emperor v. Lal Singh.*

35 Cr. L. J. 107 (1) :
146 I. C. 446 : 15 Lah. 20 :
6 R. L. 227 : A. I. R. 1933 Lah. 926.

———S. 561-A—Securing ends of justice.

If successive, frivolous and vexatious applications for transfer are made so as to prevent the ends of justice being attained, the Court ought to exercise its inherent powers under S. 561-A to prevent its process being thus abused. *In re : Shamdasani.* (F. B.)

32 Cr. L. J. 394 :
129 I. C. 584 : 32 Bom. L. R. 1123 :
54 Bom. 553 : I. R. 1931 Bom. 184 :
A. I. R. 1930 Bom. 477.

———S. 561-A—Securing ends of justice—Illegal search by Government Officer—Power of High Court to interfere.

In whatever capacity any officer of the Crown in certain actions taken by him, orders search of the house of a public servant or of a subject of the Crown, the High Court would have jurisdiction to interfere with such orders. *Bhairon Prasad v. Emperor.*

30 Cr. L. J. 62 :
113 I. C. 78 : I. R. 1929 All. 105 :
1929 A. L. J. 57 : 51 All. 377 :
A. I. R. 1928 All. 756.

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trial before the same Magistrate for an offence under S. 323 of the I. P. C. During the course of the trial, the Magistrate considered it his duty to record his own evidence as to the circumstances attending the making of the oral complaint at his house, and he was duly cross-examined and re-examined: *Held*, that the Magistrate could not be considered to be "personally interested" in the case within the meaning of S. 556. *Emperor v. Nanhe*.

1 Cr. L. J. 613 :

24 A. W. N. 157 : I. L. R. 27 All. 33.

———S. 556—*Personal interest—Meaning of—Meaning of "personally interested"—Sub-Committee of Municipal Board advising a prosecution.*

A Magistrate who had been a member of a Sub-Committee of a Municipal Board which recommended the prosecution of a certain person for an alleged obstruction caused by him in a public thoroughfare was not, by reason only of this fact, "personally interested" in the case afterwards initiated against such person so as to be debarred under S. 556 from trying it. *Emperor v. Mohan Lal*.

1 Cr. L. J. 605 :

24 A. W. N. 154 : I. L. R. 27 All. 25.

———S. 556—*Personal interest—Meaning of.*

The phrase 'interested,' as used in S. 556 does not imply mere intellectual 'interest' but something of the nature of an expectation of advantage to be gained or of a loss, or of some disadvantage to be avoided, by the person who is said to be interested in the case. The mere fact that the enquiry was made by the Magistrate is not to be regarded as a disqualifying ground under the section. *Emperor v. Cholappa*. 5 Cr. L. J. 2 :

8 Bom. L. R. 947.

———S. 556—*Personal interest—Nature of—Falsification of accounts and embezzlements—Offences numerous.*

The accused was an accountant of the District Superintendent of Police's office, and as such, his duty was to prepare bills and treasury vouchers for withdrawal of money required for official purposes, submit them to the District Superintendent of Police, or in his absence, to the Headquarters Assistant and after they had been passed and approved of, present the bills or vouchers at the treasury and receive payment thereon either in cash or in the shape of cash orders. The alleged falsification of accounts, the embezzlements, the cheating and the forgeries were all alleged to have been perpetrated by the accused in the District Superintendent of Police's Office or in connection with the books and papers maintained, or issued from there, and no question whatever with reference to the efficiency of the work of the Treasury Officer or to the discharge of the work of his office was substantially involved in any of the cases. Similarly, the offences when added up, did not involve a very great monetary value: *Held*, that the Magistrate who tried the case though functioned as a Treasury Officer had no substantial interest in the case so as to disqualify him from trying the same and the

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trial therefore was not vitiated on that account. *Mg. Po Kywe v. The King*.

40 Cr. L. J. 621.

———S. 556—*Personally interested—Magistrate making local inquiry—Refusal to grant adjournment.*

Though a local enquiry does not necessarily create a necessity for transfer, there may be circumstances under which it would be advisable to direct a transfer from the Court of a Magistrate who has made a local inquiry. *Ghassoo v. Emperor*.

31 Cr. L. J. 555 :

123 I. C. 685 : 1930 A. L. J. 606 :

A. I. R. 1930 All. 737.

———S. 556—*Scope of.*

A District Magistrate who, as Inspector of Factories, directs the District Engineer to visit a factory and see whether certain directions have been carried out, is precluded by the provisions of S. 556, Cr. P. C., from trying a prosecution based upon the report of the District Engineer. *Devi Chand v. Emperor*.

22 Cr. L. J. 717 :

63 I. C. 877.

———S. 557.

See also Cr. P. C., 1898, Ss. 222 (2), 225-A, 535 (1), 557.

———S. 557—*Pleader appointed Magistrate—Prohibition to practice.*

A Pleader, who has been appointed a Magistrate in any Court, cannot, under S. 557, be prohibited from practising in that Court but he cannot sit as a Magistrate in that Court or in any Court within the jurisdiction of that Court if he continues to practise therein. *Emperor v. Nga Tha Shwin*.

25 Cr. L. J. 311 :

76 I. C. 1031 : 4 U. B. R. 1922 127 :

A. I. R. 1923 Rang. 119.

———S. 559—*Proceedings under S. 476—Applicability to.*

Under S. 559, subject to the other provisions of the Code, the power of a Magistrate may be exercised by his successor-in-office, and this provision is applicable also to proceedings under S. 476. *Behram v. Emperor*.

27 Cr. L. J. 776 :

95 I. C. 312 : 7 Lah. 108 : 27 P. L. R. 314 :

A. I. R. 1926 Lah. 305.

———S. 561-A.

———Abuse of process of court.

———Discretion.

———Ex parte order.

———Expungement of remark.

———Expunging of remarks.

———Expunging remarks from judgment.

———Extent of power.

———Granting bail.

———Inherent power.

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———Process.

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- (iv) Public Gambling Act, 1867.
- (v) Punjab Excise Act, 1914, S. 61 (1).
- (vi) Reformatory Schools Act, 1897, S. 8.
- (vii) U. P. Excise Act, 1910, S. 60 (a).

—S. 562—Appeal.

An order of conviction without sentence under S. 562 is appealable under S. 408. No revision can be entertained when appeal is allowed. *Ma Chit Su v. Emperor*.

11 Cr. L. J. 152 :
4 I. C. 1027 : 5 L. B. R. 129.

—S. 562—Appeal.

An order under S. 562, Cr. P. C., is appealable under S. 408, Cr. P. C., and is not restricted by provisions of S. 413, Cr. P. C. *Madhav Raghvendra Kulkarni v. Emperor*.

27 Cr. L. J. 873 :
96 I. C. 121 : 28 Bom. L. R. 671 :
A. I. R. 1926 Bom. 382.

—S. 562—Appeal—Appeal against conviction without sentence.

An appeal lies to the Court of Session against a conviction without sentence by a 1st class Magistrate under S. 562. *Mi Shwe Nyun v. Emperor*.

1 Cr. L. J. 543 :
U. B. R. 1904 Cr. Pro. 7 : 10 Bur. L. R. 321.

—S. 562—Appeal—Whether lies.

An appeal lies on behalf of a convicted person against whom an order under S. 562 (1), Cr. P. C., has been passed. By operation of the Cr. P. C., a right of appeal is also conferred on those who are jointly tried with a person against whom an order under S. 562 (1), Cr. P. C., has been passed, and having been convicted, are given non-appealable sentences. *Bahadur Molla v. Emperor*.

26 Cr. L. J. 455 :
85 I. C. 135 : 29 C. W. N. 151 :
41 C. L. J. 45 : 52 Cal. 463 :
A. I. R. 1925 Cal. 329.

—S. 562—Appeal, whether lies.

An order passed by a Court under S. 562 is appealable. *Mayandi Nadar v. Pala Kudamban*.

36 Cr. L. J. 589 :
154 I. C. 879 : 1934 M. W. N. 1318 :
41 L. W. 22 : 58 Mad. 517 : 69 M. L. J. 101 :
7 R. M. 503 : A. I. R. 1935 Mad. 157.

—S. 562—Appeal and Revision.

An order passed by a Presidency Magistrate under S. 562 is not appealable. *H. Birks v. Emperor*.

33 Cr. L. J. 639 :
138 I. C. 627 (2) : 36 C. W. N. 459 :
I. R. 1932 Cal. 478 : A. I. R. 1932 Cal. 488 (1).

—S. 562—Appealable order—Order under S. 562 passed in summary trial—Sentence—Appeal.

An order passed under S. 562, Cr. P. C., in a summary trial, is appealable. An order under S. 562, Cr. P. C., does not amount to a sentence. *Hira Lal v. Emperor*. 25 Cr. L. J. 1244 :
82 I. C. 172 : 22 A. L. J. 751 : 46 All. 828 :
A. I. R. 1924 All. 765.

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—S. 562—Applicability.

Cases, where S. 562, should and should not be applied, stated. *Emperor v. Allahdino*.

35 Cr. L. J. 1149 :
150 I. C. 763 : 27 S. L. R. 463 :
7 R. S. 27 : A. I. R. 1934 Sind 93.

—S. 562—Applicability—Offence of house-breaking by night—Release.

The offence of house-breaking by night in order to commit theft, under Cl. 2 of S. 457, Penal Code, is punishable with imprisonment for a term of 14 years and, therefore, S. 562, Cr. P. C., is not applicable to this offence in the case of an adult. *Emperor v. Nga Po Wun*.

28 Cr. L. J. 759 :
103 I. C. 839 : 6 Bur. L. J. 83 :
A. I. R. 1927 Rang. 254.

—S. 562—Applicability.

Provided the other provisions of S. 562 are applicable to a case, a first offender is entitled to the benefit of the section even when in the absence of such provisions the Magistrate would be obliged to pass a sentence of imprisonment. *Emperor v. Jinga Gamaji*.

26 Cr. L. J. 694 :
86 I. C. 70 : 27 Bom. L. R. 111 :
A. I. R. 1925 Bom. 192.

—S. 562—Applicability.

Where an accused person has not only been convicted but also sentenced, the provisions of S. 562 become inapplicable to the case. *Emperor v. Misri Lal*.

20 Cr. L. J. 392 :
50 I. C. 1000 : 17 A. L. J. 426 :
A. I. R. 1919 All. 394.

—S. 562—Applicability and scope—Conviction for two offences tried consecutively—Benefit of S. 562.

Where an accused is tried consecutively for two offences and is convicted in both, at the time the second judgment is written, he must be considered to be a previous convict and S. 562, Cr. P. C., will not apply. *Emperor v. Lal*.

27 Cr. L. J. 1016 :
96 I. C. 872 : A. I. R. 1926 Lah. 651.

—S. 562—Applicability and scope.

S. 562, Cr. P. C., as amended in 1923, covers all offences whether they are or are not under the Penal Code. In cases of offences like those under S. 61, Excise Act, the section should not be resorted to. *Emperor v. Faiz Talib*.

27 Cr. L. J. 478 :
93 I. C. 702 : A. I. R. 1926 Lah. 317.

—S. 562—Applicability and scope.

S. 562 of the Cr. P. C. is not restricted to juvenile offenders only. Where, therefore, in a petty case of theft it appeared that the accused had been about two months in the lock-up and that there was no previous conviction against any of them: Held, that an order calling upon the accused to execute a bond under S. 562 was good even though the accused were adults. *Emperor v. Salimi*.

17 Cr. L. J. 254 :
34 I. C. 974 : 11 P. R. 1916 Cr. :
A. I. R. 1916 Lah. 405.

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appearing in the Court at the time when a case is called on for hearing, his client's case goes unrepresented and an *ex parte* order is passed, the High Court has jurisdiction under S. 561-A to entertain an application to re-hear the matter, if, in its discretion, it considers it necessary to do so in order to secure the ends of justice. *Emperor v. Shiva Dat.*

29 Cr. L. J. 893 :
111 I. C. 573 : 5 O. W. N. 641 :
3 Luck. 680 : A. I. R. 1928 Oudh 402.

—S. 561-A—Expungement of remark.

When a Magistrate discharged the accused but by a passage in the judgment recommended the Police to insert his name in their list of bad characters and the Sessions Judge on the authority of *Punjab Law Report No. 164 of 1904* sent the case to the Chief Court for orders, the Chief Court directed the recommendation to be expunged from the judgment. *Modi Shah v. Crown.*

1 Cr. L. J. 698 :
5 P. L. R. 285.

—S. 561-A—Expunging of remarks.

The High Court has powers under S. 561-A to order the expunging of passages in the order of a Sessions Judge granting bail if such passages are likely to prejudice the Magistrate in the impartial trial of the case. *Local Government v. Gulam Jilani.*

25 Cr. L. J. 1363 :
82 I. C. 755 : A. I. R. 1925 Nag. 228.

—S. 561-A—Expunging of remarks from judgment—Application for expunging remarks made by Magistrate—No evidence to support remarks even as legitimate inference—Remarks reflecting on character and likely to affect future of applicant—Remarks should be expunged.

Although a Magistrate is entitled to draw legitimate inferences from the evidence on record, yet when there is no evidence on record to support the remarks made by the Magistrate, for expunging which an application is made, even as legitimate inferences, such remarks are wholly unjustified and when they reflect on the character of the applicant and would affect his future, it is only fair that they should be expunged. *Lachman Das v. Jai Gopal.*

40 Cr. L. J. 214 :
179 I. C. 523 : 11 R. L. 582 :
A. I. R. 1938 Lah. 793.

—S. 561-A—Expunging remarks from judgment.

Disparaging remarks made against a person not before the Court and unwarranted by evidence or made against a witness without affording him any opportunity to offer explanation, should be expunged from the judgment. *In re : Lakshmana Rao.*

41 Cr. L. J. 317 :
186 I. C. 472 : 1939 M. W. N. 1131 :
50 L. W. 782 : 12 R. M. 657 :
A. I. R. 1940 Mad. 134.

—S. 561-A—Expunging remarks from Judgment—High Court's powers—Magistrate's right to make adverse remarks on witnesses and persons not connected with case.

The power to expunge a portion of a judg-

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ment delivered by a competent Court, is intended for cases of exceptional circumstances and it should be borne in mind that in weighing evidence and arriving at conclusion on questions of fact, lower Courts have to review the conduct of witnesses with reference to particular incidents and at times have to adjudge generally on the veracity or otherwise of such persons, and in doing so, they have often to make remarks which reflect adversely on their character. It is of the utmost importance to the administration of justice that Courts should be allowed to perform their function freely, fearlessly and without undue inference by the High Court. At the same time it is equally necessary that the right of the Magistrate to make disparaging remarks on persons who appear or are named in the course of a trial is one that should be exercised with great reserve and moderation especially where the person disparaged has had little or no opportunity of explaining or defending himself. If the conduct of a witness appears to the Judge to be suspicious or otherwise not above-board, he has the right and the duty to test his evidence by putting questions to him. But before he is justified in commenting adversely upon a witness's evidence, he must establish the particular fact warranting such criticism by proper evidence in Court and not on conjectures or by reference to materials which are not properly on the record. *Kanwar Sen v. Emperor.*

29 Cr. L. J. 620 :
109 I. C. 812 : 9 Lah. 269 :
29 P. L. R. 461 : A. I. R. 1928 Lah. 740.

—S. 561-A—Expunging remarks from judgment—High Court's power to expunge defamatory remarks in judgment when they are irrelevant and separable.

The High Court has inherent jurisdiction under the provisions of S. 561-A to expunge any matter from the judgment of a Criminal Court to secure the ends of justice. The principle which should guide the High Court in doing so is that if an unjustifiable attack be made on a person who had no opportunity of being heard in his own defence, and the remark against him is irrelevant and separable, it can and should be expunged, especially if he is neither a party nor a witness. If such remarks are not irrelevant or cannot be separated without ruining the argument and the integrity of the judgment, they should not be expunged. *Mahomed Hussain v. Emperor.*

30 Cr. L. J. 970 :
118 I. C. 747 : I. R. 1929 Sind 203 :
A. I. R. 1929 Sind 243.

—S. 561-A—Expunging remarks from judgment.

The High Court has jurisdiction under S. 561-A, to expunge from the judgment irrelevant, inadmissible and offensive remarks against a witness or a person named in the case. Although in the interests of proper administration of justice, the Courts should be allowed to perform their functions freely and fearlessly and to comment upon the

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————S. 562—Imprisonment in default of security—*If within scope.*

An order of imprisonment on failure to furnish security cannot be added to an order of release on probation of good conduct. When the surety of one of the convicts gets his security bond cancelled, he should be given an opportunity to execute another bond with fresh security. *Jamsher v. Emperor.*

36 Cr. L. J. 381 (2) :
153 I. C. 272 (2) : 35 P. L. R. 368 :
15 Lah. 824 : 7 R. L. 418 :
A. I. R. 1934 Lah. 582.

————S. 562—Imprisonment in default of security—*If within scope.*

In the event of failure to furnish security, the Magistrate should pass a sentence, which should be a nominal one. *Jamsher v. Emperor.*

36 Cr. L. J. 381 (2) :
153 I. C. 272 (2) : 35 P. L. R. 368 :
15 Lah. 824 : 7 R. L. 418 :
A. I. R. 1934 Lah. 582.

————S. 562—Interpretation and scope.

S. 562 authorises release upon probation of good conduct, but that only where the accused is convicted of one of certain offences punishable under the Penal Code. Where a conviction is bad, some sentence contemplated by the law constituting the offence must ordinarily be passed. To "release the convicted person with a warning" is not a course warranted by law. *Emperor v. John Scott.*

2 Cr. L. J. 751 :
1 N. L. R. 139.

————S. 562—Jurisdiction—Power not confined to Courts of First Instance.

The power of passing order under S. 562 is not confined to Courts of First Instance. *Narayanaswami Naidu v. Emperor.*

5 Cr. L. J. 136 :
I. L. R. 29 Mad. 567.

————S. 562—Jurisdiction—Second Class Magistrate—Procedure.

A Magistrate of the second class is not himself competent to pass orders under S. 562. If he is of opinion that a case is a fit one for the exercise of powers under that section, he should submit it, with his report, to a First Class Magistrate or a Sub-Divisional Magistrate for orders. *Emperor v. Jawali.*

25 Cr. L. J. 1124 :
81 I. C. 948 : 5 Lah. 36 :
A. I. R. 1924 Lah. 454.

————S. 562—Object.

S. 562 has not been enacted with the intention of letting off without imprisonment every juvenile offender on his first conviction for an offence described in the section, regardless of the circumstances in which the crime was committed. Magistrate, before applying the section, should carefully take into consideration the attendant circumstances, along with the age, character and antecedents of the offender. The section, has no application to the case of a youth, who grapples with another

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and after having been separated by others turns back in rage on his adversary, and inflicts a heavy *lathi* blow on him, killing him almost instantaneously, and later on, speaks of his act in spirit of truculent *braggadocio* threatening to kill those who attempt to arrest him. *Emperor v. Alia.*

31 Cr. L. J. 348 :
122 I. C. 97 : 10 Lah. 876 :
31 P. L. R. 115 : A. I. R. 1930 Lah. 259.

————S. 562—Object and intention—Reformatory Schools Act (VIII of 1897)—Youthful first offenders.

In the case of first youthful offenders, recourse should be had to the provisions of Reformatory Schools Act or S. 562, Cr. P. C., as the sending of such offenders, whose antecedents are not shown to be bad, to ordinary jails, has the effect of making them hardened criminals after they are discharged from such jails. *Emperor v. Dharam Parkash.*

27 Cr. L. J. 934 :
96 I. C. 390 : A. I. R. 1926 Lah. 611.

————S. 562—Object and intention.

The sole intention of S. 562 is that an accused person who is convicted of a crime should be given a chance of reformation which he would lose by being incarcerated in prison. The powers conferred by this section should not be used for the purpose of showing favour to any particular class of persons, and in the exercise of these powers, a Magistrate should see that the crime that the accused person has committed does not indicate that he is rather a fortunate habitual than a true first offender. *Emperor v. Mathro.*

27 Cr. L. J. 309 :
92 I. C. 693 : 20 S. L. R. 7 :
A. I. R. 1926 Sind 101.

————S. 562—Offences beyond scope.

A conviction under the Bombay Prevention of Gambling Act, being a previous conviction, S. 562 (1) cannot be applied. *Emperor v. Chhotan Hasmat Ali.*

36 Cr. L. J. 1376 :
158 I. C. 378 (b) : 59 Bom. 514 :
8 R. B. 122 : 37 Bom. L. R. 182 :
A. I. R. 1935 Bom. 188.

————S. 562—Offence beyond scope.

An offence of cattle-lifting, if it is very common in a locality, should be repressed with condign punishment and the knowledge that a first offence will go unpunished is very apt to lead the young into a course of crime. *Emperor v. Jhangi.*

34 Cr. L. J. 420 :
142 I. C. 544 : 27 S. L. R. 34 :
I. R. 1933 Sind 113 (1) :
A. I. R. 1933 Sind 44.

————S. 562—Offences beyond scope.

An offence under S. 317, Penal Code, in as bad a form as can be imagined was committed by a young woman of 18 and she did not appear to be weakly : *Held*, that S. 562 should never be extended to such a case, and where it has been applied, the High Court

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is going to appeal against his conviction by the High Court, to the Privy Council, inherent powers should be used sparingly. *Bashir-ud-Din Ahmad v. Emperor*. 38 Cr. L. J. 384 :

167 I. C. 373 : 9 R. N. 182 :

I. L. R. 1937 Nag. 236 :

A. I. R. 1937 Nag. 181.

———S. 561-A—Granting bail—Securing ends of justice—Appeal by Privy Council—High Court's power to grant bail pending appeal—Inherent jurisdiction.

The High Court has inherent jurisdiction to grant bail pending appeal to the Privy Council in a case which has been disposed of by it when the ends of justice require it. *Ram Saroop v. Emperor*.

27 Cr. L. J. 1377 :

98 I. C. 593 : 25 A. L. J. 97 :

A. I. R. 1927 All. 97.

———S. 561-A—Inherent power.

The High Court can interfere with an order granting bail passed by a Sessions Judge under its inherent powers under S. 561-A. *Local Government v. Gulam Jilani*.

25 Cr. L. J. 1363 :

82 I. C. 755 : A. I. R. 1925 Nag. 228.

———S. 561-A—Jurisdiction—Limits of jurisdiction—Practice.

Though the limits of the jurisdiction under S. 561-A, Cr. P. C., are very wide, yet as a rule of practice, it will be exercised in exceptional cases only. *S. C. Mitra v. Kalicharan*.

29 Cr. L. J. 102 :

106 I. C. 694 : 1 Luck. Cas. 653 :

3 Luck. 287 : A. I. R. 1928 Oudh 104.

———S. 561-A—Jurisdiction.

Under S. 561-A inherent powers in that behalf may be exercised by the High Court and not by a Court of inferior jurisdiction. *Shahu v. Emperor*. (F. B.)

36 Cr. L. J. 831 :

155 I. C. 736 : 7 R. S. 206 :

A. I. R. 1935 Sind 84.

———S. 561-A—Power to stay.

Order under S. 144.—High Court can suspend operation of order. *Pilchai v. Muhammad Atham*.

33 Cr. L. J. 826 :

139 I. C. 773 : 36 L. W. 461 :

1932 M. W. N. 726 :

63 M. L. J. 594 : 56 Mad. 149 :

I. R. 1932 Mad. 793 :

A. I. R. 1932 Mad. 720.

———S. 561-A—Process—Meaning of.

In the expression "abuse of process" in S. 561-A, "process" is a general word meaning in effect anything done by the Court. *Assistant Government Advocate v. Upendra Nath Mukerji*.

32 Cr. L. J. 551 :

130 I. C. 538 : 11 P. L. T. 892 :

I. R. 1931 Pat. 186 :

A. I. R. 1931 Pat. 81.

———S. 561-A—Review—Power of High Court to review its own judgment—S. 561-A, if confers such power.

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The High Court has not and never has had any inherent power to review its own judgment and S. 561-A does not confer on it any power so to do.

41 Cr. L. J. 711 :

189 I. C. 83 : 13 R. O. 50 :

1940 O. L. R. 408 :

1940 O. W. N. 594 :

A. I. R. 1940 Oudh 369.

———S. 561-A—Review of own judgment.

Obiter dictum.—S. 561-A of the Cr. P. C., which is of a very general nature, does not empower the High Court to review its judgment. *Nazar Muhammad Khan v. Hara Singh Bedi*.

27 Cr. L. J. 23 :

91 I. C. 55 : 2 Lah. Cas. 103 :

A. I. R. 1926 Lah. 196.

———S. 561-A—Review of sentence—Legality.

A re-consideration or review of an order passed by a Criminal Court is not permissible under S. 561-A or any other section of the Code. *Ganpat v. Emperor*. 32 Cr. L. J. 1222 :

134 I. C. 686 : 27 N. L. R. 163 :

I. R. 1931 Nag. 174 :

A. I. R. 1931 Nag. 169.

———S. 561-A—Scope—Inherent powers of High Court defined—High Court's inherent power to alter or review judgment in criminal cases.

There is no inherent power in the High Court to alter or review its own judgment in a criminal case once it has been pronounced and signed, except in cases where it was passed without jurisdiction or in default of appearance without an adjudication on the merits, and S. 561-A has made no change in the law. All that S. 561-A does, is to declare that such inherent powers as the High Court may possess have not been taken away or abridged by any of the provisions of the Cr. P. C. It does not confer any new powers but merely declares that such inherent powers as the Court may possess shall not be deemed to be limited or affected by anything contained in the Code. The concluding words of S. 561-A "or otherwise to secure the ends of justice," can only mean that such other inherent power as the Court possesses is likewise preserved. The High Court is not given nor did it ever possess any unrestricted and undefined power to make any order which it might please to consider was in the interest of the justice. *Rajn v. Emperor*.

29 Cr. L. J. 669 :

110 I. C. 221 : 10 Lah. 1 :

30 P. L. R. 247 : A. I. R. 1928 Lah. 462.

———S. 561-A—Scope.

It would be incorrect to interpret S. 561-A, as having any reference to bail, a matter which is specifically provided for by the Code itself. *Babu Lal Chankhani v. Emperor*.

166 I. C. 612 :

40 C. W. N. 1313 : 9 R. C. 558 :

I. L. R. 1937 1 Cal. 464 :

A. I. R. 1936 Cal. 809.

———S. 561-A—Scope—Power of High Court to quash proceedings in subordinate Court—Abuse of process.

The language of S. 561-A, Cr. P. C., is wide

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Penal Code, and not to aggravated forms of cheating under Ss. 418 to 420, Penal Code. *Emperor v. Rab Nawaz*. 22 Cr. L. J. 150 : 59 I. C. 854 : 1 Lah. 612 : A. I. R. 1920 Lah. 68.

-----S. 562—Offence beyond scope.

The fact that an accused was prosecuted under S. 19 (e), Arms Act, for possession of an unlicensed dagger is a *lanbardar* of 30 years age, is no reason for showing leniency by not sentencing him but only taking security under S. 562, Cr. P. C. His age should carry no weight. At that age a man has arrived at a time of life when he is fully responsible for his actions and capable of realising their nature to the full. If the fact that it is his first offence by itself be sufficient reason for waiving the punishment, it should be applied in all cases under S. 19 (e), Arms Act, in which there are no aggravating circumstances. But it is impossible to consider that such a course should be adopted universally. The law should be allowed to take its own course, and if it is not allowed to do so, the result would be that an exception is made in favour of an offender merely because he is a man above the average position which in itself would amount to a gross failure of justice. S. 562 should only be applied in special cases and for special reasons. *Akhtar Munir v. Emperor*. 38 Cr. L. J. 610 : 168 I. C. 783 : 9 R. Pesh. 131 : A. I. R. 1937 Pesh. 51.

-----S. 562—Trivial offence—Meaning of, offence beyond scope.

The offence of stealing a cow and taking it to the slaughter-yard is not which can be regarded as trivial within the meaning of S. 562. *Adoo v. Emperor*. 18 Cr. L. J. 621 : 39 I. C. 989 : 10 S. L. R. 185 : A. I. R. 1917 Sind 69.

-----S. 562—Offence beyond scope.

The offence under S. 409, Penal Code, is beyond the purview of S. 562, Cr. P. C., and a Magistrate, therefore, acts without jurisdiction in releasing a person convicted of that offence on probation of good conduct. *Emperor v. Rahmat Khan*. 28 Cr. L. J. 257 : 100 I. C. 225 : A. I. R. 1927 Lah 735 (1).

-----S. 562—Offence beyond scope.

The provisions of S. 562 are inapplicable to an offence under S. 420, Penal Code. *Emperor v. Deva Kanta Jha*. 21 Cr. L. J. 468 : 56 I. C. 500 : 5 P. L. J. 267 : 1 P. L. T. 297 : 1920 Pat. 224 : A. I. R. 1920 Pat. 620.

-----S. 562—Offences within scope—Petty squabbles of young person—Sentence of imprisonment without choice of fine inappropriate.

In a petty case arising out of a squabble between two girls, 16 and 14, the younger girl was convicted of slapping the elder's cheek and pulling her hair and was sentenced to day's rigorous imprisonment. Held: that the sentence of imprisonment without the option

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of a fine was inappropriate. *Ma Kywe v. Emperor*. 12 Cr. L. J. 242 (a) : 10 I. C. 772 : 4 Bur. L. T. 68.

-----S. 562—Offence within scope.

S. 562 of the Cr. P. C. covers only the form of cheating punishable under S. 417, I. P. C., with one year's imprisonment and not the more serious form punishable under S. 420 with seven years. Consequently, S. 562, Cr. P. C., cannot be used upon a conviction under S. 420, I. P. C. Where a Magistrate convicts a person of an offence under S. 420, I. P. C., but deals with him under S. 562, Cr. P. C., the proper course for the Appellate or Revisional Court is not to direct a re-trial but to set aside the order under S. 562 and remand the case to the Magistrate to pass a lawful sentence. *Haruam Singh v. Emperor*. 12 Cr. L. J. 213 : 10 I. C. 114 : 16 P. L. R. 1911 Cr. 155 P. L. R. 1911.

-----S. 562—Offence within scope.

S. 562 (1-A) covers offences punishable only with fine. *Bishambhar Nalh v. Emperor*. 36 Cr. L. J. 1036 (1) : 156 I. C. 735 : 37 Bom. L. R. 105 : 59 Bom 352 : 8 R. B. 34 : A. I. R. 1935 Bom 156.

-----S. 562—Offence within scope.

Terms 'dishonest misappropriation and cheating' in S. 562 (1-A) refer to offences under Ss. 403 and 415, Penal Code. *Emperor v. Mi Kywa*. 35 Cr. L. J. 1241 : 150 I. C. 1121 : 12 Rang. 259 : 7 R. Rang. 36 : A. I. R. 1934 Rang. 203.

-----S. 562—Offences within scope.

The expression "offence punishable with imprisonment for not more than seven years" in S. 562 cover offences punishable with a less severe sentence than those indicated, and therefore to include offences punishable only with fine. *Vaijappa Shrivlingappa Humbroadi v. Emperor*. (F. B.) 36 Cr. L. J. 1470 (2) : 158 I. C. 649 : 37 Bom. L. R. 739 : 60 Bom. 55 : 8 R. B. 138 : A. I. R. 1935 Bom. 402.

-----S. 562—Offences within scope.

The word "misappropriation" in S. 562 of the Cr. P. C., covers the offences punishable under S. 404 and 405 of the Penal Code as well as S. 403, and the word "cheating" covers the offences punishable under Ss. 418, 419, 420, as well as S. 417, Penal Code. *Emperor v. Jiyalal Bhoi*. 24 Cr. L. J. 251 : 71 I. C. 795 : A. I. R. 1923 Nag. 158.

-----S. 562—Offences within scope.

The word "theft", "dishonest misappropriation," and "cheating" as used in S. 562 of the Cr. P. C., 1898, include only the offences punishable under Ss. 379, 403 and 417, Penal Code, respectively, and not those punishable under Ss. 381 and 382, 404 and 505, and 418 to 420. *Emperor v. Nga Pyi*. 3 Cr. L. J. 21 : 3 L. B. R. 95 : 12 Bur. L. R. 91.

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—S. 561-A—*Securing ends of justice—Jurisdiction of High Court under S. 561-A to pass order that attachment shall continue till decision of title by Civil Court, where Magistrate has ordered delivery of possession to one of the parties after cancelling preliminary order passed under S. 145 (1).*

Where in proceedings under S. 145, a Magistrate after attaching the property and passing preliminary order under Sub-s. (1), subsequently cancels the preliminary order and directs delivery of the property attached, to one of the parties, the High Court has power under S. 561-A, to pass an order that the attachment shall continue, until the question of title has been determined by the Civil Courts. *Shahazad Daljit Singh v. Mian Tej Singh.* 40 Cr. L. J. 930 : 184 I. C. 290 : 1939 O. W. N. 891 : 1939 O. L. R. 602 : 12 R. O. 97 : A. I. R. 1939 Oudh 284.

—S. 561-A—*Securing ends of justice—Lower Court holding applicant guilty of indecent assault on uncorroborated statement of boy—Finding entirely irrelevant to case before Court—Applicant not giving opportunity to explain—Offensive remarks will be ordered to be expunged from judgment.*

Where travelling beyond his legitimate functions in the case, the Magistrate has on the uncorroborated statements of a boy which have not received the binding sanction of an oath, and without giving an opportunity to the applicant to be heard, held him guilty of indecent assault upon the boy, a finding which was wholly irrelevant for the right decision of the case, the High Court has, under S. 561-A, inherent power, in order to secure the ends of justice to pass any order that may be necessary to remove the legitimate grievance of the applicant, and the offensive remarks will be ordered to be expunged from the judgment of the lower Court. *Rishi Lal v. Emperor.* 38 Cr. L. J. 376 : 167 I. C. 11 : 1937 O. W. N. 258 : 9 R. O. 379 : 1937 O. L. R. 118 : A. I. R. 1937 Oudh 277.

—S. 561-A—*Securing ends of justice.*

Order dismissing appeal under S. 417 cannot be vacated unless it is proved that conditions precedent to passing of order as laid down in S. 421 have not been fulfilled. Burden of proof is on person challenging finality of order. *Shahu v. Emperor.* 36 Cr. L. J. 831 : 155 I. C. 736 : 7 R. S. 206 : A. I. R. 1935 Sind 84.

—S. 561-A—*Securing ends of justice.*

Acquittal under S. 366, Penal Code—Subsequent proceedings launched under Ss. 497, 498, Penal Code, with view to defeat acquittal—Proceedings should be quashed. *Muhammad Hussain v. Bholanath Das.* 37 Cr. L. J. 538 : 162 I. C. 176 : 8 R. C. 579 : A. I. R. 1936 Cal. 224.

—S. 561-A—*Securing ends of justice.*

Pro-note alleged to be forged found genuine—Accused in forgery case should be discharged.

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High Court can quash proceedings when he has not been discharged. *Girdhar Gopal v. Emperor.* 35 Cr. L. J. 576 : 147 I. C. 1208 : 11 O. W. N. 265 : 6 R. O. 367 (1) : A. I. R. 1934 Oudh 114.

—S. 561-A—*Securing ends of justice.*

Where a complaint before a Magistrate is purely vexatious and *prima facie* one for civil Court, it is open to the High Court to quash the proceedings under S. 561-A. *Bagh Ali v. Karam Bakhsh.* 34 Cr. L. J. 377 (1) : 142 I. C. 575 : 34 P. L. R. 126 : I. R. 1933 Lah. 233 (1).

—S. 561-A—*Time-barred appeal—Court whether has inherent power to admit.*

An Appellate Court has no power to entertain a time-barred criminal appeal under the inherent powers given by S. 561-A, Cr. P. C. *Mahadya v. Emperor.* 31 Cr. L. J. 381 : 122 I. C. 257 : I R. 1930 Nag. 129 : A. I. R. 1931 Nag. 101.

—S. 562.

—Appeal.

—Appeal and revision.

—Appealable order.

—Applicability.

—Applicability and scope.

—“Cheating,” meaning of.

—Construction.

—Discretion.

—“Dishonest misappropriation and cheating,” meaning of.

—Duty of Court.

—Failure to furnish security—Procedure.

—Failure to give security—Procedure.

—Imposition of fine—Legality of.

—Imprisonment in default of security.

—Interpretation and scope.

—Jurisdiction.

—Object.

—Object and intention.

—Offences beyond scope.

—Offences within scope.

—Offender beyond scope.

—Offender within scope.

—Power of Magistrate to whom a case is submitted.

—Power of Second Class Magistrate, Punjab Government Notification No. 431 of 1910.

—Procedure, if person ordered to give security is unable to do so.

—Punjab Government Notification No. 431 of 1910.

—Release on probation of good conduct.

—Revision.

—Scope.

—S. 562.

See also (i) Cr. P. C., 1898, Ss. 12, 15, 37, 106, 118, 236, 245, 250, 261, 349, 380, 395 (1), 408, 411, 438, 439, 592, Sels. II, III.

(ii) Criminal trial.

(iii) Penal Code, 1860, Ss. 75, 366, 411.

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aside an order under S. 562 and substitute a sentence of imprisonment. *Emperor v. Kesar.*

27 Cr. L. J. 303 :
92 I. C. 591 : 24 A. L. J. 228 :
A. I. R. 1926 All. 226.

-----S. 562—Scope.

A Magistrate convicting an accused under S. 304-A, Penal Code, cannot pass an order under S. 562, Cr. P. C. *Addala Yerrivadu v. District Magistrate of Vizagapatam.*

13 Cr. L. J. 248 :
14 I. C. 600 : 11 M. L. T. 404.

-----S. 562—Scope.

S. 562 is intended to apply to those offenders (especially youthful ones) who, without being persons of depraved character, may, on occasion, succumb to sudden temptation. The accused were convicted under S. 61, Excise Act, for the offence of manufacturing liquor contrary to law and being in possession of it and were sentenced to four months' rigorous imprisonment and a fine of Rs. 50 each. On appeal, the Sessions Judge reduced the sentences on the ground that this was appellants' first offence, that the principle of S. 562, Cr. P. C., applied and that appellants were father and son. The Government applied for enhancement of the sentences: *Held*, that as the offence of manufacturing illicit liquor implied a good deal of preparation and as it was mostly done with the intention of selling to others, it could not be said to be done in consequence of succumbing to sudden temptation; that when a man was found for the first time by the Police manufacturing illicit liquor, he had probably done it at least a dozen times before; and that as it deprived the Government of revenue, besides demoralising the people, deterrent sentences were necessary in such cases. *Emperor v. Sujan Singh.*

17 Cr. L. J. 310 :
35 I. C. 486 : 19 P. R. 1916 Cr. :
41 P. W. R. 1916 Cr. : 114 P. L. R. 1916 Cr. :
A. I. R. 1916 Lah. 189.

-----S. 562 (1) proviso — Applicability and scope.

The proviso in Sub-s. (1) of S. 562 governs also Sub-s. (1-A) of the said section. *Emperor v. Dalut Singh.*

30 Cr. L. J. 220 :
113 I. C. 911 : 11 N. L. J. 245 :
A. I. R. 1928 Nag. 343.

-----S. 562 (1)—'Offence punishable with imprisonment,' meaning of.

In S. 562, Sub-s. (1), Cr. P. C., the words 'an offence punishable with imprisonment' refer to an offence primarily punishable with imprisonment. An offence which is punishable with fine only is not contemplated by the section even though such an offence is punishable with imprisonment in default of payment of fine. *Emperor v. Kasturi Shidrama Bogar.*

27 Cr. L. J. 724 :
97 I. C. 742 : 28 Bom. L. R. 1031 :
A. I. R. 1926 Bom. 544.

-----S. 562 (1)—Offence within scope.

S. 562 (1) applies not only to offences

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punishable with imprisonment but also to offences punishable with fine only. *Shital Prasad v. Emperor.*

39 Cr. L. J. 889 :
177 I. C. 386 : 1938 O. W. N. 919 :
11 R. O. 48 : 1938 O. L. R. 421 :
A. I. R. 1938 Oudh 233.

-----S. 562 (1)—Offenders beyond scope.

Admonition is not intended to apply to offences of the nature of defamation. It is not applicable to men of responsible position who made defamatory statements and aggravated the offence by repeating them and attempting justification. *Babulal v. Tundilal.*

33 Cr. L. J. 835 :
139 I. C. 401 : 28 N. L. R. 106 :
I. R. 1932 Nag. 112 : A. I. R. 1932 Nag. 97.

-----S. 562 (1-A)—Application of—Conviction for offence under Municipal Act—Power of Magistrate to warn and discharge accused.

S. 562 (1-A), Cr. P. C. is confined in its operation to offences under the Penal Code and cannot be applied to offences punishable under the City of Bombay Municipal Act, and a Magistrate has, therefore, no jurisdiction to warn and discharge a person who has been found guilty of an offence under S. 471 of the City of Bombay Municipal Act. *Merwanji M. Mistry v. Emperor.*

29 Cr. L. J. 566 :
109 I. C. 502 : 30 Bom. L. R. 375 :
52 Bom. 250 : A. I. R. 1928 Bom. 152.

-----S. 562 (1-A)—Interpretation.

The proviso to Sub-s. (1) of S. 562 of the Cr. P. C. must be read as a part of the sub-section. It is superseded as regards the effect of Sub-s. (1-A) by the words "the Court before whom he is so convicted," in the aforesaid sub-section and cannot be used so as to control these words. A Magistrate of the Second Class, therefore, has jurisdiction to pass an order of release of an accused person convicted by him under S. 279, Penal Code, after due admonition, under S. 562 (1-A) of the Cr. P. C. The High Court will not, in revision, interfere with an order passed by a Magistrate under S. 562 (1-A) of the Cr. P. C. unless the order is clearly mistaken or injudicious or amounts to a failure of justice. *Murlidhar v. Mahboob Khan.*

26 Cr. L. J. 624 :
85 I. C. 848 : 47 All. 353 :
A. I. R. 1925 All. 644.

-----S. 562 (1-A)—Jurisdiction—Third Class Magistrate, if can exercise power of admonition under Sub-s. (1-A).

The proviso to Sub-s. (1) of S. 562 does not extend to the powers conferred by Sub-s. (1-A) and a Third Class Magistrate is, therefore, entitled to exercise the powers conferred by Sub-s. (1-A). *Emperor v. Waman Ramji Patil.* (F. B.)

39 Cr. L. J. 81 :
171 I. C. 1004 : 39 Bom. L. R. 1065 :
10 R. B. 247 : I. L. R. 1938 Bom. 58 :
A. I. R. 1937 Bom. 481.

-----S. 562 (1-A) - Jurisdiction of Third Class Magistrate.

Ordinarily speaking when a proviso governs the whole of the provisions of a section, it

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—S. 562—"Cheating"—*Meaning of—'Cheating,' whether covers offence under S. 420, Penal Code.*

The word "cheating" in S. 562, Cr. P. C., cannot be given an extended meaning so as to cover an offence under S. 420, Penal Code. *Sundaram Ayyar v. Emperor*. 19 Cr. L. J. 934 : 47 I. C. 658 : 41 Mad. 533 : A. I. R. 1919 Mad. 583.

—S. 562—*Construction.*

Inasmuch as S. 562 confers a new power, it must be strictly construed. The list of offences for which the section provides a special treatment is, therefore, exhaustive and a servant convicted under S. 381, Penal Code, of theft in respect of his master's property cannot be released upon probation of good conduct. *Emperor v. Babu Rao Maratha*.

7 Cr. L. J. 319 :
4 N. L. R. 18.

—S. 562—*Discretion.*

In order to enable a Court to exercise the power conferred by S. 562, it is not necessary that the offender should be young, that the offence should be trivial, and that there should be extenuating circumstances. The mention of these conditions and of the character and antecedents of the offender merely indicates generally considerations with regard to which the discretion of the Court should be exercised in dealing with first offenders who are convicted of any of the offences specified in the section. *Emperor v. Nawtara Singh*.

1 Cr. L. J. 558 :
U. B. R. 1904 I. Qr. P. C. 7 :
10 Bur. L. R. 356.

—S. 562—*Discretion.*

The accused, whose age was 25, was convicted of theft of property of some value in a house. There were no extenuating circumstances, and no evidence of the good character or antecedents of the accused. The Magistrate released him on probation on his executing a bond under S. 562 : *Held*, that S. 562 should be used freely in suitable cases, but should not be applied indiscriminately to the cases of all first offenders. Among the most important points for consideration are the character and antecedents of the accused. *Emperor v. Po Thein*.

1 Cr. L. J. 1121 :
2 L. B. R. 314.

—S. 562—*Discretion.*

The exercise of the discretion given to Magistrates under S. 562 needs a considerable sense of responsibility. *Emperor v. Jhangi*.

34 Cr. L. J. 420 :
142 I. C. 544 : 27 S. L. R. 34 :
I. R. 1933 Sind 113 (1) :
A. I. R. 1933 Sind 44.

—S. 562—"Dishonest misappropriation and cheating," *meaning of.*

The words "dishonest misappropriation" in S. 562, Cr. P. C., apply to the offence of criminal misappropriation in all its forms and are intended to include offences punishable under S. 404 as well as under S. 403, Penal Code.

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Similarly, the "cheating" in the same section covers the offence of cheating in all its forms and is intended to include offences punishable under Ss. 418, 419 and 420 as well as under S. 417, Penal Code. *Har Narayan v. Ramji Das*.

15 Cr. L. J. 375 :
23 I. C. 743 : 12 A. L. J. 465 :
A. I. R. 1914 All. 191.

—S. 562—*Duty of Court.*

Before applying S. 562, the Court must consider whether there is a good case for its application or not, and must guard against two things, viz :—one, danger to the public and the other, danger to the accused himself, which may result from the applicability of the section. Where a juvenile offender has shown criminality rather than mere thoughtlessness, and a general character of craft and deceit, S. 562 of the Cr. P. C., should not be applied. *Daryalal v. Emperor*.

25 Cr. L. J. 1224 :
82 I. C. 152 : 18 S. L. R. 61 :
A. I. R. 1925 Sind 75.

—S. 562—*Failure to furnish security—Procedure.*

Where on an appeal from a conviction the Appellate Court makes an order under S. 562 but the accused fails to furnish security as directed by the order, the original sentence passed on the accused is not revived. The effect of the order passed by the Appellate Court is to set aside the sentence passed on the accused by the trial Court, and the case must be dealt with as if the accused had been released on probation of good conduct by the trial Court itself, that is to say, the accused should be produced before the Appellate Court for the purpose of suitable punishment being awarded. *Badsha v. Emperor*.

26 Cr. L. J. 683 :
86 I. C. 59 : 21 L. W. 40 :
A. I. R. 1925 Mad. 496.

—S. 562—*Failure to give security—Procedure.*

Before passing an order under S. 562 of the Cr. P. C. a Magistrate should satisfy himself that the accused is able to furnish security, where, however, an order under S. 562 of the Code has been passed and the accused fails to furnish security, the proper course for the Magistrate is to pass sentence according to law. S. 123 of the Cr. P. C. applies specifically only to Ss. 106 and 118 and not to S. 562 of the Code. *Nasu Meah v. Emperor*.

26 Cr. L. J. 285 :
84 I. C. 349 : 2 Rang. 360 :
A. I. R. 1925 Rang. 42.

—S. 562—*Imposition of fine, legality of.*

It is illegal to impose a fine on the accused when an order under S. 562 has been passed. *Karim Bakhsh v. Emperor*.

30 Cr. L. J. 46 :
112 I. C. 910 : 10 Lah. 722 : 30 P. L. R. 702 :
I. R. 1929 Lah. 107 :
A. I. R. 1930 Lah. 56.

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proceed and pass an order against him under S. 565, Cr. P. C. *Harnam v. Emperor*.
6 Cr. L. J. 378 :
2 P. W. R. Cr. 95 : 17 P. R. Cr. 1907.

—S. 565—Power of High Court.

Where a trying Magistrate, not especially empowered in this behalf, passed an order under S. 565, and directed a convict to notify his residence for a period of two years and District Magistrate moved the High Court to pass such an order on revision: *Held*, that the Magistrate's order being without jurisdiction must be quashed, but that as S. 565, required that the order should be made by the Trying Magistrate at the time of passing the sentence, the Appellate Court or the Court of Revision could not make an order under that section where the original Court was not so empowered. *Emperor v. Dino*. 16 Cr. L. J. 469 :
29 I. C. 19 : 8 S. L. R. 340 :
A. I. R. 1914 Sind 18.

—S. 565—Sentence of whipping—Order for notifying residence—Legality of.

S. 565 must be construed strictly, and it must be taken that the Court's power is limited to the cases there specifically described, and does not extend to cases where the Court, instead of passing sentence of transportation of imprisonment, passes a sentence of whipping. *Emperor v. Fuiji Ditya*.
11 Cr. L. J. 691 :
8 I. C. 623 : 12 Bom. L. R. 901.

—S. 565-A—Order restricting movements of accused, if within scope.

S. 565 does not provide for an order to restrict the movements of the accused. Where on a conviction under Ss. 379-75, Penal Code, the accused was sentenced to imprisonment for two years and he was further ordered under S. 565 (1) to notify to the Police his residence, change of residence and absence from such residence for a period of three years on the expiry of the sentence of two years: *Held*, that the order passed by the trial Magistrate, so far as it related to the restriction of the accused's residence to a certain specified area on his release, was clearly illegal. *Nga Po Myit v. Emperor*. 38 Cr. L. J. 722 :
168 I. C. 1008 : 9 R. Rang. 385 :
A. I. R. 1937 Rang. 164.

—S. 565 (3)—Prosecution for non-compliance—Penal Code, S. 176.

A person refusing or neglecting to comply with any rule made under S. 565, Sub-s. (3), Cr. P. C., is punishable as if he had committed an offence under the first part of S. 176, Penal Code. *Emperor v. Bhola*. 2 Cr. L. J. 745 :
1 N. L. R. 133.

—S. 565 (4)—Notifying residence—Reasons for.

The information required to be given under S. 565 (4), Cr. P. C., could not be said to be required for the purpose of preventing the commission of an offence within the meaning of Cl. 2 of S. 176, I. P. C., and cases

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under S. 365 (4) should be dealt with under Cl. 1 of S. 176, I. P. C. *In re : Hussain Beg*.
8 Cr. L. J. 425 :
4 M. L. T. 325 : 31 Mad. 548.

—Chap. VIII.

See also (i) Bombay Regulation, 1827, S. 27.

(ii) Cr. P. C., 1898, Ss. 117, 117 (3).

—Chap. VIII—Object of.

The object of Chap. VIII of the Code is the prevention, not the punishment, of offence, and the chapter gives a certain amount of discretion to Magistrates. The High Court must be always slow to interfere with that discretion unless there is an error of law. *Emperor v. Raoji Fulchand*. 1 Cr. L. J. 3 :
6 Bom. L. R. 34.

—Chap. VIII—Power of Magistrate—Order to produce sureties from within certain limits, legality of.

In directing an accused person to [produce sureties, a Magistrate has no authority to lay down any limits within which the sureties must reside. *Raghuandan Prasad v. Emperor*.
23 Cr. L. J. 400 :
67 I. C. 352 : 20 A. L. J. 520 :
A. I. R. 1922 All. 489.

—Chap. VIII—Proceedings under.

Proceedings under Chap. VIII, Cr. P. C., should be taken with care and caution only when the public interest compels. Where there is no reason to suppose that the Subordinate Magistrate is not a careful and responsible Magistrate, and where he has seen the witnesses and has heard what they have to say and he has come to the conclusion that the case against the suspected persons is unworthy of credit and that the evidence should not be believed, the High Court will not interfere. *Emperor v. Ali Muhammad*. 38 Cr. L. J. 117 :
165 I. C. 950 : 9 R. S. 114 :
30 S. L. R. 368 : A. I. R. 1936 Sind 243.

—Chap. VIII—Right of persons proceeded against under.

Ordinarily persons proceeded against under Chap. VIII are entitled to have their witnesses summoned at Government expense. *Pahlwan v. Emperor*. 33 Cr. L. J. 679 :
138 I. C. 765 : 33 P. L. R. 742 :
I. R. 1932 Lah. 529 : A. I. R. 1932 Lah. 577.

—Chap. VIII—Security bond—Breach and forfeiture—Fresh bond, fresh sureties.]

A man cannot be required, without fresh proceedings taken against him, to find sureties and execute a fresh bond a second time, when in consequence of a breach, the original security is forfeited. There is no provision in the Code for the bare renewal of the bond. *In re : Muthu Thevan*. 11 Cr. L. J. 244 :
5 I. C. 761 : 7 M. L. T. 90.

—Chap. VIII—Surety for good behav-

Cr. P. CODE (1898), S. 562

must interfere in revision in order to prevent failure of justice. *Emperor v. Shah Huran.*

36 Cr. L. J. 1043 :
156 I. C. 431 (1) : 8 R. Pesh. 2 :
A. I. R. 1935 Pesh. 48.

—S. 562—Offences beyond scope.

As the offence under S. 394, Penal Code, is punishable with transportation for life, a youth of 18 years convicted under Ss. 394 and 451, Penal Code, cannot be bound down under S. 562. *Emperor v. Bakhsia.*

36 Cr. L. J. 105 :
152 I. C. 233 : 36 P. L. R. 370 :
7 R. L. 272 : A. I. R. 1934 Lah. 131.

—S. 562—Offence beyond scope—Lambardar pocketing money received as water rate—Sentence.

Where the accused, a lambardar, is convicted for pocketing the water rate money received by him as an agent of the Government from the complainant, a landowner, the case is not a fit one to be dealt with under S. 562, Cr. P. C. *Emperor v. Sohan Singh.*

27 Cr. L. J. 562 :
94 I. C. 130 : A. I. R. 1926 Lah. 350.

—S. 562—Offence beyond scope—Offence hideous—Youth of offender, effect of.

Where the offence committed is a hideous and reprehensible one, the mere youth of the offender does not entitle him to the benefit of S. 562. *Emperor v. Sardha Ram.*

29 Cr. L. J. 1096 :
112 I. C. 680 : A. I. R. 1929 Lah. 198.

—S. 562—Offences beyond scope—Offence punishable with transportation as alternative punishment—Attempt to commit murder—Benefit of section.

Where one of the alternative punishments prescribed for an offence is transportation for life, the provisions of S. 562, Cr. P. C., will not apply. Therefore, an offence under S. 307, Penal Code, is beyond the scope of that section. *Emperor v. Bahawali.*

30 Cr. L. J. 789 :
117 I. C. 239 : I. R. 1929 Lah. 67 :
A. I. R. 1928 Lah. 920.

—S. 562—Offence beyond scope.

Offences under S. 114, Railways Act—Offender should be punished irrespective of no previous conviction. *Emperor v. Kodumal Ochiram.*

36 Cr. L. J. 827 :
155 I. C. 697 : 7 R. S. 198 :
A. I. R. 1935 Sind 90.

—S. 562—Offence beyond scope—Offence under S. 381, Penal Code, is not covered.

S. 562 does not apply to an offence under S. 381, i.e., theft by clerk or servant. *Emperor v. Nga Thaung Pe.*

2 Bur. L. J. 75 :
A. I. R. 1924 Rang. 12.

—S. 562—Offence beyond scope—Penal Code (Act XLV of 1860), S. 420.

S. 562, Cr. P. C., is not applicable to convictions under S. 420, Penal Code. The word

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“cheating” used in S. 562, Cr. P. C., covers only simple cheating, and not the more aggravated forms of cheating for which higher punishments are provided in the I. P. C. *Emperor v. Neki Ram.*

8 Cr. L. J. 455 :
3 P. W. R. 62 Cr.

—S. 562—Offence beyond scope—Release of accused on probation in perjury case, propriety of.

It is not desirable to apply the provisions of S. 562 to a person found guilty of deliberately committing perjury to screen an offender. *Emperor v. Akbar.*

29 Cr. L. J. 219 :
107 I. C. 107 : 29 P. L. R. 219 :
A. I. R. 1928 Lah. 296.

—S. 562—Offence beyond scope—Penal Code, 1860, S. 181.

S. 562 is not appropriate where a false affidavit has been deliberately sworn. Sentence of four months and fine of Rs. 50 held erred on the side of moderation. *Gajadhar v. Emperor.*

A. I. R. 1934 Nag. 193 (2).

—S. 562—Offence beyond scope.

S. 562 is not in terms applicable to convictions of cheating and thereby dishonestly inducing delivery of property under S. 420 or of using as genuine a forged document under S. 471, Penal Code. *Emperor v. Ramjan Dadubhai.*

16 Cr. L. J. 781 :
31 I. C. 381 : 17 Bom. L. R. 921 :
A. I. R. 1915 Bom. 145.

—S. 562—Offence beyond scope, application of—Penal Code (Act XLV of 1860), S. 457—Revision.

S. 562, Cr. P. C. cannot properly be used in cases falling under S. 457, Penal Code, but where it has been wrongly applied by a Magistrate, it is open to the High Court on revision side to interfere or not, as it thinks fit upon a consideration of all the circumstances. *Abdul v. Emperor.*

11 Cr. L. J. 389 :
6 I. C. 639 : 19 P. W. R. 1910 Cr.

—S. 562—Offences beyond scope.

S. 562 is inapplicable to the case of an accused who has been convicted of an offence of theft of his master's property for he is liable to punishment under S. 381 and not under S. 380, Penal Code. *Emperor v. Brij Lal.*

14 Cr. L. J. 113 :
18 I. C. 673 : 13 P. L. R. 1913 :
27 P. W. R. 1913 Cr.

—S. 562—Offences beyond scope.

S. 562, Cr. P. C., cannot be applied in a case under S. 411, Penal Code. *Kadir Shah v. Emperor.*

26 Cr. L. J. 419 :
85 I. C. 35 : 1923 Pat. 237 :
A. I. R. 1923 Pat. 297.

—S. 562—Offences beyond scope, applicability of—“Cheating,” whether includes aggravated forms.

S. 562 of the Cr. P. C. applies only to a case of simple cheating falling under S. 417,

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that Chapter without first making such an order are without jurisdiction and are, therefore, open to revision under S. 439 of the Code. *Muhammad Hasham v. Muhammad Shami*.

20 Cr. L. J. 124 :

51 I. C. 108 : A. I. R. 1919 Nag. 160.

-----Chap. XII, S. 145—Scope of—Transfer of case—Case under S. 145—Whether S. 526 applies to proceedings under Chap. XII.

The provisions of S. 526 have no application to proceedings under Chap. XII, Cr. P. C. Therefore, a party at a proceeding under S. 145 is not entitled to an adjournment of the case under Sub-s. 8 of S. 526. *Lakhan Chandra Ray v. Yakub Mandal*.

15 Cr. L. J. 357 :

23 I. C. 727 : 18 C. W. N. 393 :

A. I. R. 1914 Cal. 557.

-----Chap. XII, Ss. 145, 146, 439—Scope—Legal procedure not followed—No danger of breach of peace—Attachment without jurisdiction—Revision.

A necessary preliminary to an order under S. 146, Cr. P. C., is that proceedings should have been taken and an order made under S. 145. Where the record showed that the Magistrate made an order for attachment of property without following the procedure prescribed by S. 145, and there was nothing to indicate that a dispute likely to cause a breach of the peace existed, the order of Magistrate could not be deemed to have been passed under Chap. XII, Cr. P. C. and was set aside as *ultra vires*. *Aziz-ud-Din v. Emperor*.

2 Cr. L. J. 102 :

2 A. L. J. 149 : I. L. R. 27 All. 294.

-----Chap. XII—Ss. 145, 147, 435—Jurisdiction—Sessions Judge sending for proceedings before an inferior Court—Discretion.

A Magistrate, after first taking proceedings under Chap. XII Cr. P. C., passed an order directing either under S. 145 or 147 an order to be sent to the Police to deliver possession of a house to the complainant and instruct the accused not to interfere with his possession till they got a decree from a Court in their favour. The Sessions Judge sent for the proceedings: *Held*, that the Sessions Judge was not required by law to call for or examine the record of any proceeding before any inferior Criminal Court, and that it was purely optional with him to do so or not, and that under the circumstances the case was not a fit one for exercising the discretion to call for the records: *Held*, also that the order of the Magistrate was without jurisdiction. *Sheorani v. Baij Nath*.

17 Cr. L. J. 145 :

33 I. C. 625 : 14 A. L. J. 146 :

A. I. R. 1916 All. 304.

-----Chap. XII—Ss. 145, 522—Power of Magistrate—Magistrate's power to disposses a person and place another in possession—Revision.

There is no provision in Chap. XII, Cr. P. C., which gives a First Class Magistrate power to oust one person and to place another person in possession. The only provision of the Code which entitles a Magistrate to dispossess a

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person of property and replace him by another person who is entitled, is S. 522 of the Code, and for the purpose of exercising powers therein granted, it is necessary that there should have been a conviction of an offence. An order of a District Magistrate declining to carry out such an order passed by a First Class Magistrate is not open to revision. *Tulshi Ram v. Abbar Ahmad*.

16 Cr. L. J. 714 :

30 I. C. 1002 : 13 A. L. J. 932 :

37 All. 654 : A. I. R. 1915 All. 377.

-----Chap. XIV—Right of Police.

The police have no right to file a charge-sheet or otherwise to proceed under Chap. XIV, in respect of an offence under the Bombay Abkari Act. *Emperor v. Mahomed Usman*. (F. B.)

35 Cr. L. J. 129 :

146 I. C. 419 : 6 R. S. 65 :

A. I. R. 1933 Sind 325.

-----Chap. XIV—Scope of—Power of Calcutta Police to conduct proceedings under Code for collection of evidence.

The Calcutta Police has no power to conduct proceedings under the Code for the collection of evidence, since the provisions of Chap. XIV which confer such power have not been extended to the Police in Calcutta, and no provision of the Code applies to them unless expressly extended. *K. Hoshide v. Emperor*.

41 Cr. L. J. 329 :

186 I. C. 486 : I. L. R. (1940) 1 Cal. 231 :

44 C. W. N. 82 : 12 R. C. 510 :

A. I. R. 1940 Cal. 97.

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See also Cr. P. C., 1898, S. 403.

-----Chap. XVIII—Power of Court, transfer of case.

Yon Bwe went to Poletwa police station on the 25th December 1905, and gave information that his property had been stolen by Akaung and Aung Chin, though the information was not on the record, as it ought to have been, Akaung and Aung Chin were arrested by the Police and sent before the District Magistrate who after taking evidence, discharged them recording that he believed the case to be false. The District Magistrate then had copies made of the deposition of Yon Bwe and his first witness, Ah Mat, examined five witnesses, directed that warrants of arrest of Yon Bwe and Ah Mat for offences under Ss. 211 and 211—109, Penal Code, should issue and directed that the proceedings should be sent to the Government Advocate in order that he might move the Chief Court to transfer the case to the Sub-Divisional Magistrate of Kyauktaw, in Akyab District, because there was no Magistrate of the 1st class in the Arakan Hill Tracts except the District Magistrate: *Held*, that the District Magistrate's proceedings, though they were peculiar and perhaps, irregular in some respects, were not illegal, as far as they went, as under S. 487 (2), he could inquire into the offence in accordance with Chap. XVIII and commit to the Court of Session; that what he had done was to take

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—S. 562—*Offences within scope—Test of.*

When the offence is not one of those explicitly mentioned in the section, the term of imprisonment which can be awarded is the test for determining whether S. 562 can be applied. *Emperor v. Kra Pru Aung.*

2 Cr. L. J. 721 :
3 L. B. R. 30.

—S. 562—*Offender beyond scope—Accused convicted of cheating—No attempt at restitution—Benefit of section.*

A person convicted of cheating who does not make any restitution to the complainant and is literate and able to appreciate the consequences of his act, does not deserve to be treated under S. 562, Cr. P. C., even if he be young. *Emperor v. Muhammad Amin.*

27 Cr. L. J. 836 :
95 I. C. 756 : A. I. R. 1926 Lah. 570.

—S. 562—*Offender beyond scope.*

S. 562, is not applicable to the offence of burglary committed by persons above 21 years of age. *Emperor v. Bhagat Singh.*

34 Cr. L. J. 779 :
144 I. C. 538 : I. R. 1933 Lah. 500.
A. I. R. 1933 Lah. 393.

—S. 562—*Offender within scope—Accused above 21 years—Benefit of section.*

In the case of an accused not under 21 years of age, S. 562, Cr. P. C., is only applicable when the accused is convicted of an offence punishable with the imprisonment for not more than seven years. The High Court is not bound to interfere on its revision side with an order under S. 562 even when it is illegal. *Emperor v. Hoshiara.*

27 Cr. L. J. 624 :
94 I. C. 368 : A. I. R. 1926 J. 132 (c).

—S. 562—*Offender within scope—Accused widow and puppet.*

The accused being a widow, 45 years old and a puppet in the hands of the accused, is a circumstance that would entitle her to the benefit of S. 562, Cr. P. C. *Superintendent & Remembrancer, Legal Affairs v. Kiran Bala Dasi.*

27 Cr. L. J. 409 :
93 I. C. 73 : 43 C. L. J. 79 :
30 C. W. N. 373 : A. I. R. 1926 Cal. 531.

—S. 562—*Offender within scope.*

Domestic quarrel ending in husband branding wife : Held, S. 562 to be applied. *Emperor v. Dukalha.*

34 Cr. L. J. 271 :
141 I. C. 861 : 15 N. L. J. 46 :
I. R. 1933 Nag. 85.

—S. 562—*Offender within scope.*

Where an offence of criminal breach of trust by a public servant was committed several years ago and the amount involved was not large and the accused was a man of 55 years and was a first offender, and the Magistrate directed his release under S. 562 : Held, that the Magistrate could not be held to have acted without reason in applying S. 562, and there

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was no reason for enhancing the punishment in revision. *Emperor v. Nur Hussain.*

31 Cr. L. J. 653 :
124 I. C. 315 : 31 P. L. R. 334 :
A. I. R. 1930 Lah. 92.

—S. 562—*Power of Magistrate to whom a case is submitted.*

Quære—Can a Magistrate to whom a case is submitted under the proviso to S. 562 pass, under S. 380, any order other than a sentence or an order for release on probation ? *Moroli v. Emperor.*

8 Cr. L. J. 476 :
4 L. B. R. 277.

—S. 562—*Power of Second Class Magistrate—Punjab Government Notification No. 431 of 1910.*

By virtue of the Punjab Government Notification No. 431 of 1910, Magistrates of the Second Class in the Punjab are competent to exercise the powers conferred by S. 562. *Emperor v. Bakhshan.*

28 Cr. L. J. 316 :
100 I. C. 540 : 8 Lah. 38.
A. I. R. 1927 Lah. 220.

—S. 562—*Procedure, if person ordered to give security is unable to do so.*

There is no authority for the view that if an accused person is ordered to give security under S. 562 and fails to do so, he should be detained in prison till the expiration of the period for which security is to be furnished. The proper course is for the Magistrate to ascertain, before passing an order under S. 562 whether the accused is likely to be able to give security immediately or within a reasonable time. If he fails to give security within a reasonable time, the Magistrate should pass sentence. *Emperor v. Tun Gaung.*

2 Cr. L. J. 374 :
3 L. B. R. 2.

—S. 562—*Punjab Government Notification No. 431 of 1910—Jurisdiction of Second Class Magistrate to exercise powers under S. 562.*

All Second Class Magistrates in the Punjab are duly empowered to exercise the powers conferred by S. 562 by the Punjab Government Notification No. 431 of 1910. *Emperor v. Hasham.*

29 Cr. L. J. 588 :
109 I. C. 604 : 10 L. L. J. 153 :
29 P. L. R. 215.

—S. 562—*Release on probation of good conduct—First youthful offender—Revision.*

Accused, who was said to be of good character by one of the witnesses, was for the first time convicted of theft and sentenced to two months' rigorous imprisonment : Held, on revision, that having regard to his youth and character, he might be dealt with under the provisions of S. 562, Cr. P. C. *Abdul Kader v. Mon Mohan Gope.*

23 Cr. L. J. 235 :
66 I. C. 75 : 25 C. W. N. 720 :
A. I. R. 1921 Cal. 149.

—S. 562—*Revision.*

S. 562 (3), Cr. P. C., empowers the High Court in the exercise of its powers of revision to set

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be frivolous or vexatious. *Mahajanam Vencatrayar v Kodi Vencatrayar*.

23 Cr. L. J. 232 :
66 I. C. 72 : 14 L. W. 247 : 1920 M. W. N. 613 :
41 M. L. J. 398 : 30 M. L. T. 75 : 45 Mad. 29 :
A. I. R. 1921 Mad. 223.

————— **Chaps. XXI, XX—Warrant case, trial of—Trial commenced as warrant-case, whether can be concluded as trial in summons case.**

Where the trial of a warrant-case has been commenced under Chap. XXI, Cr. P. C., it should be continued and concluded by the procedure laid down in that chapter. It is not open to a Magistrate after commencing the trial of a case as a warrant-case as to change the procedure in the midst of the trial and conclude it by the procedure prescribed for summons-cases in Chap. XX, Cr. P. C. *Munshi Teli v. Emperor*.

22 Cr. L. J. 683 :
63 I. C. 619 : 2 P. L. T. 482 :
A. I. R. 1921 J. 28 (b).

————— **Chap. XXII, S. 260—Summary trial—Penal Code, Ss. 451, 452.**

Where a complaint is made to a Magistrate under S. 452, Penal Code, and where there is nothing in the complainant's examination on oath to justify the Magistrate in thinking that the offence falls under S. 451, he ought not to follow the procedure of summary trials laid down in Chap. XXII, Cr. P. C., as the offence under S. 452 is not one of those mentioned in S. 260, Cr. P. C. *Sharma Iyer R. S. v. Emperor*.

14 Cr. L. J. 462 :
20 I. C. 622 : 6 Bur. L. T. 137.

————— **Chap. XXIII—Object and scope of.**

Chap. XXIII, Cr. P. C., was only designed to apply to cases of racial distinction where there is a real clash between a European as defined in the Code on the one side and an Indian on the other or vice versa. *Cyril Bertram Plucknett v. Emperor*.

41 Cr. L. J. 72 :
184 I. C. 757 : 43 C. W. N. 120 :
I. L. R. 1939 1 Cal. 162 : 12 R. C. 295 :
A. I. R. 1939 Cal. 545.

————— **Chap. XXXIII.**

See also Cr. P. C., Ss. 4 (j), 31-A.

————— **Chap. XXXIII—'Complainant'—Durwan or any other adult or child going to Police Station and giving information that certain man was lying on floor with blood marks, whether complainant.**

Even the Police Inspector cannot rightly be deemed to be a complainant for the purposes of the provisions of Chap. XXXIII, and so if a Police Inspector who in an official document was described as "the complainant" is not 'a complainant' for the purposes of the Chapter, *a fortiori* the durwan or any other adult or child who gives information that certain man was lying on floor with blood marks, ought not to be considered as a 'complainant' for the

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purposes of Chap. XXXIII. *Cyril Bertram Plucknett v. Emperor*.

41 Cr. L. J. 72 :
184 I. C. 757 : 43 C. W. N. 120 :
I. L. R. 1939 1 Cal. 162 : 12 R. C. 295 :
A. I. R. 1939 Cal. 545.

————— **Chap. XXXIII—Condition precedent for trial of case outside Presidency town under Chap. XXXIII.**

There are two fundamental conditions precedent for the trial of a case outside a Presidency town under the provisions of Chap. XXXII, namely that the accused person shall claim that the case ought to be tried under the provisions of Chap. XXXIII and that the Magistrate shall make an enquiry and record a finding that the case is a case which ought to be tried under the provisions of the Chapter. *Cyril Bertram Plucknett v. Emperor*.

41 Cr. L. J. 72 :
184 I. C. 757 : 43 C. W. N. 120 :
I. L. R. 1939 1 Cal. 162 : 12 R. C. 295 :
A. I. R. 1939 Cal. 545.

————— **Chap. XXXIII—Proceedings under—Charge, if can be cancelled—Accused not discharged—Whether should be committed to Sessions—Accused, whether can waive privilege of Chap. XXXIII.**

Once a Magistrate has taken proceedings under Chap. XXXIII, Cr. P. C., his powers are curtailed. He cannot, for instance, under S. 213 (2), cancel the charge, and if he does not discharge the accused under S. 209 or S. 253, he must, as S. 446 directs, commit the accused for trial. Chap. XXXIII is a special procedure of which certain individuals at their own request are permitted to avail themselves. Therefore the accused can waive a right which he need never have claimed provided his request can be granted without prejudice to the trial of his co-accused or the business of the Courts. *E. L. Wise v. Emperor*.

39 Cr. L. J. 789 :
176 I. C. 703 : 11 R. S. 35 :
A. I. R. 1938 Sind 150.

————— **Chap. XLIII—Illegality of order—Penal Code, Ss. 426, 447, charges under—Acquittal of accused—Order awarding possession of property to complainant till determination by Civil Court, legality of—Jurisdiction.**

The accused were tried for cutting and removing bamboos from the complainant's bamboo clump under Ss. 447 and 426, Penal Code, and were acquitted. The Magistrate also ordered that in order to avoid 'breach of the peace', the complainant was to retain the clump till ousted by a Civil Court : *Held*, that the order was illegal. *Radha Kanla Guin v. Kartic Guin*.

18 Cr. L. J. 442 :
38 I. C. 1002 : 20 C. W. N. 1302 :
A. I. R. 1917 Cal. 591.

————— **Sch. II.**

See also (i) Cattle Trespass Act, 1871, S. 20.

(ii) Reformatory Schools Act, 1897, S. 8.

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ought to appear at the end of the section. The proviso to S. 562 of the Cr. P. C., however, although it occurs in the middle of the section, governs the subsequently added Sub-s. (1-A) which empowers certain Magistrates to release the accused in cases coming within the sub-section after due admonition if he is a first offender. A Magistrate of the Third Class has, therefore, no power to pass an order under Sub-s. (1-A) of S. 562 of the Code. *Emperor v. Ranchhod Harjivan*. 26 Cr. L. J. 1461 : 89 I. C. 1029 : 27 Bom. L. R. 1019 : A. I. R. 1925 Bom. 479.

—S. 562 (1-A)—Offences under Special Acts—If within scope.

S. 562 (1-A), Cr. P. C., does not apply to offences under special acts but is confined to certain specified offences under the Penal Code. *Emperor v. Pandu Ramji*. 27 Cr. L. J. 528 : 93 I. C. 992 : 28 Bom. L. R. 297 : A. I. R. 1926 Bom. 230.

—S. 562 (1-A)—Previous conviction not proved, effect of.

The terms of S. 562 (1-A) of the Cr. P. C. are wide enough to entitle the Court to take into consideration the character and antecedents of the accused person. *Semble*—S. 562 (1-A) of the Cr. P. C. is applicable to the case of an accused person against whom no previous conviction is proved, although as a matter of fact, such a conviction exists. *Emperor v. Partab Narain*. 26 Cr. L. J. 1278 : 88 I. C. 1054 : 2 O. W. N. 593 : A. I. R. 1925 Oudh 673.

—S. 562 (1-A)—Procedure—Youthful offender committing offence under Ss. 380 and 457, Penal Code.

Where a youthful offender of 17 to 19 years of age commits offences under Ss. 380 and 457, Penal Code, and does not give sureties and possesses no property of his own, he should not be sent to prison. The Magistrate should know the evil effects a short term of imprisonment, or indeed, imprisonment at all, may have upon a young offender. It places the stigma of prison upon him; it may remove the fear of prison from his mind and by bringing him into contact with old offenders, may turn him towards a life of crime. The proper course in such a case, for the Magistrate, when it is clear that the accused can give no sureties is to admonish him for the offence under S. 380, Penal Code, under S. 562 (1-A), and to sentence him to imprisonment till the rising of the Court for the offence under S. 457, Penal Code. *Emperor v. Nur Muhammad Kalu Khan*. 41 Cr. L. J. 14 : 184 I. C. 311 : 1939 Kar. 749 : 12 R. S. 102 : A. I. R. 1939 Sind 260.

—S. 562 (1-A)—Revision.

The High Court would not interfere in revision with an order of a Magistrate under S. 562 (1-A), releasing an accused person on admonition, unless a strong case is made out

Cr. P. CODE (1898), S. 565

on the merits. *Surendra Nath Banerjee v. Dharendra Nath Dhar*. 31 Cr. L. J. 618 : 124 I. C. 76 : A. I. R. 1929 Cal. 785.

—S. 562 (1-A)—Scope.

S. 562 (1-A) is confined in its operation to offences under Penal Code, and cannot be applied to offences punishable under City of Bombay Municipal Act (III of 1888). *Merwanji M. Mistry v. Emperor*. 29 Cr. L. J. 566 : 109 I. C. 502 : 30 Bom. L. R. 375 : 52 Bom. 250 : A. I. R. 1928 Bom. 152.

—S. 562 (2)—Offences beyond scope.

Women convicted of offences punishable with transportation for life are ineligible for release on probation under S. 562. *Emperor v. Janki*. 33 Cr. L. J. 844 : 140 I. C. 59 : 28 N. L. R. 260 : I. R. 1932 Nag. 115 : A. I. R. 1932 Nag. 130.

—S. 562 (3)—Revision.

Under S. 562 (3), the High Court has power to pass a sentence itself when exercising revisional powers. *Emperor v. Janki*. 33 Cr. L. J. 844 : 140 I. C. 59 : 28 N. L. R. 260 : I. R. 1932 Nag. 115 : A. I. R. 1932 Nag. 130.

—S. 565.

See also (i) Cr. P. C., 1898, S. 221 (7).
(ii) Motor Vehicles Act, 1914, Ss. 16, 18 (2).
(iii) Penal Code, 1860, S. 75.

—S. 565—"Change of residence," meaning of.

A man is not said to change his residence so long as he leaves his family and his household effects in the house in which he has been residing. Where a convict, who after his release was bound to notify his change of residence to the Police, absented himself for one night leaving his effects and family in the place he was residing in: *Held*, that there was no such change of residence as to necessitate a notification to the Police and a conviction for not notifying the same was bad. *In re : Naddi Chengadu*. 18 Cr. L. J. 638 : 39 I. C. 1006 : 40 Mad. 789 : A. I. R. 1918 Mad. 614.

—S. 565—Legality of—Notifying residence.

Where there is no previous conviction, the accused shall not be asked to notify his residence. *Kottaparambil v. Emperor*. 11 Cr. L. J. 636 : 8 I. C. 300 : 1 M. W. N. 567.

—S. 565—Offence beyond scope.

Where either the previous or subsequent conviction of an accused person is under S. 511, I. P. C., for an attempt to commit an offence punishable for a term of three years or upwards, under any of the sections specified in Chapter XII or Chapter XVII, Penal Code, the Court trying the case has no power to

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———S. 284—Amendment, effect of.

A trial commencing after the coming into force of the new Act is rendered illegal by non-compliance with S. 284 thereof. *Pragi v. Emperor*. 11 O. L. J. 245 : A. I. R. 1924 Oudh 417.

———Ss. 369, 561-A—Power of High Court—High Court's power to review orders in criminal cases.

A High Court is competent under S. 561-A, Cr. P. C., to re-consider its order when the ends of justice require it. The object of S. 591-A, Cr. P. C., is to enable the High Court, when the ends of justice require, to make such orders as might be necessary and it is in no way limited or governed by S. 380. *Mathra Das v. Emperor*. 28 Cr. L. J. 239 : 99 I. C. 1039 : 9 L. L. J. 42 : A. I. R. 1927 Lah. 139.

CRIMINAL PROCEEDINGS

———Discretion of Magistrate, stay pending civil suit—High Court, power of interference of.

The postponement of criminal proceedings until the disposal of a civil suit, brought in respect of the property which is the subject-matter of the criminal case, is entirely within the discretion of the Magistrate, and where in the right exercise of that discretion a Magistrate refuses to stay a criminal case, the High Court will not interfere. *Raghubar Singh v. Emperor*. 21 Cr. L. J. 342 : 55 I. C. 678 : 1 P. L. T. 489 : A. I. R. 1920 Pat. 143.

———Institution of.

Though no invariable rule can be laid down, it is ordinarily undesirable to institute criminal proceedings until the determination of civil proceedings in which the same issues are involved. Criminal proceedings lend themselves to the unscrupulous application of improper pressure with a view to influencing the course of the civil proceedings, and beyond that there is the mischief of criminal proceedings being instituted with an imperfect appreciation of the facts where they have not been ascertained in the more searching investigation of a Civil Court. *Lucas v. Official Assignee of Bengal*. 21 Cr. L. J. 481 : 56 I. C. 577 : 24 C. W. N. 418 : A. I. R. 1920 Cal. 624.

———Order by Criminal Court.

An order passed by a Criminal Court unless set aside in due course of law, remains in force, and its validity cannot be questioned in a subsequent prosecution based on the disobedience of that order. *On Pe v. Emperor*. 25 Cr. L. J. 1303 : 82 I. C. 471 : 3 Bur. L. J. 27 : A. I. R. 1924 Rang. 295.

———Principles applicable—Civil suit, pendency of.

There is no statutory provision as to the stay of criminal proceedings. The question is one of expediency and has to be decided on the

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merits of the particular case keeping in view the desirability of avoiding the possibility of conflicting decisions and also the necessity of protecting the accused in the civil proceedings in the sense that he should not be prejudiced. Where the questions to be settled in the civil and criminal proceedings although arising out of the same transaction and intimately connected with each other, are different in the two cases and can be decided independently of each other, it is not necessary to stay the criminal proceedings till the decision of the civil proceedings. *Tajdin v. Taj Muhammad*. 23 Cr. L. J. 700 (b) : 69 I. C. 380.

———Proceedings amended without notice, effect of—Amendment—Notice—Criminal Procedure Code, S. 147.

It is the elementary right of a party when an amendment is made in criminal proceedings to have notice thereof. A criminal Court is not justified to infer from certain other matters that the party really knew what was going on and was not prejudiced. Therefore, where proceedings under S. 147, Cr. P. C., which originally related only to a portion of a pathway were amended without giving notice to the other party and made applicable to the whole pathway, the final order in the proceedings is not binding on the party affected by it. *Janki Nath Kundu Pal v. Manmohan De*. 25 Cr. L. J. 674 : 81 I. C. 162 : A. I. R. 1925 Cal. 263.

———Proceedings under S. 174 complete—Procedure.

Where proceedings under S. 174, Cr. P. C., have also been taken, they must be kept distinct from those taken on complaint. *Gulab Khan v. Ghulam Mohammad Khan*. 20 Cr. L. J. 26 : 99 I. C. 58 : 8 L. L. J. 524 : 27 P. L. R. 779 : A. I. R. 1927 Lah. 30.

———Stay—Civil suit—Subject-matter of both identical.

Where the subject-matter in both a criminal proceeding and a civil suit is identical, and the main questions for decision are the same, the criminal proceedings should be stayed pending the decision of the civil suit, if the same was brought without undue delay. In framing a charge for cheating, the manner in which the alleged cheating was committed should be set out. *Janki Das v. Emperor*. 23 Cr. L. J. 595 : 68 I. C. 819 : 38 P. L. R. 1922 : 4 L. L. J. 409 : A. I. R. 1922 Lah. 424.

———Stay of, pending civil suit—Discretion of Magistrate—High Court, interference by.

The question whether criminal proceedings should be stayed pending the disposal of a civil suit is primarily a matter for the discretion of the Magistrate before whom they are pending, and the High Court will not lightly interfere with the exercise of this discretion. Where the matter is purely a civil matter and can more fully and adequately be dealt with

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our—Surety living ten miles away—Friend of accused—Magistrate's discretion to reject surety.

A Magistrate refused the sureties for good behaviour on the ground that the sureties lived 10 miles away from the accused and that they were on friendly terms with him: *Held*, that the order refusing the sureties was improper. Unnecessary difficulties should not be thrown in the way of people required to give security. *Bhagwan Sahai v. Emperor*.

11 Cr. L. J. 536 :
7 I. C. 910 : 7 A. L. J. 993.

————Chap. VIII, Ss. 106, 226 and 354—
Security for keeping good behaviour and peace—Accused of an offence.

Persons ordered to give security for keeping the peace or to be of good behaviour are not persons accused of an offence. *In re: Kora Ayyappa*.

11 Cr. L. J. 251 :
5 I. C. 809 : 7 M. L. T. 104.

————Chap. VIII, S. 436—*Security proceedings—Further inquiry.*

The provisions of S. 436, Cr. P. C., are not applicable to persons against whom proceedings are taken under Chap. VIII of the Code. *Maung Than v. Emperor*.

25 Cr. L. J. 1146 :
81 I. C. 970 : 2 Bur. L. J. 285 :
2 Rang. 30 : A. I. R. 1924 Rang. 207.

————Chaps. VIII, XII—*Discretion of Magistrate—Proceedings under Chap. VIII, instituted by one Magistrate—His successor, if can keep them pending and institute proceedings under Chap. XII which he considers more appropriate.*

Where one Magistrate has instituted proceedings under Chap. VIII, Cr. P. C., his successor can order these proceedings to be kept pending and institute proceedings under Chap. XII which he considers more appropriate to the facts and circumstances of the case as they exist at the time when he makes the order. In this matter, the discretion of the Magistrate is not restricted. *Lachmandas Sanwaldas v. Sahibdin Budho Chhajra*.

37 Cr. L. J. 1036 :
163 I. C. 402 : 17 P. L. T. 399 :
2 B. R. 595 (2) : 9 R. P. 1 (2) :
A. I. R. 1936 Pat. 360.

————Chap. X, Ss. 133, 140—*Proceedings under, Nature of—Flour mill working for ten years under licence from Municipality—Recourse to provisions of Chap. X should not be taken in respect of such mill.*

In a case where the flour mills have been working for ten years and that, too, under a licence from the Municipal Board which is authorised to grant such licences under the Municipalities Act, it would not be proper to have recourse to the provisions of Chap. X of the Cr. P. C. The proceedings under that Chapter are of a summary nature and intended to enable Magistrate to deal with cases of emergency and not intended to enable a complainant to obtain, by having recourse to this

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Chapter, relief which he should seek in the Civil Court. *Kedar Nath v. Satish Chandra*.

41 Cr. L. J. 99 :
184 I. C. 754 : 1939 O. W. N. 966 :
1941 O. L. R. 653 : 15 Luck. 140 :
12 R. O. 143 : A. I. R. 1940 Oudh 75.

————Chap. X, Ss. 133, 439—*Appeal—Maintainability of—Order under S. 133—Order in criminal trial—Letters Patent, S. 15—Review by single Judge.*

The orders passed under Chap. X, Cr. P. C., are orders in a criminal trial within the meaning of S. 15, Letters Patent, and therefore, no appeal lies from an order of a single Judge reviewing such an order under S. 439, Cr. P. C. *Nissankara Rao Subbayya v. Coola Kamayya*.

16 Cr. L. J. 349 :
28 I. C. 733 : 1915 M. W. N. 240 :
A. I. R. 1915 Mad. 970.

————Chap. XII.

Sec also High Court.

————Chap. XII—*Evidence of title—Dispute as to possession of immovable property.*

In a proceeding under Chap. XII, Cr. P. C., the Magistrate may, if necessary, take and consider evidence of title to enable him to decide the question of actual possession, but such evidence should be used only to 'supplement' evidence of user. *Pananganti Parthasarathy v. Venkatasawmi Reddy*.

11 Cr. L. J. 353 :
6 I. C. 398.

————Chap. XII—*Interference by High Court—Proceedings under Chap. XII.*

The High Court will not interfere with proceedings which are, in fact and in law, proceedings under Chap. XII, Cr. P. C. *Har Piari v. Natch Lal*.

22 Cr. L. J. 97 :
59 I. C. 401 : 18 A. L. J. 1140 :
2 U. P. L. R. All. 428.

————Chap. XII—*Scope of—Compromise, whether should be accepted—Revision—High Court, power of interference of, with orders under Chap. XII.*

An order not really within the purview of Chap. XII and so without jurisdiction, can be revised under S. 439, Cr. P. C. Chap. XII does not in terms lend any countenance to the view that a Magistrate can attach property as to which a dispute exists merely because the parties wish him to do so, nor it is desirable that Magistrate should give effect to arrangements made between disputants which may themselves give rise to disagreements. If the parties come to an understanding, it should be of a kind which satisfies the Magistrate that his interference is unnecessary. *Abdul Rashid Khan v. Khandu*.

20 Cr. L. J. 117 :
49 I. C. 101 : A. I. R. 1919 Nag. 158.

————Chap. XII, S. 145—*Former order under S. 145, necessity of—Proceedings under Chap. XII.*

The drawing up of a formal order under Sub-s. 1 of S. 145, Cr. P. C., is absolutely necessary to the initiation of proceedings under Chap. XII. All proceedings purporting to be taken under

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complainant to bring a suit under S. 9, Specific Relief Act, 1877, to regain possession of land, a Magistrate should not entertain a complaint of criminal trespass on culturable land, unless it is made very clear upon the examination of the complainant that the alleged trespasser must have entered on the land with one of the intents mentioned in S. 441, Penal Code, *Shwe Kun v. Emperor*. 5 Cr. L. J. 415 : 3 L. B. R. 278.

—Trespass—Property in dispute—Order prohibiting possession being taken by complainant.

A trespass on the property in the possession of the complainant cannot be sustained in face of an order prohibiting him from taking possession. *In re : Susai Pillay*.

11 Cr. L. J. 644 :
8 I. C. 397 : 8 M. L. T. 289.

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—Abatement.
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—Absconder.
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—Absconding accused.
—Accomplice.
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cognizance of the offence, issue warrants of arrest and admit the accused to bail, and that all this he could legally do as preliminary to an inquiry under Chap. XVII: *Held*, therefore, that there was nothing to prevent this Court from transferring the case to Kyauktaw. *Emperor v. Yon Bwe*.

4 Cr. L. J. 418 :
12 Bur. L. R. 281.

-----**Chap. XVIII—Power of trying Magistrate to discharge accused—Inquiry—Scope of his inquiry in a charge triable by Court of Session—Penal Code, Ss. 463, 464.**

In the case of offences which are triable solely by a Court of Session, a Magistrate cannot be considered to have the power to proceed to the trial of the accused in those inquiries, and the chief business of the Magistrate is to see whether the prosecution has adduced such evidence as is not on the face of it absolutely incredible in regard to every ingredient of the offence that is charged. Where in a charge under Ss. 463 and 464, Penal Code, the fact of the alteration of the promissory note was proved, but no evidence was adduced to prove that either of the accused altered the document in question: *Held*, that the trying Magistrate had power to discharge the accused. *Narsappayya v. Narasayya Shanbhogue*.

16 Cr. L. J. 307 :
28 I. C. 643 : 1915 M. W. N. 233 :
A. I. R. 1916 Mad. 1226.

-----**Chap. XVIII—Procedure — Criminal trial—Charges of offence triable by Court of Session combined with offence not so triable.**

When an accused person is charged with two offences, one of which is triable only by a Court of Session, the Magistrate should adopt the procedure provided in Chap. XVIII, Cr. P. C., *inter alia* giving the accused an opportunity of cross-examining the witnesses for the prosecution. *Probodh Kumar Datta v. Mohim Chandra Roy*.

22 Cr. L. J. 480 :
60 I. C. 1008.

-----**Chap. XVIII, Ss. 209, 250, 253—Jurisdiction of Magistrate—Penal Code (Act XLV of 1860), S. 494—Offence triable by Court of Session—Inquiry by Magistrate—Discharge of accused—Compensation, order of, whether can be passed by Magistrate.**

All that a First Class Magistrate has jurisdiction to do in case of a charge of an offence triable by the Court of Session is to follow the procedure laid down by Chap. XVIII, Cr. P. C. In that chapter neither S. 250 nor S. 253 finds any place. Therefore, the Magistrate has no power to award compensation to the accused when discharging them under S. 209. Under S. 209, Cr. P. C., a Magistrate is not authorised to write a judgment in a case triable by a Court of Session; all that he is empowered to do is to record reasons for a discharge, if he makes such an order, and to pass the order of discharge. *Hait Ram v. Ganga Sahai*.

19 Cr. L. J. 706 :
46 I. C. 290 : 16 A. L. J. 486 :
40 All. 615 : A. I. R. 1918 All. 126.

-----**Chaps. XVIII, XXI—Right of cross-**

Cr. P. CODE (1898), Chap. XXI

examination—Warrant-case, conversion of, into case triable by Court of Session.

Where, after hearing the evidence in warrant case in accordance with the procedure prescribed by the Cr. P. C., for the trial of such cases, the Magistrate is of opinion that a *prima facie* case is made out of an offence triable by a Court of Session, and the proceedings are converted accordingly, the accused has a right to have the witnesses recalled for cross-examination, more especially where the accused reserved his right of cross-examination till after the framing of the charge in the trial as a warrant-case. *Damarcha v. Emperor*.

22 Cr. L. J. 496 :
62 I. C. 192 : 19 A. L. J. 463 :
A. I. R. 1921 All. 148.

-----**Chap. XX—Summons case—Commitment to Court of Session, quashed.**

Where a person was committed for trial to the Court of Session on charges under Ss. 352 and 447, Penal Code, by the Magistrate: *Held*, that the commitment should be quashed, first, because there is no warrant for such commitment, it being a summons case; and secondly, because the Magistrate can adequately punish the offender. *Emperor v. Dharam Singh*.

3 Cr. L. J. 94 :
3 A. L. J. 14 : 26 A. W. N. 28 :
1 M. L. T. 61.

-----**Chap. XXI — Non-compliance — Offence triable as warrant case, trial of, summons-case after commencement of trial, legality of.**

When an offence complained of is triable exclusively as a warrant case, and the trial has actually begun, and the statements of the complainant and some of the witnesses recorded, it is illegal to split the offence into two component parts, and to proceed to try it as a summons-case. A Magistrate when trying a warrant-case is not justified in recording the statement of the accused immediately after the examination of the complainant and before he is cross-examined and the evidence for the prosecution recorded; such a procedure is not only prejudicial to the accused in his defence, it contravenes the provisions of Chap. XXI and entirely vitiates the trial. *Ganga Saran v. Emperor*.

22 Cr. L. J. 146 :
59 I. C. 853 : 19 A. L. J. 6 :
A. I. R. 1921 All. 282.

-----**Chap. XXI, S. 250—Grant of compensation—Legality of—Facts disclosing offence triable by Sessions—Triable by Magistrate for lesser offence—Dismissal of complaint.**

The facts appearing in evidence constituted an offence under S. 467 but the Magistrate regarding it as one under S. 465, I. P. C., proceeded under Chap. XXI, Cr. P. C. and not under Chap. XVIII and dismissed the complaint awarding compensation to the accused under S. 250 of the Code: *Held*, that as the Magistrate did not proceed illegally in trying the accused for the lesser offence, he did not act illegally in awarding compensation when he found the accusation to

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from liability to discharge any fine due from him. *Sita Ram v. Emperor*.

38 Cr. L. J. 509 :
168 I. C. 177 : 1937 O. L. R. 232 :
9 R. O. 447 : 1937 O. W. N. 587 :
A. I. R. 1937 Oudh 320.

—————*Abetment—Charge of—Evidence should be analysed.*

It is a matter of common experience that charges of abetment are easily made against accused persons and are difficult to refute. Consequently, a conviction should not be confirmed unless the evidence is analysed. *Mewala Singh v. Emperor*.

39 Cr. L. J. 221 :
172 I. C. 933 : 18 P. L. T. 869 :
10 R. P. 368 : 4 B. R. 202 :
A. I. R. 1938 Pat. 34.

—————*Absconder.*

Prosecution must prove that he was present in place of occurrence before occurrence and his subsequent disappearance—Mere statement of Police officer that he did not find accused in his house is not enough. *Fazal Rahim v. Emperor*.

35 Cr. L. J. 1286 :
151 I. C. 127 : 7 R. Pesh. 15 :
A. I. R. 1934 Pesh. 70.

—————*Absconding.*

Rioting case—It is a fair inference to draw from absconding of some accused that they absconded due to a consciousness of guilt. *Ramhit v. Emperor*.

35 Cr. L. J. 919 :
149 I. C. 210 : 4 A. W. R. 191 :
6 R. A. 872 : A. I. R. 1934 All. 776.

—————*Absconding accused—Inference.*

The absence of the accused from his house for a few days after the date of commission of an offence does not necessarily lead to an inference of a guilty conscience. *Manni v. Emperor*.

32 Cr. L. J. 48 :
127 I. C. 878 : 7 O. W. N. 736 :
I. R. 1930 Oudh 494 : 6 Luck. 210 :
A. I. R. 1930 Oudh 406.

—————*Accomplice—Evidence in another.*

There is no provision of Indian Statute Law, nor is there any principle of natural justice, which makes an accomplice, as such, an incompetent witness at the trial of another person in respect of the offence in the commission of which he was an accomplice. *Emperor v. Har Prasad*.

25 Cr. L. J. 497 :
77 I. C. 961 : 21 A. L. J. 42 :
45 All. 226 : A. I. R. 1923 All. 91.

—————*Accomplice, evidence of—Corroboration.*

It is unsafe to rely on the testimony of an accomplice without independent corroboration both as to the crime, and as to the identity of the criminal, the corroboration of one tainted evidence by another tainted evidence is not an independent corroboration. *Bimal Krishna Biswas v. Emperor*.

37 Cr. L. J. 840 :
163 I. C. 566 : 62 Cal. 819 :
39 C. W. N. 761 : 9 R. C. 30.

—————*Accomplice, evidence of.*

The evidence of an accomplice must always

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be received with the greatest possible caution. *Abdul Majid v. Emperor*. 36 Cr. L. J. 1248 :
157 I. C. 840 : 39 C. W. N. 1082 :
8 R. C. 132 : A. I. R. 1935 Cal. 473.

—————*Accomplice—Instigation when amounts to abetment.*

Even if the object of the person who instigated another to commit a crime is to catch him in the act of committing the crime, instigation by him nevertheless amounts to abetment of the offence and the abettor must be regarded as an accomplice when the object of the instigation is to make the offender commit the offence, and the person who was instigated, actually commits the offence. In any case even if these witnesses are not to be regarded as accomplices in the strict legal sense, nevertheless their conduct is such that their evidence requires to be viewed with caution. *In re : Koganti Appayya*.

40 Cr. L. J. 108 :
178 I. C. 616 : 1938 M. W. N. 825 :
48 L. W. 322 : 11 R. M. 478 :
A. I. R. 1938 Mad. 893.

—————*Accomplice—Woman knowing that her paramour intended to kill her husband, value of her evidence.*

When a woman knows the fact that her paramour intended to kill her husband but does not disclose it to her husband, she must be regarded as an accomplice in the crime. In any case her testimony cannot carry any higher value than the testimony of an accomplice. *Phullu v. Emperor*. 37 Cr. L. J. 978 :
164 I. C. 700 : 38 P. L. R. 226 :
9 R. L. 157 : A. I. R. 1936 Lah. 731.

—————*Accomplice, who is.*

An accomplice is a man who could have been equally tried with the accused for the offences of which they have been convicted. When a witness is not concerned with the commission of the crime for which the accused is charged, he cannot be said to be an accomplice. Mere being aware cannot make him an accomplice. *In re : S. A. Sattar Khan*.

40 Cr. L. J. 483 :
181 I. C. 364 : 1938 M. W. N. 962 :
11 R. M. 797 : A. I. R. 1939 Mad. 283.

—————*Accomplice, who is.*

The mere fact that a witness did not reveal his knowledge of the intended crime to the proper authorities is not sufficient to make him an accessory or accomplice so as to vitiate his evidence. *Nural Amin v. Emperor*.

40 Cr. L. J. 667 :
182 I. C. 386 : I. L. R. 1939 1 Cal. 511 :
12 R. C. 51 : A. I. R. 1939 Cal. 335.

—————*Acquittal—Acquittal of some accused, effect of, upon others.*

Where several persons are charged with the commission of an offence and some of them are acquitted on the ground that the case against them is not free from doubt, it cannot be argued that the remaining accused have been falsely implicated. *Labh Singh v. Emperor*.

26 Cr. L. J. 1153 :
88 I. C. 513 : 6 Lah. 24 :
A. I. R. 1925 Lah. 337.

Cr. P. CODE (1898), Sch. V

———Sch. II, as amended by Act XVIII of 1923—Effect of amendment—*Penal Code S. 477-A—Interpretation of Statutes—Magistrate, jurisdiction of, enlargement of—Amendment, whether retrospective.*

The amendment of the Cr. P. C., 1898, in 1923, which enables a Magistrate with First Class powers to try charges falling under S. 447-A, Penal Code, is a matter of procedure only and the amended Act applies notwithstanding that a case was commenced before the amended Act came into force. Alterations in the form of procedure are always retrospective unless there is some good reason or other why they should not be. A Statute dealing with procedure applies *prima facie* to all actions pending as well as future. *Rajib Lochan Shaw v. Jogesh Chandra Das Gupta.*

26 Cr. L. J. 353 :
84 I. C. 705 : 28 C. W. N. 998 :
A. I. R. 1924 Cal. 983.

———Sch. II—Forgery.

Forgery is an offence of too grave a public importance to be made merely triable by Subordinate Magistrates. *Subramanyam v. Veerara Jhavuba*

33 Cr. L. J. 362 :
136 I. C. 780 : 1931 M. W. N. 1191 :
35 L. W. 267 : I. R. 1932 Mad. 316 :
A. I. R. 1932 Mad. 216.

———Sch. II—Interference by High Court.

High Court will not interfere with the discretion of Magistrate specially empowered to try offences under S. 124-A, I. P. C. *Hari Moreshwar Joshi v. Emperor.*

33 Cr. L. J. 262 :
136 I. C. 187 : 33 Bom. L. R. 1515 :
56 Bom. 61 : I. R. 1932 Bom. 171 :
[A. I. R. 1932 Bom. 63.

———Sch. V.

See also Cr. P. C., 1898, S. 514.

———Sch. V—Practice.

The forms for bonds given in the Fifth Schedule, need not be slavishly followed. They can be adjusted to meet the facts of the particular case. *Vithaldas Moolji v. Emperor.*

33 Cr. L. J. 628 :
138 I. C. 512 : 34 Bom L. R. 584 :
56 Bom. 220 : I. R. 1932 Bom. 386 :
A. I. R. 1932 Bom. 290.

———Sch. V, Form 10—Forfeiture of bond—Bond to keep the peace—Offence not involving breach of peace—Offence committed before execution of bond does not forfeit.

A bond to keep the peace cannot be forfeited except on proof of the commission of an offence involving a breach of the peace and the use of the word 'probably' in Form 10, Schedule V, Cr. P. C., limits forfeiture to cases in which a breach of the peace is the 'probable', and not merely the 'possible' result of the act of the person bound over. Thus a conviction for theft, wrongful confinement and extortion, for the abduction of a woman, or a secret attempt to poison a person, cannot justify a forfeiture of such a bond. Where the offence was committed prior to the date on [which the

Cr. P. CODE AMENDMENT ACT (XVIII OF 1923)

bond was executed, the bond could not be forfeited by reason of the commission of the offence. *Ahmad Gul v. Emperor.*

15 Cr. L. J. 605 :
25 I. C. 517 : 22 P. R. 1914 Cr :
262 P. L. R. 1914 Cr : 47 P. W. R. 1914 Cr :
A. I. R. 1914 Lah. 393.

———Sch. V, Form X, S. 514—Forfeiture of bond—Breach of the peace, probability of—Resulting from abduction.

The use of the word "probably" in Form X, Sch. V of the Cr. P. C., limits forfeiture to cases in which a breach of the peace is the probable result of the act of the person bound over. Abduction is not such an act. *Muhammad v. Emperor.*

4 Cr. L. J. 278 :
7 P. R. Cr. 1906 : 7 P. L. R. 462.

CR. P. C. AMENDMENT ACT (XVIII OF 1923).

———S. 72.

See also Cr. P. C., 1898, Ss. 256, 587.

———Ss. 133, 139-A—Stay of proceedings Obstruction to right of way—Denial of public right of way supported by Revenue Records—Magistrate's duty to stay proceedings.

Where in proceedings for removal of obstruction of public way under S. 133, Cr. P. C., the party obstructing the way denies the existence of any public right in respect of the way, and is supported by Revenue Records in his denial, the Magistrate is bound to stay the proceedings under S. 139-A, Cr. P. C., till the matter is decided by a competent Civil Court. *Nur Ali Shah v. Natha.*

28 Cr. L. J. 247 :
100 I. C. 119 : A. I. R. 1927 Lah. 745.

———S. 238 (2) A—Conviction for abetment—Charge for substantive offence—Separate charge, whether necessary.

Where an accused is charged for a substantive offence, he cannot be convicted of the abetment of the offence without framing a charge for such abetment. *Hulas Chand Baid v. Emperor.*

28 Cr. L. J. 2 (a) :
99 I. C. 34 : 44 C. L. J. 216 :
A. I. R. 1927 Cal. 63.

———S. 239 (F)—Joint trial, legality of—Receivers of stolen property at different times—'Transferred by one offence,' meaning of—Penal Code, S. 411.

The words "in respect of stolen property the possession of which has been transferred by one offence" in S. 239 (f), Cr. P. C., refer to transfer of possession from the true owner to the thief and not to transfer of possession from the thief to the receivers. Receivers of articles stolen at one theft can be tried jointly even though the stolen articles were received by them at different times. *Guljanai v. Emperor.*

28 Cr. L. J. 962 (a) :
105 I. C. 674 : 6 Pat. 583 :
A. I. R. 1928 Pat. 38.

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————Adjournment—Absence of Counsel for one accused.

Where in a Sessions case in which a number of witnesses have been summoned and an application for adjournment is made on the ground of absence of a Counsel for one of the accused, sufficient cause for granting adjournment is not made out. *Salag Ram v. Emperor.*

38 Cr. L. J. 416 (b) :
9 R. A. 550 : 167 I. C. 515 : 1936 A. W. R. 967 :
A. I. R. 1937 All. 171.

————Adjournment—Charge framed—Giving of long adjournment not incumbent.

It is by no means incumbent on the Court to give a longer adjournment after charge is framed against the accused. A Court is not obliged to pay any attention to telegrams sent to it by the Counsel of the accused for adjournment. *Bhanwar Singh v. Sukhram Singh.*

41 Cr. L. J. 585 :
188 I. C. 413 : 1940 N. L. J. 410 :
13 R. N. 2 : A. I. R. 1940 Nag. 283.

————Adjournment sine die for further evidence—Procedure, legality of.

Where the witnesses relied on by the prosecution do not give evidence expected of them, the Court should not allow an adjournment to enable the prosecution to put matters right by making a search in the hope of finding other witnesses who would prove more satisfactory in the eye of the prosecution. *Ah Phone v. Emperor.*

31 Cr. L. J. 296 :
121 I. C. 773 : A. I. R. 1930 Rang. 76.

————Admission, use of.

Where there is no evidence against a person connecting him with an offence except his own statement or admission, that admission must either be taken as a whole against him or not be taken into consideration at all. *Faqir Mohammad v. Emperor.*

33 Cr. L. J. 570 :
138 I. C. 217 : 33 P. L. R. 287 :
I. R. 1932 Lah. 431.

————Admission—By accused, use of.

In a criminal trial, the admission made by an accused person must be taken as a whole. *Man Singh v. Emperor.*

34 Cr. L. J. 765 :
144 I. C. 383 : I. R. 1933 All. 426 :
A. I. R. 1933 All. 401.

————Admission subsequently explained away, as basis for conviction.

Admissions which are subsequently explained away stand on a somewhat similar footing as retracted confessions and do not furnish a safe basis for conviction unless supported by a reliable evidence. *Emperor v. Bakhtawar Lal.*

28 Cr. L. J. 556 :
102 I. C. 492 : 28 P. L. R. 313 :
A. I. R. 1927 Lah. 549.

————Affidavit—From counsel.

An affidavit should not be taken from those members of the English Bar who are appearing professionally in a case in connection with which an affidavit is required. *K. L. Gauba v. Emperor.*

38 Cr. L. J. 955 :
170 I. C. 586 : I. L. R. 1937 Lah. 114 :
39 P. L. R. 643 : 10 R. L. 135 :
A. I. R. 1937 Lah. 411.

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————Alibi, defence of.

A defence of *alibi*, if true, ought to be raised at the earliest possible moment. *Dilawar v. Emperor.*

37 Cr. L. J. 751 :
163 I. C. 143 : 38 P. L. R. 695 : 8 R. L. 1023 :
A. I. R. 1936 Lah. 233.

————Alibi evidence, value of.

Although it is easy to give evidence of *alibi*, but where the case for the prosecution depends entirely on the identification of the accused in somewhat doubtful circumstances, the evidence of *alibi* cannot be lightly brushed aside. *Nga Ye Gyin v. Emperor.*

38 Cr. L. J. 890 :
170 I. C. 273 : 10 R. Rang. 76 :
A. I. R. 1937 Rang. 267.

————Alibi—Mere probabilities cannot take the place of evidence.

In the case of a plea of *alibi* reasoning from mere probabilities cannot take the place of evidence. *Gurudas Mandal v. Emperor.*

32 Cr. L. J. 122 :
128 I. C. 351 : I. R. 1931 Pat. 47 :
A. I. R. 1930 Pat. 509.

————Alibi—Murder case—Weakness of alibi evidence, effect of.

The weakness or falsity of an *alibi* is not a sufficient ground for holding that the case for the prosecution is thereby improved in a charge for murder. *Nga Zaw Gyi Aung v. Emperor.*

38 Cr. L. J. 279 :
166 I. C. 605 : 9 R. Rang. 274 :
A. I. R. 1937 Rang. 10.

————Alibi—Prosecution case, merely denunciation and identification by deceased—Weight of alibi evidence.

When the prosecution case amounts merely to an identification by the deceased, it cannot be said with certainty that the *alibi* must necessarily be false *alibi*. *Nga Zaw Gyi Aung v. Emperor.*

38 Cr. L. J. 279 :
166 I. C. 605 : 9 R. Rang. 274 :
A. I. R. 1937 Rang. 10.

————Allegations of tyranny made—Duty of High Court.

In a case where serious allegations of tyranny are made, the interests of justice require that the High Court and the complainant should be satisfied that the Magistrate has considered the allegations against the accused and has come to a decision either that there is no case against him or that there is. If there is, the Magistrate must issue process to him. *In re : Venkatasubba Pillai.*

39 Cr. L. J. 984 :
177 I. C. 957 : 1938 2 M. L. J. 372 :
1938 M. W. N. 973 : 11 R. M. 396 :
48 L. W. 801 : A. I. R. 1938 Mad. 879.

————Alternative charge—Conspiracy to commit breach of trust and commission of breach of trust in pursuance thereof.

Where the accused were charged with offences in the alternative with conspiracy to commit criminal breach of trust and with committing criminal breach of trust in pursuance of

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in a civil proceeding, criminal proceedings ought to be stayed pending the decision of the civil suit. *Sooraya v. Shwe Bwin*.

21 Cr. L. J. 353 (a) :
55 I. C. 721 : 10 L. B. R. 103 :
18 Bur. L. T. 41 : A. I. R. 1920 L. Bur. 47.

———*Stay pending disposal of civil proceedings.*

Where a document presented for registration was impugned as a forgery, and on the refusal of the Registration Officer to register it, one party appealed to the District Registrar and filed a suit to compel registration, while the other party rushed into a Criminal Court with a charge of forgery against the attesting witnesses and the obligee: *Held*, that this was a fit case in which criminal proceedings ought to be stayed until the disposal of the civil suit. In all such cases, the test is whether the accused would be prejudiced if the criminal proceedings are not stayed until the disposal of the civil suit, and in this respect, there is no distinction between proceedings instituted in pursuance of sanction granted by a Court and those instituted by a party himself where no such sanction is necessary. *Mahomad Ibrahim v. Kallayan*.

16 Cr. L. J. 637 :
30 I. C. 461 : A. I. R. 1916 Mad. 1123.

———*Stay—Pendency of civil suit—Cause of action arising subsequently.*

Ordinarily the subsequent institution of a civil suit relating to the matter in dispute is not a good cause for stay of criminal proceedings. Where, however, the cause of action did not arise till after the filing of the criminal complaint: *Held*, that the criminal proceedings should be stayed pending the decision of the civil suit in the first Court. *Shib Dayal v. Hans Raj*.

21 Cr. L. J. 399 :
55 I. C. 1007 : 2 U. L. R. Lah. 77 :
123 P. L. R. 1920 : A. I. R. 1920 Lah. 198.

CRIMINAL PROSECUTION

———*Complainant, whether can be compelled to pay costs—Transfer of case—Complainant, whether can apply.*

All criminal prosecutions are at the instance of the Crown, and the Crown is really the prosecutor in a criminal case and all costs ought to be paid by the Crown for summoning witnesses for the prosecution. It is open to a Magistrate to consider whether or not the deposition of a witness is material for the prosecution in a case, and if he is of opinion that the witness sought to be summoned is not a material witness and the application for summoning the witness is frivolous and vexatious, he might refuse to summon him. But once he thinks that the witness ought to be summoned, he cannot compel the complainant to pay his travelling allowance from his own pocket as all costs for the prosecution must be paid by the Crown. *Nand Kishore Misra v. Kalka Misra*.

25 Cr. L. J. 458 :
77 I. C. 810 : 1924 Pat. 196 :
5 P. L. T. 487 : A. I. R. 1924 Pat. 695.

CRIMINAL REVISION

———*Power of High Court—Petition—Dismissal for default—Fresh petition, whether incompetent.*

Where a matter has been finally disposed of by a Court, that Court is *functus officio* and, in the absence of direct statutory provision, cannot entertain a fresh prayer for the same relief unless and until the previous order of final disposal has been set aside. The High Court neither can nor will entertain a petition on a matter already disposed of when the order disposing of it is still in force and has not been set aside. *Narra Apayya v. Darsi Venkasappayya*.

23 Cr. L. J. 746 :
69 I. C. 634 : 44 M. L. J. 27 :
1922 M. W. N. 821 : 17 L. W. 23 :
A. I. R. 1923 Mad. 276.

CRIMINAL RULES OF PRACTICE (MAD.), R. 122

See Cr. P. C., 1898, S. 17.

———*Rr. 195, 196—Object and Policy of—Confession recorded by Village Magistrate, whether evidence—Rule against recording confession, whether of law or of guidance—Recording of confession by Magistrate—Omission to put question suggested in r. 196, Criminal Rules of Practice, effect of.*

Rule 195 of the Criminal Rules of Practice which prohibits Village Magistrates from reducing to writing any confession or statement whatever made by an accused person after the Police Investigation has begun is not a rule of law, but merely a rule for the guidance of Village Magistrates and a confession by an accused person to the Village Magistrate is not inadmissible in evidence. The whole object and policy of r. 196, Criminal Rules of Practice, is that a Magistrate should satisfy himself that there is no compulsion by the Police or ill-treatment so as to raise suspicion that the statement of the accused is not a voluntary statement, and so long as the spirit of the rule is satisfied, it is undesirable that questions should be put in the specimen forms as suggested in the Criminal Rules of Practice showing a total want of trust in the Police. *Maniara Kuppathan v. Emperor*.

28 Cr. L. J. 955 :
105 I. C. 667 : 1927 M. W. N. 824 :
53 M. L. J. 739 : 51 Mad. 167 :
27 L. W. 725 : A. I. R. 1927 Mad 974.

CRIMINAL TRESPASS

See also (i) Cr. P. C., S. 448.

(ii) Penal Code, 1860, Ss. 105, 441, 447, 448.

———*Indian Penal Code, S. 447—Specific Relief Act, 1877, S. 4.*

A sent his servant B to plough certain land. C thereupon prosecuted A and B for criminal trespass, and obtained convictions. A had not entered personally upon the land. He could not, therefore, be convicted under S. 447. B entered on the land *bona fide* as A's servant, and not in order to annoy C. S. 447 does not apply to such a case. Convictions and sentences set aside. Where it is open to

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of conviction in the Appellate Court to an offence, the elements of which have not been fully considered in the trial. *Vithal v. Emperor*.

38 Cr. L. J. 380 :
167 I. C. 378 : 9 R. N. 181 :
I. L. R. 1937 Nag. 145 :
A. I. R. 1936 Nag. 275.

—————*Appeal—Appeal from acquittal.*

Principles of interference stated. *Emperor v. Bharat Singh*.

33 Cr. L. J. 932 :
139 I. C. 740 : 9 O. W. N. 145 :
I. R. 1932 Oudh 390.

—————*Appeal—Appellate Court sending for witness given by P. P.*

If the Government Pleader takes upon himself the responsibility of not producing a certain eye-witness, then it is not the duty of the Appellate Court to fill the gap in the prosecution evidence by summoning that witness. *Hori Lal v. Emperor*.

36 Cr. L. J. 844 :
155 I. C. 753 : 1935 O. W. N. 592 :
7 R. O. 617 : A. I. R. 1935 Oudh 402.

—————*Appeal—Copies of evidence—Right of accused's Counsel.*

The practice of the Lahore High Court according to which a Counsel appearing for the petitioner or appellant in a criminal case even while his client is in jail, cannot take copies of the evidence even for the purpose of arguing his appeal unless he applies for certified copies condemned. *Umra v. Emperor*.

32 Cr. L. J. 258 :
129 I. C. 197 : I. R. 1931 Lah. 133 :
32 P. L. R. 104 : A. I. R. 1930 Lah. 1024.

—————*Appeal—Dismissal in default.*

A criminal appeal cannot be dismissed in default and the Appellate Court is not relieved of the duty of hearing the appeal on the merits and deciding it. *Din Muhammad v. Emperor*.

35 Cr. L. J. 963 :
148 I. C. 1078 : A. I. R. 1934 Pesh. 21.

—————*Appeal—Duty of Appellate Court.*

A Court hearing an appeal against an order passed under the section, must decide whether the order is correct and consider whether the order is one which it would itself have passed under the circumstances. *Palaniappa Chettiar v. Ramaswami Chettiar*.

18 Cr. L. J. 289 :
38 I. C. 321 : 4 M. L. W. 615 :
20 M. L. T. 557 : 32 M. L. J. 54 :
A. I. R. 1917 Mad. 56.

—————*Appeal—Evidence.*

In a criminal appeal, it is not desirable in most cases to rely upon the evidence which has been definitely disbelieved by the trial Judge. *Banta Singh v. Emperor*.

34 Cr. L. J. 318 :
142 I. C. 20 : 34 P. L. R. 349 :
I. R. 1933 Lah. 171 : A. I. R. 1933 Lah. 232.

—————*Appeal—Evidence.*

Where the evidence of a large number of eye-witnesses is discarded mainly on the ground that they belong to the party opposed to the

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accused, and where the testimony of disinterested witnesses supporting them is not acted upon, a Court of Appeal is entitled to decide whether it will or will not attach the same importance as the Court below to an argument of a general nature based on enmity between the parties. *Bhai Khan v. Emperor*.

32 Cr. L. J. 485 :
130 I. C. 324 : 31 P. L. R. 1026 :
I. R. 1931 Lah. 260 :
A. I. R. 1931 Lah. 18.

—————*Appeal—Failure of accused to prosecute appeal—Summary dismissal.*

The dismissal of the appeal summarily depends upon the exercise by the Judge of his independent and impartial judgment after he has read a copy of the judgment, and not upon the failure of the accused to prosecute his appeal. He cannot dismiss the appeal merely because the accused fails to prosecute it. *Emperor v. Balumal Hotchand*.

39 Cr. L. J. 890 :
177 I. C. 346 : 11 R. S. 58 :
A. I. R. 1938 Sind 171.

—————*Appeal—Interference.*

Although the High Court should ordinarily have very strong grounds for differing from the appreciation of evidence of the trial Judge who had the advantage of seeing the witnesses and noting their demeanour, where the whole story set up by prosecution is so unnatural and parts of it so suspicious that the High Court feels that benefit of doubt should be given to the accused, the High Court will interfere and set aside the conviction. *Jalal v. Emperor*.

38 Cr. L. J. 350 :
167 I. C. 75 : 9 R. S. 162 :
30 S. L. R. 456 : A. I. R. 1937 Sind 22.

—————*Appeal—Interference.*

Courts are always reluctant to interfere with the findings of a trial Court unless strong grounds are made out for so doing. *Udharam v. Emperor*.

33 Cr. L. J. 900 :
140 I. C. 23 : I. R. 1932 Sind 170 :
A. I. R. 1932 Sind 143.

—————*Appeal—Interference.*

Finding of fact of lower Court based on credibility of witnesses—Interference in appeal—When proper, stated. *Emperor v. Mahomed Usman*. (F. B.)

35 Cr. L. J. 129 :
146 I. C. 419 : 6 R. S. 65 :
A. I. R. 1933 Sind 325.

—————*Appeal—Judgment, requirements of.*

Where the Court passed the following judgment "Read judgment. Heard applicants' Pleader. The appeal is summarily dismissed under S. 421, Cr. P. C." : Held, that it was not a proper judgment and the practice of passing such stereotyped judgments should be condemned. *Brijmohan Singh v. Dasrath Singh*.

38 Cr. L. J. 232 :
166 I. C. 494 : 3 B. R. 172 : 9 R. P. 304.

—————*Appeal—Miscellaneous.*

Case not turning on questions about veracity of witnesses or on finding of doubtful facts,

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See also (i) Admission.

(ii) Cattle Trespass Act, 1871, S. 22.

(iii) Confession.

(iv) Cr. P. C., 1898, Ss. 94, 103, 106, 110, 164, 189, 196-A, 203, 234, 239, 250, 271, 297, 298, 299, 309, 350, 350 (1), 369, 401, 403, Sub-s. (1) (2) 436, 439, 498, 499, 522, 526, 537, 545, 556.

(v) Emergency Powers Ordinance, 1932, S. 4.

(vi) Evidence Act, 1872, Ss. 24, 25, 27, 30, 105, 106, 162.

(vii) Letters Patent, Cl. 15.

((viii) Penal Code, 1860, Ss. 34, 96, 109, 124-A, 147, 193, 300, 302, 326, 379, 401.

(ix) Post mortem examination.

(x) Revision.

(xi) Trade Mark.

(xii) Trial by Jury.

(xiii) Whipping Act, 1909, S. 4 (b).

-----Abatement—Revision against sentence of fine—Applicant's death.

A revisional application against a sentence of fine will not abate by reason of the death of the applicant. Under the provisions of S. 70, Penal Code, the death of an offender does not discharge any property which would, after his death, be legally liable for his debts

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of arguing the case. *Jitendra Nath Gorai v. Emperor.* 37 Cr. L. J. 831 :

163 I. C. 238 : 8 R. C. 730 (1) :
A. I. R. 1936 Cal. 294.

—————*Appeal—Summary dismissal and modification of order.*

It is illegal at the same time to dismiss an appeal summarily and to modify the order appealed from. *Baldeo Singh v. Dheno Goalin.*

37 Cr. L. J. 234 :
160 I. C. 152 (a) : 2 B. R. 172 (1) :
8 R. P. 343 (2) : A. I. R. 1936 Pat. 109.

—————*Appeal—Summary dismissal of appeal—Duty of Court.*

An Appellate Court before dismissing the appeal summarily should give indications that it has actually considered the various aspects of the case before it so that in revision the High Court can know that the appeal was fully considered. The Court should, in short, give its reasons for the conclusions. *Bala Bux v. Emperor.*

39 Cr. L. J. 732 :
176 I. C. 558 : 19 P. L. T. 395 :
4 B. R. 734 : 11 R. P. 85 :
A. I. R. 1938 Pat. 366.

—————*Appeal—Testimony of witnesses not shaken—Duty of Court.*

Where the record does not show that the testimony of witnesses is materially shaken, weight must be attached to the appreciation of the evidence by the Court which actually heard it. *Emperor v. Baharuddin.*

39 Cr. L. J. 281 (b) :
173 I. C. 213 (1) : 46 L. W. 642 :
1937 M. W. N. 1242 : 10 R. M. 536 (1) :
A. I. R. 1938 Mad. 112.

—————*Appeal against conviction—Duty of Appellate Court—Duty of accused.*

In all cases in which the Court sits in criminal appeal, it has to consider the case against the appellant bearing in mind exactly the same principles as must be borne in mind by the Court of trial in the first instance. The appellant does not come here as one who has been convicted and has to satisfy the Court beyond all reasonable doubt that he has been wrongly convicted. If after a conviction before a Subordinate Court, the Court of Appeal comes to the conclusion that there may have been a miscarriage of justice, the Appellate Court cannot allow the conviction to stand. The task of the appellant is, therefore, to bring before the consideration of the Appellate Court such matters as may cast a reasonable doubt of his guilt, having regard to all the circumstances of the case. It is true that a Sessions Judge hears and sees the witnesses, and in many cases, his opinion as to their demeanour or truthfulness may be of the highest value and an Appellate Court should not lightly disregard the conclusion at which for properly expressed reasons he arrived. On the other hand that does not absolve the Appellate Court from an independent duty of scrutinizing the evidence with care and of being satisfied not that a reasonable person might have come to the conclusion which the learned Sessions Judge came to, but that no

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reasonable person could not have come to any other conclusion but that the accused was guilty of the offence charged against him. *Nga Kyaw Hla v. The King.* 39 Cr. L. J. 248 :
173 I. C. 94 : 10 R. Rang. 306 :
A. I. R. 1938 Rang. 45.

—————*Appeal from acquittal—Presumptions in favour of accused.*

In an appeal by Government against an acquittal, the accused starts with a double presumption in his favour. Firstly, there is the rule that it is for the prosecution to make out their case and that until they do so beyond all reasonable doubt, the accused must be presumed to be innocent, and secondly, that the accused having succeeded in securing an acquittal from a Court, a Superior Court will not interfere until the Crown shows conclusively that the inference of guilt is irresistible. *Emperor v. Ghulam Nabi.*

29 Cr. L. J. 301 :
107 I. C. 835 : 7 Pat. 768 :
A. I. R. 1928 Pat. 146.

—————*Appeal from acquittal—Principles.*

The accused in an appeal from an acquittal retains his right of being presumed to be innocent until the charge is fully brought home to him. He has the right which he had in the trial Court of being given the benefit of a reasonable doubt as to his guilt. He must also have the benefit of the opinion of the trial Court upon the credibility of the witnesses whom that Court has the advantage of seeing face to face and judging of their demeanour and he has the right to ask that the acquittal should not be set aside unless the trial Court has taken a perverse view of the evidence and has arrived at unnatural and distorted conclusion. *Emperor v. Chaturbhai Narain Choudhury.*

37 Cr. L. J. 877 :
164 I. C. 74 : 15 Pat. 108 : 17 P. L. T. 302 :
2 B. R. 696 : 9 R. P. 77 :
A. I. R. 1936 Pat. 350.

—————*Approver—Corroboration, nature of—Statement of accused before Magistrate.*

Statement made by the accused himself before a Magistrate is the most powerful form of corroboration of an approver, that one could have provided that the statement definitely commits the accused to have been present at the murder of the deceased. The corroborative evidence tending to connect the accused with the crime described by an approver does not need to be evidence connecting the accused in every detail with the particular crime. Evidence is only required which tends to connect the accused with the crime. *Kushalia v. Emperor.*

39 Cr. L. J. 621 :
175 I. C. 548 : 40 P. L. R. 61 : 10 R. L. 743 :
A. I. R. 1938 Lah. 339.

—————*Approver—Corroboration needed.*

In considering the evidence of the approver, it must be borne in mind that corroborative evidence need not be direct; it may be circumstantial, and what is wanted is evidence sufficient to confirm the evidence of the approver.

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—————*Acquittal—Co-accused.*

The acquittal of an accused does not necessitate the acquittal of his co-accused. *Gulzaman v. Emperor.* 36 Cr. L. J. 942 : 156 I. C. 436 : 7 R. Pesh. 123 : A. I. R. 1935 Pesh. 50.

—————*Acquittal—Effect.*

It is not correct to take into account the fact that an accused person has been tried for an offence when he has been acquitted of the charge. The acquittal clears the conduct of the person and he cannot be judicially considered guilty. *Tor Gul v. Emperor.* 159 I. C. 97 : 8 R. Pesh. 77 : A. I. R. 1935 Pesh. 158.

—————*Acquittal—Effect.*

Per *Biswas, J.*—It is a very dangerous principle to adopt to regard a verdict of not guilty as not fully establishing the innocence of the person to whom it relates. *Goloke Behari Takal v. Emperor.* 39 Cr. L. J. 161 : 173 I. C. 65 : 66 C. L. J. 225 : 42 C. W. N. 129 : 10 R. C. 441 : I. L. R. 1938 1 Cal. 290 : A. I. R. 1938 Cal. 51.

—————*Acquittal, grounds for.*

Where in a criminal trial the prosecution fails to make out the case set up by it, the accused are entitled to an acquittal. *Ram Pershad Tewari v. Emperor.* 26 Cr. L. J. 1589 : 90 I. C. 661 : A. I. R. 1926 Pat. 5.

—————*Acquittal—Interference by High Court is proper when trial Court has acquitted accused owing to wrong view of law.*

Ordinarily the High Court will not interfere with an order of acquittal especially in a case under S. 323, Penal Code, but it will interfere when the trial Magistrate has acquitted the accused owing to a wrong view of the law. *Ram Dayal v. Mata Din.* 38 Cr. L. J. 329 : 166 I. C. 987 (1) : 1937 O. L. R. 82 : 9 R. O. 352 : 1937 O. W. N. 281 : A. I. R. 1937 Oudh 283.

—————*Acquittal—Miscellaneous.*

Accused charged under Ss. 302, 392 read with S. 114, Penal Code—Sessions Judge not convicting accused under S. 392 amounts to acquittal under that section—High Court, cannot alter conviction from S. 302-114, Penal Code to S. 379-511, Penal Code. *Pow Tha U. v. Emperor.* 37 Cr. L. J. 246 : 160 I. C. 210 : 8 R. Rang. 347 : A. I. R. 1935 Rang. 512.

—————*Acquittal—Private application for setting aside.*

Although the Court is competent to entertain an application to set aside an acquittal, it is not the custom of the Court to do so on a consideration of the evidence at the instance of private individuals except in extreme cases. It is open to the applicant, should he so desire, to move the Local Government to appeal against the acquittal on the facts. *In re : Kisni.* 38 Cr. L. J. 719 : 169 I. C. 96 : I. L. R. 1937 Nag. 163 : 9 R. N. 301 : A. I. R. 1937 Nag. 103.

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—————*Acquittal—Setting aside.*

Case under Act not authorising Police to take action—Principles as to setting aside of acquittals should not be applied strictly. *Nanhak Lal v. Baijnath Agarwala.* 37 Cr. L. J. 227 : 160 I. C. 116 : 16 P. L. T. 629 : 2 B. R. 164 : 8 R. P. 334 : A. I. R. 1935 Pat. 474.

—————*Acquittal—Setting aside—Reference under S. 307, Criminal Procedure Code—Sessions Judge finding whole trial illegal—Whether can acquit accused—Order of acquittal set aside.*

In the course of recording his reasons for reference under S. 307, Cr. P. C., it occurred to the Sessions Judge that on account of wrong joinder of charges the whole trial was illegal and he, therefore, acquitted the accused : *Held*, on appeal that as the whole trial was illegal, the Judge could neither convict nor acquit, and that the High Court was bound to set aside orders of acquittal. *Emperor v. Yemanya Kallappa.* 38 Cr. L. J. 571 : 168 I. C. 479 : 39 Bom. L. R. 76 : 9 R. B. 371 : A. I. R. 1937 Bom. 152.

—————*Acquittal—Setting aside.*

The charge framed against the accused was one under S. 427, Penal Code. The Magistrate held a local inquiry without a notice to the parties during the course of the trial, and as a result, came to the conclusion that the offence made out was one under S. 426, Penal Code. After having come to that conclusion he acquitted the accused under S. 247, Cr. P. C., because the complainant did not happen to be present on the date on which he was to pronounce judgment : *Held*, that there were serious illegalities, as a result of which, the order of acquittal was vitiated and it must, therefore, be set aside. *Bankim Behari Sen v. Yusuf Mian.* 40 Cr. L. J. 514 (a) : 180 I. C. 858 (1) : 19 P. L. T. 918 : 5 B. R. 498 : 11 R. P. 549 (1) : A. I. R. 1939 Pat. 186.

—————*Acquittal—Trial for more serious offence—Conviction for lesser offence—Acquittal for serious offence, mode for setting aside.*

Where a man is tried of a more serious offence and is convicted of less serious one, he must be held to have been acquitted of the more serious offence and the acquittal cannot be set aside except upon an appeal filed by the Local Government. *Motiram v. Emperor.* 38 Cr. L. J. 71 : 165 I. C. 734 : 1936 A. L. J. 1083 : 9 R. A. 301 : 1936 A. W. R. 921 : A. I. R. 1936 All. 758.

—————*Acquittal of one accused—Effect.*

Where two accused persons are tried together, the mere fact that one of them has been acquitted, does not entitle the co-accused to an acquittal when the evidence against the latter is far stronger. *Raja Ram Tewari v. Emperor.* 35 Cr. L. J. 185 : 146 I. C. 888 : 10 O. W. N. 835 : 6 R. O. 188 : A. I. R. 1933 Oudh 399.

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a non-existent S. 506 (b), Penal Code, the trial is not vitiated, if the mistake is merely a clerical error copied from the complaint without verification and the accused is acquitted of this charge, and the mistake does not affect the rest of the trial. *Jamna Prasad v. Emperor*.

39 Cr. L. J. 427 (b) :
174 I. C. 523 : 10 R. N. 417 :
A. I. R. 1938 Nag. 325.

—————Accused convicted for cheating—
Return of property to owner.

Where the accused represented to the owner of a jewel that he wanted it for use at a wedding, and upon that representation, obtained the jewel but instead of using it for that purpose, the jewel was pledged and the Magistrate after convicting the accused of cheating ordered the jewel to be returned to the owner; *Held*, the order of the Magistrate could not be said to be wrong. *S. R. Subrama Ayyar v. Damodaram*.

38 Cr. L. J. 690 :
169 I. C. 80 : 1937 M. W. N. 53 :
1937 1 M. L. J. 128 : 9 R. M. 680 :
A. I. R. 1937 Mad. 313.

—————Accused how far bound to disclose
his defence during course of prosecution evidence.

An accused person is not bound to plead in detail until called on to enter on his defence, but he can reserve his defence at his risk, inasmuch as the Crown witnesses must be given an opportunity of denying any allegations against them which form a part of the defence. *Emperor v. Saran*.

28 Cr. L. J. 66 :
99 I. C. 89 : A. I. R. 1927 Sind 104.

—————Accused of poor wits—Lunacy, inquiry
into—Criminal Procedure Code, Ch. XXXIV.

Where a Magistrate finds an accused to be of poor wits and wanting in apprehension of the serious consequences of his acts, he should hold an inquiry under Chap. XXXIV, Cr. P. C., into the question whether the accused is a lunatic either at the time of the trial or was a lunatic when he committed the offence of which he is charged. *In re : Adala Yerrivadu*.

13 Cr. L. J. 24 :
13 I. C. 216 : 11 M. L. T. 24.

—————Accused pleading insanity—Defence—
Duty of Court.

Persons who plead insanity and who had showed abnormality of mind on previous occasions and as regards whom the medical evidence tends in the same direction, cannot be expected to look after their defences as accused in ordinary cases, and it is the duty of the Court to watch their interests with unusual degree of care and circumspection. *Pancha v. Emperor*.

33 Cr. L. J. 714 :
139 I. C. 147 : I. R. 1932 All. 536 :
A. I. R. 1932 All. 233.

—————Accused's refusal to make statement—
Inference.

Persons accused of an offence may not have a very satisfactory explanation to offer

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for the circumstances in which they were found, and they may prefer to say nothing, although the allegations of the prosecution make the case very much more serious than would the mistake, to which they might otherwise have admitted. One cannot, in all cases, draw an adverse inference from the fact that the persons accused refuse to give their account of what happened. *E. Clark v. The King*.

39 Cr. L. J. 187 :
172 I. C. 902 : 10 R. Rang. 298 :
A. I. R. 1937 Rang. 516.

—————Accused refusing to give finger print—
Inference.

If the accused refuses to write or to give his finger impression in Court, an adverse inference may even be drawn against him in respect of the charge on which he is brought to trial. *Emperor v. Ramrao*.

33 Cr. L. J. 666 :
138 I. C. 708 : 56 Bom. 304 :
34 Bom. L. R. 598 : I. R. 1932 Bom. 423 :
A. I. R. 1932 Bom. 406.

—————Accused telling lie—Effect.

The fact that an accused person tells a lie is not sufficient to convict him by itself, nor can it be corroboration of the approver's statement. *Bachcha Babu v. Emperor*.

36 Cr. L. J. 684 :
155 I. C. 369 : 1935 A. W. R. 1 :
7 R. A. 908 : A. I. R. 1935 All. 162.

—————Accused unable to attend Court—Medical
certificate, value of.

Ordinarily a certificate signed by a qualified Doctor stating that an accused person is unable to attend Court, should be considered sufficient unless the Magistrate before whom the certificate is produced has reason to believe that the certificate is forged or not genuine. *Ahmad Din v. Emperor*.

25 Cr. L. J. 638 :
81 I. C. 126 : 1 L. Cas. 8 :
A. I. R. 1925 Lah. 101.

—————Bail—Applicant young and coming from
respectable family—Consideration of.

Although in an application for bail, the argument, that the applicant is of young age and comes from a respectable family, and that it will be unfortunate that he should be associated with bad characters in jail if ultimately it is found that he was not guilty, has some force, yet after all it is an argument, which could be raised in almost every case, because respectable men even older may suffer deterioration from detention in jail. *Dhanpal v. Emperor*.

37 Cr. L. J. 1017 :
164 I. C. 703 (1) : 1936 A. L. J. 961 :
9 R. A. 182 : 1936 A. W. R. 732 :
A. I. R. 1936 All. 656.

—————Bail—Application for bail—Magistrate
consulting superior Magistrate, legality of.

It is one of the elementary principles of administration of justice that a judicial officer, who is called upon to decide a matter in controversy, must exercise his own

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that conspiracy, and in the alternative, upon the same facts, when one of the accused is charged as the principal offender with criminal breach of trust and the others as abettors, the accused should be convicted under one or other of the alternative charges: they should not be convicted under both. *Emperor v. Balumal Hotchand.*

39 Cr. L. J. 890 :
177 I. C. 346 : 11 R. S. 58 :
A. I. R. 1938 Sind 171.

—————*Alternative charge—Offence established but nature doubtful—Conviction for least serious offence, if good.*

If the Magistrate is not able to find for certain that facts exist which justify conviction, he should, of course, acquit the accused, but where the Magistrate has found that facts do exist which establish that the accused person must have committed some offence although it is doubtful exactly what that offence was, a conviction for the least serious offence is perfectly good. *Babu Ram v. Emperor.*

39 Cr. L. J. 152 :
172 I. C. 617 : 1937 A. L. J. 1214 :
10 R. A. 412 : 1937 A. W. R. 885 :
A. I. R. 1937 All. 754.

—————*Appeal.*

In a criminal appeal or revision, the High Court need not pay much attention to the findings of a Civil Court when the finding is one against which the person affected by it could not appeal he having been successful in the suit on other grounds. *Montajuddi v. Emperor.*

34 Cr. L. J. 526 (2) :
143 I. C. 15 : I. R. 1933 Cal. 342 :
A. I. R. 1933 Cal. 481.

—————*Appeal—Admission by counsel of accused, acting upon.*

Though in original trials of criminal cases the requirements of Cr. P. C. have to be properly followed, and in a warrant case, the accused cannot be convicted merely upon the admission of his Pleader, yet there is no rule of law which lays down that a Judge cannot, in appeal, when the question whether further evidence should be taken arises, act upon an admission made by the accused's Pleader. *Bansilal Gangaram Vani v. Emperor.*

29 Cr. L. J. 990 :
112 I. C. 110 : 30 Bom. L. R. 646 :
52 Bom. 686 : A. I. R. 1928 Bom. 241.

—————*Appeal—Affidavit.*

Where allegations of material facts are made in the grounds of appeal, they should be supported by an affidavit filed before the appeal comes on for hearing. *Emperor v. Rashbehari Lal.*

34 Cr. L. J. 83 :
140 I. C. 846 : 13 P. L. T. 440 :
I. R. 1933 Pat. 27 : A. I. R. 1932 Pat. 302.

—————*Appeal against acquittal—Duty of Government—Government should be bound in arguments to grounds raised in memorandum.*

It is not proper in an appeal against an acquittal for Government to attempt to snatch a conviction by making out another

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case against the accused. An appeal against an acquittal is a serious matter. The liberty of a person once acquitted is again to be put in jeopardy, and the cases, in which an appeal against an acquittal is to be made, should be carefully considered in all their aspects before the appeal is filed, and the Government should be bound in arguments and should consider themselves bound in arguments to the grounds raised in the memorandum of appeal. *Emperor v. Pursomal Gerimal.*

39 Cr. L. J. 630 (b) :
175 I. C. 620 : 10 R. S. 298 :
A. I. R. 1938 Sind 108.

—————*Appeal against acquittal—Findings of facts—Interference.*

Appeals by the Crown against acquittals on questions of fact and fact alone are not often encouraged by Appellate Courts: Thus where faced with conflicting facts and conflicting testimony, the Magistrate has acquitted the accused in a riot case, the High Court will not interfere in appeal. *Superintendent and Remembrancer of Legal Affairs, Bengal v. Jatindra Mohan Ray.*

38 Cr. L. J. 638 :
168 I. C. 738 : 9 R. C. 874 :
A. I. R. 1937 Cal. 156.

—————*Appeal against acquittal—Powers of High Court—Distinction between appeal from conviction and appeal from acquittal.*

In dealing with an appeal from an order of acquittal on a matter of fact, the High Court has full power to review at large the evidence upon which the order of acquittal was founded and to reach the conclusion that upon the evidence, the order of acquittal should be reversed. In exercising this power, the High Court will always give proper weight and consideration to such matters as the views of the trial Court as to the credibility of the witnesses, the presumption of innocence in favour of the accused, his right to the benefit of any doubt, and the slowness of an Appellate Court in disturbing a finding of fact by a Judge who had the advantage of seeing the witnesses. Though there is no distinction made in Cr. P. C. between an appeal from an acquittal and appeal from conviction, yet there is a real distinction, apart from the provisions of the Cr. P. C. If the appellant can show that the essential evidence against him is not sufficiently reliable, as the lower Court thought or that all reasonable doubt as to his guilt is not removed thereby, he is bound to succeed on these principles. An Appellant from a judgment of acquittal has, on the contrary, to work in the face of these principles and to satisfy the Court that accused can drive no benefit from them on the facts of the case under appeal. His task is thus naturally more difficult than that of the convict-appellant. *Emperor v. Ghulamali Bahawal.*

39 Cr. L. J. 462 :
174 I. C. 694 : 10 R. S. 261 :
32 S. L. R. 694 : A. I. R. 1938 Sind 67.

—————*Appeal—Alteration of charge—Legality of.*

The accused is also prejudiced by changing

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exception which takes it out of the offence defined even if the accused did not specifically rely on it. *Muhammad Gul v. Fazley Karim*.

31 Cr. L. J. 369 :
122 I. C. 205 : 33 C. W. N. 446 : 56 Cal. 1013 :
A. I. R. 1929 Cal. 346.

—————Benefit of doubt.

A brutal murder committed in daylight in a village is bound to go unpunished where satisfactory evidence is not forthcoming as to who were the guilty parties. *Kchri v. Emperor*.

35 Cr. L. J. 681 (2) :
6 R. O. 406 : 148 I. C. 259 : 11 O. W. N. 77 :
A. I. R. 1934 Oudh 13.

—————Benefit of doubt.

Benefit of doubt should be given to the accused. *Sali Sheikh v. Emperor*.

33 Cr. L. J. 85 :
134 I. C. 1191 : 54 C. L. J. 244 :
I. R. 1932 Cal. 71 : A. I. R. 1931 Cal. 752.

—————Benefit of doubt.

Case against accused depending on direct evidence—Assessors finding guilt not proved—Evidence of witnesses distrusted—Accused, is entitled to benefit of doubt. *Chanchal Singh v. Emperor*.

35 Cr. L. J. 81 :
146 I. C. 391 : 34 P. L. R. 994 :
6 R. L. 221 : A. I. R. 1933 Lah. 714.

—————Benefit of doubt.

Case of rival factions in village—Prosecution witnesses belonging to family of deceased—In absence of corroboration, accused is entitled to benefit of doubt. *Sohan Singh v. Emperor*.

37 Cr. L. J. 83 :
159 I. C. 418 : 8 R. L. 398 :
A. I. R. 1935 Lah. 130.

—————Benefit of doubt.

Evidence not clear and specific—Duty to give benefit of doubt to accused. *Ghauns v. Emperor*.

37 Cr. L. J. 407 :
160 I. C. 561 : 8 R. L. 561.

—————Benefit of doubt.

Great suspicion but nothing inconsistent with accused's story being true—Accused cannot be convicted. *Superintendent and Remembrancer of Legal Affairs, Bengal v. Tarak Nath Chatterjee*.

37 Cr. L. J. 698 :
162 I. C. 910 : 62 Cal. 666 :
8 R. C. 663 : A. I. R. 1935 Cal. 304.

—————Benefit of doubt.

If there is any room for reasonable doubt, the accused must have the benefit of it. *Emperor v. Hub Lal*.

34 Cr. L. J. 858 :
144 I. C. 942 : 10 O. W. N. 323 :
6 R. O. 22 : A. I. R. 1933 Oudh 254.

—————Benefit of doubt.

It is not permissible for the trial Judge to make any surmise in favour of the prosecution. The benefit of any doubt that may arise in the mind of the trial Judge is to be given to the accused. *Binda v. Emperor*.

35 Cr. L. J. 1489 :
152 I. C. 85 : 11 O. W. N. 1224 :
7 R. O. 177 : A. I. R. 1934 Oudh 485.

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—————Benefit of doubt—Judge should not find accused guilty even in alternative of offence in respect of which doubt exists—Duty of Judge—Charge under S. 302, Penal Code—"Knowledge" established—Conviction should be under S. 304, Part 2.

It is the duty of a Judge to make up his mind upon the facts of the case before him, and if there is any real doubt as to the facts, then he must give the accused the benefit of that doubt, not by finding him guilty, even in the alternative, of the offence in respect of which the reasonable doubt exists, but by acquitting him of that offence. In other words, he should remember that the burden lies on the prosecution to prove the guilt of the accused, and if the prosecution fail to prove the intention which is necessary in order that an accused should be convicted of murder, then they fail to prove the accused is guilty of murder, and the accused should not be convicted of murder even in the alternative. If the prosecution can prove the knowledge which is necessary for the conviction of an offence under S. 304, Para. 2, Penal Code, the proper course is to convict the accused of an offence under S. 304, Part 2 and not in the alternative. *Ghulam Hyder Imam Baksh v. Emperor*.

39 Cr. L. J. 460 :
174 I. C. 497 : 31 S. L. R. 480 :
10 R. S. 254 : A. I. R. 1938 Sind 63.

—————Benefit of doubt.

Mistake as to concurrent nature of sentence—Benefit of doubt should be given to accused. *Muhammad Panah v. Emperor*.

35 Cr. L. J. 1170 :
150 I. C. 917 : 7 R. S. 33 :
A. I. R. 1934 Sind 78 (2).

—————Benefit of doubt.

Once the Court has any doubt about the truth of the version even as first recorded in the first information report, then the accused is entitled to the benefit of that doubt. *Romeshwar Singh v. Emperor*.

41 Cr. L. J. 114 :
185 I. C. 162 : 6 B. R. 110 :
12 R. P. 339 : A. I. R. 1940 Pat. 365.

—————Benefit of doubt.

Prosecution witnesses not implicating one of the accused in their examination before Magistrate—Trial by the same Magistrate—Witnesses implicating the accused in trial—Accused held entitled to benefit of doubt. *Ghulam Ahmad v. Emperor*.

36 Cr. L. J. 32 :
152 I. C. 153 : A. I. R. 1934 Lah. 211 (1).

—————Benefit of doubt.

When Crown case is not satisfactory and *alibi* evidence is better than that usually put forward, accused is entitled to benefit of doubt. *Nga Tin Han v. Emperor*.

35 Cr. L. J. 434 :
147 I. C. 440 : 6 R. Rang. 146 :
A. I. R. 1933 Rang. 423.

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but upon question of inference from facts—High Court in appeal can draw necessary inference. *Benoyendra Chandra Pandey v. Emperor*.

37 Cr. L. J. 394 :
161 I. C. 74 : 40 C. W. N. 432 :
63 Cal. 929 : 8 R. C. 472 :
[A. I. R. 1936 Cal. 73.]

—————*Appeal—New plea, competency of.*

The objection that the whole trial is vitiated by an alleged illegality or an error in the trial in the lower Court, can be raised at the time of the hearing of the appeal even though it was not specifically raised in the lower Courts or in the memorandum of appeal. *Ram Lotan v. Emperor*.

32 Cr. L. J. 91 :
128 I. C. 209 : 7 O. W. N. 972 :
I. R. 1931 Oudh 17 : 6 Luck. 386 :
A. I. R. 1931 Oudh 113.

—————*Appeal—Order under S. 476, Criminal Procedure Code by Presidency Small Cause Court—Forum of appeal.*

An appeal against an order of the Chief Judge of the Presidency Court of Small Causes, under S. 476, Cr. P. C., directing that a complaint under Ss. 193 and 196 of the Penal Code be filed, lies only to the High Court in its appellate jurisdiction. *Kalyanji v. Ram Deen Lala*.

26 Cr. L. J. 801 :
86 I. C. 449 : 48 M. L. J. 290 :
21 L. W. 664 : 48 Mad. 395 :
A. I. R. 1925 Mad. 609.

—————*Appeal—Procedure.*

The accused are not entitled in law to re-open facts not only impliedly accepted in the written statement but expressly admitted before the Sessions Judge on behalf of the accused. *Local Government v. Baliram*.

37 Cr. L. J. 270 :
160 I. C. 255 : 18 N. L. J. 49 :
8 R. N. 169.

—————*Appeal—Procedure—Weight of evidence—Credibility of witnesses—Interference by Appellate Court.*

Questions of fact may be decided by a trial Court by drawing inferences from proved or admitted facts or on the credibility of witnesses alone. In the former case, an Appellate Court is in as good a position as the Trial Court to arrive at a finding. In the latter case, where the trial Court's finding is based on the demeanour of the witnesses in the witness-box and the impression which that demeanour created on the mind of the Judge who had seen and heard them, the finding should carry considerable weight and should not lightly be disregarded by an Appellate Court. Where, however, the finding of the trial Court is not based on the demeanour of the witnesses and the impressions derived therefrom, a Court of Appeal is free to come to its own conclusions as to the credibility of a particular witness. Where in a criminal trial the question is one of the credibility of the evidence, and the witnesses, who have told a consistent and probable story, have been believed by the Sessions Judge and the assessors, who had the advantage of hearing their evidence, it is not

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right for an Appellate Court to set aside the decision of the Court of Trial on conjectural grounds of what might have happened in the face of the sworn testimony of what actually did happen. In a criminal trial, the Court should always insist upon having before it the evidence relating to the circumstances under which the accused persons were arrested. *Silla Bakhsh Singh v. Emperor*.

27 Cr. L. J. 529 :
93 I. C. 1025 : 2 O. W. N. 931 :
A. I. R. 1926 Oudh 120.

—————*Appeal—Right of accused.*

It is desirable in criminal cases, and particularly when the accused is in jail that his Counsel should be allowed to inspect the record free of charge and to take copies, if necessary. *Umra v. Emperor*.

32 Cr. L. J. 258 :
129 I. C. 197 : 32 P. L. R. 104 :
I. R. 1931 Lah. 133 :
A. I. R. 1930 Lah. 1024.

—————*Appeal—Stay of proceedings.*

An order to stay criminal proceedings cannot be passed in an appeal under S. 423 from a complaint which has been actually made by a subordinate revenue authority to a competent Magistrate and which is being investigated by the latter. *Jagannath Acharya Goswami v. A. Rajagopalachari*.

33 Cr. L. J. 147 :
135 I. C. 513 : 12 P. L. T. 671 :
I. R. 1932 Pat. 33 :
A. I. R. 1931 Pat. 411.

—————*Appeal—Summary dismissal—Judgments, contents of.*

Where it does not appear from the order of the Sessions Judge dismissing the appeal summarily, that he examined the record of the case or that he tested the arguments on question of fact by examination of the evidence actually given by the witnesses, the order is illegal. *Chhathu Gope v. Emperor*.

39 Cr. L. J. 380 :
173 I. C. 751 (1) : 19 P. L. T. 28 :
10 R. P. 444 : 4 B. R. 331 :
A. I. R. 1938 Pat. 176.

—————*Appeal—Summary dismissal—Judgment dealing in detail with evidence and points raised—Non-issuing of notice to Crown, if a grievance.*

Where on an appeal the Sessions Judge appoints a day for hearing the Pleader of the appellant and after hearing him dismisses the appeal summarily, but his judgment is a complete one dealing with the evidence in detail and with the points raised on behalf of the appellants, no grievance can be made of the fact that he did not issue notice to the Crown. *Sonu Kurmi v. Emperor*.

39 Cr. L. J. 950 :
177 I. C. 697 : 11 R. P. 176 :
5 B. R. 12 : A. I. R. 1939 Pat. 24.

—————*Appeal—Summary dismissal—Pleader's right to argue.*

Before dismissing the appeal summarily, the Court ought to give the Pleader an opportunity

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convincing. In the Sessions Court, witnesses to prove threats of the accused to the deceased—a point of vital importance—were not examined but the Judge convicted the accused of murder: *Held*, that the circumstantial evidence as it was presented to the Court, was not such as to make it clear beyond doubt that the accused murdered the deceased. *Emperor v. Hardwar Sah.* 37 Cr. L. J. 1061:

164 I. C. 1079 : 2 B. R. 791 :
8 R. P. 145 : A. I. R. 1936 Pat. 486.

—————Benefit of doubt—Plea of alibi.

In the trial for an offence under S. 147, Penal Code, the accused although he failed to establish his plea of *alibi* but had put it forward at an early stage of the investigation and from the evidence his presence at the affray appeared somewhat doubtful: *Held*, that he was entitled to the benefit of the doubt which would not have arisen if the Police whom the accused had cited as witnesses had given their evidence frankly. *Pindi Das v. Emperor.* 37 Cr. L. J. 748:

163 I. C. 135 : 38 P. L. R. 680 :
8 R. L. 1022 : A. I. R. 1936 Lah. 473.

—————Burden of proof.

Accused putting on record statement of his criminal activities and not repudiating it nor offering reasonable explanation. Crown is not bound to establish writer of admissions of guilt. *Surjya Kumar Sen v. Emperor.* (F. B.)

35 Cr. L. J. 334 :
147 I. C. 32 : 6 R. C. 304 :
A. I. R. 1934 Cal. 221.

—————Burden of proof.

Before an accused person is called upon to make any answer to the case for the Crown, there must be some credible account of the circumstances before the Court. Where the only facts which have been proved beyond question are that the deceased was watering his land when he was attacked by two members of the prosecution party who at least felled him to the ground, that very soon afterwards there were three, possibly four members of the prosecution on the spot, and also four or five members of the accused's party, and that they proceeded to fight, the members of both parties were injured, on the prosecution side, there were at least one spear and one *takwa*; and on the accused's side, one spear and some other sharp weapons; with only this amount of evidence before the Court, it would be impossible to come to any definite conclusion on the matter. Apart from the plea of self-defence, therefore, it would be difficult to convict the accused and impossible to apply S. 149, Penal Code. *Ghulam Rasul v. Emperor.* 39 Cr. L. J. 7:

171 I. C. 906 : 10 R. L. 247 :
40 P. L. R. 17.

—————Burden of proof.

In a criminal case the onus is on the prosecution to prove beyond reasonable doubt the guilt of the accused and it never shifts to the

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accused. *Major Roberts Stuart Wanchope v. Emperor.* 35 Cr. L. J. 156:

146 I. C. 767 : 58 C. L. J. 405 :
38 C. W. N. 187 : 6 R. C. 257 :
A. I. R. 1933 Cal. 800.

—————Burden of proof.

In a criminal trial it is the duty of the prosecution to establish all the facts essential for making out the offence charged against the accused. *Lachman Singh v. Emperor.*

34 Cr. L. J. 614 :
143 I. C. 686 : 10 O. W. N. 553 :
I. R. 1933 Oudh 189 : A. I. R. 1933 Oudh 281.

—————Burden of proof.

In all criminal cases the innocence of the accused person must be presumed; and the burden lies upon the prosecution of completely rebutting that presumption. If after the consideration of the whole evidence any doubt is felt by the Court as to the guilt of the accused, he is entitled to the benefit of that doubt. *Deputy Legal Remembrancer, Behar and Orissa v. Matukdhari Singh.* 17 Cr. L. J. 9:

32 I. C. 137 : 20 C. W. N. 128 :
A. I. R. 1917 Cal. 687.

—————Burden of proof.

In criminal cases onus of proof never shifts to the accused. *Benoyendra Chandra Pandey v. Emperor.*

37 Cr. L. J. 394 :
161 I. C. 74 : 40 C. W. N. 432 :
63 Cal. 929 : 8 R. C. 472 :
A. I. R. 1936 Cal. 73.

—————Burden of proof.

In criminal cases the onus remains always on the prosecution to prove its case in its entirety and it does not change merely because the prosecution has succeeded in proving one part of its case. *Bolai Chandra Kheru v. Bishnu Bejoy Srimani.* 35 Cr. L. J. 715:

148 I. C. 559 : 38 C. W. N. 474 :
6 R. C. 467 : A. I. R. 1934 Cal. 425.

—————Burden of proof.

In criminal trials the burden of proof is always on the prosecution and the weakness of the defence and the inability of the accused to prove their innocence are no grounds for convicting them if the prosecution evidence is not strong enough and sufficient to justify their conviction. *Har Dayal Singh v. Emperor.*

34 Cr. L. J. 935 :
145 I. C. 359 : 10 O. W. N. 506 :
8 Luck. 397 : 6 R. O. 43 :
A. I. R. 1933 Oudh 226.

—————Burden of proof.

In criminal trials the onus of proof never shifts to the accused but always rests on the prosecution. *Bhutnath Mondal v. Emperor.*

33 Cr. L. J. 40 :
134 I. C. 1071 (b) : 35 C. W. N. 291 :
I. R. 1931 Cal. 31 (2) : A. I. R. 1931 Cal. 617.

—————Burden of proof.

In criminal trials the prosecution must prove their case, apart from any statement made by

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ver when he speaks as to the identity of each criminal. *Khadim v. Emperor*.

38 Cr. L. J. 808 :
169 I. C. 716 : 31 S. L. R. 82 : 10 R. S. 17 :
A. I. R. 1937 Sind 162.

—————Approver—Corroboratian required.

Where the approver's statement in his general aspect is abundantly corroborated, and there is no doubt of the truth of the story told in it, it alone is sufficient evidence for his conviction where he forfeits his pardon. *Azis Begum v. Emperor*.

39 Cr. L. J. 16 :
171 I. C. 954 : 39 P. L. R. 394 : 10 R. L. 254 :
A. I. R. 1937 Lah. 689.

—————Approver—Detention in Police custody.

An approver, so long as he has not forfeited his pardon, must be regarded as a witness for the purposes of the case and cannot be detained in Police custody. *In the matter of Khairati Ram*.

32 Cr. L. J. 913 :
132 I. C. 519 : 12 Lah. 635 :
32 P. L. R. 493 : I. R. 1931 Lah. 615 :
A. I. R. 1931 Lah. 476.

—————Approver—Evidence, value of.

In order to base conviction on the evidence of an approver, it is necessary that his evidence should be corroborated in material particulars which connect the accused with the commission of the crime. Merely because the approver tells a probable story, it cannot be said to be corroborated nor can it be said to be corroborated by mere evidence of motive. *In re: Talayari Thota Baliya Maddi Subbanna*.

40 Cr. L. J. 801 :
183 I. C. 564 : 1939 M. W. N. 316 :
49 L. W. 520 : 12 R. M. 311 :
A. I. R. 1939 Mad. 469.

—————Approver's evidence, value of.

Approver's disclosure to Police—Statements of witnesses taken two months after arrest of approver—Their testimony should be discredited. *Mangal Singh v. Emperor*.

35 Cr. L. J. 1046 :
150 I. C. 21 : 36 P. L. R. 121 :
6 R. L. 829 : A. I. R. 1934 Lah. 346.

—————Approver—Resiling from statement in Sessions Court—Conviction on his own confession—Corroboratian, whether required.

An approver resiled from his statement made in the Committing Magistrate's Court when he was in the Sessions Court and, therefore, he was sent up for trial. He himself had produced from his house ornaments which were stained with human blood and were proved to be stolen from the house of the deceased: *Held*, that the statement must be treated as a confession, and on the confession alone, conviction might follow without its corroboration: *Held*, however, that there was sufficient corroboration of his confession for conviction. *Puran v. Emperor*.

39 Cr. L. J. 335 (a) :
173 I. C. 484 : 39 P. L. R. 930 :
10 R. L. 449 : A. I. R. 1938 Lah. 135.

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—————Arguments—Accused, right of, to be heard.

The Cr. P. C. does not provide for the right of an accused person to be heard in arguments at the conclusion of the case, but it is the invariable practice of all Magistrates' Courts to hear the accused at the end of the case and this practice ought to be followed. *Malik v. Emperor*.

26 Cr. L. J. 810 :
86 I. C. 458 : A. I. R. 1925 All. 282.

—————Arguments—Duty of Court.

A Court is bound to hear arguments, if offered, in every criminal trial or proceeding. *Baij Nath Sah v. Emperor*.

25 Cr. L. J. 1380 :
83 I. C. 340 :
27 O. C. 323 : A. I. R. 1925 Oudh 288.

—————Arguments—Duty of Court to hear.

In a criminal trial at the conclusion of the evidence, the accused has a right to have his arguments heard through his pleader. The denial by a Magistrate of the right cannot be regarded as a mere irregularity but vitiates the conviction. *In re: Mulhukaruppa Servai*.

29 Cr. L. J. 1082 :
112 I. C. 588 : 28 L. W. 656 :
55 M. L. J. 626 : A. I. R. 1928 Mad. 1234.

—————Arguments—Receiving notes of arguments.

The practice of receiving from the Pleaders of the parties notes of arguments after a case has been heard, is most reprehensible, and must be discontinued. *Jogendra Nath Mukherjee v. Rabindra Nath Chatterjee*.

37 Cr. L. J. 1089 :
165 I. C. 150 : 40 C. W. N. 863 :
64 C. L. J. 7 : 9 R. C. 348.

—————Assessors—Omission to record opinions of—Effect.

Omission to record the opinions of assessors with their reasons would vitiate the conviction if such omission appears to be a material omission. *Bhikhari Singh v. Emperor*.

36 Cr. L. J. 17 :
152 I. C. 282 : 15 P. L. T. 523 :
7 R. P. 161 : A. I. R. 1934 Pat. 561.

—————Assessors—Value of their opinion.

The opinion of the assessors is, of course, entitled to due consideration especially of intelligent assessors and especially when they consider a man guilty, for it is so seldom that that happens in capital cases. But when all is said and done, they have not the legal training which will enable them to distinguish suspicion from proof and where the evidence against the accused does not travel beyond suspicion, their conviction cannot be upheld. *Shaligram v. Emperor*.

39 Cr. L. J. 105 :
172 I. C. 213 : 10 R. N. 185 :
A. I. R. 1938 Nag. 52.

—————Accused charged under non-existent section of Penal Code—Clerical error—Effect.

Even though the accused is charged under

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so by relying on any of the facts brought out in the case, even when they do not appear in his own statement or defence evidence. Where the Court finds on the prosecution evidence itself that the accused is entitled to the benefit of one of the exceptions to S. 300, it should give the accused that benefit though he may not have relied on the exception. Consequently, where in a prosecution for defamation, the occasion of defamatory statements is found to be a privileged one, there should be no conviction even if this exception is not expressly relied on by the accused. *Bhaddu v. Emperor*. 37 Cr. L. J. 1035 : 164 I. C. 928 : 9 R. N. 43 : I. L. R. 1936 Nag. 85 : A. I. R. 1936 Nag. 119.

—————Burden of proof—Explosion, case of.

Where the cause of explosion is alleged to be by use of fire, it is not for the defence to prove that there was some cause for explosion other than petrol. *Alexander Kennedy v. The King*. 38 Cr. L. J. 503 : 168 I. C. 67 : 1937 M. W. N. 385 : 9 R. P. C. 225 : 46 L. W. 125 : 42 C. W. N. 1 P. C. : A. I. R. 1937 P. C. 108.

—————Burden of proof—Failure of accused to explain suspicious circumstances—Prosecution, if can infer guilt.

Though in a criminal case the burden of proof to prove the guilt is always on the prosecution and never shifts to the accused, it is open to the prosecution to rely on an inference from the failure of the accused to give an explanation of acts, suspicious in themselves, with which he is connected. *Bapurao v. Emperor*. 39 Cr. L. J. 349 : 173 I. C. 639 : I. L. R. 1937 Nag. 38 : 10 R. N. 316 : A. I. R. 1936 Nag. 160.

—————Burden of proof—Inference of guilt, when justifiable.

The burden of proving the guilt of the accused lies entirely on the prosecution, and the law does not cast on the accused any burden of proving his innocence. The proof of the case against the accused does not depend for its support upon the absence or want of any explanation on the part of the accused but upon the positive affirmative evidence of his guilt as given by the Crown. In order to justify the inference of guilt, the inculpatory facts must be incompatible with the innocence of the accused upon any other reasonable hypothesis than that of his guilt; the proof of guilt thus dispelling all reasonable doubts. *Shevanti v. Emperor*. 29 Cr. L. J. 561 : 109 I. C. 497 : A. I. R. 1928 Nag. 257.

—————Burden of proof—Murder case—Burden of proof as to intention or knowledge—*Maxim actus non facit reum nisi mens sit rea*, applicability in India.

In British India the law does not regard, that every case of homicide is *prima facie* murder. The burden of proving a certain intent or knowledge—that which in English Law is called malice—is thrown on the prosecution by

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the statutory definition of culpable homicide and murder, and it is not only in cases of murder that this burden of proof is thrown on the prosecution by statute, that burden is imposed in every offence coming within the ambit of the Penal Code. The maxim *actus non facit reum nisi mens sit rea*, a source of fruitful discussion in Criminal Courts in England, has no application in India, as the statutory definitions of the offences in the Code in each case expressly contain a proposition as to the state of mind of the accused. *Daljit Singh v. Emperor*. 39 Cr. L. J. 92 : 172 I. C. 204 : 10 R. N. 177 : A. I. R. 1937 Nag. 274.

—————Burden of proof—Onus to prove guilt—General rule that it always lies on prosecution is subject to exception in S. 105, Evidence Act.

The general rule that the onus always lies on the prosecution to prove the guilt is subject to statutory exception contained in S. 105, Evidence Act. The prosecution cannot claim a verdict of guilty because the accused puts forward a false defence. The guilt must be determined on the strength of the prosecution evidence alone, but where the accused puts forward a plea that he did commit the offence charged but in circumstances that excused or mitigated, the prosecution in such cases can show that no such circumstances exist and so the claim is averted. *Bhag Singh Pakhar Singh v. Emperor*. 41 Cr. L. J. 447 : 187 I. C. 15 : 12 R. L. 463 : A. I. R. 1940 Lah. 54.

—————Burden of proof—Prosecution, duty of.

In a criminal trial the burden of proof is always on the prosecution, and it is only when a good *prima facie* case has been made out against the accused sufficient to justify his conviction of that offence, that the burden shifts upon the accused to prove that he is not guilty of any such offence. *Nannhun v. Emperor*. 37 Cr. L. J. 1130 : 165 I. C. 458 : 1936 O. W. N. 1013 : 1936 O. L. R. 650 : 9 R. O. 213.

—————Burden of proof—Right of accused.

If the Court either is satisfied from the examination of the accused and the evidence adduced by him, or from circumstances appearing from the prosecution evidence that the existence of circumstances bringing the case within the exception or exceptions pleaded has been proved or upon a review of all the evidence is left in reasonable doubt whether such circumstances do exist or not, the accused, in the case of a general exception, is entitled to be acquitted, or in the case of a special exception, can be convicted only of the minor offence. *Emperor v. U Damapala*. (F. B.). 38 Cr. L. J. 524 : 168 I. C. 193 : 14 Rang. 666 : 9 R. Rang. 340 : A. I. R. 1937 Rang. 83.

—————Burden of proof—Sentence—Quashing of sentence—Merits to be gone into—Accused denying in toto acts alleged—Conviction, legality of.

When the accused denies in toto the act or acts alleged, and it appears from the evidence

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independent judgment, after hearing the parties concerned. It is the privilege as well as the duty of the presiding officer of a Court of Justice to form his own opinion on the point before him and to act accordingly. He ought not, as if it were, to mortgage his mind to another officer and to seek instructions from the latter, whenever he is called upon to decide a difficult or important matter. A Magistrate who does so, abdicates his proper functions and discloses a lamentable lack of sense of responsibility. *Chiranjilal v. Emperor*.

29 Cr. L. J. 815 :
111 I. C. 319 : 9 Lah. 537 :
A. I. R. 1928 Lah. 1.

———*Bail—Concurrent jurisdiction—Lower Court to be moved first—Exception.*

Although there is no hard and fast rule, it is desirable that the ordinary practice should certainly be that the lower Court should first be moved and this is particularly desirable in a bail application, where the appropriate Court to deal with the matter is the Court which is going to try the case and where an expression of opinion by a superior Court is likely to prejudice the trial in the lower Court. But where the lower Court's judgment is likely to be affected by some remarks made by the superior Court during the proceedings in that case, then the superior Court can be moved but only as an exception to the general rule. *Mohi-ud-Din Lal Badshah v. Emperor*.

40 Cr. L. J. 127 :
178 I. C. 632 (2) : 40 P. L. R. 716 :
11 R. L. 482 : A. I. R. 1938 Lah. 762.

———*Bail—Conviction for attempting to shoot—Grant of bail.*

A man who is convicted of an attempt to shoot another, cannot safely be released on bail until it is established that he is not guilty or, at any rate, that his conviction is not justifiable. A man is kept in prison not only to prevent his absconding but if there is reason to believe that he has committed crimes of certain type to prevent him from being a possible danger to the community. *Dhanpal v. Emperor*.

37 Cr. L. J. 1017 :
164 I. C. 703 (1) : 1936 A. L. J. 961 :
9 R. A. 182 : 1936 A. W. R. 732 :
A. I. R. 1936 All. 656.

———*Bail—Granting of—Power to accept sureties, if can be delegated to another Magistrate.*

The granting of bail is a judicial and not a ministerial one and no judicial function which can only be performed by Courts having seisin of the proceedings, can be delegated to another in the absence of an express provision of law, or of some rule having the force of law. It follows that the Magistrate cannot delegate this responsibility of granting bail to another Magistrate unless the law expressly empowers him to do so. *Emperor v. Banarsidas*.

38 Cr. L. J. 633 :
168 I. C. 876 : I. L. R. 1937 Nag. 168 :
9 R. N. 275.

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———*Bail—Points to be considered—Status of accused, if should be taken into account—Bail, if can be granted as of right.*

The main points for consideration in the application for bail are :—(1) Whether there is any likelihood of the accused absconding ; and (2) whether there is any likelihood of the accused tampering with the evidence by threatening the complainant. The Courts must see that the Crown does not get a free hand and the accused are not locked up or are hampered in their defence simply on the ground that it is alleged or feared that they will tamper with the evidence. The person accused under S. 302-115, Penal Code, are not entitled to bail as a matter of right. *King-Emperor v. Abhairaj Kunwar*.

40 Cr. L. J. 841 :
183 I. C. 713 : 1939 O. W. N. 791 :
1939 O. L. R. 548 : 12 R. O. 54 :
A. I. R. 1939 Oudh 8.

———*Bail—Practice—Order of release on bail, whether must be communicated to Sub-Inspector, through Superintendent of Police—Sub-Inspector, if can disobey such order—Criminal Procedure Code, Ss. 167, 496.*

The Police Regulations are a volume of orders by the Local Government and there is no paragraph in the Cr. P. C., giving the Local Government power to issue orders for carrying out the provisions of the Cr. P. C. The Code gives him authority to order release on bail and it is certainly not for a Sub-Inspector to refuse to carry out such an order on the mere technical quibble that he thought that such an order should be communicated to him through the Superintendent of Police. There is nothing in S. 167, Cr. P. C., which indicates that the order either of detention or of release should be communicated through the Superintendent of Police. Under S. 496, Cr. P. C., where a person is accused of non-bailable offence, the Court may grant bail and there is nothing in that section which provides that the order for release shall be communicated through the Superintendent of Police. *Muhammad Yakub v. Emperor*.

39 Cr. L. J. 471 :
177 I. C. 867 : 1938 A. L. J. 782 :
11 R. A. 235 :
1938 A. W. R. 471 :
A. I. R. 1938 All. 534.

———*Bench of Magistrates, trial by.*

In a Bench of Magistrates requiring the presence of two members to form a *quorum*, a trial was begun by four Magistrates, A, B, C and D. On an objection taken by the accused that A and B were related to the complainant, the District Magistrate ordered that the trial should be concluded by C and D. This was done and the accused was convicted : *Held*, that the trial was legal; *Balbhadri Bani v. Tribhuban Nath*.

6 Cr. L. J. 43 :
3 N. L. R. 67.

———*Benefit of—Exceptions—Duty of Court.*

Unlike a civil suit in which the Court is confined more or less to the pleading in a criminal case, before a conviction is recorded, it always has to be seen whether the proved or admitted facts bring the case within an

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—————*Charge — Facts constituting various offences — Procedure.*

Where the same facts will constitute different offences, the indictment may, and ought to charge each such offence so as to meet every possible view of the case. But when only one offence has been committed, the punishment must not exceed that applicable to the graver offence. *Khemji Khetsi v. Emperor.*

36 Cr. L. J. 1037 :
156 I. C. 972 : 8 R. S. 2.

—————*Charge, form of.*

It is desirable that in the charge so much of the definition of the offence should be stated as to give the accused clear notice of the exact matter. *Ditto v. Emperor.*

36 Cr. L. J. 504 :
154 I. C. 138 : 28 S. L. R. 295 :
7 R. S. 154 : A. I. R. 1935 Sind 23.

—————*Charges, number of — Withdrawal, when proper.*

It is better to have too many charges than to have too few, and once a charge has been framed, it should not be dropped until the conclusion of the trial, unless on the face of it, it is wholly inappropriate or the trial is open to attack on the ground of misjoinder or multifariousness of charges. *Kunja Subudhi v. Emperor.*

30 Cr. L. J. 675 :
116 I. C. 770 : 8 Pat. 289 :
I. R. 1929 Pat. 338 : 10 P. L. T. 549 :
A. I. R. 1929 Pat. 275.

—————*Charge — Accused summoned for criminal trespass but convicted also of assault and mischief — Legality.*

It is open to the trying Magistrate to convict the accused of the offences of assault and mischief, although they had been summoned to answer a charge of criminal trespass only. *Dasarath Rai v. Emperor.*

10 Cr. L. J. 557 :
4 I. C. 352 : 36 Cal. 869.

—————*Charge for substantive offence — Conviction for abetment, legality of.*

An accused can be convicted for abetment on a charge for the substantive offence. *Emperor v. Ghulam Nabi.*

29 Cr. L. J. 301 :
107 I. C. 835 : 6 Pat. 768 :
A. I. R. 1928 Pat. 146.

—————*Charge not expressly formulated — Conviction.*

A conviction upon a charge which was not expressly formulated is not improper where the facts on the charge and on which evidence was given are the same as the facts upon which the accused could be convicted of the substantive offence, provided that the accused is put to no disadvantage and would have had to adduce no further evidence. *Emperor v. Rashichori Lal.*

34 Cr. L. J. 83 :
140 I. C. 846 : 13 P. L. T. 440 :
I. R. 1933 Pat. 27 :
A. I. R. 1932 Pat. 302.

—————*Charge of homicide — Intention.*

The question of intention or knowledge

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should never be mentioned in a charge of homicide. *Nga Tha Aye v. Emperor.*

36 Cr. L. J. 1380 :
158 I. C. 441 : 8 R. Rang. 169 :
A. I. R. 1935 Rang. 299.

—————*Charge — Risk of misjoinder — Separate trial, necessity of — Acquittal because of technical difficulty.*

If there is any risk of a misjoinder of charges by the two accused being tried together, then their separate trials should be ordered; but it is wrong to acquit an accused against whom a *prima facie* case had been made out by the prosecution evidence merely because of this technical difficulty. *Nga Po Htwe v. Emperor.*

38 Cr. L. J. 183 :
166 I. C. 419 : 9 R. Rang. 253 :
A. I. R. 1936 Rang. 474.

—————*Charge — Stress not laid on essential elements — Prejudice to accused.*

Although the wording of the body of the charge may cover an offence under S. 228, still the accused might be prejudiced when no stress is laid on an essential element in a charge under S. 228, Penal Code, namely, that the Court must be sitting in a judicial proceeding at the time when the insult is offered. *Vithal v. Emperor.*

38 Cr. L. J. 380 :
167 I. C. 378 : 9 R. N. 181 :
I. L. R. 1937 Nag. 145 :
A. I. R. 1936 Nag. 275.

—————*Charge framed — Facts disclosing aggravated offence — Duty of Court.*

In a criminal case, quite apart from the charge, whenever facts are proved constituting an aggravated offence, that is the offence which must be regarded as being tried. It is not as though the analogy of a civil trial were applicable and the Magistrate is restricted to the facts set forth in the issues. In a criminal trial, he must be ever ready as the facts are disclosed either to alter the charge under S. 227 or to refer the case under S. 346, Cr. P. C. *Kattuva Roster v. Suppan Asari.*

28 Cr. L. J. 164 :
99 I. C. 596 : 25 L. W. 86 :
A. I. R. 1927 Mad. 307.

—————*Charge for an offence triable by Sessions Court — Magistrate's duty to commit.*

Where a person is charged with an offence triable exclusively by a Court of Session and there is some evidence to support the story of the complainant, it is the duty of the Magistrate to commit the accused for trial by that Court, and not to convict him of other offences immediately connected with that offence and which ought to have been tried with it. *Moze Ali v. Emperor.*

21 Cr. L. J. 10 :
54 I. C. 58 : 30 C. L. J. 132 :
23 C. W. N. 1031 : A. I. R. 1920 Cal. 40.

—————*Chemical Examiner, evidence of — Duty of Court.*

It is always open to the Courts to call the Chemical Examiner in the interests of justice. He does not, as a rule, give any opinion as to the cause of death, but merely reports

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———Benefit of doubt.

When prosecution evidence is unsatisfactory and doubtful, benefit should be given to accused. *Ujja v. Emperor.* 35 Cr. L. J. 299 : 147 I. C. 111 : 10 O. W. N. 976 : 6 R. O. 220 : A. I. R. 1933 Oudh 457.

———Benefit of doubt.

When there is a reasonable doubt, the benefit of it must be given to the prisoner. *Sali Sheikh v. Emperor.* 33 Cr. L. J. 85 : 134 I. C. 1191 : 54 C. L. J. 244 : I. R. 1932 Cal. 71 : A. I. R. 1931 Cal. 752.

———Benefit of doubt.

Where different constructions can be placed on an incident consistent with the evidence in the case, it is right to put the construction that is most favourable to the accused. *Hazari v. Emperor.*

32 Cr. L. J. 851 : 132 I. C. 270 : 8 O. W. N. 685 : I. R. 1931 Oudh 270 : A. I. R. 1931 Oudh 385.

———Benefit of doubt.

Where it appeared that out of spite and because of old-standing enmity which existed between the deceased and the accused, the latter were falsely implicated in a murder, and for this reason, two persons named in the first information report were not prepared to support the prosecution story: Held, that the charge against the accused was not proved beyond all reasonable doubt and they could be given the benefit of the doubt and acquitted. *Mulaim Singh v. Emperor.*

37 Cr. L. J. 986 : 164 I. C. 422 : 9 R. O. 70 : 1936 O. W. N. 838 : 1936 O. L. R. 449.

———Benefit of doubt.

Where it is doubtful whether the accused was at all present at the scene and there are discrepancies in prosecution evidence, benefit of doubt must be given to the accused. *Mohammad, son of Shadbad v. Emperor.*

A. I. R. 1923 Lah. 195.

———Benefit of doubt.

Where it is shown that the guilt of the accused is so probable that a prudent man ought to act upon the supposition that he is guilty, the accused should not be given merely the benefit of the doubt but must be acquitted as absolutely innocent. *Emperor v. Nogendra Nath Sen Gupta.*

16 Cr. L. J. 576 : 30 I. C. 128 : 21 C. L. J. 396 : 19 C. W. N. 923 : A. I. R. 1916 Cal. 524.

———Benefit of doubt.

Where the prosecution and the defence witnesses, between whom there is not much to choose, make two divergent statements about one and the same incident, the matter

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becomes doubtful and the accused is entitled to the benefit of doubt. *Kalu v. Emperor.*

29 Cr. L. J. 208 : 106 I. C. 800.

———Benefit of doubt.

Where there is no evidence to show any particular part taken by the accused in a case and it is possible that they are named only with a view to rope in all the members of a family, the accused should be given the benefit of the doubt. *Ram Sagar v. Emperor.*

34 Cr. L. J. 609 : 143 I. C. 656 : 10 O. W. N. 389 : I. R. 1933 Oudh 188 : A. I. R. 1933 Oudh 123.

———Benefit of doubt—Appellate Court, duty of.

Where there is a doubt, the accused person must receive the benefit of the doubt and not the lower Court's finding. *Gur Charan v. Emperor.*

28 Cr. L. J. 688 : 103 I. C. 416 : 1 Luck. Cas. 190 : A. I. R. 1927 Oudh 611.

———Benefit of doubt—Burden of proof.

In all criminal cases the innocence of the accused person must be presumed; and the burden lies upon the prosecution of completely rebutting that presumption. If after the consideration of the whole evidence any doubt is felt by the Court as to the guilt of the accused, he is entitled to the benefit of that doubt. *Deputy Legal Remembrancer, Bihar and Orissa v. Matukdhari Singh.*

17 Cr. L. J. 9 : 32 I. C. 137 : 20 C. W. N. 128 : A. I. R. 1917 Cal. 687.

———Benefit of doubt—Charge, proof of—Liability for act of agent.

An important principle of Criminal Law is that the guilt of an accused person must not only be proved beyond any reasonable doubt but that it must be proved strictly in accordance with the law. An accused person is on his trial in respect of a particular charge and to import matters into the trials not relevant to the charge is equivalent to trying him as to matters on which he has no opportunity to defend himself. *Bishambhar Nath Bajpai v. Emperor.*

26 Cr. L. J. 1042 : 87 I. C. 962 : A. I. R. 1925 Oudh 676.

———Benefit of doubt—Murder case.

In a murder case where all evidence except the statement of one witness has to be rejected, the accused should not be convicted on the solitary statement of this witness but should be given the benefit of doubt. *Nura v. Emperor.*

37 Cr. L. J. 1029 : 164 I. C. 1056 : 38 P. L. R. 274 : 9 R. L. 188 : A. I. R. 1936 Lah. 778.

———Benefit of doubt—Murder charge—Conduct of accused suspicious—Motive lacking—Evidence, not convincing.

In a charge for murder by poisoning, the accused's conduct on the day of crime was suspicious, but motive was lacking. The evidence of the poison-vendor was also not

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conviction, it should be incompatible with any reasonable hypothesis than that of the accused's guilt. *Emperor v. Ismail Khadirsab.*

29 Cr. L. J. 403 :
108 I. C. 501 : 30 Bom. L. R. 330 :
52 Bom. 385 : A. I. R. 1928 Bom. 130.

—————*Circumstantial evidence, value of.*

Circumstantial evidence may be and frequently is, more cogent than the evidence of eye-witnesses. *Tulsi Gangola v. Emperor.*

34 Cr. L. J. 395 :
142 I. C. 613 (2) : 14 P. L. T. 96 :
I. R. 1933 Pat. 165 : A. I. R. 1933 Pat. 180.

—————*Civil Court judgment—Duty of Criminal Courts.*

A Criminal Court should not, except for very exceptional and cogent reasons, go behind the findings of a Civil Court which has been arrived at on the merits. *Suraj Bhan v. Emperor.*

31 Cr. L. J. 48 :
120 I. C. 186 : 31 P. L. R. 60 :
A. I. R. 1930 Lah. 62.

—————*Civil dispute.*

There is no ground for making a criminal charge against a person against whom there is a civil claim, and to use the Criminal Courts for enforcing a civil claim is highly improper. *Mst. Sudeshara v. Emperor.*

35 Cr. L. J. 224 (1) :
146 I. C. 904 : 55 All. 562 : 6 R. A. 374 :
A. I. R. 1933 All. 818.

—————*Civil dispute.*

Where the order of Civil Court has determined the rights as between the parties, it is not open to the Criminal Court to adjudicate upon them again. *Osman v. Emperor.*

37 Cr. L. J. 495 :
166 I. C. 647 (a) : 61 C. L. J. 586 : 8 R. C. 539 :
A. I. R. 1936 Cal. 124.

—————*Civil rights, decision of.*

A Criminal Court is not competent to decide the civil rights of the parties. *Ram Bali v. Emperor.*

38 Cr. L. J. 147 :
160 I. C. 219 : 1936 O. L. R. 727 : 9 R. O. 293 :
1937 O. W. N. 34 : A. I. R. 1937 Oudh 207.

—————*Commencement—Offence punishable with death or transportation for life—Trial, when commences.*

Where an accused person is charged with an offence punishable with death or transportation for life, his trial really commences when the case is proceeded with in the Sessions Court. The inquiry before the Committing Magistrate is of a preliminary nature and therefore there could be no objection to the case being referred to a Council of Elders without moving the Court to stay its hand. *Minho v. Emperor.*

39 Cr. L. J. 294 :
173 I. C. 325 : 10 R. S. 201 : 32 S. L. R. 129 :
A. I. R. 1938 Sind 9.

—————*Commission for cross-examination—Complainant twice present—Inability to be present again due to reasons of health—Certificate of doctors, complainant entitled to commission.*

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It is always better that the complainant attends in person rather than that he should be examined on commission, but where he has already appeared twice for cross-examination and his condition is clearly bad and it has been certified by doctors that he must have undisturbed rest, and if complete rest and treatment are taken, there is every possibility of his recovery within the next three or four months, commission should be issued for his cross-examination especially when it appears that the opposition to this commission is caused not by a legitimate objection to its being issued, but by a desire to delay the case. *H. Guha v. R. R. Chanda.*

38 Cr. L. J. 875 :
170 I. C. 238 : 10 R. Rang. 67 :
A. I. R. 1937 Rang. 231.

—————*Commitment—Accused stealing water-melons and inflicting injury—Injury, not fatal—Commitment, propriety of.*

Where the accused while stealing water-melons worth about six annas, inflicted an injury, the mere fact that the injury might have been fatal when in fact it is not so, is not enough by itself to commit the accused to Sessions. A case should be considered from the point of view, not of what injury might have been inflicted but what injury was in fact inflicted. *Emperor v. Waroo.*

39 Cr. L. J. 507 :
174 I. C. 920 : 10 R. S. 271 :
A. I. R. 1938 Sind 79.

—————*Commitment—Charges under Ss. 449, 296, 302.*

Where the accused were charged under Ss. 449, 296 and 302, Penal Code, and the Sessions Judge, as regards the charges under Ss. 449 and 396 against accused neither cancelled these charges nor took up the trial of them nor gave any reasons for so doing: *Held*, that he ought to have recorded some order in respect of those charges and should not have left them in the air. He was not competent (under S. 215) to quash the commitment though he could (under S. 240) stay the trial of some charges or allow them to be withdrawn on conviction being had on the murder charge, in that case the consequences set forth in S. 240 would follow in the event of the conviction being set aside. If his intention was to withdraw the charges, it would be "premature" to do so. *Emperor v. Sadasibo Majhi.*

39 Cr. L. J. 997 :
178 I. C. 130 : 11 R. P. 215 :
19 P. L. T. 801 : 5 B. R. 53 :
A. I. R. 1939 Pat. 35.

—————*Commitment—Nose-cutting cases.*

It cannot be said that nose-cutting cases should, as a matter of course, be committed to the Court of Session for trial, although the Magistrate should always consider whether he ought not to commit. *Ismail Umar v. Emperor.*

39 Cr. L. J. 928 :
177 I. C. 647 : 11 R. B. 111 :
40 Bom. L. R. 832 :
A. I. R. 1938 Bom. 430.

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the accused or any evidence tendered by him.
A. R. Munnell v. Emperor. 36 Cr. L. J. 1462 :
 158 I. C. 791 : 39 C. W. N. 1303 :
 8 R. C. 217 : A. I. R. 1935 Cal. 678.

———Burden of proof.

Prosecution should prove ingredients of offence
 —Difficulty is no ground for exemption from
 such duty. *Shahzad Khan v. Emperor.*

34 Cr. L. J. 912 :
 144 I. C. 857 : 14 P. L. T. 679 :
 6 R. P. 134 : A. I. R. 1933 Pat. 513.

———Burden of proof.

The burden of establishing the guilt of the
 accused is throughout on the prosecution and
 they must prove every link in the chain of
 evidence against him, from the beginning to
 the end. *Hayat v. Emperor.*

33 Cr. L. J. 411 :
 137 I. C. 59 : 33 P. L. R. 23 :
 I. R. 1932 Lah. 291 : A. I. R. 1932 Lah. 243.

———Burden of proof.

The burden of proof in a criminal trial
 remains at all times upon the prosecution, and
 it is only shifted upon the accused in so far as
 an accused person may set up the existence
 of circumstances bringing his case within any
 of the general exceptions in the Penal Code, or
 within any special exception or proviso con-
 tained in any other part of the same Code.
Binda v. Emperor. 35 Cr. L. J. 1489 :

152 I. C. 85 : 11 O. W. N. 1224 :
 7 R. O. 177 : A. I. R. 1934 Oudh 485.

———Burden of proof.

The onus of proving grave and sudden pro-
 vocation lies on the accused. *Umar Khan v.*
Emperor. 33 Cr. L. J. 186 :

135 I. C. 666 : 32 P. L. R. 804 :
 I. R. 1932 Lah. 122 : A. I. R. 1932 Lah. 11.

———Burden of proof.

The principle that if a person is injured in a
 fight, the burden of proving the right of private
 defence always lies on him comes perilously
 near, if it does not actually amount to saying
 that it is an offence to be hit or injured.
Ahmad Sher v. Emperor. 32 Cr. L. J. 868 :

132 I. C. 381 : I. R. 1931 Lah. 573 :
 A. I. R. 1931 Lah. 513.

———Burden of proof.

Though as a general rule it is the duty of the
 accused to make out a case of self-defence,
 the Court has to look into the facts and circum-
 stances of each case. *Banta Singh v. Emperor.*

34 Cr. L. J. 318 :
 142 I. C. 20 : 34 P. L. R. 349 :
 I. R. 1933 Lah. 171 : A. I. R. 1933 Lah. 232.

———Burden of proof.

Accused not under obligation to suggest any
 other way in which deceased died—Limits to
 the proposition, stated. *Ratan Lal v. Emperor.*

35 Cr. L. J. 45 :
 146 I. C. 381 : 16 O. W. N. 557 :
 8 Luck. 570 : 6 R. O. 107 :
 A. I. R. 1933 Oudh 333.

———Burden of proof—Conviction based on

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*probability, legality of—Complainant, uncorro-
 borated statement of, whether sufficient.*

An accused person should not be convicted
 upon the uncorroborated statement of the com-
 plainant that he saw the accused committing
 the offence with which he is charged. In a
 criminal trial, the case of the prosecution
 cannot gain any strength on account of the
 weakness or improbability of the defence
 theory, and in order to obtain a conviction,
 there must be a definite, positive and certain
 finding that the case for the prosecution, as
 alleged, is proved and that the offence has been
 brought home to the accused. In a criminal
 case the accused cannot be convicted upon
 the prosecution case being more probable than
 that of the defence. *Ram Sunder Sahay v. Em-
 peror.*

20 Cr. L. J. 253 :
 49 I. C. 925 : 1 P. L. T. 115 :
 A. I. R. 1920 Pat. 553.

———Burden of proof—Defence false—Burden
 still lies on prosecution.

A conviction should not be based upon the
 failure of the accused to make good their
 defence. Even if a defence is plausibly false,
 the burden still rests upon the prosecution,
 which must establish beyond reasonable doubt
 that no other alternative, than the truth of
 the prosecution case will explain the facts.
*K. V. Ramaswami Naick v. Rangaswami
 Chettiar.* 39 Cr. L. J. 144 :

172 I. C. 501 : 1937 M. W. N. 733 :
 10 R. M. 457 : 47 L. W. 140 :
 A. I. R. 1937 Mad. 968.

———Burden of proof—Duty of prosecution—
 Acquittal of persons not before High Court, lega-
 lity of.

An area of 1,100 *bighas* of land was attached
 and the petitioners along with certain boys
 were charged with having cut *jhalasi* within
 that area. It was established in evidence that
 prior to the date of the occurrence, the peti-
 tioners had obtained delivery of possession,
 of a portion of the attached area extending
 to 345 *bighas*. The Courts below assumed that
 unless the accused proved that they cut from
 within the area of the 345 *bighas*, they must
 be held to have committed theft and convicted
 the accused. The boys were released after
 admonition under S. 562-A of the Cr. P. C. :
Held, (1) that the conviction was wrong inas-
 much as the burden of proving that the area
 from which the *jhalasi* was cut was not within
 the area of 345 *bighas* in the possession of the
 petitioners was on the prosecution and the
 prosecution had failed to discharge that
 burden ; (2) that the High Court had jurisdic-
 tion, in the circumstances, to set aside the
 conviction of the boys also even though they
 were not before the High Court. *Tulsi Mahito
 v. Emperor.* 29 Cr. L. J. 259 :

107 I. C. 529 : A. I. R. 1928 Pat. 249.

———Burden of proof—Exceptions—Accused,
 if can discharge burden by relying on facts
 brought out in case, even if not expressly relied on
 by him in his statement.

In a criminal case the burden is on the
 accused to prove an exception but he may do

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—————*Complaint—Complainant's right to produce evidence, limitations on.*

A person bringing a complaint in a Criminal Court is entitled to produce evidence in support of it subject only to two conditions, viz., (a) that the facts alleged constitute an offence and (b) that there are no circumstances apparent on the examination of the complainant, such as to justify the Court in coming to the conclusion that the complaint is false. *Muhammad Salamat-ul-Lah v. Lala Sital Prasad.*

8 Cr. L. J. 342 :
11 O. C. 261.

—————*Complaint on behalf of Cantonment Board—Executive Officer not filing his authority with complaint—Trial whether vitiated—Criminal Procedure Code, S. 537.*

Failure on the part of the Executive Officer of a Cantonment Board to file with the complaint the authority entitling him to lodge the complaint is a mere irregularity curable under S. 537, Cr. P. C., where in fact he is authorised to file the complaint. *Khushal Chand v. Emperor.*

29 Cr. L. J. 822 :
111 I. C. 326 : A. I. R. 1928 Lah. 946.

—————*Complaint—Magistrate doubtful regarding allegations in complaint—Procedure.*

If the Magistrate has any doubt as to the truth of the allegations in the petition of complaint as supported by the solemn affirmation of the petitioner, he ought to record an order to that effect in the order sheet, so that the superior Courts may be satisfied that the Magistrate had any justification whatever in refusing to issue summons to the accused as required by law. *Mukti Narayan Gir v. Emperor.*

41 Cr. L. J. 349 :
186 I. C. 627 : 20 P. L. T. 947 :
6 B. R. 377 : 12 R. P. 534 :
A. I. R. 1940 Pat. 97.

—————*Complaint—Power of Court to dismiss without inquiry.*

It is only in very rare cases that the Court will be justified in throwing out a complaint without giving an opportunity to the complainant to substantiate his allegations, but in certain cases, it is the duty of the Court to protect the accused from unnecessary harassment and worry. *G. A. St. George v. Uma Dutt Sharma.*

40 Cr. L. J. 917 :
184 I. C. 313 : 12 R. A. 217 :
1939 A. L. J. 574 :
I. L. R. 1939 All. 851 :
A. I. R. 1939 All. 602.

—————*Complaint—Referred charge-sheet by Police—Private complaint to Magistrate—No orders on complaint—Order on charge-sheet, whether disposal of complaint.*

Where on a referred charge-sheet a person filed a complaint of his own before a Magistrate, but though orders were passed on the referred charge-sheet, no orders were passed on the complaint : *Held*, that the complaint had not been disposed of in a legal manner and must be regarded as being still pending. *Hameed Sahib v. Abdul Khadir Sahib.*

31 Cr. L. J. 462 :
123 I. C. 11 : 1929 M. W. N. 503 :
A. I. R. 1929 Mad. 849.

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—————*Complaint cases, nature of—Rights of complainant.*

Though it cannot be said that a complainant has no rights whatever in a criminal matter, yet it is a common mistake to suppose that criminal cases based upon complaints are in the nature of private suits between private parties. Too much cannot be made of the alleged rights of a complainant. If a complainant is really anxious to get compensation for some private wrong, his proper procedure is to file a suit in the Civil Court for damages. It can hardly be said that a private complainant is wronged if an accused person is discharged or acquitted. *Kamni Begam v. Bashir ul-Zaman Khan.*

37 Cr. L. J. 1100 :
165 I. C. 20 : 1936 A. L. J. 975 :
9 R. A. 242 : 1936 A. W. R. 838 :
A. I. R. 1936 All. 695.

—————*Complicated questions of rights—Duty of Criminal Courts.*

A Criminal Court is not an appropriate tribunal to decide complicated questions relating to rights of property, such as game-birds between landlord and tenant. *Advocate-General, Orissa v. Bhikhari Charan Mahanti.*

41 Cr. L. J. 509 :
187 I. C. 825 : 6 B. R. 550 :
12 R. P. 655 : A. I. R. 1940 Pat. 588.

—————*Complicated questions of title—Procedure.*

It is outside the province of a Criminal Court to decide a complicated question of title ; the question should be left for determination by a Civil Court. *Bhim Bahadur Singh v. Emperor.*

21 Cr. L. J. 374 :
55 I. C. 854 : 1 P. L. T. 121 :
2 U. P. L. R. Pat. 53 : A. I. R. 1922 Pat. 265.

—————*Compounding of offence—Refusal of permission—Revision—Power of High Court.*

The High Court may, in revision, grant permission to compound an offence and acquit the accused where such permission has been wrongly withheld by the lower Appellate Court. *Titan Pramanik v. Chintan Pramanik.*

30 Cr. L. J. 484 :
115 I. C. 528 : 55 Cal. 1190 :
I. R. 1929 Cal. 384 : A. I. R. 1929 Cal. 96.

—————*Compromise—Complaint—Defamatory allegations—Separate complaints.*

Where an application made by certain persons to the Police against a certain person contains defamatory matter against such person and his minor daughter, both the father and his daughter have a right to seek redress, therefore, in Civil and Criminal Courts and can, therefore, file separate complaints and a compromise and acquittal of the accused in father's complaint is no bar to the complaint by the daughter as the complaint by the father, although on the same facts could not have been filed on behalf of the minor daughter or compromised without the Court's permission. *Harbans Kaur v. Lahari Ram.*

40 Cr. L. J. 131 :
178 I. C. 791 : 11 R. L. 499 :
A. I. R. 1938 Lah. 739.

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for the prosecution that there are reasonable grounds for holding that the case falls within an exception, the presumption enacted in the last line of S. 105 does not arise at all. The burden is on the prosecution to establish the guilt of the accused beyond reasonable doubt, and if upon a review of all the materials on the record there appears a reasonable doubt as to whether the case falls within any exception, the prosecution has failed to discharge that burden, and the accused must be acquitted or convicted only of the minor offence, as the case may be. *Emperor v. U Damapala*. (F. B.)

38 Cr. L. J. 524 :

168 I. C. 193 : 14 Rang. 666 :

9 R. Rang. 340 : A. I. R. 1937 Rang. 83.

-----Burden of proof of explaining circumstances.

Unless an incriminating circumstance is proved by the prosecution to exist against an accused person, he should not be called upon to explain away its existence. *Shamlal v. Emperor*.

31 Cr. L. J. 15 :

120 I. C. 210 : A. I. R. 1929 Nag. 350.

-----Burden on prosecution—Shifting of burden.

In a criminal case, the onus is on the prosecution to prove the guilt of the accused beyond doubt. It is wrong to suppose that in a criminal case the burden is, in some cases, shifted to the accused. *Hori Lal v. Emperor*.

35 Cr. L. J. 621 :

148 I. C. 141 : 1933 A. L. J. 1534 :

56 All. 250 : 6 R. A. 649 :

A. I. R. 1933 All. 893.

-----Capital charge—Defence of accused.

When an accused appears before a Judge on a capital charge, he ought not to be allowed to go undefended, the custom being for the Judge to appoint or request any member of the Bar to conduct the defence of the accused. *Emperor v. Mohar Ali Sheikh*.

16 Cr. L. J. 481 :

29 I. C. 321 : 19 C. W. N. 556 :

21 C. L. J. 495 : A. I. R. 1916 Cal. 79.

-----Case under Arms Act—Relevant evidence.

The evidence of witnesses and the committal order in a dacoity case are irrelevant and inadmissible in a trial under the Arms Act. *Nga Tha Ku v. Emperor*.

17 Cr. L. J. 512 :

36 I. C. 480 : A. I. R. 1917 L. Bur. 112.

-----Charge.

A man should not be charged, tried and convicted without being heard in his defence. The High Court will not use any power that they have as an Appellate Court to substitute a new charge against him and convict him of that case. *Emperor v. Bhawani Prasad Bhatta-chargee*. (S. B.)

36 Cr. L. J. 1275 :

157 I. C. 1070 : 62 Cal. 433 :

39 C. W. N. 334 : 8 R. C. 153 :

A. I. R. 1935 Cal. 561.

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-----Charge.

Multifarious and indefinite charge—undesirability of, pointed out. *Ditto v. Emperor*.

36 Cr. L. J. 504 :

154 I. C. 138 : 28 S. L. R. 295 :

7 R. S. 154 : A. I. R. 1935 Sind 23.

-----Charge, addition of—Legality.

In the trial of a charge of bribery, the Magistrate at first framed a charge under S. 165, Penal Code, but at a subsequent and much later stage, added a charge under S. 161. On the addition of the charge, the accused was given an opportunity of re-calling the witnesses and he actually did re-call some of them: *Held*, that the accused was in no way prejudiced by the addition of the charge and that the proceedings of the Magistrate were in no sense void or without jurisdiction. *Girdhari Lal v. Emperor*.

12 Cr. L. J. 217 :

10 I. C. 156 : 11 P. R. 1911 Cr. :

32 P. W. R. 1911 Cr. : 146 P. L. R. 1911.

-----Charge.

Charge solely under Ss. 457 and 380, Penal Code—No alternative charge under S. 411, Penal Code—No mention of S. 411 even in charge to jury: *Held* omission prejudices accused. *Manuhalayan v. Emperor*.

36 Cr. L. J. 633 :

155 I. C. 74 : 1934 M. W. N. 1140 :

67 M. L. J. 693 : 40 L. W. 1873 :

50 Mad. 86 : 7 R. M. 544 :

A. I. R. 1934 Mad. 721.

-----Charge—Discovery of offence more serious than one complained of—Court's duty to charge with aggravated offence.

It is the duty of the Magistrate to see what offence has been committed, if any, and if any offence more aggravated than the one complained of is discovered, it is no less his duty to charge the accused person with the more aggravated offence. *Mangal Sen v. Emperor*.

30 Cr. L. J. 957 :

118 I. C. 653 : I. R. 1929 Lah. 813 :

A. I. R. 1929 Lah. 838.

-----Charge—Dropping of.

Once a charge has been framed, it should not be dropped until the conclusion of the trial, unless on the face of it, it is wholly inappropriate or the trial is open to attack on the ground of misjoinder or multifariousness of charges. *Emperor v. Sadasibo Majhi*.

39 Cr. L. J. 997 :

178 I. C. 130 : 11 R. P. 215 :

19 P. L. T. 801 : 5 B. R. 53 :

A. I. R. 1939 Pat. 35.

-----Charge, error in—Effect.

Where the facts constituting the offence were clearly stated and accused knew what the charge he would have to meet was, the mere fact that there was a mistake in the number of the section under which he was charged, will not invalidate conviction. *H. B. Spicers v. Johi-ud-Din*.

33 Cr. L. J. 549 :

138 I. C. 98 : 36 C. W. N. 246 (2) :

59 Cal. 113 : I. R. 1932 Cal. 419 :

A. I. R. 1932 Cal. 461.

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Confession.

Although it is not safe to rely on a retracted confession where there is no corroborative evidence, yet this is not a hard and fast rule. Each case depends on its own circumstances. *Mangal Singh v. Emperor.* 36 Cr. L. J. 287 :

153 I. C. 121 : 35 P. L. R. 349 :
7 R. L. 381.

Confession.

An extra-judicial confession alleged to have been made by the accused to a *lambardar* and a *sufedposh* is inadmissible in evidence. *Mustafa v. Emperor.* 36 Cr. L. J. 304 :

153 I. C. 203 : 35 P. L. R. 359 :
7 R. L. 399 (1).

Confession.

Classes of confessions and weight to be attached to each class defined. *Bakhshan v. Emperor.* 37 Cr. L. J. 432 :

161 I. C. 339 : 16 Lah. 912 :
37 P. L. R. 869 : 8 R. L. 721 :
A. I. R. 1936 Lah. 247.

Confession.

Confession can be recorded in any place other than Court. *Maung Tha Ka Do v. Emperor.* 37 Cr. L. J. 280 :

160 I. C. 292 : 8 R. Rang. 363 :
A. I. R. 1935 Rang. 491.

Confession.

Confession made to persons taking part in investigation—Contradictory and discrepant statements by such persons—Even if confession is not barred under S. 26, Evidence Act, it should be corroborated—Existence of slight motive is not sufficient for corroboration. *Allah Ditta v. Emperor.* 35 Cr. L. J. 623 :

148 I. C. 205 : 35 P. L. R. 335 :
6 R. L. 514 : A. I. R. 1934 Lah. 8.

Confession.

Confession not extorted—Absence of other evidence against confessing accused—Confession retracted—It can be relied upon against him. *Jahangiri Lal v. Emperor.* 35 Cr. L. J. 1180 :

150 I. C. 1056 : 7 R. L. 58 :
A. I. R. 1935 Lah. 230.

Confession.

Confession should either be accepted or rejected as a whole. *Banta Singh v. Emperor.* 34 Cr. L. J. 318 :

142 I. C. 20 : 34 P. L. R. 349 :
I. R. 1933 Lah. 171 : A. I. R. 1933 Lah. 232.

Confession.

Every statement made to the Police by an accused person is not a confession and statements which are not of an incriminatory nature are admissible. The crucial question is what use does the prosecution attempt to make of the accused's statement. *Misri v. Emperor.* 35 Cr. L. J. 1332 :

151 I. C. 437 : 7 R. S. 52 :
A. I. R. 1934 Sind 100.

Confession.

Identity of confessing person not proved—

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Circumstances showing accused made it : Held, that inference could be drawn that accused made it. *Jahangiri Lal v. Emperor.* 35 Cr. L. J. 1180 :

150 I. C. 1056 : 7 R. L. 58 :
A. I. R. 1935 Lah. 230.

Confession.

If confession is voluntary and not under inducement, legally conviction can be based on it but when it is retracted, Court expects corroboration. *E. Martin v. Emperor.* 35 Cr. L. J. 1453 :

151 I. C. 924 : 7 R. L. 225 :
A. I. R. 1934 Lah. 89.

Confession.

In absence of undue influence, confession should not be rejected solely on technical grounds. *Naubat Singh v. Emperor.* 36 Cr. L. J. 1139 :

157 I. C. 354 : 8 R. A. 179 :
1935 A. W. R. 801 : A. I. R. 1935 All. 653.

Confession.

It is impossible to lay down any hard and fast rule as to the amount of weight to be attached to a particular confession. This is a matter for the Court to decide in each case on consideration of the cumulative effect of the entire evidence in the case. *Bakhshan v. Emperor.* 37 Cr. L. J. 432 :

161 I. C. 339 : 16 Lah. 912 :
37 P. L. R. 869 : 8 R. L. 721 :
A. I. R. 1936 Lah. 247.

Confession.

It must be accepted or rejected as a whole. Court cannot accept only the inculpatory element while rejecting the exculpatory element as incredible. *Mohammad Shafi v. Emperor.* 36 Cr. L. J. 281 :

153 I. C. 19 (1) : 35 P. L. R. 659 :
7 R. L. 372 : A. I. R. 1934 Lah. 620.

Confession.

Retracted confession must be corroborated by reliable evidence. *Shangara Ram v. Emperor.* 33 Cr. L. J. 935 :

140 I. C. 194 : 33 P. L. R. 691 :
I. R. 1932 Lah. 695 :
A. I. R. 1932 Lah. 557.

Confession.

The confessional statements as also the exculpatory statements have to be taken into consideration along with the other evidence in the case. *Narain Chandra Biswas v. Emperor.* 37 Cr. L. J. 445 :

161 I. C. 289 : 63 C. L. J. 191 :
8 R. C. 508 : A. I. R. 1936 Cal. 101.

Confession.

The Court will look with suspicion on confessions obtained where the accused has been so confined that interviews with Counsel or friends or both have been evaded. *Jahangiri Lal v. Emperor.* 35 Cr. L. J. 1180 :

150 I. C. 1056 : 7 R. L. 58 :
A. I. R. 1935 Lah. 230.

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the result of the chemical examination. It is for the Court to determine the cause of death. *Aishan Bibi v. Emperor*.

36 Cr. L. J. 11 :
152 I. C. 206 : 15 Lah. 310 :
36 P. L. R. 67 : 7 R. L. 263 :
A. I. R. 1934 Lah. 150.

-----Circumstantial evidence.

Circumstantial evidence must be such as would unmistakably lead to the inference of guilt and be reasonably inconsistent with any theory about the innocence of the accused. *Gaya Prasad v. Emperor*.

32 Cr. L. J. 1184 :
134 I. C. 401 : 8 O. W. N. 517 :
6 Luck. 668 : I. R. 1931 Oudh 353.

-----Circumstantial evidence.

Circumstantial evidence to base conviction should be conclusive. *Sitaram Sao v. Emperor*.

35 Cr. L. J. 82 :
146 I. C. 481 : 6 R. P. 268 :
A. I. R. 1933 Pat. 606.

-----Circumstantial evidence.

However strong the moral certainty as to the guilt of a person may be, he ought not to be convicted without sufficient evidence connecting him with the offence. Therefore, a conviction cannot be based on circumstantial evidence unless and until all the inferences to be drawn from the whole history of the case point so strongly to the commission of the crime by the accused that the defence theory appears in the face of it impossible or highly improbable. *Bahali v. Emperor*.

26 Cr. L. J. 161 :
83 I. C. 721 : A. I. R. 1923 Lah. 488.

-----Circumstantial evidence.

In a case depending on circumstantial evidence of acts capable of an innocent interpretation should be so interpreted and evidence of good character of the accused is relevant. *Major Robert Stuart Wanchope v. Emperor*.

35 Cr. L. J. 156 :
146 I. C. 767 : 58 C. L. J. 405 :
38 C. W. N. 187 : 6 R. C. 257 :
A. I. R. 1933 Cal. 800.

-----Circumstantial evidence.

In cases based on circumstantial evidence in order to justify the inference of guilt, the inculpatory facts must be incompatible with the innocence of the accused and incapable of explanation upon any other reasonable hypothesis than that of their guilt. *Hawaladar Singh v. Emperor*.

33 Cr. L. J. 379 :
137 I. C. 63 : 9 O. W. N. 170 :
I. R. 1932 Oudh 199 : A. I. R. 1932 Oudh 324.

-----Circumstantial evidence.

In order to justify the inference of guilt, the circumstantial evidence must be incompatible with the innocence of the accused and incapable of explanation upon any other reasonable hypothesis than that of his guilt. *Mustafa v. Emperor*.

36 Cr. L. J. 304 :
153 I. C. 203 : 35 P. L. R. 359 : 7 R. L. 399 (1).

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-----Circumstantial evidence.

Recovery of blood-stained articles from accused's house is valuable to corroborate other evidence. It is not by itself sufficient to prove the case for the Crown. *Dhunda v. Emperor*.

37 Cr. L. J. 503 (2) :
161 I. C. 884 : 38 P. L. R. 15 : 16 Lah. 995 :
8 R. L. 810 (2) : A. I. R. 1936 Lah. 335.

-----Circumstantial evidence.

To justify conviction, it must be reasonably inconsistent with theory of accused's innocence. *Nankan v. Emperor*.

35 Cr. L. 286 :
147 I. C. 106 : 10 O. W. N. 1213 : 6 R. O. 224.

-----Circumstantial evidence.

Where prosecution story is untrue and defence story is made out and supported by circumstantial evidence, accused should be acquitted. *Debi Ram v. Emperor*.

36 Cr. L. J. 1149 :
157 I. C. 524 : 8 R. A. 199.

-----Circumstantial evidence.

Where the circumstantial evidence in a case considered in conjunction with the oral evidence of the principal witnesses is not inconsistent with the innocence of the accused, conviction is not proper. *Nawab Khan v. Emperor*.

35 Cr. L. J. 476 :
147 I. C. 572 : 35 P. L. R. 132 : 6 R. Pesh. 34 :
A. I. R. 1933 Pesh. 94.

-----Circumstantial evidence.

Where the conviction of the accused rests on purely circumstantial evidence and there are no witnesses to the crime, the circumstantial evidence requires careful scrutiny. *Lallu Rahim Mirasi v. Emperor*.

35 Cr. L. J. 615 :
148 I. C. 164 : 6 R. L. 509 (1) :
A. I. R. 1934 Lah. 10.

-----Circumstantial evidence—Benefit of doubt.

In a criminal case, where a set of circumstantial evidence is capable of two constructions, one in favour of the accused and one against him, he should be entitled to the benefit of the doubt. *Emperor v. Eddula Venkata Subba Reddi*.

33 Cr. L. J. 51 (2) :
134 I. C. 1143 : 34 L. W. 128 : 61 M. L. J. 608 :
1931 M. W. N. 1177 : 54 Mad. 931 :
I. R. 1932 Mad. 7 : A. I. R. 1931 Mad. 689.

-----Circumstantial evidence—Conviction.

It is an axiom that in the case of presumptive evidence in order to justify the inference of guilt, the inculpatory facts must be incompatible with the innocence of the accused and incapable of explanation upon any other reasonable hypothesis than that of his guilt. *Feroze v. Emperor*.

31 Cr. L. J. 871 :
125 I. C. 381 : A. I. R. 1930 Lah. 659.

-----Circumstantial evidence—Conviction.

The ordinary rule in a case of circumstantial evidence is that, in order to justify a

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made, is not admissible in evidence. *Daulat Ram v. Emperor*. 35 Cr. L. J. 10 : 146 I. C. 465 : 10 O. W. N. 466 : 8 Luck. 518 : 6 R. O. 129 : A. I. R. 1933 Oudh 315.

———Confession—Admissibility.

Where a confession is made merely in the hope of securing a pardon, that fact, by itself, would not make the confession inadmissible. *Nanak Chand v. Emperor*. 32 Cr. L. J. 1036 : 133 I. C. 545 : 32 P. L. R. 792 : I. R. 1931 Lah. 785 : A. I. R. 1932 Lah. 73.

———Confession—Admissibility — Confession made to chowkidar appointed.

A village chowkidar appointed under North-Western Province Village and Road Police Act, 1873, is a Police Officer within the words of S. 25, Evidence Act, and consequently a confession made to him is inadmissible in evidence. *Deokinandan v. Emperor*. (F. B.)

38 Cr. L. J. 40 : 165 I. C. 701 : 1936 A. L. J. 999 : 9 R. A. 305 : I. L. R. 1937 All. 85 : A. I. R. 1936 All. 753.

———Confession—Admissibility of.

A Court which is called upon to accept a confession must in each case satisfy itself that the Magistrate recording the confession honestly believed and took steps to ascertain that the confession was a voluntary one. *Thibu Bhogta v. Emperor*. 24 Cr. L. J. 649 : 73 I. C. 569 : 4 P. L. T. 279 :

2 P. L. R. 52 Cr. : A. I. R. 1923 Pat. 356 :

———Confession—Admissibility against co-accused.

A confession of a co-accused is admissible against another accused only if it equally implicates the confessor with his colleague in crime. Where the confessing accused implicates himself as having concealed a dead body but implicates his co-accused not only for concealment but also for the murder, the confession will not be admissible against the co-accused as far as the murder is concerned. *Mangal Singh v. Emperor*. 38 Cr. L. J. 472 :

167 I. C. 861 : 17 Lah. 547 : 38 P. L. R. 1018 : 9 R. L. 562 : A. I. R. 1937 Lah. 127.

———Confession—Admissibility in part.

A Court is not bound in law to accept a confession as a whole. If the Court is satisfied that part of a confession is true and part is false, it can accept such portion as it finds it to be true and reject the false portion. *Emperor v. Jata Uraon*.

41 Cr. L. J. 472 : 187 I. C. 586 : 6 B. R. 503 : 12 R. P. 641 : A. I. R. 1940 Pat. 541.

———Confession—Co-accused.

The weight of an extra-judicial confession against a co-accused is not very great and can only be taken into account if it was adequately corroborated. *Ramzan v. Emperor*.

36 Cr. L. J. 1305 : 157 I. C. 1054 : 37 P. L. R. 345 : 8 R. L. 171.

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———Confession.

Confessing accused should not be sent back to police custody. *Narinjan Singh v. Emperor*. 37 Cr. L. J. 567 : 162 I. C. 379 : 17 Lah. 419 : 38 P. L. R. 820 : 8 R. L. 890 : A. I. R. 1936 Lah. 357.

———Confession—Confession by accused after being kept in Police custody for number of days.

If an accused has been sent up to headquarters for production before a Magistrate within 24 hours of his arrest, and if then he has made a confession, it may be argued on behalf of the prosecution that there was nothing suspicious about the circumstances in which the confession was made. But when it is found that the man who makes a confession has been kept in Police custody in defiance of the rules on the point for a number of days, then the Court is entitled to ask the prosecution to explain why the irregularities were committed. When a confession itself contains a statement that the accused made it under the threat of the Police, it must go against the prosecution. It is not right for the Court to put reliance on a portion of the statement made by the accused person which would implicate him in the commission of a crime and to disregard another portion simply because it would go against the prosecution story. *Abdul Subhan v. Emperor*.

41 Cr. L. J. 258 : 186 I. C. 192 : 1939 A. L. J. 966 : 12 R. A. 384 : 1939 A. W. R. 768 : A. I. R. 1940 All. 46.

———Confession—Conviction based on retracted confession, legality of.

To base a conviction upon the sole evidence of a subsequently retracted confession, which has been corroborated by certain discoveries, both the confession and the discoveries must be beyond suspicion. A confession should be, unless there are exceptional reasons to the contrary, recorded in open Court and during Court hours and the confessing accused should not be returned to the Police custody. Where the confession is taken in a Dak Bungalow before a Second Class Magistrate, without disclosing any reason for so doing and the accused was subsequently sent back to Police custody, it cannot be said that the confession and recoveries are free from doubt and the conviction based on such evidence cannot stand. *Jahana v. Emperor*. 38 Cr. L. J. 338 :

166 I. C. 1003 : 38 P. L. R. 791 : 9 R. L. 458 : A. I. R. 1937 Lah. 98.

———Confession.

Conviction sought to be based solely on accused's statement—Statement should be taken in its entirety—Exculpatory part, not to be excluded. *Sher Gul v. Emperor*.

36 Cr. L. J. 966 : 156 I. C. 529 : 37 P. L. R. 492 : 7 R. L. 918 : A. I. R. 1935 Lah. 671.

———Confession—Corroboration.

As a rule of practice though not of law, a

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-----Commitment—Sessions Judge thinking there was no sufficient evidence to convict accused—Commitment, if should be quashed.

High Court would not quash commitment merely on the ground that upon the record there was no evidence on which the accused could reasonably have been convicted because this is a matter which should better be left to the Magistrate who is trying the case. The Magistrate who having the powers to punish adequately for an offence which is within his jurisdiction fails to do so, fails to comply with the provisions of S. 254, Cr. P. C., and that the committal may, on that ground, be held bad as being an error of law. *Emperor v. Waroo*.

39 Cr. L. J. 507 :
174 I. C. 920 : 10 R. S. 271 :
A. I. R. 1938 Sind 79.

-----Committing Magistrate, duty of.

It is the function of the Magistrate conducting the enquiry to weigh the evidence produced before him and not merely to insulate that which was directed against the petitioners and act upon it without any analysis of the remaining evidence. A Magistrate conducting an enquiry into a case triable by a Court of Session should weigh the evidence produced before him before deciding whether to commit or discharge the accused. *Fazal Razak v. Emperor*.

38 Cr. L. J. 427 :
167 I. C. 602 : 9 R. Pesh. 88 :
A. I. R. 1937 Pesh. 12.

-----Committal proceedings—Procedure—Duty of Committing Magistrate in recording evidence.

It is true that a Committing Magistrate is not holding a trial but only an inquiry leading up to a trial; but the fact remains that he is recording evidence just as much as a Sessions Judge himself, and it is his duty to record the evidence fully in order that the accused may have ample notice of the matter with which he is charged and of the evidence by which the prosecutor seeks to prove the case. In fact, if the prosecutor at the trial intends to lead any further evidence of substance beyond what has been adduced in the Committing Magistrate's Court, the correct procedure is that he gives the accused notice of this new matter in his opening address at the trial. *Yusuf Mia v. Emperor*.

40 Cr. L. J. 147 :
178 I. C. 934 : 20 P. L. T. 51 :
5 B. R. 185 : 11 R. P. 312 :
A. I. R. 1938 Pat. 579.

-----Committal proceedings—Evidence not examined, consideration of.

The fact that the Crown Counsel might have examined certain witnesses had he not been of opinion that they had been tampered with, should not be taken into consideration in deciding whether the evidence recorded amounts to a *prima facie* case and

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cannot form a ground for framing a charge. *Wahid Bux Bhutto v. Emperor*.

30 Cr. L. J. 1121 :
120 I. C. 81 : I. R. 1929 Sind 225 :
A. I. R. 1929 Sind 250.

-----Communal considerations—Dispute as to possession of bull—Duty of Court.

No communal considerations can or ought to weigh with the Court in deciding a matter in which the simple question is which of the two parties, if any, has made out a claim to be entitled to possession of a disputed bull. *Mahammad Yusuf v. Krishna Mohan Bhattacharjya*.

39 Cr. L. J. 245 :
172 I. C. 959 : 10 R. C. 478 :
41 C. W. N. 1376 :
A. I. R. 1938 Cal. 17.

-----Compensation—Fine imposed on two persons and compensation awarded to third person—Only one paying fine.

Where two persons A and B were sentenced to fines of Rs. 30 and 80, respectively, and it was directed that out of the fine, if recovered, Rs. 40 was to be paid to one C, and one of the accused paid his fine of Rs. 80 while the other went to jail: Held, that C must get compensation in full when such amount was available from the recovery of the fine. *Emperor v. Bhagwandas Lalchand*.

38 Cr. L. J. 292 (a) :
166 I. C. 528 : 9 R. S. 147 :
A. I. R. 1937 Sind 3.

-----Complaint.

An application under S. 107, Cr. P. C., is not a complaint under S. 4 (1) (b) of the Code. *Hari Singh v. Jogta*.

29 Cr. L. J. 866 :
111 I. C. 450 : 29 P. L. R. 666 :
A. I. R. 1928 Lah. 694.

-----Complaint.

Complaint need not necessarily be made by person injured but may be made by any person aware of offence. Exceptions are mentioned in Ss. 198 and 199, Cr. P. C. *Gajraj Sinha v. Emperor*.

37 Cr. L. J. 56 :
159 I. C. 306 : 1935 A. L. J. 1108 :
1935 R. D. 491 : 8 R. A. 425 :
1935 A. W. R. 1067 :
A. I. R. 1935 All. 938.

-----Complaint.

It is entirely wrong to make a complaint against, or sanction the prosecution of, two persons in the alternative. *Narainjan Dass v. Emperor*.

31 Cr. L. J. 1065 :
126 I. C. 537 : A. I. R. 1930 Rang. 51.

-----Complaint.

When complaint is filed before Magistrate empowered to take cognizance of it, he has no power to send it to another District himself. *Ramsis Singh v. Bhola Singh*.

35 Cr. L. J. 1151 :
147 I. C. 439 : 6 R. P. 364 (1) :
A. I. R. 1933 Pat. 643 (1).

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Confession.

Procedure laid down by High Court not followed—Reasons for departing from them should be given. *Jahangiri Lal v Emperor*.

35 Cr. L. J. 1180 :
150 I. C. 1056 : 7 R. L. 58 :
A. I. R. 1935 Lah. 230.

Confession, recording of.

According to the Lahore High Court instructions ordinarily speaking, confessional statements should be recorded in the Court room, and if for some reason they are not so recorded during the ordinary Court hours, some explanation should be furnished by the prosecution. *Amar Singh v. Emperor*.

39 Cr. L. J. 262 :
173 I. C. 105 : 39 P. L. R. 453 :
10 R. L. 391 : A. I. R. 1937 Lah. 746.

Confession—Recording of—Duty of Magistrate while recording confession.

When an accused person makes a statement to the Police, one would expect the Police, as a general rule, to suggest to the accused person that he should make that statement before a Magistrate and it is only after he expresses his willingness to make a statement before the Magistrate that a request is made by the Police to the Magistrate to record the confession. It is then the duty of the Magistrate to remove the accused person from all Police influence, to warn him that his statement will be used against him, to give him time to think over the consequences of such a confession and to satisfy himself that the statement made was a voluntary one. *Kamsala Muneyya v. Emperor*.

39 Cr. L. J. 390 :
173 I. C. 1001 : 1937 M. W. N. 537 :
46 L. W. 144 : 10 R. M. 643 :
I. L. R. 1938 Mad. 348 :
A. I. R. 1937 Mad. 755.

Confession, reliance on.

Where the conviction does not solely rests on a confession but it rests on the dying declaration and the circumstantial evidence also, the Court is not bound to accept the confession *in toto*. *Jumma Khan v. Emperor*.

36 Cr. L. J. 914 :
156 I. C. 6 : 7 R. Pesh. 113 :
A. I. R. 1935 Pesh. 59.

Confession—Retracted.

The mere fact that the confessions were retracted will not raise an inference that they were obtained by improper inducement, threat or promise. *Amina v. Emperor*.

32 Cr. L. J. 579 :
130 I. C. 641 : I. R. 1931 Lah. 321 :
A. I. R. 1931 Lah. 196.

Confession—Retracted.

The use to be made by the Court of a confession, whether retracted or not, is a matter of procedure rather than law, the business of the Court being to make up its mind in accordance with the dictates of common sense, whether it is safe to believe the confession or not. *Amina v. Emperor*.

32 Cr. L. J. 579 :
130 I. C. 641 : I. R. 1931 Lah. 321 :
A. I. R. 1931 Lah. 196.

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Confession—Retracted—Allegation of extortion—Duty of Magistrate.

Where an accused retracts the confession and alleges that it was not voluntary but was extorted from him by gross torture by the Police resulting in serious injuries, it is the duty of the Magistrate, to take immediate steps to have the accused examined by a competent doctor. This is a matter to which the attention of the Local Government might well be drawn, as there is a tendency upon the part of Magistrate and Judges to regard themselves as mere recording machines and not to take obvious steps for the elucidation of matters before them. *Gurdit Singh v. Emperor*.

40 Cr. L. J. 614 :
181 I. C. 924 : 41 P. L. R. 290 :
11 R. L. 899 : I. L. R. 1939 Lah. 216 :
A. I. R. 1939 Lah. 66.

Confession—Retracted—Value against co-accused.

A retracted confession may be valuable evidence against the accused making the confession but it is of very little value against a co-accused. *Singha Khobi v. Emperor*.

39 Cr. L. J. 491 :
174 I. C. 849 (1) : 40 P. L. R. 58 :
10 R. L. 619 : A. I. R. 1938 Lah. 252.

Confession—Retracted confession.

A retracted confession of an accused person is sufficient for his conviction if it is true and voluntary, even if there is no corroborative evidence. *Emperor v. Ram Sahai*.

33 Cr. L. J. 812 :
139 I. C. 736 : 9 O. W. N. 96 :
I. R. 1932 Oudh 381 :
A. I. R. 1932 Oudh 115.

Confession—Retracted confession.

Conviction cannot be based on confession of co-accused of an exculpatory nature recorded four months after arrest and retracted subsequently. *Khanizaman v. Emperor*.

36 Cr. L. J. 1146 :
157 I. C. 229 : 8 R. Pesh. 15.

Confession—Retracted confession.

Obviously a retracted confession has little evidentiary value against a co-accused when compared with the evidence of an accomplice given on oath, which can be tested by cross-examination; but when, there is considerable circumstantial evidence connecting the accused with the murder, the Court is entitled to use the confession of a co-accused to remove any doubts that might still linger in its mind whether in spite of the fact that the accused has been identified, that he was seen both before and after the offence under suspicious circumstances, yet by some chance he may not have taken part in the murder. *Kamsala Munneyya v. Emperor*.

39 Cr. L. J. 390 :
173 I. C. 1001 : 1937 M. W. N. 537 :
46 L. W. 144 : 10 R. M. 643 :
I. L. R. 1938 Mad. 348 :
A. I. R. 1937 Mad. 755.

Confession—Retracted confession.

The Court is entitled to read and look at a

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solemnly by the Magistrate of the consequences of making a confession and knowing that he may be convicted thereon, if he still persists in his purpose and makes a confession, the statements that he makes cannot be considered to be tainted statements unless it be that they are tainted because he is an immoral person who has committed a criminal offence. It cannot be argued that because the confession is admissible, therefore, it must be believed. *Nga Mya v. The king.*

39 Cr. L. J. 481 :
174 I. C. 947 : 1938 Rang. 30 :
10 R. Rang. 449 : A. I. R. 1938 Rang. 92.

Confession—Value of.

Even if a confession appears to be untrue as far as it implicates other persons in the crime, the part that appears untrue will in no way lessen the culpability of the accused and the confession can be used against him. *Emperor v. Shankar.*

35 Cr. L. J. 894 :
149 I. C. 69 : 11 O. W. N. 636 :
6 R. O. 514 : A. I. R. 1934 Oudh 222.

Confession—Value of.

Where the only corroboration in the case is the evidence of eye-witnesses which cannot be implicitly relied upon in view of the possibility of a genuine mistake on their part, the confession cannot be acted upon. *Ramzan v. Emperor.*

36 Cr. L. J. 1305 :
157 I. C. 1054 : 37 P. L. R. 345 :
8 R. L. 171.

Confession—Value of.

Where there is nothing in the record of a confession to show that besides the usual and stereotyped questions any serious attempt has been made by the Magistrate to find whether the statement was voluntarily or otherwise made the High Court would hesitate to accept his certificate at its face value. *Emperor v. Shambhu.*

33 Cr. L. J. 201 :
135 I. C. 838 : 1932 A. L. J. 162 :
I. R. 1932 All. 102 :
A. I. R. 1932 All. 228.

Confession—Voluntariness—Slightest doubt about voluntariness—Effect.

Omission to comply with the requisites of the Criminal Rules of Practice would not vitiate a confession provided S. 161, Cr. P. C., is complied with. If there is the slightest doubt whether the statement was voluntarily made then this defect would be an important factor in favour of the accused and in favour of rejecting this confession. *In re Dasi Viraya.*

39 Cr. L. J. 585 :
175 I. C. 422 : 1938 M. W. N. 90 :
47 L. W. 161 : 1938 1 M. L. J. 289 :
10 R. M. 775 : A. I. R. 1938 Mad. 490.

Confession—What is—Statement containing self-exculpatory matter, when amounts to confession.

No statement that contains self-exculpatory matter can amount to a confession, if the exculpatory statement is of some fact which, if true, would negative the offence alleged to be confessed. An admission of a gravely incriminating fact, even of a conclusively in-

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criminating fact is not of itself a confession. The definition of confession is not contained in the Evidence Act and in that Act it would not be consistent with the natural use of language to construe confession as a statement by an accused "suggesting the inference that he committed" the crime. *Pakala Narayana Swami v. The King-Emperor.*

40 Cr. L. J. 364 (P. C.) :
180 I. C. 1 : 1939 M. W. N. 185 :
1939 O. W. N. 282 : 20 P. L. T. 265 :
49 L. W. 349 : 43 C. W. N. 473 :
1939 O. L. R. 134 : 11 R. P. C. 166 :
1939 A. L. J. 298 : 41 Bom. L. R. 428 :
41 P. L. R. 272 : 69 C. L. J. 273 :
5 B. R. 449 : 1939 1 M. L. J. 756 :
18 Pat. 234 : 66 I. A. 66 :
1939 A. W. R. 35 :
A. I. R. 1939 P. C. 47.

Confession—Whether to be accepted or rejected as a whole—Confession stating accused gave blow only in self-defence—Further statement that deceased died from accidental hatchet blow from another—Medical evidence to the contrary—Exculpatory statement concerning plea of self-defence, if can be considered on merits.

Held, that where the accused confessed that he dealt a blow only in self-defence and also stated that deceased died as a result of an accidental hatchet blow from a prosecution witness and the statement as to cause of death was found false in view of the medical evidence, the exculpatory statement giving rise to the plea of self-defence being distinct and separate from statement as to cause of death, could be considered on merits. *Ahman Shah Muhammad v. Emperor.*

38 Cr. L. J. 843 :
170 I. C. 81 : 38 P. L. R. 105 :
10 R. L. 77 : A. I. R. 1937 Lah. 243.

Confession of co-accused—Conviction.

A conviction on the confession of a co-accused alone is bad in law. *Nitai Chandra Jana v. Emperor.* (S. B.) 38 Cr. L. J. 852 :
170 I. C. 201 : 10 R. C. 98 :
A. I. R. 1937 Cal. 433.

Confession—Accused caught red-handed, making confession before Court.

An accused who was caught red-handed while committing dacoity made a confessional statement in the Court of the trial Magistrate which, however, was subsequently retracted. On the day of the confession the accused had admittedly come from Police custody, he was before the Court for a considerable period and overwhelming evidence for the prosecution was recorded against him before his statement was taken: Held, that in the circumstances it could not be said that there was any cogent inference that his confession was in any way improperly induced. It was more likely to have been due to the fact that he had the intelligence to see that he had been caught red-handed and that the evidence which had been given against him

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Confession.

The procedure of returning to Police custody a person whose confession has been validly recorded under S. 164, Cr. P. C., is highly improper and may damage the whole case in which such a confession is used. *Abdul Sattar v. Emperor*.

37 Cr. L. J. 493 :
161 I. C. 793 : 17 Lah. 460 :
38 P. L. R. 1 : 8 R. L. 802 :
A. I. R. 1936 Lah. 278.

Confession.

Though it is not a rule of law that an accused cannot be convicted upon a confession if he has retracted it, it is very necessary to make certain before acting on it that corroborated evidence supports the confession. *Bhahananda Banerjee v. Emperor*. (S. B.) 34 Cr. L. J. 1222 :
146 I. C. 186 : 57 C. L. J. 213 i
6 R. C. 183 : A. I. R. 1933 Cal. 747.

Confession.

To reject a confession of an accused involuntarily made as inadmissible is a matter for the discretion of the Judge. *Abdula Khan v. Emperor*.

37 Cr. L. J. 707 :
162 I. C. 931 : 39 C. W. N. 677 :
62 Cal. 928 : 62 C. L. J. 217 :
8 R. C. 669.

Confession.

Voluntary confessions may be received in evidence against the accused making them and may furthermore be taken into consideration against their co-accused. Evidence of the accomplice can be used for the purpose of corroborating the evidence of the approvers. *Maung Tha Ka Do v. Emperor*.

37 Cr. L. J. 280 :
160 I. C. 292 : 8 R. Rang. 363 :
A. I. R. 1935 Rang. 491.

Confession.

Where a confession is otherwise valid, the mere fact of its having been recorded at the Magistrate's house does not vitiate it. *Ghulam Muhammad v. Emperor*.

36 Cr. L. J. 683 :
155 I. C. 265 : 35 P. L. R. 746 :
7 R. L. 673 : A. I. R. 1934 Lah. 675 (2).

Confession.

When a grown-up man in the full possession of his senses chooses to confess his crime, then he can be legally convicted on his own confession even if it be subsequently retracted. *Mathura v. Emperor*.

36 Cr. L. J. 767 :
155 I. C. 527 : 1935 O. W. N. 561 :
7 R. O. 602 : A. I. R. 1935 Oudh 354.

Confession.

Where a weapon has been recovered from the accused and the Court believes his confession and acts upon it, the mention of a weapon in the confession as the weapon of offence sufficiently connects the weapon with the offence. *Mehnga Hamira v. Emperor*.

35 Cr. L. J. 709 :
148 I. C. 424 : 6 R. L. 564 :
A. I. R. 1934 Lah. 51.

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Confession.

Where an attempt is made to rely upon an extra-judicial confession every precaution should be taken to ascertain as exactly as possible the very words which were used by the prisoner who is supposed to have confessed. *Sultan v. Emperor*.

36 Cr. L. J. 62 (2) :
151 I. C. 984 : 28 S. L. R. 285 :
7 R. S. 74 : A. I. R. 1934 Sind 119.

Confession—Acceptance of part—Principles.

Where there is no other evidence then the confession is to be rejected or accepted as a whole, when there is other evidence whereby the truth or falsity of a part of the confession could be tested, the Court will test the truth or falsity of the confession by that other evidence and will use its discretion and will accept that part of the confession which it believes to be true and reject that part which it believes to be false. Where, however, there is no other evidence as to certain facts to which the accused in his confession testifies and which are in his favour, the Court will accept these facts as true if it accepts the confession and draw from them the proper inferences in favour of the accused. *Naukar Mouldedino v. Emperor*.

38 Cr. L. J. 968 :
170 I. C. 827 : 10 R. S. 73 : 31 S. L. R. 460 :
A. I. R. 1937 Sind 212.

Confession.

Accused exonerating himself but implicating other co-accused—Corroboration is very necessary. *Pwa Tha U v. Emperor*.

37 Cr. L. J. 246 :
160 I. C. 210 : 8 R. Rang. 347 :
A. I. R. 1935 Rang. 512.

Confession—Admissibility—Conduct of Police Sub-Inspector and Magistrate.

In a murder trial the Sub-Inspector who was in charge of the investigation took a Magistrate with him to witness the accused discover the dead body. The Magistrate instead of doing what he was brought for, took charge of the investigation and taking aside the accused recorded his confession in instalments. All along the Sub-Inspector kept on looking till the *post mortem* examination, when he proceeded to inquire and take note of what the accused had deposed before the Magistrate : *Held*, that the behaviour of the officers was so abnormal that it cast a good deal of doubt on the genuineness of the confession. *Akbar Badr Din v. Emperor*.

39 Cr. L. J. 907 (b) :
177 I. C. 617 : 40 P. L. R. 890 :
11 R. L. 339 : A. I. R. 1938 Lah. 594.

Confession—Admissibility.

Production of *gandasa* neither blood-stained nor proved to have been connected with crime—Confession is not admissible. *Kanshi Ram v. Emperor*.

36 Cr. L. J. 1195 :
157 I. C. 735 : 37 P. L. R. 83 :
A. I. R. 1935 Lah. 433.

Confession—Admissibility.

The retracted confession of an accused when not proved to have been duly and voluntarily

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no rule of law which compels belief in the statement of a witness. The Court if it comes to the conclusion that the statement in its essential particulars is true, is entirely entitled to disregard the statements which it may hold in the circumstances are not true. *Emperor v. Itwa Munda*. (S. B.)

39 Cr. L. J. 554 :
175 I. C. 300 : 10 R. P. 606 :
4 B. R. 568 : 10 P. L. T. 476 :
A. I. R. 1938 Pat. 258.

—Confession—*J tried along with L—Trial going on for about a year—J dying six months before delivery of judgment—His confession, put on record before his death—Such confession, how far can be used against L.*

J was put on his trial along with L under Ss. 420-B and 411-120-B, Penal Code, the trial proceeded for some time and it was only about six months before the delivery of judgment when the trial had proceeded for more than a year or about a year that J died, and before his death, his confession had been put on the record: Held, that even if the confession of J was admissible against L, it could not be used as substantive evidence. Such a confession could only be used for purposes of corroborating the other evidence which was on record. *Ram Sarup Singh v. Emperor*.

38 Cr. L. J. 339 :
167 I. C. 162 : 41 C. W. N. 183 : 9 R. C. 652 :
A. I. R. 1937 Cal. 39.

—Confession—Magistrate asking accused to 'make a detailed statement'—Effect.

The fact, that the Magistrate while recording a confession asked the accused to make detailed statement, does not make the statement resulting from that question any the less voluntary. Such a question cannot be construed as a threat. *Gian Chand v. Emperor*.

38 Cr. L. J. 879 :
170 I. C. 5 : 10 R. L. 101 : 39 P. L. R. 834 :
I. L. R. 1937 Lah. 481 :
A. I. R. 1937 Lah. 399.

—Confession—Magistrate, if can give oral proof of confession—Confession unreliable—Effect on discovery.

Oral proof by a Magistrate of a confession which he could have recorded is inadmissible, for, when the Legislature has prescribed a particular mode of proof; no other method will suffice. If the confession, as a whole, is unreliable, the discovery which is but a part of that confession should also be held to be unreliable. *Akbar Badr Din v. Emperor*.

39 Cr. L. J. 907 (b) :
177 I. C. 617 : 40 P. L. R. 890 :
11 R. L. 339 : A. I. R. 1938 Lah. 594.

—Confession—Murder—Wrong details of incident, effect of.

The mere fact that the accused in his confession has given a wrong or an incomplete description of the way in which he brought about the death of the deceased is not a reason for finding him not guilty. *Bangaru Reddi v. Emperor*.

41 Cr. L. J. 909 :
190 I. C. 415 : 51 L. W. 562 :
13 R. M. 409 : 1940 M. W. N. 543 :
A. I. R. 1940 Mad. 699.

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—Confession—Proper recording of voluntary true confession—Form of questions.

The proper recording of confessions which can be shown, on the face of them, to be voluntary and apparently true, is of the highest and supreme importance in criminal trials, especially in those of murder and dacoity. The circumstances of each case vary, and the form of the questions put by the Magistrate so as to satisfy himself that the prisoner is in fact making a voluntary confession may also in consequence vary, but fundamental principles must ever remain constant, and their application needs only the exercise of a little intelligence and a little sympathy and understanding on the part of the Magistrate, of the needs and the limitations of the confessing prisoner. *Prag v. Emperor*.

32 Cr. L. J. 97 :
128 I. C. 215 : 7 O. W. N. 909 :
6 Luck. 335 : I. R. 1931 Oudh 23 :
A. I. R. 1930 Oudh 449.

—Confession—Retracted confession by co-accused—Admissibility—Corroboration, necessity of.

A retracted confession by a co-accused is admissible in evidence but the rule of prudence is to seek corroboration before the conviction of a co-accused is based thereon; as to what the nature of the corroboration should be will depend upon the facts of each particular case. *Emperor v. Mangru Kisan*.

39 Cr. L. J. 325 :
173 I. C. 507 : 16 Pat. 612 : 10 R. P. 418 :
19 P. L. T. 104 : 4 B. R. 284 :
A. I. R. 1938 Pat. 108.

—Confession—Statements by several accused to Police Officer not amounting to confession when taken separately—When taken together, showing that accused were engaged in conspiracy—Admissibility.

Although the statements made by a number of accused separately to a Police Officer in the course of his investigation of an offence, when taken separately, may not amount to complete confession of any crime, nevertheless when such statements taken together show that the accused who made them were engaged in criminal conspiracy and it is for the purpose of establishing this fact that the statements are sought to be used, they amount to confessions made to the Police Officer and are inadmissible in evidence. *In re : Koganti Appayya*.

40 Cr. L. J. 108 :
178 I. C. 616 : 48 L. W. 322 : 11 R. M. 478 :
1938 M. W. N. 825 :
A. I. R. 1938 Mad. 893.

—Confession—Statement, when amounts to confession.

Whether the statements amount to a confession or not depends upon the facts related in the statements and not upon the opinion of the man who made them. *Zahid Beg v. Emperor*.

39 Cr. L. J. 364 :
173 I. C. 838 : 1937 A. L. J. 1253 :
10 R. A. 508 : 1937 A. W. R. 1099 :
A. I. R. 1938 All. 91.

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retracted confession should be corroborated.
Rhojo v. Emperor.

36 Cr. L. J. 223 :
152 I. C. 1032 : 7 R. S. 106 :
A. I. R. 1934 Sind 172.

————Confession—Corroboration.

Confession implicating a co-accused requires corroboration if a co-accused is to be convicted on it. *Khatir Jama Khan v. Emperor.*

31 Cr. L. J. 492 :
123 I. C. 393 : A. I. R. 1930 Pat. 385.

————Confession—Corroboration.

It is a rule of prudence which requires that a retracted confession shall not be acted upon to the prejudice of the accused, unless it is corroborated by reliable and independent evidence to a material extent and also in material particulars. *Honsabai Bala Shinde v. Emperor.*

34 Cr. L. J. 73 :
140 I. C. 740 : 34 Bom. L. R. 1240 :
56 Bom. 542 : I. R. 1933 Bom. 30 :
A. I. R. 1932 Bom. 553.

————Confession—Corroboration.

Recovery of weapons stained with blood from accused corroborates extra-judicial confession. *Emperor v. Shankar.*

35 Cr. L. J. 894 :
149 I. C. 69 : 11 O. W. N. 636 :
6 R. O. 514 : A. I. R. 1934 Oudh 222.

————Confession—Corroboration.

Commission of offences alleged to have been pointed out—Confession not maintaining it—Retraction of confession—Mere fact of showing places does not amount to corroboration. *Emperor v. Chadammi Lal.*

37 Cr. L. J. 730 :
162 I. C. 948 : 1936 A. W. R. 185 :
8 R. A. 916 : A. I. R. 1936 All. 373.

————Confession, credibility of.

Where an accused was produced at 9 P. M. before the Magistrate for recording confession and was not recommended to the judicial lock-up after the confession had been recorded : Held, that the confession was not of much use in deciding the case. *Kishan Chand Kewal Ram v. Emperor.*

39 Cr. L. J. 448 :
174 I. C. 449 : 10 R. Pesh. 64 :
A. I. R. 1938 Pesh. 5.

————Confession.

Dishonest intention not admitted—Record of statement not complete—Statement is not a confession. *Ramsakhia v. Emperor.*

36 Cr. L. J. 447 :
153 I. C. 922 : 15 P. L. T. 586 :
7 R. P. 385 : A. I. R. 1934 Pat. 651.

————Confession—Evidentiary value of—Confession retracted—Corroboration.

Normally a confession of guilt is the most conclusive evidence which one can have. But if that confession is "retracted," then it is certainly desirable, if not absolutely necessary, that there should be some corroboration of what the accused has said about himself even in respect of his own actions. *Purnananda Das Gupta v. Emperor.* (F. B.)

40 Cr. L. J. 199 :
179 I. C. 506 : 68 C. L. J. 206 :
11 R. C. 557 : I. L. R. 1939 1 Cal. 1 :
A. I. R. 1939 Cal. 65.

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————Confession—Mode of recording.

In recording confessions, non-compliance with the provisions of S. 364, Cr. P. C., is fatal to the prosecution case. *Ramsakhia v. Emperor.*

36 Cr. L. J. 447 :
153 I. C. 922 : 15 P. L. T. 586 :
7 R. P. 385 : A. I. R. 1934 Pat. 651.

————Confession—Murder—Accused confessing but introducing circumstances not borne out by medical evidence—Effect.

Where an accused confesses to having caused the death of a woman and admits having robbed her after death but, during that confession introduces into it circumstances with a view to exculpate himself from a conviction for murder, and it is clear from the medical evidence and the Court is satisfied that the woman lost her life not in the least in the manner described by the accused but that by violence to the neck and pushing of the cloth into her mouth by the accused, the violence amounts to murder and the accused can be convicted of murder upon his confession. *Emperor v. Deyyam Chinnayya.*

41 Cr. L. J. 461 :
187 I. C. 481 : 1940 M. W. N. 169 :
12 R. M. 733.

————Confession.

Non-confessional statement should not be torn from context—Confession which is inadmissible should not be dissected to make parts admissible. *James Dowdall v. Emperor.*

37 Cr. L. J. 607 :
162 I. C. 430 : 31 N. L. R. 215 Sup. :
8 R. N. 262 : A. I. R. 1936 Nag. 103.

————Confession, opposed to medical evidence—Value.

Where the medical evidence in a case is contrary to the statement contained in a confession, the value of the confession as a piece of evidence, is negligible. *Shangara Ram v. Emperor.*

33 Cr. L. J. 935 :
140 I. C. 194 : 33 P. L. R. 691 :
I. R. 1932 Lah. 695 : A. I. R. 1932 Lah. 557.

————Confession—Partial admissibility.

Where there is no other evidence to show affirmatively that any portion of the exculpatory element in the confession is false, the Court must accept or reject the confession as a whole and cannot accept only the inculpatory element while rejecting the exculpatory element as inherently incredible. *Kala Mohammad Akbar v. Emperor.*

41 Cr. L. J. 150 :
185 I. C. 274 : I. L. R. 1940 Lah. 217 :
42 P. L. R. 711 : 12 R. L. 277 :
A. I. R. 1939 Lah. 534.

————Confession—Partially false—Procedure.

Where a confession made by an accused is found to be partly false, the Court may consider only that part which is found to be true and need not take into consideration the rest of the confession. *Nihal Singh Dewa Singh v. Emperor.*

41 Cr. L. J. 576 :
188 I. C. 326 : 42 P. L. R. 1 :
13 R. L. 27 : A. I. R. 1940 Lah. 157.

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a substantial portion of which has been disbelieved, is bad. *Jagdeo Rai v. Kali Rai*.

18 Cr. L. J. 639 :
30 I. C. 1007 : 1 P. L. W. 577 :
A. I. R. 1917 Pat. 331.

————Conviction—Evidence—Accessory after fact—Corroboration, necessity of.

Where a woman witnesses the murder of her paramour by her husband, but does not report the matter, which she was bound to do under S. 44, Cr. P. C., even though an opportunity had come due to the absence of the husband for some days, in the circumstances, she must be regarded as an accessory after the fact and conviction cannot be based on her solitary testimony without corroboration. *Emperor v. Kalloo*.

38 Cr. L. J. 286 :
166 I. C. 667 : 1937 O. L. R. 33 :
9 R. O. 328 : 1937 O. W. N. 104 :
A. I. R. 1937 Oudh 259.

————Conviction—Evidence—Charge of offence committed at particular time and place—Conviction in respect of offence committed at different time and place, legality of.

Where an accused person is charged with having beaten the complainant at a particular place at a particular time and the prosecution evidence fails to establish that charge, he cannot, on the evidence, be convicted of having beaten the complainant at a different place on a different occasion. *Jalal-ud-Din v. Emperor*.

25 Cr. L. J. 471 :
77 I. C. 823 : 6 L. L. J. 572 :
A. I. R. 1924 Lah. 616.

————Conviction—Evidence—Important witnesses on whose evidence prosecution and Judge rely, not examined.

Conviction is not justified where the prosecution has failed to call important witnesses in the Committing Magistrate's Court, on whose evidence the prosecution and the Judge largely rely and with whose evidence the evidence of other witnesses is closely connected. *Raban Lalu Sheikh v. Emperor*.

39 Cr. L. J. 618 :
175 I. C. 324 : 10 R. S. 296 :
32 S. L. R. 709 : A. I. R. 1938 Sind 97.

————Conviction—Grounds for.

A conviction cannot be based upon evidence which it is believed the witnesses might have given but have not in fact given. *Murad v. Emperor*.

23 Cr. L. J. 606 :
68 I. C. 830 : A. I. R. 1923 Lah. 128.

————Conviction—Grounds for.

A conviction must rest upon direct or circumstantial evidence, and conjecture must not be allowed to take the place of proof. *Emperor v. Buta Singh*.

18 Cr. L. J. 490 :
39 I. C. 330 : 1 P. R. 1917 Cr. :
A. I. R. 1917 Lah. 48.

————Conviction—Grounds for.

A conviction must stand or fall on the strength of the prosecution and not on the

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weakness of the defence. *Natha Singh v. Emperor*.

26 Cr. L. J. 949 :
87 I. C. 101 : 6 L. L. J. 579 :
A. I. R. 1925 Lah. 282.

————Conviction—Grounds for.

A finding based on a theory not merely unsupported by, but opposed to, the direct evidence available, is bad in law. Similarly, a moral conviction of guilt is not sufficient foundation for a verdict of guilty, unless it is based on substantial facts which lead to no other reasonable conclusion than that the person charged is guilty. *Gulzarsha Fakir v. Emperor*.

20 Cr. L. J. 747 :
53 I. C. 155 : A. I. R. 1918 Nag. 123.

————Conviction—Grounds for.

A man cannot be convicted on his appearance and manner of speech. An ugly, stammering nervous man may be innocent while a good looking plausible man may be a scoundrel. *Ghulam Mohammad v. Emperor*.

23 Cr. L. J. 161 :
65 I. C. 625.

————Conviction—Grounds for.

A person cannot be convicted merely because his own story is false. The conduct of the accused at the time on a question of guilty knowledge may, in probability and in truth, be the best evidence in the world. *Tarapada Mitra v. Emperor*.

34 Cr. L. J. 1073 :
145 I. C. 814 : 37 C. W. N. 426 :
6 R. C. 138 : A. I. R. 1933 Cal. 603.

————Conviction—Grounds for.

Conviction cannot be had on the testimony of perjured witnesses. *Nem Singh v. Emperor*.

36 Cr. L. J. 152 :
152 I. C. 741 : 7 R. S. 373 :
4 A. W. R. 5 : A. I. R. 1934 All. 408.

————Conviction—Grounds for.

In this country and among Jats, murders are sometimes committed from motive of pride to avenge comparatively harmless insults. The mere presence of motive, however, will not justify a conviction for murder when the testimony of alleged eye-witnesses of the occurrence cannot be relied upon. *Pohla v. Emperor*.

27 Cr. L. J. 241 :
92 I. C. 417 : 7 L. L. J. 442.

————Conviction—Grounds for.

Moral certainty is necessary for conviction—In cases of circumstantial evidence incriminating facts must be inconsistent with innocence of accused. *Hem Chandra v. Emperor*.

35 Cr. L. J. 712 :
148 I. C. 543 : 38 C. W. N. 582 :
6 R. C. 465 : A. I. R. 1934 Cal. 407.

————Conviction—Grounds for.

Moral conviction can never be a substitute for legal proof and cannot furnish a safe basis for the conviction of an accused person. *Sullah v. Emperor*.

29 Cr. L. J. 697 :
110 I. C. 329 : 29 P. L. R. 388 :
10 L. L. J. 311 : A. I. R. 1928 Lah. 721.

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confession although it is retracted but the same credence should not be given to it as it would be given were it not retracted. *Emperor v. Bhawani Prasad*. (S. B.)

36 Cr. L. J. 1275 :
157 I. C. 1070 : 39 C. W. N. 334 :
62 Cal. 433 : 8 R. C. 153 :
A. I. R. 1935 Cal. 561.

— — — Confession—Retracted confession.

Absence of circumstances to show that accused was willing to make it—Suspicion that it was made at instance of Police—Confession has no evidentiary value. *Manji v. Emperor*.

162 I. C. 914 : 1936 A. L. J. 669 :
1936 A. W. R. 248 :
A. I. R. 1936 All. 388.

— — — Confession — Retracted confessions —
Confessions contradictory—No direct testimony
—Conviction.

In the absence of any direct evidence it is not safe to rely upon the retracted confessions which are contradictory to each other in material details and which have been contradicted by direct testimony. The facts that the confessions were retracted and that when they were made, some Policemen were interested in the investigation of the case, are good grounds for not relying upon the confession. *Remal Singh v. Emperor*.

39 Cr. L. J. 290 :
173 I. C. 315 : 39 P. L. R. 815 :
10 R. L. 431 : A. I. R. 1938 Lah. 101.

— — — Confession - Retracted confession—
Confession made under torture of Police—Duty of
Court.

The excuse of torture by the Police in compelling an accused to make confession is used so often without any justification time and again, that it has become very difficult for any Court to pay serious attention to it, and indeed no Court should pay any attention to it unless it is supported by evidence. An accused cannot therefore get rid of statement, made by him by merely retracting it. *Purnananda Das Gupta v. Emperor*. (F. B.).

40 Cr. L. J. 199 :
179 I. C. 506 : 68 C. L. J. 206 :
11 R. C. 557 : I. L. R. 1939 1 Cal. 1 :
A. I. R. 1939 Cal. 65.

— — — Confession—Retracted confession—
Conviction on its basis—Legality of—Evidence—
Accomplice—Corroboration—Corroborating evidence
if should implicate each accused—Some
accused implicated—Corroboration as regards
identity of others—Necessity of.

One accomplice cannot corroborate another. The case of each of the accused must be taken on its merits and independent corroborative testimony must be sought for in every instance. It is not enough to find such corroboration as regards the presence and participation in the crime by several of the accused and then to conclude that the evidence of the accomplices must be true so far as it implicates the rest. The danger in these cases is that while an accomplice may be telling a story, which is in the main true, they may wickedly implicate persons who took no part in the joint crime, although the story as to the commission of a

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joint crime by a number of criminals acting in concert may be well-established. The rule of prudence demands that the evidence of accomplices should be corroborated in material particulars implicating each of the accused: *Held*, that when there are a number of accomplices giving evidence against seven accused persons, it was a mistake, having found corroborative evidence implicating four of them for the Judge to assume that the story of the accomplices did not require corroboration as regards the identity of the other three. *Nga Po Aung v. Emperor*.

38 Cr. L. J. 948 :
170 I. C. 645 : 10 R. Rang. 101 :
A. I. R. 1937 Rang. 264.

— — — Confession—Retracted confession—Extra-
judicial confession—Admissibility.

A confession cannot be held inadmissible merely because it has been retracted or because of allegations as to its having been induced in the absence of evidence to support them. Excepting the statement of the accused as to the place of the offence which has led to some discovery, the extra-judicial confession of the accused to the Magistrate must be wholly excluded. *Ibrahim v. Emperor*.

38 Cr. L. J. 583 :
168 I. C. 745 : 39 P. L. R. 419 : 9 R. L. 669 :
A. I. R. 1937 Lah. 208.

— — — Confession—Retracted confession, value
of.

Where there is absolutely no evidence to show in what circumstances an accused showed his willingness to investigating officer to make a confession but on the contrary there are indications in the confession which suggest that the confession was not the outcome of the desire of the accused to state what he knew and there are reasons to suspect that the confession was made at the instance of the police who had a hand in shaping it, the confession, if retracted, has no evidentiary value both against the co-accused and the accused himself. *Manji v. Emperor*.

162 I. C. 914 : 1936 A. L. J. 669 :
1936 A. W. R. 248 : A. I. R. 1936 All. 388.

— — — Confession—Retracted confession—When
can be basis of conviction.

As a rule of prudence a retracted confession should not be the basis of a conviction unless it is substantially corroborated by independent evidence. *Emperor v. Manu Chik*.

39 Cr. L. J. 635 :
175 I. C. 716 : 4 B. R. 626 :
11 R. P. 11 : A. I. R. 1938 Pat. 290.

— — — Confession—Value of, against co-accused
—Approver's evidence and confession of co-ac-
cused—Distinction between.

As regards an approver, there is the fear that he is giving evidence in order to save his skin and, therefore, he is liable to make statements which are not true, if he thinks they will be for his benefit. But as regards the confession of a co-accused, this cannot be called tainted evidence for the same reason. A person making a confession does so deliberately and after having been warned

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The conviction of a prisoner by a competent Court is not invalid simply because he was brought before it under an illegal arrest. *Juma v. Emperor*.

5 Cr. L. J. 89 ;
17 P. R. Cr. 1906.

————Conviction based on accused's deposition, legality of.

A conviction based on the deposition of the accused taken on solemn affirmation cannot be upheld. *Anthony v. Emperor*.

7 Cr. L. J. 131 ;
3 M. L. T. 138.

————Conviction.

Charge on one set of facts—Conviction on same charge but on altogether different set of facts. It is a legal error and conviction is liable to be set aside. *Parsram Kundraj v. Emperor*.

35 Cr. L. J. 582 ;
148 I. C. 66 ; 6 R. S. 179 ;
A. I. R. 1933 Sind 225.

————Conviction for a more serious offence—Lesser offences in the same transaction—Procedure.

Where the accused were convicted of the more serious offence of rioting and they could also be convicted of the lesser offence of criminal trespass, it would not be proper to order a further charge and a re-trial in regard to the minor offence, if it appears that the Sessions Judge had taken it into account in fixing the appropriate sentence. *Mappillai Muthappa Nadar v. Mappillai Kula Sankara Nadar*.

12 Cr. L. J. 19 ;
8 I. C. 1101 : (1911) 1 M. W. N. 835 ;
9 M. L. T. 275.

————Conviction for minor offence, legality of—Trial for graver offence, expediency of.

Where a public servant was convicted by a second class Magistrate on a charge of criminal misappropriation, but the evidence seemed to disclose to the Appellate Court that criminal breach of trust by a public servant had been committed : Held, that the conviction for the minor offence was invalid and that it was not expedient in the interests of justice to require prosecution and trial in respect of the graver charge. *Narayana v. The Tahsildar of Conjeevaram*.

7 Cr. L. J. 215 ;
2 M. L. T. 495.

————Conviction on complainant's statement—Prudence.

There is no rule of prudence that no Court should convict the accused solely upon the uncorroborated testimony of the complainant even if it believes the evidence of the complainant. *Mendai Lal v. Emperor*.

35 Cr. L. J. 935 ;
149 I. C. 231 ; 11 O. W. N. 680 ;
6 R. O. 538 : A. I. R. 1934 Oudh 244.

————Conviction on defence evidence.

The evidence of a defence witness cited by a co-accused cannot be treated as prosecution evidence against the other accused in the case. *Bahoru v. Emperor*. 26 Cr. L. J. 1018 ;
87 I. C. 842 : A. I. R. 1925 All. 769.

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————Conviction on evidence of single witness.

There is no rule of law that it is illegal to convict a man on the evidence of only one witness. *In re : Veerappa Goundan*.

30 Cr. L. J. 317 ;
114 I. C. 353 ; 28 L. W. 575 ;
55 M. L. J. 591 ; 51 Mad. 936 ;
1928 M. W. N. 185 ; I. R. 1929 Mad. 273 ;
A. I. R. 1928 Mad. 1186.

————Conviction on mere suspicion.

If a fight has taken place between two armed mobs, but there is no evidence as to what actually occurred, a mere suspicion that the accused were present can form no basis for a conviction. *Rameshwar Singh v. Emperor*.

41 Cr. L. J. 114 ;
185 I. C. 162 ; 6 B. R. 110 ;
12 R. P. 339 ; A. I. R. 1940 Pat. 365.

————Conviction without charge—Power of Appellate Court.

An Appellate Court can convict a person of an offence even if there is no specific charge in respect of it, if evidence establishes that charge. *Diwan Singh of Delhi v. Emperor*.

38 Cr. L. J. 390 ;
167 I. C. 465 ; 9 R. N. 186 ;
I. R. 1936 Nag. 99 ;
A. I. R. 1936 Nag. 132.

————Corpus delicti—Expression corpus delicti, whether applicable in criminal trials.

The expression *corpus delicti* is not found in any part of Cr. P. C. The course of criminal trials in India is to be governed by the provisions of the Indian Statute and not by a criterion derived from the law of some other country. *Emperor v. Mayadhar Pothal*.

40 Cr. L. J. 625 ;
181 I. C. 1001 : 20 P. L. T. 420 ; 5 B. R. 706 ;
11 R. B. 653 ; 18 Pat. 450 ;
A. I. R. 1939 Pat. 577.

————Costs.

Accused under S. 107, Cr. P. C., cannot be ordered to pay costs. *Sheo Prasad Singh v. Mahango Nonia*.

25 Cr. L. J. 476 ;
77 I. C. 828 : A. I. R. 1924 All. 694.

————Costs for adjournment—Power of Courts.

No doubt the Criminal Courts are empowered to order an accused, if he asks for adjournment, to pay costs to the complainant, but this power should not be exercised in such a manner as to place obstacles in the way of the accused properly defending himself. *Ishar Singh v. Shama Dusadh*.

38 Cr. L. J. 484 ;
167 I. C. 881 : 3 B. R. 379 ; 17 P. L. T. 627 ;
9 R. P. 449 : A. I. R. 1937 Pat. 131.

————Costs.

Private complaint in non-cognizable case—Order by Court for prosecution by Court Inspector—Application for expert witnesses—Costs of expert witnesses should be paid by the Crown. *Gobardhan Mahton v. Rambilas Tewari*.

37 Cr. L. J. 98 ;
159 I. C. 451 : 16 P. L. T. 511 ; 2 B. R. 81 ;
8 R. P. 282 (1) : A. I. R. 1935 Pat. 455.

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in his presence was overwhelming. *Molar v. Emperor*.

40 Cr. L. J. 81 :
178 I. C. 572 : 11 R. L. 475 :
A. I. R. 1938 Lah. 731.

———*Confession—Confession during cross-examination as approver in another case—Effect of.*

Where the confession is made by the accused to a Magistrate during his cross-examination as approver in another case and not because he was requested to do so by any one acting on behalf of the prosecution, the confession cannot be said to be one made under the influence of promise of pardon. *Jagat Singh v. Emperor*.

38 Cr. L. J. 84 :
165 I. C. 795 : 9 R. L. 317 :

———*Confession—Confession not implicating maker in anything which preceded death—Admissibility against co-accused.*

The confession of an accused which is only a confession about taking part in the disposal of the dead body so far as the maker of the confession is concerned, and does not implicate the maker of the confession in anything which preceded the death, cannot be made use of against a co-accused who is charged with murder. *Govind Subbaramayya v. Emperor*.

38 Cr. L. J. 753 :
169 I. C. 372 : 45 L. W. 93 :
1937 M. W. N. 178 : 1937 1 M. L. J. 750 :
10 R. M. 19 : A. I. R. 1937 Mad. 321.

———*Confession—Criminal rules of practice, r. 85—Object of—Question put to accused and his statements showing voluntariness of confession—Confession, if can be rejected merely because formal questions were not asked.*

The object of putting the questions set out in r. 85 of the Criminal Rules of Practice is to enable the Magistrate to be quite sure that the statement was a voluntary one; and if one can be sure from the other questions and statement made by the accused that the confession was voluntary and was not brought about by coercion and inducement, then the confession cannot be rejected merely because a formal question was not asked. *Kamsala Muncyya v. Emperor*.

39 Cr. L. J. 390 :
173 I. C. 1001 : 1937 M. W. N. 537 :
46 L. W. 144 : 10 R. M. 643 :
I. L. R. 1938 Mad. 348 :
A. I. R. 1937 Mad. 755.

———*Confession—Evidence of recording Magistrate.*

Any Magistrate of any rank could depose to a confession made by an accused as long as it was not induced by a threat or promise, without affirmatively satisfying himself that it was made voluntarily and without showing or reading to the accused any version of what he was supposed to have said or asking for the confession to be vouched by any signature. The range of Magisterial confessions would be so enlarged by this process that the provisions of S. 164 would almost inevitably be widely disregarded. It is a section conferring powers on Magis-

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trates and delimiting them. *Nazir Ahmad v. Emperor*.

37 Cr. L. J. 897 P. C. :
163 I. C. 881 : 38 Bom. L. R. 987 :
1936 O. W. N. 505 : 1936 M. W. N. 745 :
1936 A. L. J. 895 : 40 C. W. N. 1221 :
17 P. L. T. 594 : 1936 O. L. R. 437 (2) :
9 R. P. C. 57 : 71 M. L. J. 476 : 44 L. W. 583 :
19 N. L. J. 214 : 17 Lah. 629 : 64 C. L. J. 445 :
39 P. L. R. 43 : 1936 A. W. R. 620 P. C. :
A. I. R. 1936 P. C. 253 (2).

———*Confession—Exculpatory part inherently improbable—Effect.*

Where there is evidence to show that any portion of the exculpatory statement in a confession by the accused is inherently improbable, the Court is at liberty to reject that portion of the statement which appears to it to be so improbable and to act only upon that part of the statement which is inculpatory. *Ghulam Nabi v. Emperor*.

40 Cr. L. J. 185 :
179 I. C. 237 : 40 P. L. R. 265 : 11 R. L. 542 :
A. I. R. 1938 Lah. 850.

———*Confession—Extra-judicial confession, proof of.*

In dealing with an extra-judicial confession, particularly when it is not anywhere recorded, the Court must be very careful and should not act upon it unless it is proved by evidence of the most reliable character. *Emperor v. Jagia*.

39 Cr. L. J. 428 :
174 I. C. 524 : 19 P. L. T. 268 :
10 R. P. 531 : 4 B. R. 451 :
17 Pat. 369 : A. I. R. 1938 Pat. 308.

———*Confession—First Information lodged by accused—Accused in Police custody for 58 hours—Confession after Police custody subsequently retracted, whether acceptable.*

The accused himself gave the First Information in a case practically without any delay at all on the morning after the night in which the offence had taken place. There he had given an entirely different account of what had happened that night, from the one given by him in his confession after he had remained for 58 hours in the Police custody and under arrest for about 24 hours: *Held*, that it was impossible to dissociate this confession from his long period in Police custody and the hope that he would be made an approver, circumstances being black against him as he was the last man seen in the company of the deceased and a confession made under such circumstances which is subsequently retracted cannot be made the basis for a conviction for murder. *Emperor v. Karu Guala*.

28 Cr. L. J. 447 :
101 I. C. 479 : 8 P. L. T. 555.

———*Confession—In absence of other evidence, if whole of confession should be accepted as true statement.*

It cannot be said that in the absence of other evidence the whole of a given confession must be accepted as a statement of truth in its entirety. It is true that if an accused person makes a confession, the whole of that confession must be placed before the Court and is receivable in evidence. But there is

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not pronounce judgment till the hearing of both cases is finished thereby precluding the danger of an accused being convicted before his whole case is before the Court, and also preventing thereby conflicting judgments upon similar facts, although it infringes the fundamental principle that the Court must not import any facts into a case which are not to be found upon the record of the case. There is no clear law as regards the procedure in counter-cases, a defect which the Legislature ought to remedy. *Krishna Pannadi v. Emperor*.

31 Cr. L. J. 461 :
123 I. C. 10 : 1929 M. W. N. 883 :
31 L. W. 233 : 58 M. L. J. 352 :
A. I. R. 1930 Mad. 190.

-----Counter-cases of mutual assault—Evidence in one cannot be used in other.

Where two persons bring cases of mutual assault, the Magistrate cannot use evidence given in one case as evidence in the other, and a conviction based on such evidence cannot be upheld. *Mrs. W. Waugh v. Emperor*.

41 Cr. L. J. 247 :
186 I. C. 67 : 12 R. C. 466 :
A. I. R. 1940 Cal. 59.

-----Court's duty.

The duty of a Criminal Court is to get to the bottom of a case and to see that every scrap of relevant evidence is brought before it. *Emperor v. Janki Prasad*.

22 Cr. L. J. 210 :
60 I. C. 322 : 19 A. L. J. 196 :
43 All. 283 : A. I. R. 1921 All. 202.

-----Court's duty.

Even if prosecution and pleader for accused fail to probe into evidence, Court must do it so that intelligible story may be included in deposition. *Molla Khan Kabuli v. Emperor*. (S. B.)

35 Cr. L. J. 601 :
148 I. C. 172 : 37 C. W. N. 1061 :
6 R. C. 432 : A. I. R. 1934 Cal. 169.

-----Court's duty.

In a criminal proceeding an accused person ought to be distinctly made to understand from the beginning what the Court is about, and no laxity ought to be allowed in the procedure prescribed by the Legislature. *In re: Sitaram Shivrambhat*.

1 Cr. L. J. 746 :
6 Bom. L. R. 578.

-----Court's duty.

It is the duty of a Judge, when an Advocate for the defence, in a criminal case, involving a question of life or death, remains supine with regard to his client's case, to test the evidence of the different witnesses for eliciting the truth and protecting the interests of the accused. *Nga Lu v. Emperor*.

35 Cr. L. J. 792 :
148 I. C. 810 : 6 R. Rang. 254 :
A. I. R. 1933 Rang. 378.

-----Court's duty—Duty of Magistrate.

It is the duty of the Committing Magis-

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trate and the trial Judge to be solicitous in the interest of the accused. *Shukul v. Emperor*.

34 Cr. L. J. 689 :
144 I. C. 207 : 1933 A. L. J. 590 :
55 All. 378 : I. R. 1933 All. 399 :
A. I. R. 1933 All. 314.

-----Court's duty—Duty of Magistrate.

Where in a suit against one K on a registered bond, alleged to have been executed by him, K denied the execution of the bond but the Munsif, holding that the bond was genuine, decreed the suit and directed his prosecution under S. 476, Cr. P. C., for an offence under S. 193, I. P. C., and on appeal by K, the judgment of the Munsif was reversed by the Subordinate Judge, who held that the bond was not genuine and K had not executed it: *Held*, that the result of the judgment of the Subordinate Judge must be taken to be that the order for the prosecution of K under S. 476, Cr. P. C., was not maintainable as the basis of that order had gone. That the order of the Criminal Court convicting K under S. 193, I. P. C., and sentencing him to imprisonment which order was affirmed on appeal by the Sessions Judge, ought to be set aside by the High Court, although K did not move the High Court to quash the proceedings against him, as soon as the judgment of the Subordinate Judge was pronounced. *Kunullah v. Emperor*.

6 Cr. L. J. 354 ;
12 C. W. N. 1 : 6 C. L. J. 703.

-----Court's duty—Duty of Magistrate—Accused not represented by Counsel—Duty of Court to suggest defensive pleas.

It is the duty of the Magistrate when dealing with ignorant individuals accused of technical offences to go very thoroughly into the evidence, and where they are not defended by Advocates to give them some assistance in putting up obvious defensive pleas. *Ali Hossein v. Emperor*.

32 Cr. L. J. 206 :
128 I. C. 845 : I. R. 1931 Rang. 61 :
A. I. R. 1930 Rang. 349.

-----Court's duty—Duty of Magistrate—Committal proceedings—Duty of Magistrate—Magistrate refusing to commit and discharging accused—Duty of Sessions Judge in such case.

In proceedings coming up before Magistrate by way of committal, the Magistrate's duty is to consider whether a conviction is possible in the case, and in order to come to that conclusion, he is entitled to appreciate the evidence. But he must appreciate the evidence from that point of view only, and it is not within his province to consider the evidence merely from the point of view of the probability of a conviction resulting. It may be that a conviction is improbable. But if it is possible for a Court to take such a view of the evidence as to be able to found a conviction upon it, then it is the duty of the Magistrate to commit the accused for trial. If he refuses to commit, the grounds of the refusal should be that no conviction is possible. The duty of the Sessions Court is to appreciate the evidence from the point

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———Confiscation—Evidence against accused not more than suspicion—Conviction, propriety of—Crown's right to seize property.

However strong the suspicion may be, the Crown has no right to confiscate property seized from another's possession without proving that it does not belong to him. *S. 517, Cr. P. C.*, confines the powers of confiscation to property "regarding which any offence appears to have been committed or which has been used for the commission of any offence." *Shaligram v. Emperor*.

39 Cr. L. J. 105 :
172 I. C. 213 : 10 R. N. 185 :
A. I. R. 1938 Nag. 52.

———Connected cases—Opinion expressed by Judge in previous case, whether binding in subsequent case.

The opinion expressed in a previous connected case by a Judge that the evidence of a particular witness was not believable, is not binding on his successor in a subsequent case against another accused relating to the same offence. The succeeding Judge, on the other hand, has to weigh the evidence before him and form his own opinion of its reliability. *Godha v. Emperor*.

28 Cr. L. J. 670 :
103 I. C. 206 : 8 Lah. 263 :
28 P. L. R. 433 : A. I. R. 1927 Lah. 500.

———Conspiracy.

No charge of conspiracy—Time should not be wasted to prove on. *Hans Raj v. Emperor*.

37 Cr. L. J. 504 :
161 I. C. 900 : 37 P. L. R. 605 :
16 Lah. 345 : 8 R. L. 811 :
A. I. R. 1936 Lah. 341.

———Conspiracy—Offence committed in pursuance of conspiracy—Trial for conspiracy.

It is legal to try accused person on a charge of conspiracy to commit an offence even if the substantive offence has been carried out. *In re : Surajpalsingh*.

39 Cr. L. J. 818 :
176 I. C. 853 : 1938 N. L. J. 185 :
I. L. R. 1938 Nag. 516 : 11 R. N. 81 :
A. I. R. 1938 Nag. 328.

CONVICTION

———Alteration.

———Appeal.

———Charge.

———Conviction under repealed Act.

———Duty of Court.

———Duty of prosecution.

———Evidence.

———Grounds for.

———Mistake.

———Motive as basis for conviction.

———Setting aside of.

———"Scientific" theories.

———Several offences.

———Uniformity.

———What is.

———When not sound.

———When sound.

———Conviction—Alteration.

A conviction for an offence for which a particular set of facts are required to be

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proved, cannot be converted into a conviction for an offence of which quite a different set of facts are the constituents. *Bageshwari Ahir v. Emperor*.

33 Cr. L. J. 709 ;
139 I. C. 76 : 11 Pat. 392 :
13 P. L. T. 732 : I. R. 1932 Pat. 201 :
A. I. R. 1932 Pat. 241.

———Conviction—Appeal—Enhancement of sentence, what is.

On appeal against a conviction, a sentence of three months' rigorous imprisonment was altered into one of one month's rigorous imprisonment and fine of Rs. 60 with a further 2 months' rigorous imprisonment in default of payment : *Held*, that the sentence passed by the Appellate Court was not illegal as amounting to an enhancement, if the accused did not consider the fine a heavier sentence than two months' imprisonment. *In re : Subba Goundan*.

31 Cr. L. J. 203.
121 I. C. 125 : 1929 M. W. N. 896 :
A. I. R. 1930 Mad. 193.

———Conviction—Charge.

Before any one can be convicted on charges formulated in a complaint, all those charges must be fully and properly proved in accordance with the procedure and the law of evidence applicable to criminal charges. *A. D. M. Cotton v. Emperor*.

35 Cr. L. J. 996 :
149 I. C. 450 : 6 R. C. 597 :
A. I. R. 1934 Cal. 604.

———Conviction—Conviction under repealed Act, legality of.

The fact that a conviction is recorded under an Act which has been repealed, is not vital and does not vitiate the conviction, if the offence is punishable under the repealing Act as well. *Emperor v. Sarju Prasad*.

25 Cr. L. J. 336 :
77 I. C. 192 : 10 O. L. J. 208 :
A. I. R. 1924 Oudh 32.

———Conviction—Duty of Court.

A Criminal Court must, in every case before it convicts, and, as a general rule, before it goes into evidence, clear the ground and decide and define the offence which it is sought to establish against the accused. *Qasim Ali v. Emperor*.

17 Cr. L. J. 407 :
35 I. C. 967 : 14 A. L. J. 1222 :
A. I. R. 1916 Ail. 126.

———Conviction—Duty of prosecution—Weakness of defence.

It may be that the accused were not well defended at the trial, and did not put forward a defence which was obviously open to them but they cannot be convicted upon a criminal charge merely on that account, since the prosecution must clearly establish its case irrespective of the defence taken. *Tarachand Sah v. Emperor*.

41 Cr. L. J. 795 :
189 I. C. 737 : 6 B. R. 854 :
13 R. P. 138 : A. I. R. 1940 Pat. 701.

———Conviction—Evidence.

A conviction based upon a prosecution story,

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house of another will not be presumed criminal at all unless there are circumstances from which an inference of criminality can be drawn. *Mosahab Dome v. Emperor*.

40 Cr. L. J. 833 (b) :
183 I. C. 660 : 5 B. R. 978 : 12 R. P. 177 :
20 P. L. T. 879 : A. I. R. 1940 Pat. 14.

———Criminal proceedings, object of.

The primary object of criminal proceedings is the punishment of the offender. Restitution to the injured party is also a desirable thing, but the Criminal Courts are not always in a position to deal with that. *In re : Lloyds Bank, Limited*.

35 Cr. L. J. 1028 :
149 I. C. 1005 : 36 Bom. L. R. 88 :
58 Bom. 152 : 6 R. B. 409 :
A. I. R. 1934 Bom. 74.

———Counter-cases—Cross-cases—Circular No. 52 issued by Judicial Commissioner's Court, N. W. F. Province—Intention of.

It is intended by Circular No. 52 issued by the Court of the Judicial Commissioner, N. W. F. Province that in cross-cases arising out of same transaction, the trial Judge should bring on each record separately the whole story complete by itself and should give findings on the issue involved in that case independently from those which arise in the other. *Ibrahim v. Emperor*. 39 Cr. L. J. 401 :
174 I. C. 137 : 10 R. Pesh. 458 :
A. I. R. 1938 Pesh. 10.

———Cross-cases—Evidence recorded separately—Judgment, common—Irregularity.

In the trial of cross-cases arising out of the same occurrence, the Court ought to keep the evidence in each case entirely distinct and to deliver separate judgment in each case. Where, however, the evidence is separately recorded in each trial, the mere fact that both the cases are decided by one judgment would not vitiate the trial. *Madat Khan v. Emperor*.

28 Cr. L. J. 254 :
100 I. C. 126 : 1927 M. W. N. 68 :
31 C. W. N. 393 : 28 P. L. R. 167 :
52 M. L. J. 441 : 25 L. W. 724 :
29 Bom. L. R. 784 : 45 C. L. J. 408 :
8 Lah. 193 : A. I. R. 1927 P. C. 26.

———Cross-cases—Procedure.

Cross-criminal cases should be tried simultaneously and judgments in both should be given after all the evidence has been recorded in both. The trial of one case should not be postponed till the decision of the other. *Emperor v. Krishan Murari Lal*.

29 Cr. L. J. 1059 :
112 I. C. 563.

———Cross-cases—Procedure of creating prosecution evidence in one case as defence evidence in other and vice versa, legality of.

Trials in criminal cases are governed by the provisions of the Cr. P. C., and in cross-cases, the procedure of treating the prosecution evidence in one case as defence evidence in the other and vice versa, is not warranted, by any provisions of that Code and makes the trial illegal. The defect is not cured even if the

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Counsel for the accused and the Government Pleader have consented to it. *Sarju v. Emperor*.

39 Cr. L. J. 929 :
177 I. C. 559 : 1938 O. W. N. 958 :
1938 O. L. R. 429 : 11 R. O. 58 :
A. I. R. 1938 Oudh 249.

———Cross-cases—Separate trials—Appeals by accused—Joint hearing, legality of—Procedure.

In two separate counter-cases the accused were convicted by the trial Court. An appeal was preferred from each case by the convicted persons. The Sessions Judge tried the two appeals together as one case and made up his mind that there were two contradictory stories. Having found which of the stories was true, he allowed one of the appeals and dismissed the other: *Held*, that the Appellate Court ought to have kept each appeal absolutely separate and to have dealt with it on its merits confining itself to the evidence given in that case and that alone, and that the procedure adopted by the Appellate Court was illegal. *Doat Ali v. Emperor*.

29 Cr. L. J. 512 :
109 I. C. 240 : 47 C. L. J. 211 :
32 C. W. N. 328 : A. I. R. 1928 Cal. 230.

———Cross-cases—Two separate trials but one judgment—Procedure, legality of.

There were two separate trials before the Magistrate and there were two appeals before the Sessions Judge. Although the judgment was one continuous document, the decisions in the two cases were quite separate and distinct from each other. None of the findings in the one case was based upon the evidence recorded in the other case only. The judgment before the High Court was a self-contained document and was based upon its own oral and documentary evidence: *Held*, that the procedure was not illegal and the accused was not prejudiced. *Panna Lal v. Emperor*.

37 Cr. L. J. 1033 :
164 I. C. 809 : 9 R. L. 164 :
A. I. R. 1936 Lah. 294.

———Cross-cases—Use of evidence in one case as evidence in the other.

It is illegal to use as evidence in a case evidence led in another case which was not recorded in the presence of the accused. *Hayat v. Emperor*.

29 Cr. L. J. 282 :
107 I. C. 766 : 10 L. L. J. 389 :
A. I. R. 1928 Lah. 380.

———Cross-examination.

Though it is the duty of every Court to see that the questions are properly understood by the witnesses and the cross-examining lawyer does not take undue advantage of the foolishness or simplicity or the want of understanding of a witness in the witness-box, a general order that each question must be repeated three times irrespective of the consideration whether the witness has understood the first question or not and irrespective of the standard of intelligence of the witness can hardly be justified. *Lal Bahadur Raut v. Emperor*.

39 Cr. L. J. 527 :
175 I. C. 110 : 10 R. P. 581 :
4 B. R. 533 : A. I. R. 1938 Pat. 238.

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———Conviction—Grounds for.

Probabilities and suspicions are not sufficient grounds in law upon which to found a conviction, especially in a murder trial where the maximum punishment is death. *Gendan Lal v. Emperor*. 32 Cr. L. J. 94 :

128 I. C. 211 : 7 O. W. N. 933 :
I. R. 1931 Oudh 19 : 6 Luck. 326 :
A. I. R. 1930 Oudh 460.

———Conviction—Grounds for.

Statement of accused alone cannot form basis of valid conviction. *Har Dayal Singh v. Emperor*. 34 Cr. L. J. 935 :

145 I. C. 359 : 10 O. W. N. 506 :
8 Luck. 397 : 6 R. O. 43 :
A. I. R. 1933 Oudh 226.

———Conviction—Grounds for.

Point not raised in pleadings but extracted in cross-examination cannot form basis of decision. *Ludgi v. Har Prasad*.

154 I. C. 415 : 3 A. W. R. 176 :
7 R. A. 754 : A. I. R. 1934 All. 11.

———Conviction—Mistake.

A mistake in the order of a Magistrate, in which reference is made to one section instead of to another, does not affect the legality of a conviction. *Abdul Razak v. Municipal Committee, Nagpur*. 33 Cr. L. J. 859 :

139 I. C. 496 (2) : I. R. 1932 Nag. 114 (1) :
A. I. R. 1932 Nag. 116.

———Conviction—Motive as basis for conviction.

Motive in itself is quite inadequate to sustain a conviction unless there are other grounds upon which it could rightly be had. *Arjan v. Emperor*. 28 Cr. L. J. 118 :

99 I. C. 326 : 9 L. L. J. 36 :
A. I. R. 1927 Lah. 74.

———Conviction—Setting aside of, after sentence is served out.

A conviction may be set aside even if the accused has served out his sentence. *Emperor v. Bashir*. 30 Cr. L. J. 505 :

115 I. C. 614 : I. R. 1929 All. 390 :
A. I. R. 1929 All. 267.

———Conviction on scientific theories.

Persons cannot be convicted merely on scientific theories which may or may not be infallible. *Jaimal Singh v. Emperor*.

41 Cr. L. J. 146 :
185 I. C. 266 : 41 P. L. R. 763 :
I. L. R. 1939 Lah. 307 : 12 R. L. 275 :
A. I. R. 1939 Lah. 523.

———Conviction—Several offences—Cross-cases of rioting—Conviction in one case on plea of guilty, whether bars conviction in cross-case.

The fact that there has been a conviction in one rioting case on a plea of guilty, is no bar to a conviction in a cross-case of rioting in connection with the same occurrence which arose out of a dispute regarding the exclusive possession of a piece of land. *Hafizuddin Khan v. Mohammed Elim*. 19 Cr. L. J. 766 :

46 I. C. 606 : A. I. R. 1918 Cal. 650.

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———Conviction—Several offences.

Person cannot be convicted for two distinct offences on same set of facts. *Mohammad Gul Rohilla v. Emperor*. 33 Cr. L. J. 849 :

140 I. C. 49 : 28 N. L. R. 233 :
I. R. 1932 Nag. 118 : A. I. R. 1932 Nag. 121.

———Conviction—Uniformity—Trials, original and supplementary—Punishments, uniform, principle of, application of.

It is impossible to apply the principle of uniformity in convictions and punishments in all cases where there are two trials—one original and the other supplementary—one batch of prisoners being tried by one Judge and one Jury, and the other batch by a different Judge and different Jury. *Mafezuddi v. Emperor*.

24 Cr. L. J. 305 :
72 I. C. 65.

———Conviction, what is—Order for compensation under Cattle Trespass Act—Appeal.

An order for compensation under S. 22, Cattle Trespass Act, for the illegal seizure or detention of cattle is a conviction within the meaning of the Cr. P. C., and is, therefore, appealable. *Emperor v. Mi Hari Ma*.

6 Cr. L. J. 121 :
4 L. B. R. 10.

———Conviction—When not sound.

A conviction of the accused under Ss. 325 and 147, Penal Code, read with S. 140, Penal Code, is not correct inasmuch as there should not be one sentence under two sections of the Penal Code. *Saun Pandu v. Emperor*.

35 Cr. L. J. 1159 :
150 I. C. 945 : 1934 O. L. R. 658 :
11 O. W. N. 992 : 7 R. O. 74 :
A. I. R. 1934 Oudh 279.

———Conviction—When not sound.

Where the attention of the accused is not directed by the complaint to an offence, he cannot be convicted of that offence. *Sobhraj Ramchand v. Emperor*. 36 Cr. L. J. 1345 :

158 I. C. 212 : 29 S. L. R. 27 : 8 R. S. 42 :
A. I. R. 1935 Sind 91.

———Conviction—When not sound.

Sessions Judge disbelieving prosecution evidence in its main details—Conviction on an assumption of what their evidence ought to have been is not legal. *Hashmal v. Emperor*.

35 Cr. L. J. 278 :
147 I. C. 77 : 12 O. W. N. 1203 :
6 R. O. 215 : A. I. R. 1933 Oudh 566.

———Conviction—When not sound.

Where an accused was not mentioned in the First Information Report nor his identification carried out in the Jail by any Magistrate and the accused was convicted on the sole testimony of the complainant: Held, that the conviction, under the circumstances, was unjustifiable. *Parshadi v. Emperor*.

29 Cr. L. J. 989 :
112 I. C. 109 : 5 O. W. N. 732 :
A. I. R. 1928 Oudh 417.

———Conviction—When sound.

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up another and alternative line of defence.
Nga Ba Sein v. Emperor. 37 Cr. L. J. 293 :
 160 I. C. 463 : 8 R. Rang. 384 :
 A. I. R. 1936 Rang. 1.

———Defence—Alibi.

When the accused is convicted for committing an offence on a day different from that entered in the charge-sheet, and the defence is that of *alibi*, a material irregularity is committed, and the conviction cannot stand.
Kishori Lal v. Emperor. 36 Cr. L. J. 282 (2) :
 153 I. C. 32 : 35 P. L. R. 449 :
 7 R. L. 379 (1) : A. I. R. 1934 Lah. 455.

———Defence—Alibi.

Whenever a defence of *alibi* is set up and that defence utterly breaks down, it is a strong inference that if the prisoner was not in fact where he says he was, then in all probability, he was where the prosecution say he was. *Sarat Chandra Dhupi v. Emperor.* (S. B.)
 35 Cr. L. J. 1335 :
 151 I. C. 473 : 7 R. C. 133 :
 A. I. R. 1934 Cal. 719.

———Defence—Alibi.

Witnesses to prove *alibi* should be called by accused and unless they are cross-examined, value of their evidence cannot be assessed.
Emperor v. Nirmal Jiban Ghose. (S. B.)
 36 Cr. L. J. 1115 :
 157 I. C. 387 : 62 Cal. 238 :
 39 C. W. N. 744 : 8 R. C. 106 :
 A. I. R. 1935 Cal. 513.

———Defence—Defence evidence of one accused, use of, against others.

Where the case of one accused person is quite antagonistic to the case of his co-accused, the evidence of a witness called on behalf of one of them is admissible against the other and more so when the witness has been cross-examined on behalf of the other. *Nga Shwe Din v. Emperor.*
 35 Cr. L. J. 905 :
 149 I. C. 33 : 6 R. Rang. 281 :
 A. I. R. 1934 Rang. 98.

———Defence—Defence of poor prisoners at Crown expense—Duty of Crown and Court pointed out.

About the defence of prisoners who are too poor to instruct lawyers on their own account, those whose duty it is to select lawyers to defend at the expense of the Crown should not treat the selection as a matter of patronage for the benefit of the lawyer so appointed. The selection should be made from among young men of marked ability. Trial Judge should remember that he has the duty not only to prosecution but to the defence. He has the Police diary in front of him and should use his greater experience to cross-examine the witnesses when he sees that the defence lawyer is incompetent. *Darpan Potdarin v. Emperor.*
 39 Cr. L. J. 384 :
 173 I. C. 833 : 10 R. P. 456 : 4 B. R. 342 :
 A. I. R. 1938 Pat. 153.

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———Defence—Evidence—Extent to which accused can be allowed to bring evidence.

Undoubtedly, the Magistrate is bound to allow the accused to defend himself, but on the charge brought against him and to which he has to answer: but the Magistrate should not allow, for instance, an accused person charged with theft to bring evidence to justify his theft. An accused can bring evidence to explain his motive and his actions; to show, for instance, that he stole because he was starving and to explain all the circumstances of his offence so that the Court can come to a true and just decision. *Om Radhe v. Emperor.*
 40 Cr. L. J. 803 :
 183 I. C. 460 : 12 R. S. 55 :
 A. I. R. 1939 Sind 238.

———Defence—Evidence of one accused—Use against others.

There is nothing in the law of evidence or procedure which renders the statements of witnesses produced by one accused inadmissible against a co-accused, but at the same time there are obvious reasons for receiving such evidence with great caution, and indeed for regarding it with great suspicion. *Shapurji Sorabji v. Emperor.*
 37 Cr. L. J. 688 :
 162 I. C. 399 : 60 Bom. 148 :
 8 R. B. 415 : 38 Bom. L. R. 106 :
 A. I. R. 1936 Bom. 154.

———Defence—Documents referred to by accused in his statement—Court whether bound to consider them without formal proof.

It is open to an accused person to file in Court along with his statement a document written by him, whether it be a letter or any other document, and even if there is no witness to speak to the actual writing of the document, the Court is bound to consider the document along with his statement. *In re : Muhammad Salia Rowther.*
 29 Cr. L. J. 1041 :
 112 I. C. 465 : 28 L. W. 509 :
 1928 M. W. N. 782 : 55 M. L. J. 624 :
 A. I. R. 1928 Mad. 1135.

———Defence—Exceptions, proof of.

Admission that death resulted from injuries caused by accused—Burden of proof to show his act is covered by exceptions—Accused is entitled to benefit of prosecution evidence. *Mohammad Rafiq v. Emperor.*
 35 Cr. L. J. 470 :
 147 I. C. 722 : 6 R. L. 436 :
 A. I. R. 1933 Lah. 1055.

———Defence—Fair opportunity.

In a trial before the Special Bench, an accused may be given an opportunity of explaining the circumstances appearing against him and a truthful explanation coming from the accused cannot injure him, innocent as he is presumed to be. *Emperor v. Nogensra Nath Sen Gupta.*
 16 Cr. L. J. 576 :
 30 I. C. 128 : 21 C. L. J. 396 :
 19 C. W. N. 923 :
 A. I. R. 1916 Cal. 524.

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Counter-cases.

Case against applicant instituted by Police—Cross-complaint by accused—Arguments heard in Police case—Orders in that case should be postponed till hearing of evidence in the other case. *Ujagar Singh v. Emperor*.

37 Cr. L. J. 510 (1) :
161 I. C. 921 : 37 P. L. R. 80 : 8 R. L. 316 :
A. I. R. 1936 Lah. 356.

Counter-cases—Cross-cases.

There is no rule of law that all charges and counter-charges must be tried by the same Court, and in the circumstances of the case, the proper course for the Magistrate was to try the cross-case as a warrant case. *Lakshmi Narayana v. Surya Narayana*.

33 Cr. L. J. 765 :
139 I. C. 343 : 1932 M. W. N. 634 :
63 M. L. J. 101 : 36 L. W. 390 :
I. R. 1932 Mad. 667 : A. I. R. 1932 Mad. 502.

Counter-cases—Evidence — Cross-cases, disposal of, by single judgment—Intermixing of evidence, legality of.

The evidence in two cross-cases was recorded separately but the Magistrate thought it convenient to dispose of them in one judgment. In his judgment, the Magistrate while discussing the guilt or innocence of the accused in each case, freely relied on the evidence which was led in the cross-case. It also appeared that the Magistrate treated the evidence in two cases as if it was evidence on one record and had so mixed up the depositions of the witnesses that it was impossible to say how far the conviction of the appellants in each case was based upon what was legal evidence against them: *Held*, that the procedure adopted was contrary to law. *Sheo Karan v. Emperor*.

29 Cr. L. J. 734 :
110 I. C. 590 : A. I. R. 1928 Lah. 923.

Counter-case.

Evidence taken separately one after another—One argument and one judgment—Procedure though irregular, High Court will not interfere when no prejudice is caused. *Khilish Chandra Bose v. Maniram Mahlania*.

36 Cr. L. J. 1339 :
157 I. C. 1042 : 8 R. C. 150 :
A. I. R. 1935 Cal. 548.

Counter-cases—Cross-cases—Evidence—Use of depositions given in one case in the other with consent of both parties, legality of—Cr. P. C. S. 537.

Where a Court trying two counter-cases filed in one of the cases with the consent of both parties certified copies of the evidence given by the defence witnesses when they were examined as prosecution witnesses in the other case after calling and examining them in the presence of the accused and making them swear to the truth of their previous statements: *Held*, that the procedure adopted was not in any

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way illegal or irregular. *Krishnayya Naidu v. Emperor*.

31 Cr. L. J. 1191 :
127 I. C. 289 : 58 M. L. J. 547 :
1930 M. W. N. 410 : 53 Mad. 775 :
A. I. R. 1930 Mad. 505.

Counter-cases.

Judge can try each case to conclusion and then pronounce judgment in both—But trial must be separate and separate judgments must be given. Conclusions in each case must be founded only on evidence in each. If he cannot detach himself from extraneous considerations, transfer is proper. *In re: Mounagurusami Naicker*. (F. B.)

34 Cr. L. J. 175 :
141 I. C. 539 : 37 L. W. 101 :
64 M. L. J. 150 : 1933 M. W. N. 98 :
56 Mad. 159 : I. R. 1933 Mad. 143 :
A. I. R. 1933 Mad. 367 (2).

Counter-case.

Where there is a case and counter-case, the Court is not in any way bound to adjourn the hearing of the case indefinitely, waiting for the results of the steps taken in the counter-case. *Ram Singh v. Emperor*. (S. B.)

36 Cr. L. J. 714 :
155 I. C. 421 (b) : 16 P. L. T. 295 :
7 R. P. 580 : A. I. R. 1935 Pat. 214.

Counter-cases.

Appeal—Judge acquitting accused in case—Reversal of findings in counter-case—Evidence not discussed—Finding in other appeal referred to—Procedure is not proper—Remand ordered. *Heta Singh v. Emperor*.

36 Cr. L. J. 1349 :
158 I. C. 281 : 1 B. R. 871 :
8 R. P. 185 : A. I. R. 1935 Pat. 494.

Counter-cases—Evidence for prosecution copied word for word in other case for defence and vice versa—Trial, whether vitiated.

Where in two cross-cases the evidence for the prosecution in one case has been recorded practically word for word as the evidence for the defence in the other and vice versa, and the evidence has been copied so exactly that in places the words "present accused" have been included where they are inappropriate because the evidence is taken bodily from the other case, there is a serious defect in the procedure vitiating the whole trial. *Maung Pa v. Emperor*.

38 Cr. L. J. 641 :
168 I. C. 713 : 9 R. Rang. 364 :
A. I. R. 1937 Rang. 100.

Counter-cases.

Incidental reference to prosecution evidence in counter-case—Accused not prejudiced—Failure of justice not caused—Trial is not vitiated. *Kanchan v. Emperor*.

35 Cr. L. J. 1415 :
151 I. C. 812 : 3 A. W. R. 458 :
7 R. A. 219 : A. I. R. 1934 All. 651.

Counter-cases—Proper mode of trial.

It is a generally recognized rule that a case and a counter-case should be tried in quick succession by the same Judge, who should

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and the evidence, if any, upon which it is founded is to be discussed and a conclusion is to be arrived at by the lower Appellate Court in the same way as in the case for the prosecution. It is not enough to say that the prosecution has been proved and that, therefore, it is unnecessary to deal with the defence case. *Samru v. Bansari Burmani*.

31 Cr. L. J. 567 :
123 I. C. 742 : A. I. R. 1929 Cal. 532.

-----Defence, weakness of.

The guilt of a person accused for a crime has to be established by the evidence for the prosecution and not by the weakness of the defence. *Emperor v. Sain Dass*.

27 Cr. L. J. 593 :
94 I. C. 257 : 8 L. L. J. 180 :
27 P. L. R. 353 : A. I. R. 1926 Lah. 375.

-----Defence witnesses, credibility of—Insinuation as to relation with accused unsupported by record, value of—Court, duty of.

The mere fact that some of the witnesses for the defence are fellow-castemen of the accused, is no ground for discrediting their evidence. A Court ought not to permit the making of insinuations by the Police as to the defence witnesses being related to the accused especially when there is nothing on the record to support such insinuation, and the witnesses have not been questioned with reference thereto. *Rameshwar Tewari v. Emperor*.

20 Cr. L. J. 748 :
53 I. C. 156 : 22 O. C. 375 :
2 U. P. L. R. (J. C.) 62 :
A. I. R. 1919 Oudh 310.

-----Defence in the alternative.

It is open to an accused person to adopt a defence in the alternative, such as that he was not present at the occurrence and did not strike the complainant but that if he did strike him, he acted in self-defence. *Afiruddi Chakdar v. Emperor*.

20 Cr. L. J. 661 :
52 I. C. 485 : 29 C. L. J. 571 :
23 C. W. N. 833 : A. I. R. 1919 Cal. 439.

-----Delay, undesirability of.

Delay in the disposal of a criminal case only invites evidence which cannot be relied upon. The longer the period allowed to elapse from the time of the event to the time when the witness gives evidence, the greater is the probability of confusion and of the truth being obscured. *Thomas James Henry Arnp v. Kedar Nath Ghose*.

27 Cr. L. J. 129 :
91 I. C. 801 : 30 C. W. N. 935 :
A. I. R. 1925 Cal. 1017.

-----Delay in disposal—Effect.

Delay in the disposal of cases is seriously prejudicial to the course of justice in cases where identification is a material issue and should, therefore, be avoided. *Dhanu Raut v. Emperor*.

28 Cr. L. J. 865 (b) :
104 I. C. 705 : 9 P. L. T. 217 :
A. I. R. 1928 Pat. 59.

-----De novo trial.

It is not expedient in the interests of

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justice that a petty case should be tried *de novo*.
Amir v. Emperor. 35 Cr. L. J. 1447 (1) :
151 I. C. 913 (a) : 7 R. L. 224 :
A. I. R. 1934 Lah. 455.

-----De novo trial, meaning of.

What is called a trial *de novo*, is not strictly speaking a new or fresh trial. All that it means is that the accused has the right to have all or any of the witnesses re-summoned or re-heard by the new Magistrate. *In re : D. M. Venkatanarayana Ayyar*.

38 Cr. L. J. 537 :
168 I. C. 291 : 45 L. W. 240 :
1937 M. W. N. 173 : 1937 1 M. L. J. 338 :
9 R. M. 559 : A. I. R. 1937 Mad. 448.

-----De novo trial—Order of examining witnesses.

Witnesses summoned for *de novo* trial—Order in examining them, is at discretion of prosecution. *Ibrahim v. Emperor*.

36 Cr. L. J. 41 :
152 I. C. 236 : 31 N. L. R. 117 : 7 R. N. 80 :
A. I. R. 1934 Nag. 209.

-----De novo trial—Same Magistrate.

Where a Magistrate who tried the case has already formed an opinion on the evidence on the record and has expressed the same, it is only fair to the accused that they should be re-tried by another Magistrate, who has formed no opinion. *Umed Singh v. Emperor*.

11 Cr. L. J. 51 :
5 I. C. 178 : 7 A. L. J. 19.

-----Deposition — Procedure — Verification that deposition has been read over to witness must be signed by presiding officer of Court.

The essential feature in verifying that a deposition has been read over and interpreted to a witness is the certificate signed by the presiding officer of the Court. This is a statutory provision. Any initialling by the Reader prior to the signature by the Judge is unessential and is merely done for the Reader's own convenience or for the more certain satisfaction of the Judge ; but, when the Judge has certified that the evidence has been read over to the witness, it must be presumed until the contrary is shown that this has not been done. *Vithoo v. Emperor*.

40 Cr. L. J. 388 :
180 I. C. 577 : 1938 N. L. J. 285 : 11 R. N. 373 :
I. L. R. 1939 Nag. 338 : A. I. R. 1938 Nag. 487.

-----Deposition not amounting to confession—Admissibility.

A deposition not amounting to a confession of a person recorded on solemn affirmation by a Magistrate is admissible against the deponent only but not against any other person jointly tried with him. *Emperor v. Shuldham*. (F. B.)

16 Cr. L. J. 257 :
28 I. C. 145 : 14 P. W. R. 1914 Cr. :
222 P. L. R. 1915 : A. I. R. 1915 Lah. 487.

-----Discharge.

Neither an order of discharge nor of acquittal can properly be made in a case

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of view of the correctness of the Magistrate's order of discharge. *Akberally Tayaballi v. Alimahomed Abdul Hussain*. 40 Cr. L. J. 951 : 184 I. C. 282 : 12 R. B. 159 : 41 Bom. L. R. 749 : A. I. R. 1939 Bom. 372.

-----Court's duty—Duty of Magistrate—Conviction set aside by High Court—Committal to Sessions directed—Procedure in Committing Magistrate's Court.

Where an accused person is tried and convicted by a Magistrate, but the conviction and sentence are set aside by the High Court and the latter directs that the accused be committed to Sessions, all that the Magistrate should do is to re-open the original proceedings, frame a fresh charge, explain it to the accused, require him to give in his list of witnesses for Sessions, examine, if he thinks fit, any of those witnesses, who have not already been examined and then to write a short formal order of committal as under the orders of the High Court. *Nga Myaing v. Emperor*. 26 Cr. L. J. 1106 : 88 I. C. 274 : 2 Rang. 447 : A. I. R. 1925 Rang. 82.

-----Court's duty—Jurisdiction.

If an offence against public justice has been committed, the offenders are liable to punishment irrespective of the state of affairs in the Civil Courts. *Jujeshwar Pershad v. Ragho Misser*. 19 Cr. L. J. 146 : 43 I. C. 434 : 2 P. L. J. 688 : 4 P. L. W. 143 : A. I. R. 1918 Pat. 190.

-----Court's duty—To take evidence of defence witnesses.

Every reasonable attempt should be made by the Court to secure the evidence of witnesses cited by the accused either by procuring their attendance or by having their evidence taken on commission and the record must show what happened to the summonses issued to them. *Hira Singh v. Emperor*. 28 Cr. L. J. 167 : 99 I. C. 599 : 27 P. L. R. 501.

-----Court's duty—Practice.

Officials who function both as Deputy Commissioner and District Magistrate ought to take meticulous care to differentiate between their duties as Deputy Commissioners and as District Magistrates. *Sein Tha U v. Maung Kyaw Khine*. 36 Cr. L. J. 875 : 156 I. C. 149 : 13 Rang. 336 : 7 R. Rang. 378 : A. I. R. 1935 Rang. 137.

-----Court's duty—Procedure—Duty of trying Judge to decide all questions of law at trial.

It is the duty of the Judge to decide all questions of law arising in the course of the trial. If his decision is erroneous, it is liable to correction by a superior Tribunal in appeal or revision ; but as long as the case is before the Judge, he is responsible for the decision and cannot relieve himself of that responsibility by seeking advice or instructions from

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a superior Court. It would be most improper for a superior Court to give such instructions, if sought. *Emperor v. Dosu*. 18 Cr. L. J. 913 : 42 I. C. 145 : 11 S. L. R. 52 : A. I. R. 1917 Sind 24.

-----Court's duty—Practice—Duty of Magistrate—Private conference with Prosecuting Officer—Invoking intervention of superior Executive Officers—Putting accused to inconvenience—Improper conduct.

It is an elementary principle of justice that a person cannot simultaneously perform the functions of a Prosecutor and those of a Judge in a Criminal case. A Magistrate ceases to be an Executive Officer when he is sitting in a Court to try a criminal case. A District Magistrate, as such, is directly subordinate to the High Court and he cannot be allowed to invoke the intervention of his superior Executive Officers in a matter concerning the discharge of his judicial duties for which he owes responsibility only to the High Court. *Taj Mahmud v. Emperor*. 29 Cr. L. J. 212 : 107 I. C. 100 : 29 P. L. R. 14 : I. L. T. 40 Lah. 36 : A. I. R. 1928 Lah. 125.

-----Court's duty—Procedure.

In a case where every possible point is likely to be contested, a strict compliance with the statutory provisions is desirable. *Amritlal Hazra v. Emperor*. 16 Cr. L. J. 497 : 29 I. C. 513 : 21 C. L. J. 331 : 19 C. W. N. 676 : 42 Cal. 957 : A. I. R. 1916 Cal. 188.

-----Court's duty to exclude inadmissible evidence.

It is the duty of the trial Magistrate or Judge to refuse to admit evidence which is not admissible according to law, and therefore, it is his duty to exclude such evidence. *Phukan Singh v. Emperor*. 32 Cr. L. J. 1025 : 133 I. C. 449 : 12 P. L. T. 471 : I. R. 1931 Pat. 369 : A. I. R. 1931 Pat. 345.

-----Credibility.

'Testimony of accomplice and witness knowing commission of crime but not disclosing it. Degree of credibility depends on all facts and circumstances. *Haqjuddi v. Emperor*. 35 Cr. L. J. 1357 : 151 I. C. 486 : 38 C. W. N. 777 : 7 R. C. 136 : A. I. R. 1934 Cal. 678.

-----Criminal Courts, duty of.

A complainant who has exhausted the resources of a Civil Court in obtaining possession, should receive assistance from the Criminal Courts. *Emperor v. Amru*. 37 Cr. L. J. 720 : 162 I. C. 813 : 18 N. L. J. 307 : 8 R. N. 286.

-----Criminal intention, duty of prosecution to prove—Entry in another's house—When criminal.

When criminal intention is an ingredient of an offence, it is on the prosecution to prove that intention just as much as any other ingredient. The entry of one person into the

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———Duty of Magistrate.

Magistrates should avoid any suspicion of being influenced in their decisions by the opinion of the Police who investigate the cases which are brought before them. *Pratap Singh v. Emperor*.

169 I. C. 33 : I. L. R. 1937 Nag. 183 :
9 R. N. 291 : A. I. R. 1937 Nag. 114.

———Duty of Magistrate.

Any Magistrate, who seeks inspiration from any Counsel for the Crown, even if he be of the position of Government Advocate, or from any Police Officer, however highly placed he may be, is unworthy of his office. *K. L. Ganba v. Emperor*.

38 Cr. L. J. 955 :
170 I. C. 586 : I. L. R. 1937 Lah. 114 :
39 P. L. R. 643 : 10 R. L. 135 :
A. I. R. 1937 Lah. 411.

———Duty of Magistrate.

Magistrate should afford facilities to accused also when he has discretion in the matter and ends of justice require. *Bashir-ud-Din v. Emperor*.

33 Cr. L. J. 752 :
139 I. C. 330 : I. R. 1932 All. 554 :
A. I. R. 1932 All. 327.

———Duty of Magistrate.

The duty of Bench Magistrates lies in administering the law, and in the performance of that duty they should not allow their minds to be diverted by irrelevant consideration, such as want of politeness on the part of the accused in his behaviour towards the Police. *In re : Ramaswamy Ayyar*.

38 Cr. L. J. 544 :
168 I. C. 511 : 45 L. W. 289 :
1937 M. W. N. 184 (1) : 1937 1 M. L. J. 310 :
9 R. M. 595 : A. I. R. 1937 Mad. 534.

———Duty of Magistrate—Everything to be done in order.

The authority of the Court must be vindicated and its orders carried out, but all things should be done decently and in order. *Gangadhar Nathmall v. Corporation of Calcutta*.

39 Cr. L. J. 259 :
172 I. C. 954 : 41 C. W. N. 1344 :
10 R. C. 481 : I. L. R. 1938 1 Cal. 558 :
A. I. R. 1938 Cal. 15.

———Duty of Magistrate—Judgment—Proper way of dealing with criminal case, stated.

The proper way for a Magistrate to deal with a criminal case is to discuss first the prosecution evidence and come to an independent finding on the truth or falsity of the story related by them and then to examine the statement of the accused and criticize it in the light of the circumstances brought on the record. Where the Sessions Judge dealt with the statement of the accused first and having found it untrustworthy, except to the extent of his admission that he had killed his wife, then animadverted upon the prosecution evidence and finding it to be entirely unreliable, believed the evidence only to the extent to which it agreed with the admission of the accused : *Held*, that

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the manner in which the case was approached was entirely illegal. *Ghulam Nabi v. Emperor*.

40 Cr. L. J. 185 :
179 I. C. 237 : 40 P. L. R. 265 :
11 R. L. 542 : A. I. R. 1938 Lah. 850.

———Duty of Magistrate—Magistrate making unfounded suggestions in explanation submitted to High Court, impropriety of.

A Magistrate is not entitled to make any suggestion or representation in the explanation which he may submit in any case to the High Court of anything which is not founded on the record before him. *Mani Krishna Sen Gupta v. Emperor*.

32 Cr. L. J. 18 :
127 I. C. 672 : 34 C. W. N. 256 :
I. R. 1930 Cal. 880 :
A. I. R. 1930 Cal. 379 (1).

———Duty of Magistrates—Recommendation of Police—Magistrates to use discretion.

The habit of the Junior Magistracy and others of accepting applications and recommendations of the Police without exercising their judicial discretion in any way commented upon. *Dattatraya Govindrao Pakode v. Emperor*.

39 Cr. L. J. 65 :
172 I. C. 130 : 10 R. N. 167 :
A. I. R. 1938 Nag. 76.

———Duty of prosecution.

In a criminal case, the duty is cast upon the prosecution to establish all the essential ingredients of the offence with which a person is charged, and if the evidence produced leaves a lacuna on any of the material points, the accused is entitled to an acquittal. *Mela Ram v. Emperor*.

32 Cr. L. J. 1233 (2) :
134 I. C. 782 : 32 P. L. R. 83 :
I. R. 1931 Lah. 990 :
A. I. R. 1931 Lah. 361.

———Duty of prosecution.

In a criminal prosecution involving heavy punishment and where a clear and definite order is relied on as having been disobeyed, the prosecution must prove what the order really was and its actual transgression. *Gulabchand v. Emperor*.

34 Cr. L. J. 771 :
143 I. C. 622 : 35 Bom. L. R. 185 :
I. R. 1933 Bom. 277 :
A. I. R. 1933 Bom. 148.

———Duty of prosecution.

In a murder case the omission of the prosecution to show how the investigation proceeded step by step and to bring out in evidence the manner in which the various witnesses were treated is a serious defect. *Feroze v. Emperor*.

31 Cr. L. J. 871 :
125 I. C. 381 : A. I. R. 1930 Lah. 659.

———Duty of prosecution.

It is duty of the prosecution Counsel to see that the case is regularly conducted against all the accused. *Chhotey Lal v. Emperor*.

28 Cr. L. J. 756 :
103 I. C. 836 : 1 Luck. Cas. 265 :
A. I. R. 1927 Oudh 353.

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—Cross-examination—Discretion of Court.

A trial Judge can restrict the scope of the cross-examination of witnesses. *Eknath Sahay v. Emperor*. 17 Cr. L. J. 353 (a) : 35 I. C. 657 : 1 P. L. J. 317 : A. I. R. 1916 Pat. 236.

—Cross-examination—Duty of Court.

While it is the duty of every Court to keep the cross-examination of a witness within legitimate bounds, it must be careful in the discharge of that duty, not to exercise too effective a control so as to unduly curtail legitimate cross-examination. Too much interruption by the presiding Judge in the course of the cross-examination of witnesses by the Counsel for the accused has, more often than not, the result of robbing the cross-examination of its efficacy and, therefore, undue interference in cross-examination must be avoided by the presiding Judge. *Salag Ram v. Emperor*. 38 Cr. L. J. 416 (b) : 167 I. C. 515 : 1936 A. W. R. 967 : 9 R. A. 550 : A. I. R. 1937 All. 171.

—Cross-examination—Evidence—Practice—Right of Judge to curtail cross-examination.

A Judge is, and always must be, in control of the proceedings in his Court. On the one hand the right of the cross-examination must be carefully guarded, and it must be remembered that it may be necessary for an Advocate to approach delicately and with caution the point upon which he is seeking to obtain admissions. It may be important that a witness whom he does not consider truthful should not be put on his guard by immediate presentation of the case set up by the opposing side. The length of the cross-examination is by no means the criterion of its excellence, and it is lamentably true that lack of skill in advocacy often leads to a failure to appreciate this fact. When irrelevant topics are pursued at great length, and persistence is shown in going over the same ground again and again in the hope of making the witness appear discrepant, some limit must be placed upon the latitude given. *Brahmayya v. The King*. 40 Cr. L. J. 265 : 179 I. C. 783 : 11 R. Rang. 347 : A. I. R. 1938 Rang. 442.

—Cross-examination.

Prosecution witnesses not cross-examined concerning defence version—Defence put up subsequently—Conclusion that it was afterthought, can be arrived at. *Emperor v. Nga Nyun*. 37 Cr. L. J. 94 : 159 I. C. 450 : 8 R. Rang. 267 : A. I. R. 1935 Rang. 393.

—Cross-examination—Fresh matter introduced in re-examination—Opportunity for re-examination.

Where in re-examination of a witness a fresh matter is introduced and the Court grants only three minutes for further cross-examination, the time is insufficient as the object of re-examination is to clear the ambiguities in cross-examination, and if new and important matter is allowed to be introduced in re-examination, the accused has a right to cross-examine

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the witness as regards the matter so introduced. *Salag Ram v. Emperor*. 38 Cr. L. J. 416 (b) : 167 I. C. 515 : 9 R. A. 550 : 1936 A. W. R. 967 : A. I. R. 1937 All. 171.

—Cross-examination, right of, defined.

Right to cross-examine prosecution witness includes right to cross-examine as to any previous statement relevant to the matter in question. *Muhammad Rahim v. Emperor*. 36 Cr. L. J. 581 : 154 I. C. 762 : 29 S. L. R. 92 : 7 R. S. 167 : A. I. R. 1935 Sind 13.

—Cross-examination after charge—Witness not appearing—Effect.

A witness did not appear for cross-examination after charge and the accused also did not press for a warrant of arrest against him : *Held*, that the accused could not be said to have been prejudiced by the failure of the Court to allow the cross-examination of the witness. *Ashfaq v. Emperor*. 37 Cr. L. J. 1108 : 165 I. C. 25 : 1936 A. L. J. 958 : 9 R. A. 247 (1) : 1936 A. W. R. 731 : A. I. R. 1936 All. 707.

—Crown appeal—Appeal by Crown—Limitation—Two charges against accused—Conviction on one—Appeal.

An accused was charged for two offences but was acquitted on first of them and convicted for the second. He preferred an appeal against conviction in which he was acquitted of the charge for which he was convicted but the Court expressed opinion that he ought to have been convicted on the charge on which he was first acquitted. Thereupon the Crown preferred an appeal against his acquittal on the first charge. It was preferred after three months and eight days after the original order of acquittal. There were executive instructions that appeals by the Crown should be filed not later than three months after the date of the order of acquittal : *Held*, that although the appeal ought to have been filed within three months, yet the period exceeded being small one, under the circumstances of the case, the delay was not unreasonable. *The King v. Nga Tok Hla*. 39 Cr. L. J. 490 : 174 I. C. 839 : 10 R. Rang. 437 : A. I. R. 1938 Rang. 109.

—Death of complainant—Abatement of proceedings.

On the death of a complainant during the pendency of a trial, the proceedings abate if the offence complained of was personal to the complainant, that is, if it was one which could be compounded without the sanction of the Court. In other cases, the proceedings do not abate. *Labhu v. Emperor*. 20 Cr. L. J. 717 : 52 I. C. 797 : 25 P. R. 1919 Cr. : A. I. R. 1919 Lah. 409.

—Defence—Accused and his counsel taking different defences.

The accused himself may, on his own behalf, take up one line of defence, but it is equally open to his Pleader on his behalf to take

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or to embroider the case. *Hans Raj v. Emperor.*

37 Cr. L. J. 504 :
161 I. C. 900 : 37 P. L. R. 605 :
16 Lah. 345 : 8 R. L. 811 :
A. I. R. 1936 Lah. 341.

—Duty of Prosecution.

The prosecution is bound to place before the trial Court all evidence relating to the case which is at its disposal, and then invite a judicial decision. Prosecution takes a very grave risk if it takes upon itself the duty of withholding evidence relating to the crime. The duty of the prosecution is that the trial Judge must be informed about the opposite version and then it will be for the Judge to decide whether he should hear the evidence or not. Where subsequent to the case being sent up for trial but before the trial takes place, the higher officers suspect the conduct of the investigating officer in connection with the case and come to know of some further evidence which may possibly throw doubt on the prosecution story which had been put forward as a result of the inquiry made by the investigating officer, the proper and the fair course is to place fresh evidence or information before the Court which has to adjudicate the question of guilt or innocence of the accused persons. In a case of this kind, it is the clear duty of the prosecution to produce at the trial not only the witnesses who supported the version of the investigating officer but also the witnesses on whose evidence the prosecution authorities passed an order for the suspension of the investigating officer. *Abdul Subhan v. Emperor.*

41 Cr. L. J. 258 :
186 I. C. 192 : 1939 A. L. J. 966 :
12 R. A. 384 : A. I. R. 1940 All. 46.

—Duty of prosecution.

The prosecution must realise that it is no part of their duty to try by hook or by crook to obtain convictions. *Major Robert Stuart Wanchope v. Emperor.*

35 Cr. L. J. 156 :
146 I. C. 767 : 58 C. L. J. 405 :
38 C. W. N. 187 : 6 R. C. 257 :
A. I. R. 1933 Cal. 800.

—Duty of prosecution.

The prosecution must succeed on the strength of its own case, and not on the weakness of the defence. *Emperor v. Eddula Venkata Subba Reddi.*

33 Cr. L. J. 51 (2) :
134 I. C. 1143 : 34 L. W. 128 :
61 M. L. J. 608 : 1931 M. W. N. 1177 :
54 Mad. 931 : I. R. 1932 Mad. 7 :
A. I. R. 1931 Mad. 689.

—Duty of prosecution.

The Public Prosecutor is under a duty to disclose to the defence the existence of any fact that may help the accused. *Nga Su v. Emperor.*

35 Cr. L. J. 792 :
148 I. C. 810 : 6 R. Rang. 254 :
A. I. R. 1933 Rang. 378.

—Duty of prosecution.

The suggestion, that if there is little doubt that accused challaned by Police are guilty, the prosecuting authorities are entitled to do

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their best to obtain a conviction, should be rejected. *Nem Singh v. Emperor.*

36 Cr. L. J. 152 :
152 I. C. 741 : 7 R. A. 373 :
4 A. W. R. 5 : A. I. R. 1934 All. 908.

—Duty of prosecution.

Though it is the duty of the prosecution to place before the Court, especially in a case of murder, all the available evidence which is likely to throw any light upon the crime and the withholding of such evidence is likely to be treated by the Court as a flaw in the evidence for the Crown, each case depends upon its own facts and circumstances. *Lachmi Narain v. Emperor.*

33 Cr. L. J. 497 (2) :
137 I. C. 691 : 33 P. L. R. 580 :
I. R. 1932 Lah. 347 : A. I. R. 1932 Lah. 500.

—Duty of prosecution.

When the prosecution proposes to examine new witnesses, the prosecuting Counsel should always mention in his opening address the names of the new witnesses and the purpose for which they are being called, and the Court should always insist upon this being done. *Emperor v. Dhondiba Santoo Shinde.*

36 Cr. L. J. 344 :
153 I. C. 278 : 36 Bom. L. R. 950 :
7 R. B. 228 : A. I. R. 1934 Bom. 487.

—Duty of prosecution.

Where proceedings bristle with irregularities, it is for the prosecution to show that the accused was not prejudiced thereby. *Lachmi Narain v. Emperor.*

20 Cr. L. J. 742 :
53 I. C. 150 : A. I. R. 1919 Pat. 452.

—Duty of prosecution.

Where the prosecution does not name the witnesses in the *challan*, it is not entitled in law to have an adjournment for the purpose of examining them. *Hajan Tika Lodhi v. Emperor.*

35 Cr. L. J. 1163 (2) :
150 I. C. 916 : 7 R. N. 30 :
A. I. R. 1934 Nag. 156.

—Duty of prosecution—Accused refusing to explain evidence against him—Presumption.

A person accused of a crime is under no obligation to offer any explanation of his conduct or of any circumstances which direct suspicion towards him. It is the duty of the prosecution to prove its case, but when such proof has been given and the time comes when the prosecution evidence, whether direct or circumstantial, has to be weighed, it is impossible for a Court to ignore the fact that it is unweakened or un rebutted by contrary evidence, which might have been produced if the facts alleged were not true. The accused is at liberty to defend himself in any way he thinks proper, but the Court cannot ignore the consideration that the prosecution evidence has been left un rebutted. *Sushil Chandra v. Emperor.*

20 Cr. L. J. 465 :
51 I. C. 449 : 6 O. L. J. 210 :
A. I. R. 1919 Oudh 160.

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—Defence obtaining copy of statement of prosecution witness.

Statement favourable to accused—Witness not questioned on the point in trial—Verdict of jury—Revisional power of High Court cannot be invoked to consider it and set aside verdict of guilty. *Hari Mahlo v. Emperor*.

37 Cr. L. J. 320 :
160 I. C. 675 : 2 B. R. 233 : 8 R. P. 375 :
A. I. R. 1936 Pat. 46.

—Defence—Practice.

There is no principle of law which will warrant a Court's findings that there is reasonable doubt of the case overwhelmingly made out by the prosecution, merely because the accused is ready with an explanation. *Burjorjee v. Emperor*.

37 Cr. L. J. 190 :
159 I. C. 952 : 8 R. Rang. 301 :
A. I. R. 1935 Rang. 453.

—Defence—Practice — Defence, whether bound to give explanation.

In a criminal trial it is not desirable to call upon the defence to frame a theory either at the beginning or at any other stage of the hearing, particularly in a case of difficulty in which the theory of the prosecution itself is not clear. *Surendra Nath Mukerji v. Emperor*.

19 Cr. L. J. 935 :
47 I. C. 659 : 16 A. L. J. 478 :
A. I. R. 1918 All. 160.

—Defence—Procedure.

When a new defence is raised at a late stage, the Court should consider whether such defence ought to have been raised at an earlier stage assuming the accused to have been innocent. *Emperor v. Kameshwar Lal*.

34 Cr. L. J. 828 :
144 I. C. 872 : 6 R. P. 12 :
A. I. R. 1933 Pat. 481.

—Defence—Procedure.

Admission of document after conclusion of arguments at the request of prosecution—Opportunity to be given to accused to adduce evidence in rebuttal. *Mofizuddin Mondal v. Sekandar Molla*.

35 Cr. L. J. 538 :
147 I. C. 1095 : 6 R. C. 397 :
37 C. W. N. 1186 :
A. I. R. 1934 Cal. 133.

—Defence—Provocation, plea of.

Once the provocation is given by the offender himself, he cannot subsequently urge that the opposite party acted in a provocative manner. *Nihal Singh v. Emperor*.

37 Cr. L. J. 87 :
159 I. C. 284 : 8 R. Pesh. 81 :
A. I. R. 1935 Pesh. 155.

—Defence, rejection of—Duty of prosecution to prove case.

The Sessions Judge is at liberty to reject the suggestion of the defence as to how the deceased was killed, but the mere fact that he rejected the theory of the defence will not prove the guilt of the accused in respect of the

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charges brought against them. *Binda v. Emperor*.

36 Cr. L. J. 1489 :
152 I. C. 85 : 11 O. W. N. 1221 :
7 R. O. 177 : A. I. R. 1934 Oudh 485.

—Defence—Right of accused.

A Magistrate exercises his jurisdiction with material irregularity if he holds a trial at a place where the accused is totally incapable of making a proper defence. *Mewa Lal v. Emperor*.

19 Cr. L. J. 249 :
44 I. C. 41 : 1917 Pat. 363 :
3 P. L. J. 147 : 4 P. L. W. 359 :
A. I. R. 1918 Pat. 197.

—Defence—Rights of accused.

Accused is entitled to confidential communication with his Advocate. *Sudha Sindhu Dey v. Emperor*.

36 Cr. L. J. 615 :
154 I. C. 1006 : 39 C. W. N. 259 :
62 Cal. 384 : 7 R. C. 545 :
A. I. R. 1935 Cal. 101.

—Defence—Rights of accused.

Where in a criminal trial the defence alleged that, certain statements made by certain witnesses before the Judge were not mentioned to the Police, the defence has a right to cross-examine the witnesses as to such statements and seek their explanation. *Mrs. M. F. Rego v. Emperor*.

34 Cr. L. J. 505 :
143 I. C. 17 : 29 N. L. R. 251 :
I. R. 1933 Nag. 153 :
A. I. R. 1933 Nag. 136.

—Defence—Rights of accused.

Defence is not bound to offer hypothesis. *Leda Bagat v. Emperor*.

33 Cr. L. J. 111 :
135 I. C. 81 : 10 Pat. 590 :
12 P. L. T. 864 : I. R. 1932 Pat. 1 :
A. I. R. 1931 Pat. 384.

—Defence—Right of accused to summon investigating officer.

Where at the instance of an accused person, the investigating officer is summoned as a witness, the accused is entitled to have the evidence of the officer recorded, and if he fails to appear, the Court should enforce his attendance. *Amrit Mander v. Emperor*.

21 Cr. L. J. 336 :
55 I. C. 608 : 1 P. L. T. 490 :
A. I. R. 1920 Pat. 714.

—Defence—Right of the accused—Res judicata, application of.

Under the law it is perfectly open to an accused person to raise any plea of law or fact which may make for his acquittal. There is nothing like *res judicata* in a criminal trial as long as it does not terminate in either acquittal or conviction so as to attract the provisions of S. 403, Cr. P. C. *Dewan Singh v. Emperor*.

37 Cr. L. J. 474 (2) :
161 I. C. 635 : 8 R. N. 219 :
A. I. R. 1936 Nag. 55.

—Defence disclosed—Duty of Appellate Court to consider defence case and evidence.

In a criminal trial where the defence is disclosed on behalf of the accused, it should be stated as such by the lower Appellate Court

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Pleader in the trial Court and the trial Judge do not any of them discharge their duty, if they are merely content with getting recorded and recording such evidence as the Police may put before the Court. They must examine the motives and relations between the parties and insist upon their actions, where those actions are material, being disclosed. *Karan Singh v. Emperor*.

29 Cr. L. J. 26 :
106 I. C. 442 : 26 A. L. J. 92 :
A. I. R. 1928 All. 25.

———Duty of prosecution to examine all witnesses, limits of—Failure to examine.

The prosecution is under no obligation to examine witnesses who, it has reason to believe, will not speak the truth. It is usual in such circumstances for the prosecution to tender such witnesses for cross-examination. But if the defence omit to claim this privilege, they cannot be permitted to make capital of the fact that these witnesses were not cross-examined. Although in strictness it is not necessary for the prosecution to call every witness who has been examined before the Committing Magistrate; it is usual to do so, so that the defence may cross-examine them, and if the prosecution in their discretion do not choose to call such a witness, then the presumption may be drawn that his evidence, if given, would be unfavourable to their case. *Narayan Mandal v. Emperor*.

31 Cr. L. J. 918 :
125 I. C. 746 : 34 C. W. N. 170 :
A. I. R. 1930 Cal. 134.

———Duty of prosecution to examine all witnesses.

No presumption adverse to the prosecution can be drawn from the fact that they did not consider it necessary to examine all the witnesses cited by it. *Hari Mahlo v. Emperor*.

37 Cr. L. J. 320 :
160 I. C. 675 : 2 B. R. 233 : 8 R. P. 375 :
A. I. R. 1936 Pat. 46.

———Duty of prosecution to prove offence—Statement of accused, use of.

A statement of the accused cannot be used to fill up a gap in the prosecution evidence which the prosecution have not proved. *Elukuri Seshapani Chetty v. Emperor*.

38 Cr. L. J. 323 :
166 I. C. 917 : 1936 M. W. N. 1241 :
45 L. W. 100 : (1937) 1 M. L. J. 154 :
I. L. R. 1937 Mad. 358 : 9 R. M. 411 :
A. I. R. 1937 Mad. 209.

———Duty of prosecution to put forward all eye-witnesses of occurrence—Inference.

If the Police or the Public Prosecutor considers a witness to be a false witness or that his evidence is unnecessary, there would be justification for not sending up that witness as a witness for the prosecution, and his absence at the trial ought not to be a reason for disbelieving the prosecution witnesses if they are otherwise worthy of credit. Where all the eye-witnesses called for the prosecution are partisans of the complainant and hostile to the accused, and the independent eye-witnesses are

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not called, the Court is entitled to take this fact into consideration in weighing their evidence and to draw an inference adverse to the prosecution. *Ranjit Ahir v. Emperor*.

24 Cr. L. J. 801 :
74 I. C. 705 : 2 Pat. 309 :
1 P. L. R. 236 Cr. : A. I. R. 1923 Pat. 413.

———Dying declaration, conviction whether can be based on corroboration—Sessions Judge rejecting evidence of witnesses—High Court, whether can reconsider evidence.

It is not safe to base a conviction on the uncorroborated dying declaration of a deceased person. Where a Sessions Judge, in a trial held before him, rejects the evidence of certain witnesses for insufficient reasons, the High Court, on appeal, can go into the matter and form its own estimate of the value of such evidence. *Bakhshish Singh v. Emperor*.

26 Cr. L. J. 890 :
86 I. C. 826 : A. I. R. 1925 Lah. 549.

———Every witness contradicting himself—Conviction, if proper.

Where every one of the witnesses for the prosecution has been demonstrated at the trial to have contradicted the statement he made before the Committing Magistrate, it is not safe to convict the accused. *Harnam Singh v. Emperor*.

38 Cr. L. J. 765 (a) :
169 I. C. 434 : 39 P. L. R. 555 :
10 R. L. 13 : A. I. R. 1937 Lah. 597.

EVIDENCE.

- Absconder.
- Absconding of accused.
- Absence of finding on defence of accused.
- Accomplice.
- Accused.
- Admissibility.
- Alibi.
- Appreciation.
- Approver.
- Articles in accused's possession.
- Believing defence witnesses.
- Blood-stains.
- Blood-stained clothes.
- Blood-stained garments.
- Bribery case.
- Circle Inspector causing witnesses to sign statement.
- Circumstantial evidence.
- Complainant's evidence.
- Complainant's story.
- Conduct.
- Conduct of accused.
- Confession.
- Contradiction.
- Contradiction of witnesses.
- Contradictory statement.
- Contradictory witness.
- Conviction.
- Corroboration.
- Court disallowing question.
- Court's duty.
- Court witnesses.
- Credibility.
- Cross-examination.
- Defamation.

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where the accused has not been directed to appear. *In re : Mulhia Moopan.*

14 Cr. L. J. 559 :

21 I. C. 159 : 36 Mad. 315.

-----Duty of counsel of accused to raise objection to charge early.

Though Counsel for an accused has no duty except to his client, it is not fair to produce the point that the charge is defective at the very last moment in the hope that it might be overruled and thereby the accused might get a technical victory in appeal. *K. C. V. Reddy v. Emperor.*

31 Cr. L. J. 793 :

125 I. C. 266 : 8 Rang. 25 :

A. I. R. 1930 Rang. 201.

-----Duty of Court.

Case *nisi* border line between culpable homicide and murder—Court cannot invent defence to bring offence under culpable homicide.

39 Cr. L. J. 403 :

174 I. C. 442 : 10 R. Rang. 406 :

A. I. R. 1938 Rang. 62

-----Duty of Court—Original charge breaking down—Change—Notice to accused.

Where a Magistrate finds that the charge of house-breaking with a view to commit theft has broken down but also finds that there was another object, it is his duty to give the accused notice of that object by drawing up a charge clearly stating what it is that he is accused of doing. *Mahomed Hossein v. Emperor.*

15 Cr. L. J. 190 :

22 I. C. 766 : 18 C. W. N. 1247 :

41 Cal. 743 : A. I. R. 1914 Cal. 663.

-----Duty of Court—Procedure—Confession.

The confessing accused must invariably be sent to the judicial lock-up as soon as possible after confession, and on no account, be returned to Police custody. There certainly ought to be an interval between the taking of the confession and the handing over of the accused to the Police for any subsequent purpose. Where the accused is handed back to the Police, the Court must look very carefully at the confessions and the surrounding circumstances in order to satisfy itself that the confessions were in fact voluntary. *Surat Singh Buta Singh v. Emperor.*

39 Cr. L. J. 475 :

174 I. C. 804 : 40 P. L. R. 214 :

I. L. R. 1937 Lah. 740 : 10 R. L. 600 :

A. I. R. 1938 Lah. 292.

-----Duty of Experts and Judges.

Per Lord Williams, J.—Medical experts and others such as Judges who have to form opinions and exercise their judgment should have regard primarily to the facts and not draw upon their imaginations. Otherwise the administration of justice would depend upon individual idiosyncrasies and become unstable and unworkable. *Emperor v. Yunus Ali.*

30 Cr. L. J. 820 :

117 I. C. 680 : 32 C. W. N. 783 :

I. R. 1929 Cal. 568.

-----Duty of Judge.

A Judge in a criminal trial is not merely a

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disinterested auditor of the contest between the prosecution and the defence, and it is his duty to elucidate a point which the prosecution or the defence may have left in obscurity either intentionally or unintentionally. He must come to clear understanding, so far as is possible, of the actual events that occurred and he cannot shield himself behind the plea that any point was left obscure by either party when he had an opportunity of illuminating that obscurity. *Mehr Singh v. Emperor.*

18 Cr. L. J. 561 :

39 I. C. 801 : 23 P. R. 1917 Cr. :

24 P. W. R. 1917 Cr. : 120 P. L. R. 1917 :

A. I. R. 1917 Lah. 175.

-----Duty of Judge.

In a serious case the Judge should allow every opportunity to the accused to adduce such evidence as they chose, either oral or documentary. If at the time of examination he is of opinion that the evidence adduced by the accused is inadmissible or irrelevant, or that such evidence was adduced for the purpose of vexation or delay or to defeat the ends of justice, he can refuse to receive such evidence. But he should not dismiss an application for adjournment for producing witnesses merely on the ground that those witnesses would not prove relevant matters or any matters admissible in evidence under the law, without allowing the accused to produce their witnesses and then deciding about the relevancy of their evidence. *Mukhtal Hossein v. Emperor.*

31 Cr. L. J. 1077 :

126 I. C. 720 : A. I. R. 1930 Cal. 362.

-----Duty of Judge—Conspiracy—Evidence—Nature of—Proof of conspiracy—Inferences.

The proof of conspiracy in law is very largely inferential, but the inferences which are to be drawn by the Jury and which the Jury should be directed to consider with regard to their conspiracy verdict, must be, even if they are mere inferences, supported by solid evidence. Evidence of motive is not tantamount to evidence of conspiracy. Therefore, in a conspiracy case, if there is no evidence of conspiracy, but merely that of motive, the Judge should direct the jury to return a verdict of not guilty. *Ekkabbar Mondal v. Emperor.*

39 Cr. L. J. 182 :

172 I. C. 891 : I. L. R. 1937 2 Cal. 315 :

10 R. C. 461 : A. I. R. 1937 Cal. 756.

-----Duty of Magistrate.

A Magistrate is not entitled to make observations in his judgment in a criminal case concerning a person who is not a party to the proceedings and who has had no opportunity of being heard, based upon material which is not admissible in evidence in that proceeding, and which even if admissible, would not justify the observations. Such conduct on the part of a Magistrate amounts to an abuse of judicial privilege. *Bcnarsi Das v. Emperor.*

26 Cr. L. J. 1326 :

89 I. C. 270 : 6 Lah. 166 :

A. I. R. 1925 Lah. 392.

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very much stronger reason for believing that the story given by both the approvers is true, than there would be if only one accomplice had been available, and since the evidence of an approver can be acted upon without corroboration, there can be nothing illegal in acting on the evidence of accomplices that has been rendered more credible by agreement between them on the details elicited in cross-examination. *In re : S. A. Sattar Khan*.

40 Cr. L. J. 483 :
181 I. C. 369 : 1938 M. W. N. 962 :
11 R. M. 797 : A. I. R. 1939 Mad. 283.

————Evidence—Accomplice and approver—Corroboration.

Whether a witness is stigmatized as an approver or as an accomplice, he is as regards the matter of corroboration on one and the same footing. An accomplice witness including an approver ought to be corroborated and it is unsafe in ordinary cases to treat the evidence of one accomplice as corroborating that of another. *Parnananda Das Gupta v. Emperor*. (F. B.)

40 Cr. L. J. 199 :
179 I. C. 506 : 68 C. L. J. 206 :
11 R. C. 557 : I. L. R. 1939 Cal. 1 :
A. I. R. 1939 Cal. 65.

————Evidence—Accused—Good antecedents, effect of.

The mere fact that a person has enjoyed the confidence of his superiors or that he had in fact led a life of honesty in the past, is no reason to suppose that he will not succumb to temptation at the close of his career, but before a man of this type and such antecedents is adjudged guilty, the evidence against him must be of an unimpeachable character. *Mangat Rai v. Emperor*.

29 Cr. L. J. 740 :
110 I. C. 676 : 10 L. L. J. 262 :
29 P. L. R. 703 : A. I. R. 1928 Lah. 647.

————Evidence—Admissibility.

A list of stolen properties made and handed over to the Police in the course of the investigation cannot be admitted in evidence. *Sucha Singh v. Emperor*.

34 Cr. L. J. 379 :
142 I. C. 699 (2) : 34 P. L. R. 405 :
I. R. 1933 Lah. 241 : A. I. R. 1932 Lah. 488.

————Evidence—Admissibility.

Accused owing money to complainant—Accused tearing off *bahi* paper, complaint under Ss. 379, 477, Penal Code. Report by accused that he was being falsely charged—Decree in prior Civil suit sent by complainant is not inadmissible but proceedings and nature of allegations made in it are not admissible. *Fazal Ahmad v. Emperor*.

37 Cr. L. J. 603 :
161 I. C. 885 : 8 R. Pesh. 186 :
A. I. R. 1936 Pesh. 72.

————Evidence—Admissibility.

Affidavit by wife of deceased during hearing of appeal that evidence given by her was false and given under pressure, cannot be taken notice of. *Moti Ram v. Emperor*.

35 Cr. L. J. 455 :
147 I. C. 692 : 35 P. L. R. 201 :
6 R. L. 423 : A. I. R. 1933 Lah. 998.

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————Evidence—Admissibility—Benefit of doubt.

When considering the question of admissibility, the Court should lean always in favour of the accused, and exclude all evidence tendered by the prosecution which is of doubtful or remote relevance. *Benoyendra Chandra Pandey v. Emperor*.

37 Cr. L. J. 394 :
161 I. C. 74 : 40 C. W. N. 432 :
63 Cal. 929 : 8 R. C. 472 :
A. I. R. 1936 Cal. 73.

————Evidence—Admissibility—Cipher Code—Inference—Admissibility.

Where Ciphers or Cipher lists are discovered in searches, the ciphers, provided they were properly decided, are not and cannot, of course, be treated as acts, words or deeds of any particular person, but the fact that they existed and that the names and addresses of a number of persons who were alleged to be parties to a conspiracy as charged, are mentioned in them; the fact that they were in peculiar forms, such as was not likely to be used for any lawful purpose, taken along with other matters brought out in evidence, gives rise to a legitimate inference that the ciphers were prepared in connection with some unlawful purpose requiring secrecy; and in the absence of evidence that the matters appearing from the secret of documents were associated with some legitimate or lawful purpose, the ciphers are themselves materials affording good reasons for inferring that the names, addresses and other matters appearing in the ciphers were connected with the furtherance of the objects of the conspiracy, and as such, evidence under S. 10, Evidence Act. *Jitendra Nath Gupta v. Emperor* (S. B.)

38 Cr. L. J. 818 :
169 I. C. 977 : 10 R. C. 69 :
A. I. R. 1937 Cal. 99.

————Evidence—Admissibility—Complainant colluding with accused—Previous statements of complainant, admissibility of—Proper procedure.

Secondary oral evidence of a report made by a witness cannot be used as substantive evidence against the accused even where the witness who made the report subsequently, in the trial, denies all knowledge of the facts alleged to have been reported by him to the other witnesses. Where the complainant, owing to undue influence or corruption, goes back on his or her story of how the crime was committed or who committed the crime, it is most advisable for the Presiding Judge to allow the complainant to be treated as a witness hostile to the prosecution; and if as a result of that cross-examination certain evidence emerges which supports the case for the Crown, the evidence of corroboration on the part of third parties would then be admissible in law. *Emperor v. Nga Hlaing*.

29 Cr. L. J. 1042 :
112 I. C. 466 : 6 Rang. 481 :
A. I. R. 1928 Rang. 295.

————Evidence—Admissibility, decision as to—Duty of Judge—Benefit of doubt.

Matters tendered in evidence by the pro-

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-----Duty of prosecution.

It is for the prosecution to prove affirmatively and beyond all reasonable doubt that accused was responsible for the murder of the deceased. *Mohammad Sayeed Khan v. Emperor.*

36 Cr. L. J. 181 :
152 I. C. 423 : 7 R. O. 221 :
11 O. W. N. 1219 :
1934 O. L. R. 852 :
A. I. R. 1935 Oudh 7.

-----Duty of prosecution—Motive.

It is no part of the prosecution's duty to suggest a motive for a crime nor is it any duty of the Court to determine why an offence was committed. *Tun Khine U v. The King.*

40 Cr. L. J. 49 :
178 I. C. 298 : 11 R. Rang. 223 :
A. I. R. 1938 Rang. 331.

-----Duty of prosecution.

It is not incumbent on the prosecution to produce all the persons who had gathered at the scene of offence and had seen the commission of the offence. *Bahadur v. Emperor.*

29 Cr. L. J. 999 :
112 I. C. 215 : 10 L. L. J. 229.

-----Duty of prosecution—Examination of accused against co-accused by splitting up case.

It is the duty of the Police to work up a case and to secure evidence against the real culprits. If there is no evidence against an accused person, it is their duty to tell the Magistrate so. But they cannot be permitted to examine an accused person as a witness against a co-accused person by adopting the simple process of splitting up the case against them, before he has either been convicted or not found guilty of the offence with which he is charged. *Dholimal Karoomal v. Emperor.*

37 Cr. L. J. 716 :
162 I. C. 863 : 8 R. S. 175 :
A. I. R. 1936 Sind 47.

-----Duty of prosecution.

It is the duty of the prosecution, especially in the case of a Crown prosecution, to place all the evidence it has before the Court. *Panchanan Mukherjee v. Emperor.*

30 Cr. L. J. 577 :
116 I. C. 160 : 33 C. W. N. 203 :
I. R. 1929 Cal. 448 :
A. I. R. 1929 Cal. 275.

-----Duty of prosecution.

It is the duty of the prosecution to adduce positive evidence of the fact that an accused person was concerned in the commission of the offence; it is not incumbent upon them to prove the negative, viz., that at the time alleged he was not doing what he was expected in the ordinary course to be engaged in. *Kali Das Basu v. Emperor.*

26 Cr. L. J. 33 :
83 I. C. 513 : 39 C. L. J. 151.

-----Duty of Prosecution.

It is the duty of the prosecution to bring out in evidence everything in favour of an accused person and to lay before the Court

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all the evidence even though some of that evidence may result in an acquittal. *Shukul v. Emperor.*

34 Cr. L. J. 689 :
144 I. C. 207 : 1933 A. L. J. 590 :
55 All. 378 : I. R. 1933 All. 399 :
A. I. R. 1933 All. 314.

-----Duty of prosecution.

It is the duty of a Public Prosecutor to conduct the case for the Crown fairly; his object should be, not to obtain an unrighteous conviction, but, as representing the Crown, to see that justice is vindicated; and in exercising his discretion as to the witnesses whom he should or should not call, he should bear that in mind. It is his bounden duty to place before Court for the adjudication of the Court, all the evidence against the accused persons. *Nga Sar Kee v. The King.*

41 Cr. L. J. 153 :
185 I. C. 303 : 1940 Rang. 203 :
12 R. Rang. 189 : A. I. R. 1939 Rang. 390.

-----Duty of prosecution.

Prima facie, it is for the purpose of prosecution to call such witnesses as they think will establish their case. If the Public Prosecutor knows of a witness who favours the accused, it is his duty to call the witness himself or to see that the defence is supplied with the name of the witness and given an opportunity of calling him. *Vasudeo Balwant Gogle v. Emperor.*

33 Cr. L. J. 613 :
138 I. C. 503 : 56 Bom. 434 :
34 Bom. L. R. 571 : I. R. 1932 Bom. 388 :
A. I. R. 1932 Bom. 279.

-----Duty of prosecution.

Prosecution's duty in a criminal case is not merely to prove a *prima facie* case. The prosecution have to do more than that; they must prove the guilt of the accused. *Shewaram Jethanand Shivdasani v. Emperor.*

41 Cr. L. J. 28 :
184 I. C. 474 : 1940 Kar. 249 :
12 R. S. 107 : A. I. R. 1939 Sind 209.

-----Duty of prosecution.

Prosecution should prove guilt of accused. Judge cannot convict accused on their own version of occurrence on failure of prosecution. *Kanauji Lal v. Emperor.*

35 Cr. L. J. 1347 :
151 I. C. 559 : 1934 O. L. R. 755 :
11 O. W. N. 1117 : 7 R. O. 142.
A. I. R. 1934 Oudh 427.

-----Duty of prosecution.

Public Prosecutor should tender in evidence not only medical evidence and *post mortem* report but also reports of Chemical Examiner and of Imperial Serologist. *Ghirrao v. Emperor.*

34 Cr. L. J. 1009 :
145 I. C. 470 : 10 O. W. N. 1108 :
6 R. O. 53 : A. I. R. 1933 Oudh 265.

-----Duty of prosecution.

The conviction of guilty persons would be more certainly obtained if the prosecution was confined to simple and true evidence and no attempt was made either to hide essential facts

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of course, true that evidence of signs of an ambiguous or uncertain character ought not to be admitted at all, and that in many cases, the evidence, though admissible, might be of little weight. It is no doubt also true that answer to questions of a leading character may be of little weight. *Alexander Pereira Chandarasekera alias Alisandiri v. The King.*

- 38 Cr. L. J. 281 :
166 I. C. 330 : 45 L. W. 78 :
9 R. P. C. 138 : 1937 O. W. N. 218 :
1937 M. W. N. 169 : 41 C. W. N. 513 :
1937 A. L. J. 420 : 39 Bom. L. R. 359 :
1937 1 M. L. J. 600 (P. C.) :
1937 A. W. R. 275 : A. I. R. 1937 P. C. 24.

Evidence—Admissibility.

Statements made to the investigating officer in the course of the inquiry and statements made to the Magistrate at the time of inspecting the scene of the alleged offence are both inadmissible in evidence. *Muhammad Haneef v. Emperor.*

- 35 Cr. L. J. 1463 :
151 I. C. 904 : 7 R. N. 75 :
A. I. R. 1934 Nag. 198.

Evidence—Admissibility—Statement of accused before Police during investigation, use of.

No statement made by an accused person before the Police can be used as evidence against him in a judicial trial though a statement of accused recorded by a Magistrate or by a Court of Session can be considered against him as there is a provision in Cr. P. C., to that effect. *Kanhaiya Lal v. Emperor.*

- 38 Cr. L. J. 491 :
168 I. C. 58 : 9 R. O. 432 :
1937 O. W. N. 505 :
1937 O. L. R. 202 :
A. I. R. 1937 Oudh. 331.

Evidence—Admissibility—Statements of witnesses who are accused in counter-cases.

The principle that the statements of witnesses are not admissible evidence merely because they happen to be the statements of persons who are accused in a counter-case is clearly wrong. *In re : Rahiman Khan Sahib.*

- 40 Cr. L. J. 442 :
180 I. C. 592 : 1938 M. W. N. 31 :
47 L. W. 149 : 11 R. M. 730 :
A. I. R. 1938 Mad. 403.

Evidence—Admissibility.

Suggestions made to the prosecution witnesses by the Pleader for the accused in cross-examination should not be admitted in evidence unless these suggestions have been accepted by the witnesses for the prosecution. *Emperor v. Karimuddi Sheikh.*

- 33 Cr. L. J. 725 :
139 I. C. 245 : 36 C. W. N. 106 :
I. R. 1932 Cal. 592 :
A. I. R. 1932 Cal. 375.

Evidence—Admissibility.

Unsworn statement of witness, apart from special cases, cannot be used against accused at all. *Profulla Kumar Sarkar v. Emperor.* (F. B.)

- 32 Cr. L. J. 768 :
131 I. C. 575 : 53 C. L. J. 427 :
35 C. W. N. 731 : I. R. 1931 Cal. 463 :
A. I. R. 1931 Cal. 401.

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Evidence—Admissibility.

Where a married girl has been enticed away and the accused is tried under S. 498, Penal Code, the evidence of an Honorary Magistrate as to the nature of the statement made to him by the father of the accused or as to what he promised, is inadmissible. *Gulzaman Khan v. Emperor.*

- 36 Cr. L. J. 1442 (1) :
158 I. C. 483 : 8 R. Pesh. 59 :
A. I. R. 1935 Pesh. 73.

Evidence—Admissibility.

Where a person is examined as a witness, a statement said to have been made by him to another is not admissible if no question is put to him as to whether the statement had been made to the other person. *Misri v. Emperor.*

- 35 Cr. L. J. 1332 :
151 I. C. 437 : 7 R. S. 52 :
A. I. R. 1934 Sind 100.

Evidence—Admissibility.

Where the telegram was put in without objection and was available to the defence to contradict witnesses : *Held*, that no prejudice was caused to the accused and the conviction should not be set aside on this ground. *Kachi Hazam v. Siraj Khan.*

- 36 Cr. L. J. 919 :
156 I. C. 400 : 7 R. C. 699 :
39 C. W. N. 403 :
A. I. R. 1935 Cal. 403.

Evidence—Admission of guilt by accused not leading to discovery of relevant facts, admission, if admissible.

Where an information given by an accused to the Police admitting his guilt, does not lead to the discovery of any relevant fact concerning the offence, evidence of what that information was, is inadmissible. *In re : Uppara Dodda Narasa.*

- 40 Cr. L. J. 211 :
179 I. C. 518 : 48 L. W. 601 :
1938 2 M. L. J. 771 : 11 R. M. 593 :
1938 M. W. N. 1116 :
A. I. R. 1939 Mad. 59.

Evidence—Alibi.

Where there is satisfactory evidence that a man committed a crime at a certain place and at a certain time, a Court will never find any difficulty in rejecting an alibi he may seek to establish. *Suraj Bakhsh Singh v. Emperor.*

- 145 I. C. 817 :
10 O. W. N. 753 : 6 R. O. 72 (2) :
A. I. R. 1933 Oudh 369.

Evidence—Alibi, value of.

Alibi evidence is generally viewed with suspicion. *Jahangiri Lal v. Emperor.*

- 35 Cr. L. J. 1180 :
150 I. C. 1056 : 7 R. L. 58 :
A. I. R. 1935 Lah. 230.

Evidence—Appreciation.

Applicability of maxim *falsus in uno falsus in omnibus* stated. *Har Dayal Singh v. Emperor.*

- 34 Cr. L. J. 935 :
145 I. C. 359 : 10 O. W. N. 506 :
8 Luck. 397 : 6 R. O. 43 :
A. I. R. 1933 Oudh 226.

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—————*Duty of prosecution—Capital case—Duty of prosecution to produce all material evidence.*

In a capital case, it is undoubtedly the duty of the prosecution to place before the trial Court, the testimony of all available witnesses. Unless it is shown by facts and circumstances in the case that the witnesses were withheld because they would not tell the truth, the prosecution should not be left the option to choose. *Mathura Tewary v. Emperor.*

30 Cr. L. J. 1136 :
120 I. C. 37 : 8 Pat. 625 :
10 P. L. T. 177 : I. R. 1929 Pat. 677 :
A. I. R. 1929 Pat. 343.

—————*Duty of prosecution—Defence merely relying on defects in prosecution evidence, propriety of.*

Although the prosecution must prove their case in the first instance before the accused can be called upon to make their defence, yet when evidence has once been given on oath by witnesses who profess to have seen the occurrence and who directly implicate the accused and ascribe particular acts to them, it will not avail the accused merely to rely upon discrepancies here and there or upon the absence of adequate motive or on indications that there may be exaggerations in the prosecution story. *Ghanshyam Singh v. Emperor.*

29 Cr. L. J. 239 :
107 I. C. 305 : 6 Pat. 627 :
A. I. R. 1928 Pat. 100.

—————*Duty of prosecution—Defence story untrue—Effect.*

Even if the version put forward by the defence be wholly untrue, yet the prosecution must establish beyond all reasonable doubt that the case put forward by them is true. *Rambrichh Singh v. Emperor.*

41 Cr. L. J. 114 :
185 I. C. 162 : 12 R. P. 339 :
6 B. R. 110 : A. I. R. 1940 Pat. 365.

—————*Duty of prosecution—Evidence—Appreciation—Mess of false evidence—Attempt to search for truth, advisability.*

The duty of the prosecution is to establish the guilt of the accused by evidence which satisfies the Court and it cannot be said that evidence which is for the most part untrustworthy, can be relied upon or can be said to satisfy the Court as regards the few of the accused when the evidence of the same witness does not satisfy the Court in respect of a large number of accused. *G. Venkataratnam v. D. Ramasastrulu.*

41 Cr. L. J. 903 :
190 I. C. 366 : 1939 M. W. N. 1256 :
13 R. M. 405.

—————*Duty of prosecution—Prosecution, if bound to call all witnesses—Non-examination of some witnesses—Jurors may draw adverse inference.*

The prosecution is not bound to call any particular witness or witnesses when there is reasonable ground for the Public Prosecutor to come to the conclusion and believe that such witness or witnesses, if called, will not speak the truth nor is it incumbent on the prosecution

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to call any witness when the Public Prosecutor believes that the evidence of such person is wholly unnecessary for the trial. It is open, however, to the jurors to draw inference unfavourable to the prosecution for the non-examination of the witnesses. *Brichipada Dafadar v. Emperor.*

39 Cr. L. J. 964 :
177 I. C. 929 : 67 C. L. J. 45 :
11 R. C. 296 : A. I. R. 1938 Cal. 625.

—————*Duty of prosecution.*

Prosecution cannot be permitted to examine accused as witness against co-accused by process of splitting up case against them. *Dholiomal Karoomal v. Emperor.*

37 Cr. L. J. 716 :
162 I. C. 863 : 8 R. S. 175 :
A. I. R. 1936 Sind 47.

—————*Duty of prosecution.*

Prosecution must make out its case—Statement of accused under S. 342, Cr. P. C., cannot fill up gaps—Voluntary written statements can do it. *Hasham v. Emperor.*

37 Cr. L. J. 428 :
161 I. C. 344 : 8 R. L. 719 :
A. I. R. 1936 Lah. 28.

—————*Duty of prosecution—Weakness of defence—Conviction.*

It is the duty of the prosecution to establish by its own evidence that the accused is guilty. The weakness of the defence evidence is no ground for finding the accused guilty. *Ramudu Aiyar v. Emperor.*

24 Cr. L. J. 426 :
72 I. C. 538 : 44 M. L. J. 243 : 17 L. W. 370 :
32 M. L. T. 318 : A. I. R. 1923 Mad. 365.

—————*Duty of prosecution—Witnesses in a position to give evidence, withheld by prosecution—Inference.*

Where there are witnesses who are in a position to give relevant evidence but the prosecution deliberately withholds their evidence without establishing the slightest reason for the suggestion that they had been won over by the defence, the prosecution must face the inference arising from their conduct in withholding evidence. It is the duty of the prosecution to produce the witnesses, and it is for the Court to disbelieve or believe them. The mere fact that their evidence is expected to be inconsistent with the prosecution story, does not justify refusal to examine them as witnesses. *Francis Hector v. Emperor.*

38 Cr. L. J. 401 :
167 I. C. 676 : 9 R. A. 567 :
A. I. R. 1937 All. 182.

—————*Duty of prosecution.*

Witness making untrue statement—Prosecution should see that Court does not rely on it. *Nga San Ba v. Emperor.*

37 Cr. L. J. 414 :
161 I. C. 14 : 8 R. Rang. 449 :
A. I. R. 1936 Rang. 75.

—————*Duty of prosecution and trial Judge to see that all material evidence is adduced.*

The prosecuting Inspector, the Government

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up for testing the veracity of the defence witnesses and the prosecution witnesses. *Ramsakhia v. Emperor*. 36 Cr. L. J. 447 :

153 I. C. 922 : 15 P. L. T. 586 :
7 R. P. 385 : A. I. R. 1934 Pat. 651.

—Evidence—Approver.

Evidence of guilty knowledge by report or conversation from the mouth of an approver cannot be given much weight. *Ambica Charan Roy v. Emperor*. 33 Cr. L. J. 19 :

134 I. C. 1121 : 35 C. W. N. 1270 :
I. R. 1932 Cal. 33 : A. I. R. 1931 Cal. 697.

—Evidence—Approver.

When a conditional pardon has been tendered and accepted, there must be good faith on both sides and it is for the Crown to prove that the pardon was forfeited by showing that the accused was guilty of deliberate bad faith. *Dip Chand v. Emperor*. 37 Cr. L. J. 79 :

159 I. C. 412 : 37 P. L. R. 336 :
8 R. L. 391 (2) : A. I. R. 1935 Lah. 799.

—Evidence—Approver examined last—Effect.

Where in a criminal trial the approver was examined after all the witnesses who were supposed to corroborate his statement had been examined : Held, that the assessors could not have appreciated the corroborative evidence. *Ali Muhammad v. Emperor*.

36 Cr. L. J. 491 :
154 I. C. 224 : 7 R. L. 529 :
A. I. R. 1934 Lah. 171.

—Evidence—Articles in accused's possession.

The Crown is entitled to rely upon any material evidence of an incriminatory character found in the house of an accused person as the result of house search. *Emperor v. Narbada Prasad*. 31 Cr. L. J. 356 :

121 I. C. 819 : 51 All. 861 :
A. I. R. 1930 All. 38.

—Evidence—Believing defence witnesses if implies that prosecution witnesses are lying.

To believe the evidence of the defence witnesses does not imply that the prosecution witnesses are deliberately lying, for, they may be speaking in good faith but in error, whereas if the Court accepts the evidence of the prosecution witnesses, it must also hold that the defence witnesses are definitely lying, and for this, there is no justification whatsoever. *Nga Ta Te v. The King*.

39 Cr. L. J. 975 :
177 I. C. 946 : 11 R. Rang. 187 :
A. I. R. 1938 Rang. 295.

—Evidence—Blood-stains — Presence of slight blood-stains on villager's clothing—Evidentiary value of.

From the mere presence of slight blood-stains upon a villager's dhoti which may be there in the ordinary course of nature, no damning conclusion should be drawn against him. *Mata Din v. Emperor*.

38 Cr. L. J. 424 :
167 I. C. 579 : 1937 O. W. N. 291 :
1937 O. L. R. 122 : 9 R. O. 392 :
A. I. R. 1937 Oudh 236.

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—Evidence—Blood-stained clothes.

Where the accused is not questioned about stains of blood on his clothes and he is offered no opportunity to explain their existence, no great value can be attached to this piece of evidence against him. *Bhagwan Din v. Emperor*. 35 Cr. L. J. 915 :

149 I. C. 195 : 11 O. W. N. 444 :
6 R. O. 529 : A. I. R. 1934 Oudh 151.

—Evidence—Blood-stained garments.

The presence of a few blood-stains on a garment found in the house of a zemindar does not necessarily connect him with a murder. *Ali Muhammad v. Emperor*.

36 Cr. L. J. 491 :
154 I. C. 224 : 7 R. L. 529 :
A. I. R. 1934 Lah. 171.

—Evidence—Bribery case.

Payment of bribe not voluntary—Accomplice's evidence—Extent of corroboration necessary, stated. *Papa Kamakhan v. Emperor*.

36 Cr. L. J. 968 :
156 I. C. 615 (2) : 59 Bom. 486 :
37 Bom. L. R. 366 : 8 R. B. 2 :
A. I. R. 1935 Bom. 230.

—Evidence—Circle Inspector causing witnesses to sign statement—Admissibility of such statements.

Where, in the course of his investigation, the Circle Inspector causes certain witnesses to sign the statements made by them before him, the evidence of such witnesses is inadmissible. *Emperor v. Samiullah*.

40 Cr. L. J. 19 :
178 I. C. 254 : 11 R. O. 102 :
1938 O. L. R. 473 : 1938 O. W. N. 1048 :
14 Luck. 302.

—Evidence—Circumstantial evidence—Conviction.

In a case of circumstantial evidence, in order to justify the inference of guilt, the inculcating facts must be incompatible with the innocence of the accused and incapable of explanation on any other reasonable hypothesis than that of his guilt. *Emperor v. Abdul Aziz*. 30 Cr. L. J. 757 :

117 I. C. 348 : I. R. 1929 All. 700.

—Evidence—Circumstantial evidence—Duty of Court.

In dealing with cases which depend largely on circumstantial evidence, there is always a great danger that conjecture and suspicion may take the place of legal proof and Courts should, therefore, take great care to see that the accused is not convicted on mere suspicion not amounting to conclusive proof. *Basudeb Mandar v. Emperor*. 30 Cr. L. J. 835 :

117 I. C. 879 : I. R. 1929 Pat. 479 :
A. I. R. 1929 Pat. 112.

—Evidence—Circumstantial evidence.

Murder—Accused absconding—Motive established—Eye-witnesses not contradicted—Mere delay in report does not make case doubtful. *Mir Jawali v. Emperor*. 37 Cr. L. J. 619 :

162 I. C. 300 : 8 R. Pesh. 194 :
A. I. R. 1936 Pesh. 106.

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- Defence evidence.
- Defence witnesses.
- Discrepancy.
- Documents.
- Doubtful.
- Duty of Court.
- Duty of prosecution.
- Duty of trial Judge.
- Dying declaration.
- Evidence disbelieved.
- Evidence in connected cases.
- Evidence of children.
- Evidence of old criminal produced in police.
- Evidence of relatives.
- Evidence of small boy.
- Evidence produced by one accused if can be used against others.
- Examination.
- Examination of medical witness.
- Examination of eye-witness.
- Examination of witness.
- Expert evidence.
- Expert knowledge.
- Expert witness.
- Forcing accused to appear as witness.
- History sheet.
- Independent witnesses not produced.
- Intention.
- Judicial notice.
- Mainly disbelieved.
- Maps and plans.
- Map of spot.
- Material witnesses not examined by prosecution.
- Medical evidence.
- Medical officer examined before Committing Court but not before Sessions Court.
- Miscellaneous.
- Mode of appreciating.
- Motive.
- Murder.
- Necessity for conviction.
- Non-production of some witnesses by prosecution.
- Omission to examine all witnesses.
- Opinion of the trial Court.
- Plurality of accomplices, usefulness of.
- Police diary.
- Police investigation tainted.
- Police officer.
- Police report.
- Practice.
- Presence of injuries on body of person.
- Presumption.
- Previous statement of witness.
- Procedure.
- Proof of guilt.
- Prosecution.
- Public document.
- Public Prosecutor.
- Quantum of.
- Recording of.
- Rejection of.
- Relevancy.
- Reliability.
- Riot.
- Sessions Judge doubtful whether certain question is leading question.

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- Slight differences in the story of the same event.
- Standard proof.
- Statement.
- Story of eye-witness.
- Sub-Inspector deposing on facts which are result of investigation by predecessor in office.
- Sufficiency.
- Suspicion.
- Tendering of alleged eye-witnesses.
- Value of.
- Withholding of document.
- Witness.
- *Zaildar* and *sufedposhes*.
- Evidence - Abscondence, value of.

Conduct like that of absconding, though it may raise presumptions, is at most corroborative, and is not in itself sufficient to substantiate a charge in the absence of substantive evidence. *Rahmat Shah v. Emperor*.

34 Cr. L. J. 386 :
142 I. C. 392 : I. R. 1933 Pesh. 11 :
A. I. R. 1933 Pesh. 28.

----- Absconding of accused.

Although the mere fact that an accused person absconds cannot in itself be taken as proof of his guilt, it is of great corroborative value when weighing other and direct evidence. *Khaista Khan v. Emperor*. 36 Cr. L. J. 958 :
156 I. C. 433 : 7 R. Pesh. 126 :
A. I. R. 1935 Pesh. 75.

----- Evidence—Absence of finding on defence of accused, effect of.

The mere absence of an express finding on a special defence raised by the accused apart from a general finding that the prosecution case is true will not render a judgment illegal where it is clear from the judgment that the Magistrate has duly considered the evidence adduced by the accused to support his special defence. *Lakhan Singh v. Emperor*.

30 Cr. L. J. 1070 :
119 I. C. 560 : I. R. 1929 Pat. 608 :
A. I. R. 1929 Pat. 231.

----- Evidence—Accomplice—Corroboration.

Where a witness says that she helped the accused to dispose of the body only because he threatened to kill if she did not, she would not be an accomplice, but whether she was an accomplice or not, it would certainly be unsafe to rely on her evidence unless it is corroborated in some material particular as against the accused. *Nanhu v. Emperor*.

37 Cr. L. J. 846 (b) :
163 I. C. 460 : 18 N. L. J. 327 : 9 R. N. 5.

----- Evidence—Accomplice—Evidence of—Corroboration of, by another accomplice—Sufficiency of—Question is academical.

Whether corroboration of one accomplice by another accomplice is sufficient corroboration or not is largely an academical question because it is clear that if two accomplices give depositions in detail which agree with each other very closely, and it is unlikely that on all those details they have agreed beforehand, there is

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only of robbery of the ornaments to the strangers was natural. *Sosni v. Emperor*.

11 Cr. L. J. 665 (a) :
8 I. C. 494 : 93 P. L. R. 1910.

————Evidence—Contradiction between deposition before Magistrate and that before Sessions Judge—Former preferred.

Where the deposition of a witness before the Magistrate differs from the deposition at the Sessions, the former is to be invariably preferred. *Champa Pasin v. Emperor*.

29 Cr. L. J. 325 :
108 I. C. 81 : A. I. R. 1928 Pat 326.

————Evidence—Contradiction of witness, mode of.

It is an elementary rule of evidence that if former statements made by a witness are to be used for the purpose of contradiction, he must be confronted with those statements and be given an opportunity of explaining any apparent discrepancies. It is also a rule of evidence that only those portions of the statements with which he has been confronted should be proved or relied upon for the purposes of contradiction. *Government Advocate, N.- W. F. P. v. Muqaddar Shah*.

158 I. C. 974 :
8 R. Pesh. 73 : A. I. R. 1935 Pesh. 148.

————Evidence—Contradictory statements—Duty of Court.

When witnesses make two contradictory statements, there is no reason why Courts should be prevented from applying their minds to discovering which of such statements is true, and from drawing conclusions therefrom. Consequently there is no reason why the evidence of such persons should be discarded altogether. *Emperor v. Ram Lal*.

36 Cr. L. J. 86 :
152 I. C. 331 : 11 O. W. N. 1269 :
7 R. O. 207 : A. I. R. 1934 Oudh 507.

————Evidence—Contradicting witness—Procedure.

It is an elementary rule of evidence that if former statements made by a witness are to be used for the purpose of contradiction, he must be confronted with those statements and be given an opportunity of explaining any apparent discrepancies. *Government Advocate, N.- W. F. P. v. Muqaddar Shah*.

158 I. C. 974 :
8 R. Pesh. 73 : A. I. R. 1935 Pesh. 148.

————Evidence—Conviction based on single witness.

It is not illegal to convict an accused person on the statement of a single witness, but where the statement of only one witness is relied upon, it must be free from all doubt. *Aziz v. Emperor*.

84 I. C. 436 :
A. I. R. 1925 Lah. 295.

————Evidence—Conviction on evidence disbelieved against others.

An accused should not be convicted on the strength of evidence which is disbelieved so far as other co-accused are concerned, if the ground for disbelieving it is common to all of them. *Shah Din v. Emperor*.

11 Cr. L. J. 131 :
4 I. C. 993 : 20 P. W. R. 1909 Cr.

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————Evidence—Conviction.

Where a conviction of an accused is based on the evidence of witnesses who are on enmity terms with the accused, it is unsafe to uphold the conviction. *Kholia Naiko v. Emperor*.

40 Cr. L. J. 318 :
179 I. C. 929 : 5 B. R. 322
11 R. P. 428 : 20 P. L. T. 313
A. I. R. 1939 Pat. 292.

————Evidence—Corroboration.

Accomplice—Evidence of—No corroboration by legal evidence—Accused cannot be convicted. *Kunji v. Emperor*.

36 Cr. L. J. 1029 :
156 I. C. 902 : 1935 A. L. J. 959 :
8 R. A. 54.

————Evidence—Corroboration—Case of sexual offence—Corroboration required.

What exactly amounts to corroboration of the main evidence in cases of sexual offences is always a difficult question. It need not be the direct oral evidence of another person. It may be only independent evidence of such a character that it connects the accused directly or indirectly with the crime that he was said to have committed. *Sikandar Mian v. Emperor*.

39 Cr. L. J. 371 :
173 I. C. 881 : 41 C. W. N. 641 :
I. L. R. (1937) 2 Cal. 345 :
10 R. C. 594 : A. I. R. 1937 Cal. 321.

————Evidence—Corroboration.

False evidence must inevitably damage the whole fabric of the prosecution case. Honest or circumstantial evidence cannot be used to support or corroborate a perjured witness. *Man Singh v. Emperor*.

34 Cr. L. J. 765 :
144 I. C. 383 : I. R. 1933 All. 426 :
A. I. R. 1933 All. 401.

————Evidence—Corroboration.

Recovery of marked coins amounts to corroboration. *Govinda v. Emperor*.

38 Cr. L. J. 423 :
167 I. C. 521 : 9 R. N. 193 :
I. L. R. 1937 Nag. 181 :
A. I. R. 1936 Nag. 245.

————Evidence—Court disallowing question—Ruling should be recorded.

It is most desirable that when a question is disallowed by a formal ruling and an Advocate desires that a note of the ruling should be recorded in the proceedings, this should be done, as the question whether evidence material to one side was improperly excluded may often engage the attention of an Appellate Court. Unless the Appellate Court knows the exact question which was disallowed, or the application which was refused, it is difficult to judge afterwards as to the propriety with which evidence may have been excluded from the consideration of a Court of first instance. *Brahmaya v. The King*.

40 Cr. L. J. 265 :
179 I. C. 783 : 11 R. Rang. 347 :
A. I. R. 1938 Rang. 442.

————Evidence—Court's duty.

When prosecution proves only some facts, Court should see if proved facts amount to

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secution affecting a case must be dealt with summarily and instantly by the Judge at the trial when they are tendered. It is very dangerous to discuss at elaborate length not merely the nature of proof of documents but also their contents from the point of view of the use which is being made of them by the person who tenders them in evidence, viz., the prosecution, and at the same time to say that they cannot be used as evidence. The benefit of a reasonable doubt ought to be given to the accused even with regard to admission of evidence. No Judge in a doubtful case of admissibility ought to allow the evidence first to be given and then in his judgment give a decision about its admissibility. *Laijam Singh v. Emperor*.

26 Cr. L. J. 881 :

86 I. C. 817 : A. I. R. 1925 All. 405.

—————*Evidence — Admissibility — Entry in daily diary of thana before recording of first information report.*

An entry made at the instance of a Sub-Inspector before the recording of the first information report, in the daily diary of the *thana*, mentioning the names of some of the accused alleged to have been given to him by one of the persons alleged to have been assaulted and injured, is a part of the proceedings of the Police and is consequently inadmissible in evidence for any purpose in Court. *Ahman v. Emperor*. 40 Cr. L. J. 435 :

180 I. C. 507 : 40 P. L. R. 697 :

11 R. L. 697 : A. I. R. 1938 Lah. 787.

—————*Evidence—Admissibility of.*

Every Court has got inherent power to allow relevant evidence to be produced by any party at any stage of the trial. If such evidence is allowed to be produced by the prosecution, all that the accused can urge is that he should be given a full opportunity of rebutting it. There is, therefore, nothing illegal or irregular where the Magistrate allows certain documents to be produced while the prosecution witnesses are being cross-examined by the defence. *Lala v. Emperor*.

40 Cr. L. J. 145 :

178 I. C. 894 : 1938 A. L. J. 1010 :

I. L. R. 1938 All. 968 :

11 R. A. 337 : 1938 A. W. R. 638 :

A. I. R. 1938 All. 637.

—————*Evidence—Admissibility.*

Evidence about the statements of person who is neither a witness nor an accused, is not admissible. *Asab-ud-Din v. Emperor*.

39 Cr. L. J. 601 :

175 I. C. 523 : 10 R. Cr. 795 :

A. I. R. 1938 Cal. 399.

—————*Evidence — Admissibility — Intercepted letters.*

The execution or authorship of a copy of intercepted letter as in the case of any other document, is a question of fact and may be proved like any other fact. The question whether the contents of a copy of intercepted letter used in evidence against an accused person could be acted upon must be deter-

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mined on a consideration of other evidence in the case, documentary and oral. *Jitendra Nath Gupta v. Emperor*. (S. B.)

38 Cr. L. J. 818 :

169 I. C. 977 : 10 R. C. 69 :

A. I. R. 1937 Cal. 99.

—————*Evidence—Admissibility—Murder case — Person dying denouncing accused as assailant in presence of accused and others—Accused remaining silent.*

Per Full Bench.—The fact, that an accused person remains silent when denounced in the presence of witnesses by another person as the latter's assailant, is admissible in evidence. The reason of the confrontation of the accused by the person he is alleged to have attacked is two-fold. First, it is of importance as affording evidence of identification ; if the victim dies, it may be of the highest importance that before his death he identified the accused as his assailant ; if he lives and gives evidence of the identity of the accused at the trial, the fact that he did so at the first possible moment is often valuable as showing the consistency of his story. Secondly, it affords the accused person an opportunity of which, however, he is not bound to avail himself, either of denying that he is the person who attacked the injured party or of setting up some fact which may, at a latter stage, form part of his defence, such as that he was acting in self-defence, or under grave and sudden provocation, or that the injuries received were due to accident. *Emperor v. U Damapala*. (F. B.)

38 Cr. L. J. 524 :

168 I. C. 193 : 14 Rang. 666 :

9 R. Rang. 340 : A. I. R. 1937 Rang. 83.

—————*Evidence—Admissibility—Statement by signs.*

Evidence as to signs made in answer to questions put to the deceased is admissible but statements of witnesses as to what interpretation they put upon the signs are not admissible. But it is difficult to adhere to a clear line of division between the description of signs and the interpretation of signs, and it may be that in some respects witnesses may trespass beyond the line and so usurp what obviously is the function of the jury but where the matter complained of was elicited by cross-examination on behalf of the accused, no substantial grievance can be made out in this regard still less any real or serious miscarriage of justice. *Alexander Perera Chandarsekera v. The King*.

38 Cr. L. J. 281 (P. C.) :

166 I. C. 330 : 45 L. W. 78 :

9 R. P. C. 138 : 1937 O. W. N. 218 :

1937 M. W. N. 169 : 41 C. W. N. 513 :

1937 A. L. J. 420 : 39 Bom. L. R. 359 :

1937 1 M. L. J. 600 : 1937 A. W. R. 275 :

A. I. R. 1937 P. C. 24.

—————*Evidence—Admissibility—Statement by signs.*

The nod of assent by the deceased to the question "was it A?" would constitute a verbal statement made by the deceased. It is,

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occurrence, no reliance can be placed upon his evidence. *Kala v. Emperor*.

27 Cr. L. J. 822 :
95 I. C. 598 : 8 L. L. J. 186 :
27 P. L. R. 719.

—Evidence—Credibility.

Where the evidence is entirely oral and of interested witnesses and there is no circumstantial evidence against the accused, he cannot be convicted. *Jit Singh v. Emperor*.

37 Cr. L. J. 233 :
160 I. C. 158 : 38 P. L. R. 136 :
8 R. L. 501 : A. I. R. 1935 Lah. 922.

—Evidence—Cross-examination.

When a party does not choose to cross-examine witness examined against him, evidence of that witness is usually utilised against that party. *Kalu Ram v. Emperor*.

35 Cr. L. J. 1278 :
151 I. C. 288 : 1934 O. L. R. 706 :
11 O. W. N. 1035 : 7 R. O. 106 :
A. I. R. 1934 Oudh 424.

—Evidence—Defamation—Allegation of illicit pregnancy—Refusal to submit to medical examination—No adverse inference.

In a defamation case, based on an allegation that a woman has had illicit pregnancy, she cannot be compelled to submit to medical examination against her consent and her refusal to do so, is not evidence against her. *Nathu Mal v. Abdul Haq*.

31 Cr. L. J. 584 :
123 I. C. 841 : 12 L. L. J. 555 :
A. I. R. 1930 Lah. 159.

—Evidence—Defence evidence—Rejection of—Position of prosecution.

When defence evidence is rejected, the situation simply is as if the evidence had never existed. If the defence evidence is believed, it would, of course, rebut the prosecution. If it is not believed, the prosecution is left just where it was before the defence witnesses were called. *In re : Ramalinga Goundan*.

39 Cr. L. J. 147 :
172 I. C. 498 : 1937 M. W. N. 878 :
46 L. W. 522 : 10 R. M. 459 :
(1937) 2 M. L. J. 620 :
A. I. R. 1937 Mad. 975.

—Evidence—Defence evidence of co-accused, use of.

A statement by a witness called by the accused that he saw the co-accused striking the deceased with a stick, is admissible in evidence against the co-accused. The mere fact that he is witness for the other accused, who has clearly not made the assault, is no reason for rejecting the evidence of such witness. *Aung Than v. The King*.

39 Cr. L. J. 255 :
173 I. C. 92 : 10 R. Rang. 310 :
A. I. R. 1937 Rang. 540.

—Evidence—Defence witnesses.

A Court is not entitled to decide beforehand that a witness cited by the defence is unworthy of credit. *Nga Ta Te v. The King*.

39 Cr. L. J. 975 :
177 I. C. 946 : 11 R. Rang. 187 :
A. I. R. 1938 Rang. 295.

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—Evidence.

The Magistrate should, as far as possible, allow the accused to select the order in which the defence witnesses are to appear. *Jaffar Beg v. Emperor*.

41 Cr. L. J. 948 :
190 I. C. 561 : 13 R. L. 215 :
A. I. R. 1940 Lah. 354.

—Evidence—Defence witnesses, reliability of.

The fact that the witnesses for defence were caste-fellows and had come voluntarily, without being summoned, is no adequate ground for discarding their evidence. *Raghubar Dayal v. Emperor*.

36 Cr. L. J. 33 :
152 I. C. 120 : 3 A. W. R. 655 :
7 R. A. 261 : A. I. R. 1934 All. 735.

—Evidence—Discrepancy—Murder—Accused charged with murder in course of melee found to have several wounds—Duty of prosecution in explaining such wounds.

It is surely a discrepancy of great gravity when a witness, called to say that a fatal blow was struck and the deceased fell in consequence of it, is obliged to admit that on an earlier occasion he told the Police that the deceased fell when he ran into the yoke-pin of a cart. When a man charged with murder in the course of a *melee* is found to have number of wounds, the prosecution ought to be able to do more than merely call a witness to say that the deceased swung a *da* in all directions, and then ask the Court to infer that that explains the accused's wounds. *Nga Kyaw Win v. The King*.

41 Cr. L. J. 373 :
186 I. C. 719 : 12 Rang. 295 :
A. I. R. 1940 Rang. 55.

—Evidence—Discrepancies.

Too much stress should not be laid without appraising their value and effect. *Emperor v. Muhammad Khan*.

36 Cr. L. J. 419 :
153 I. C. 889 : 35 P. L. R. 641 :
7 R. L. 472 : A. I. R. 1934 Lah. 710.

—Evidence—Discrepancies between evidence recorded in Magistrate's Court and Sessions Court—Duty of accused.

If there are any discrepancies in the evidence of the prosecution witnesses as recorded in the Magistrate's Court and the Sessions Court, it is for the accused to bring them on the record of the Sessions Court so as to afford an opportunity to the prosecution to explain them. The accused cannot ask the High Court to look at the record of the Magistrate's Court to find out the discrepancies. *Mahomed Khan v. Emperor*.

32 Cr. L. J. 172 :
128 I. C. 673 : I. R. 1931 Sind 1 :
A. I. R. 1930 Sind 308.

—Evidence—Documents.

Where the prosecution relies on a written authority as the authority under which a Sanitary Inspector is acting, the written authority should be proved, marked as an exhibit.

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—Evidence—Appreciation.

It is the weight of the evidence and not the number of the witnesses which the Court has to consider. *Kewal Kishore v. Emperor*.

26 Cr. L. J. 1283 :
89 I. C. 147 : 12 O. L. J. 413 :
29 O. C. 44 : A. I. R. 1925 Oudh 473.

—Evidence — Appreciation—Jail Official committing offence against convict in jail premises—Evidence of other convicts, if can be relied upon.

Where an offence is committed by jail officials in jail premises against a convict, a criticism that all the eye-witnesses are convicts and that, therefore, their evidence is unreliable, has no force. In the first place, in an offence of this kind committed in a jail it is obvious that the only evidence likely to be produced would be that of convicts. If a rule was laid down that evidence was unreliable because it was that of a convict, jail officials would have complete immunity for the commission of any offence against a convict. In addition, there is no reason to believe that those convicted of crimes of violence should be more untruthful than other persons. The vice of untruthfulness would be more associated with those convicted of deceit, fraud or perjury. A murderer may have some good qualities such as courage and initiative. *Chaman Lal v. Emperor*.

41 Cr. L. J. 639 :
188 I. C. 440 : 13 R. L. 41 :
I. L. R. 1940 Lah. 521 :
A. I. R. 1940 Lah. 210.

—Evidence—Appreciation.

The events preceding and leading out to the assault on the deceased have to be considered in approaching the evidence led by the prosecution to prove the guilt of the accused. *U Ba U v. Emperor*.

35 Cr. L. J. 855 :
148 I. C. 1069 : 6 R. Rang. 269 :
A. I. R. 1934 Rang. 44.

—Evidence—Appreciation — Unbelievable evidence, admissibility of.

There is no doubt a fundamental difference between the admissibility and the credibility of evidence, but for all practical purposes, if it is said that evidence cannot be believed, it may just as well be said that it is not admissible. *Zahid Beg v. Emperor*.

39 Cr. L. J. 364 :
173 I. C. 838 : 10 R. A. 508 :
1937 A. L. J. 1253 :
1937 A. W. R. 1099 :
A. I. R. 1938 All. 91.

—Evidence—Appreciation.

Where the witnesses are more or less the same, they cannot be said to be unreliable as against certain accused only and reliable as against others. *In re : Mohideen Pichai Rowther*.

41 Cr. L. J. 337 :
186 I. C. 525 : 1939 M. W. N. 879 :
50 L. W. 557 : 12 R. M. 671 :
A. I. R. 1940 Mad. 43.

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—Evidence—Appreciation of.

Evidence evenly balanced in weakness—Accused should not be allowed to stand trial—It is a ground for revision. *Mi Choke v. Emperor*.

34 Cr. L. J. 781 :
144 I. C. 369 : I. R. 1933 Rang. 105 :
A. I. R. 1933 Rang. 119.

—Evidence—Appreciation of.

In a case of murderous assault, the fact that accused produced no evidence in defence may be taken into consideration in deciding what weight is to be attached to evidence of eye-witnesses. *Ganesh Bakhsh Singh v. Emperor*.

35 Cr. L. J. 1244 :
151 I. C. 179 : 7 R. O. 93 :
1934 O. L. R. 686 : 11 O. W. N. 909 :
A. I. R. 1934 Oudh 401.

—Evidence—Appreciation of.

The Court is bound to consider all the evidence before it and to decide whether such evidence establishes the case beyond any reasonable doubt. *Nanhak Lal v. Bajinath Agarwala*.

37 Cr. L. J. 227 :
160 I. C. 116 : 16 P. L. T. 629 :
2 B. R. 164 : 8 R. P. 334 :
A. I. R. 1935 Pat. 474.

—Evidence—Appreciation of.

The Police Officials very often are in a far better position to depose about the character of a man. The right way of judging the evidence of Police Officials is to consider their statements on merits and then to determine whether they have given true evidence or otherwise. *Emperor v. Dipu*.

36 Cr. L. J. 1362 :
158 I. C. 424 : 8 R. A. 298 :
1935 A. W. R. 1089 :
A. I. R. 1935 All. 850.

—Evidence—Appreciation of.

The process of dealing with evidence of the prosecution and defence is not merely one of counting of heads. *Ramdhani Mahio v. Emperor*.

36 Cr. L. J. 1473 :
158 I. C. 948 : 16 P. L. T. 478 :
2 B. R. 32 (1) : 8 R. P. 224 :
A. I. R. 1935 Pat. 421.

—Evidence—Appreciation of.

The strength of the evidence against the accused is a matter to be considered before but not after conviction. *Santokhi Beldar v. Emperor*.

34 Cr. L. J. 349 :
142 I. C. 474 : 14 P. L. T. 82 :
12 Pat. 241 : I. R. 1933 Pat. 139 :
A. I. R. 1933 Pat. 149.

—Evidence—Appreciation of.

When the Judge has tried the case with marked care and intelligence, his opinion as to the credibility of the witnesses should ordinarily be accepted. *Emperor v. Parmeshwar Din*.

35 Cr. L. J. 66 :
146 I. C. 431 : 10 O. W. N. 742 :
6 R. O. 116 : A. I. R. 1933 Oudh 372.

—Evidence—Appreciation of—Standard.

Two separate standards should not be set

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Evidence—Duty of trial Judge.

The Judges in appeal are rightly inclined to attach great weight to the views of trial Judges on the manner in which evidence has been given before them. It is, therefore, essential that a trial Judge should endeavour in making such comments to be strictly accurate. *Mehnga v. Emperor*.

39 Cr. L. J. 534 :
175 I. C. 96 : 10 R. L. 675 :
A. I. R. 1938 Lah. 288.

Evidence—Dying declaration—When can be sufficient for conviction.

It is, of course, a fact that for an accused person to be convicted on a dying deposition alone, the Court must be quite satisfied that the dying deposition bears all the marks of truth, and it must be examined with care, remembering that the statement is an *ex parte* statement, made as a rule in the absence of the accused without the accused having any chance of cross-examining the person who made it; but the conviction can be had solely on a dying deposition where the Court is satisfied that the man who made the dying deposition had a good opportunity of recognizing the person who attacked him, that he did recognize him, and that he was telling the truth when he made his dying deposition. *The King v. Maung Po Thi*.

39 Cr. L. J. 771 :
176 I. C. 683 : 11 R. Rang. 72 :
A. I. R. 1938 Rang. 282.

Evidence—Dying declaration—Wound penetrating whole liver going through stomach and ribs—Sufferer of injury of this nature is incapable of making declaration after two hours.

Where in a case the deceased had received a spear wound which, according to the medical evidence, penetrated the chest wall on the right side, went through the ribs, through the diaphragm, penetrated the right lobe of the liver, completely penetrated the whole liver and came out of the left lobe of the liver and it then went through the stomach and finally through the ribs on the left side of the chest and through the chest wall and the Court was invited to believe that the victim, some two hours after receiving such a wound, made a dying declaration relied on by the prosecution: *Held*, that there was great difficulty in believing that the deceased could possibly have lived for two hours after receiving an injury of this description much less could he have been conscious. The probability of his ever living to make a dying declaration two hours later was too remote to be considered. *Dharam Singh v. Emperor*.

39 Cr. L. J. 508 :
174 I. C. 973 : 10 R. L. 651 :
A. I. R. 1938 Lah. 268.

Evidence—Evidence disbelieved against all the accused but one—Its effect.

Held, that where six accused were prosecuted on the evidence which was entirely discredited against five of them, it would be unsafe to convict the sixth on that evidence without additional circumstances or corroboration. *Nur Khan v. Emperor*.

4 Cr. L. J. 431 :
1 P. W. R. Cr. 27.

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Evidence—Evidence in connected cases, admission of, whether vitiates trial.

The reading of depositions taken in one case as evidence in another case with the consent of the Pleaders for the Crown and the accused, though an irregular procedure, does not constitute an illegality which vitiates a trial. *Emperor v. Harjivan Valji*.

27 Cr. L. J. 1335 :
98 I. C. 407 : 28 Bom. L. R. 115 :
50 Bom. 174 : A. I. R. 1926 Bom. 231.

Evidence—Evidence of children—Conviction when can be based on it.

The evidence of children unless immediately available and unless received before any possibility of coaching is eliminated, is notoriously dangerous. *Darpan Poldarin v. Emperor*.

39 Cr. L. J. 384 :
173 I. C. 833 : 10 R. P. 456 :
4 B. R. 342 : A. I. R. 1938 Pat. 153.

Evidence—Evidence of old criminal produced by Police, value of.

No reliance can ordinarily be placed on the uncorroborated testimony of a witness who is an old criminal, especially when he is produced by the Police under whose supervision he is. Such a witness is doubly unworthy of credit if the story that he tells is on the face of it improbable. No criminal can be expected to reveal his participation in a heinous offence merely for the asking. *Nawab v. Emperor*.

26 Cr. L. J. 1335 :
89 I. C. 311 : 7 L. L. J. 219 :
A. I. R. 1925 Lah. 397.

Evidence—Evidence of relatives.

Where there is a *marpit* in a village between two factions, relatives may possibly be inaccurate in their evidence and, therefore, there should be some corroboration of witnesses who are not independent. But in ordinary murders unconnected with faction feuds, there is no reason to suspect the evidence of relatives. *Nathu v. Emperor*.

36 Cr. L. J. 475 :
154 I. C. 130 : 36 P. L. R. 174 :
7 R. L. 515 : A. I. R. 1934 Lah. 870.

Evidence—Evidence of small boy—Recording of.

Where the guilt or innocence of the accused depends almost wholly upon the evidence of one small boy, it is desirable that the lower Court takes that evidence down in the form of question and answer. *Emperor v. Haria Dhobi*.

39 Cr. L. J. 156 :
172 I. C. 780 : 18 P. L. T. 857 :
10 R. P. 346 : 4 B. R. 165 :
A. I. R. 1937 Pat. 662.

Evidence—Evidence produced by one co-accused if can be used against others.

The evidence of a defence witness produced by one co-accused cannot be treated as prosecution evidence against others. *Sammun v. Emperor*.

27 Cr. L. J. 1037 :
96 I. C. 989 : A. I. R. 1926 Lah. 627.

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————Evidence — Circumstantial evidence, nature of, for conviction on murder charge.

Where there is only circumstantial evidence against the accused in order to convict an accused of murder, the Court must be satisfied that the circumstantial evidence is of such a nature that it would be inconsistent with his innocence. *Emperor v. Jagia*.

39 Cr. L. J. 428 :
174 I. C. 524 : 19 P. L. T. 268 :
10 R. P. 531 : 4 B. R. 451 : 17 Pat. 369 :
A. I. R. 1938 Pat. 308.

————Evidence—Circumstantial evidence.

The mere absence of explanation cannot prove the crime of murder, but the fact that a criminal does not explain very suspicious circumstances against him is certainly circumstantial evidence which may be taken into consideration against him. *Mangal Singh v. Emperor*.

38 Cr. L. J. 472 :
167 I. C. 861 : 17 Lah. 547 :
38 P. L. R. 1018 : 9 R. L. 562 :
A. I. R. 1937 Lah. 127.

————Evidence — Circumstantial evidence, value of.

Where two interpretations are possible, it is not right to adopt the interpretation which is unfavourable to the accused in preference to the other which is favourable to the accused, unless there is some specific reason which justifies the adoption of the unfavourable interpretation. *In re : Kanakasabai*.

41 Cr. L. J. 369 :
186 I. C. 704 : 1939 M. W. N. 883 :
50 L. W. 452 : 12 R. M. 682 :
A. I. R. 1940 Mad. 1.

————Evidence—Circumstantial evidence.

Where it is a case of circumstantial evidence, the Court has to see whether the evidence taken as a whole points conclusively towards guilt of the accused. *Emperor v. Mangru Kisan*.

39 Cr. L. J. 325 :
173 I. C. 507 : 16 Pat. 612 :
19 P. L. T. 104 : 10 R. P. 418 :
4 B. R. 284 : A. I. R. 1938 Pat. 108.

————Evidence—Circumstantial to sustain charge for murder.

Where a charge of murder is based purely on circumstantial evidence, that evidence must point conclusively to the guilt of the accused, and must practically exclude the possibility of the murder having been committed by other persons. It must be such as to show that within all human probability, the act must have been done by the accused. Circumstances of strong suspicion without more conclusive evidence are not sufficient to justify conviction, even though no explanation of them is forthcoming. [The accused was given the benefit of doubt.] *Emperor v. Mendai*. 40 Cr. L. J. 764 :

183 I. C. 307 : 1939 O. W. N. 700 :
12 R. O. 23 : 1939 O. L. R. 498 :
14 Luck. 635.

————Evidence—Complainant's evidence, value of.

A complainant who after all is one of the

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persons most likely to know the facts should not *ex-hypothesi* be unworthy of belief. His evidence ought, in all cases, to be carefully tested : and it is not to be supposed to suffer an irrebuttable presumption of unworthiness. *Emperor v. Aftab Mohammad Khan*.

41 Cr. L. J. 647 :
188 I. C. 649 : 1940 A. L. J. 206 :
13 R. A. 55 : A. I. R. 1940 All. 291.

————Evidence—Complainant's story disbelieved in essential details—Conviction based on part of story, propriety of.

Where a party comes into Court with a story which cannot be believed as to its essential details, it is impossible to rely on a part of the story for the purpose of convicting the accused. *Phalali Singh v. Emperor*.

19 Cr. L. J. 877 :
47 I. C. 73 : 5 P. L. W. 157 :
1918 Pat. 288 : A. I. R. 1918 Pat. 536.

————Evidence—Conduct.

Evidence of the conduct of an accused unless it is incompatible with his innocence is, in fact, a make-weight and nothing more, and care should be taken that it may not have an exaggerated effect. *Emperor v. Dewan Kahar*.

24 Cr. L. J. 497 :
72 I. C. 961 : 4 P. L. T. 186 :
A. I. R. 1923 Pat. 13.

————Evidence—Conduct.

The former association of an accused person with proved conspirators must be construed in the light of his subsequent actions. *Surjya Kumar Sen v. Emperor*. (F.B.) 35 Cr. L. J. 334 :
147 I. C. 32 : 6 R. C. 304 :
A. I. R. 1934 Cal. 221.

————Evidence—Conduct of accused.

Where a person is alleged to have murdered his wife and there is no direct or medical or other circumstantial evidence justifying a conviction, much reliance cannot be safely placed on the conduct of the accused. *In re : Kanakasabai Pillai*.

41 Cr. L. J. 369 :
186 I. C. 704 : 1939 M. W. N. 883 :
50 L. W. 452 : 12 R. M. 682 :
A. I. R. 1940 Mad. 1.

————Evidence—Confession—Rape on a child—Complaint of robbery—Report of Chemical Examiner.

The accused, who belonged to the menial staff of a railway station, were convicted of ravishing a girl 11—13 years of age, who was travelling in a train and was left at the station while getting a drink. Their confessions were recorded by a Magistrate of the first class a day after the occurrence and the Chemical Examiner's report supported the girl's story. On appeal, it was contended that the confessions were not admissible in evidence and that the girl having in the first instance complained only of the robbery of her ornaments was not a credible witness : *Held*, that the contentions were not valid, for the confessions were validly recorded and appeared to be voluntary, and the fact that the girl, in the first instance, complained

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———*Evidence—Expert evidence—Value of—Conviction.*

The opinion of an expert has a corroborative value only and is useful for ascertaining whether the direct evidence is true or not. It is absolutely unsafe to base a conviction on that opinion only, when there is no other evidence in the case. *Mir Abbas Hayat Khan v. Emperor.*

39 Cr. L. J. 234 :
172 I. C. 540 : 10 R. Pesh. 41 :
A. I. R. 1937 Pesh. 99.

———*Evidence—Expert evidence, value of.*

The value of the opinion given by an expert depends to a great extent upon the materials put before him and the nature of the questions that are put to him. The criticism that the expert speaks from an impregnable fortress hardly holds good to-day. Experts are always ready to explain the reason for their opinions; and Judges are entitled to attach little or no importance to their evidence if the explanations given are not satisfying. Many Advocates are now able to cross-examine experts very ably. *In re: S. A. Sattar Khan.*

40 Cr. L. J. 483 :
181 I. C. 364 : 1938 M. W. N. 962 :
11 R. M. 797 : A. I. R. 1939 Mad. 283.

———*Evidence—Knowledge—Duty of Court.*

For a Magistrate untrained in medicine to attempt largely without trained assistance, to ascertain what certain medicines were prescribed for, and what should be prescribed for a particular disease, by reference to medical books is entirely unsound, and the conclusions thus arrived at are valueless. A Magistrate should not take upon himself to decide, without expert evidence, whether the amount of arsenic contained in certain prescriptions would produce arsenical poison and collapse and unconsciousness. *Emperor v. Purna Chandra Ghose.*

26 Cr. L. J. 71 :
83 I. C. 631 : 28 C. W. N. 579 :
A. I. R. 1924 Cal. 611.

———*Evidence—Expert witness.*

Accused has a right to summon expert witness to contradict the expert witness of the Crown. *Misri Lal v. Emperor.*

35 Cr. L. J. 591 :
147 I. C. 1197 : 1934 A. L. J. 67 :
6 R. A. 628 : 3 A. W. R. 241 :
A. I. R. 1934 All. 372.

———*Evidence—Expert witness—Fee—Power of Magistrate to enforce his attendance on reasonable fee.*

A witness cannot refuse to attend the Court when summoned, and the rules of the High Court have clearly laid down the fees to which an expert witness is entitled. The Court, therefore, should not hesitate in exercising its powers under the law, however highly placed a witness may be. An accused person should not be burdened with the costs of an expert, if his demand is unreasonable, especially when the Magistrate is empowered to enforce the

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attendance of the witness and to pay him his reasonable dues. *Parshotam Das v. Emperor.*

38 Cr. L. J. 133 (a) :
166 I. C. 128 (1) : 38 P. L. R. 1165 :
9 R. L. 340 : A. I. R. 1936 Lah. 919.

———*Evidence—Expert witnesses—Opinion on scientific basis but differing—Duty of Court.*

It may be said generally that expert evidence produced by an interested party may have a certain amount of unconscious bias in favour of that party. But if the difference of opinion between two expert witnesses is purely of a scientific character, the Court must accept one opinion or the other without characterising the opposite opinion as partial. *Francis Hector v. Emperor.*

38 Cr. L. J. 401 :
167 I. C. 676 : 9 R. A. 567 :
1936 A. W. R. 1065 :
A. I. R. 1937 All. 182.

———*Evidence—Forcing accused to appear as witness—Effect.*

It is repugnant to all principles of Criminal Law as administered in this country to compel a person to give evidence in the very matter in which he is accused or is liable to be accused and then to base the charge on such evidence and at the trial of the accused to use such evidence given on oath as a statement tending to prove the guilt of the accused. *Emperor v. Kazi Dawood.*

27 Cr. L. J. 433 :
93 I. C. 225 : 28 Bom. L. R. 78 :
50 Bom. 56 : A. I. R. 1926 Bom. 144.

———*Evidence—History-sheet.*

The maintenance of a history-sheet may have its uses, and a history-sheet may, in some cases, form good evidence against the accused. But there is much difficulty in treating it as evidence against the accused, as in many cases, it turns out that the history-sheet is no more than an *ex-parte* proceeding and that the accused does not know upon what ground the history-sheet has been opened against him, nor does he know what facts it contains. *Emperor v. Kudua Bari.*

31 Cr. L. J. 301 :
121 I. C. 559 : A. I. R. 1930 All. 37.

———*Evidence—Independent witnesses not produced—Presumption.*

Where the witnesses, who are independent, named in the F. I. R. are not called by the prosecution, the Court will be justified in assuming that their evidence, had they been called, would not have supported the prosecution. *Ghulam Rasul v. Emperor.*

39 Cr. L. J. 7 :
171 I. C. 906 : 10 R. L. 247 :
40 P. L. R. 17.

———*Evidence—Intention.*

It is pure question of fact to be inferred from surrounding circumstances. *Ramzan v. Emperor.*

37 Cr. L. J. 106 :
159 I. C. 466 : 8 R. S. 85 :
A. I. R. 1935 Sind 203.

———*Evidence—Intention.*

Where the Legislature has passed upon a

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offence charged and whether frame of charge gives sufficient notice of case to be met. *Ghyosuddin, Ahmad v. Emperor.*

33 Cr. L. J. 864 :
139 I. C. 616 : 13 P. L. T. 288 :
11 Pat. 523 : I. R. 1932 Pat. 251 :
A. I. R. 1932 Pat. 215.

—Evidence—Court witnesses, summoning of—Discretion of Courts.

Summoning of Court witnesses is entirely a matter for the Court to decide and it is not for the accused to insist. It is open to the accused to summon these witnesses in his defence, if so advised. *Chotey Miyan v. Emperor.*

38 Cr. L. J. 482 :
167 I. C. 860 : 9 R. N. 228 :
I. L. R. 1937 Nag. 165 :
A. I. R. 1936 Nag. 250.

—Evidence—Credibility.

A witness may be discredited because he has been convicted for one of two reasons: (1) because the offence that he has committed shows a certain amount of moral obliquity; (2) because it has resulted in the witness having spent some time in jail in company with men presumably of bad character, which association may very possibly have contaminated him. A conviction for adultery in this country is very much the same as appearing as a respondent or co-respondent in the Divorce Court in England, and that it is not generally regarded there as carrying with it the suggestion that the man is unreliable as a witness with regard to matters entirely unconnected with that particular matrimonial offence. *Gafoor v. Emperor.*

37 Cr. L. J. 992 :
164 I. C. 677 : 9 R. Rang. 125 :
A. I. R. 1936 Rang. 373.

—Evidence—Credibility.

Considerable weight must be attached to the opinion of the Judge who hears the witnesses as to their relative credibility. Where the record does not show that the witnesses on either side have been materially discredited or greatly shaken in cross-examination, it is the duty of the Judge to decide which side is telling the truth. Where the Judge has tried the case with marked care and intelligence, his opinion as to credibility of witnesses should ordinarily be accepted. *Mukta Prasad v. Emperor.*

27 Cr. L. J. 577 :
94 I. C. 193 : 13 O. L. J. 69.

—Evidence—Credibility.

Deceased denouncing accused just before death—Absence of corroborative evidence or motive—Benefit of doubt should be given. *Nga Kan Htu v. Emperor.*

34 Cr. L. J. 747 :
144 I. C. 282 : I. R. 1933 Rang. 99 :
A. I. R. 1933 Rang. 95.

—Evidence—Credibility.

Injured man varying his statement—Only evidence that of injured man—No presumption that he will charge only the actual assailant—Conviction cannot be upheld. *Said Umar v. Emperor.*

35 Cr. L. J. 874 :
143 I. C. 949 : 6 R. Pesh. 61 :
A. I. R. 1934 Pesh. 18.

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—Evidence—Credibility.

Inspector not sending a person for trial—Statement by eye-witness incriminating him does not amount to perjury. *Mir Jawali v. Emperor.*

37 Cr. L. J. 619 :
162 I. C. 300 : 8 R. Pesh. 194 :
A. I. R. 1936 Pesh. 106.

—Evidence—Credibility.

Mere verbal contradictions and discrepancies are not sufficient to discredit the testimony of the eye-witnesses. *Rattan Lal v. Emperor.*

35 Cr. L. J. 45 :
146 I. C. 381 : 10 O. W. N. 557 :
8 Luck. 570 : 6 R. O. 107 :
A. I. R. 1933 Oudh 333.

—Evidence—Credibility.

Opinion of trial Court regarding veracity of witnessess is of great value. *Allah Dino v. Emperor.*

34 Cr. L. J. 891 :
144 I. C. 943 : 6 R. S. 23 :
A. I. R. 1933 Sind 254.

—Evidence—Credibility.

Person sleeping close to cot on which deceased was murdered—No mention in First Information Report of his witnessing the crime—First Information Report filed by brother of deceased—Omission is significant and tends to discredit such person's testimony secured by Police after three days of crime. *Sundar Lal v. Emperor.*

35 Cr. L. J. 836 :
148 I. C. 1045 (2) : 11 O. W. N. 661 :
6 R. O. 482 : A. I. R. 1934 Oudh 315.

—Evidence—Credibility.

The evidence of a man who can remember no details and cannot submit to the test of thorough cross-examination, is of very little value. *Mahla Singh v. Emperor.*

32 Cr. L. J. 522 :
130 I. C. 410 : 32 P. L. R. 259 :
I. R. 1931 Lah. 282 : A. I. R. 1931 Lah. 38.

—Evidence—Credibility.

The opinion of the trial Court on the credibility of oral evidence must be treated as almost conclusive when it is based on the demeanour of witnesses. *Bhai Khan v. Emperor.*

32 Cr. L. J. 485 :
130 I. C. 324 : 31 P. L. R. 1026 :
I. R. 1931 Lah. 260 : A. I. R. 1931 Lah. 18.

—Evidence—Credibility.

Where a witness has deliberately committed perjury in falsely implicating one accused, it is impossible to accept his evidence against another accused. *Jit Singh v. Emperor.*

37 Cr. L. J. 233 :
160 I. C. 158 : 38 P. L. R. 136 : 8 R. L. 501 :
A. I. R. 1935 Lah. 922.

—Evidence—Credibility.

Where a witness who has had several opportunities of making a statement to the Police, does not disclose his knowledge of the occurrence till many days after the

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tion in the case of crimes of violence must be regarded as a very unsatisfactory feature of the prosecution case. *Emperor v. C. Barwick*.

33 Cr. L. J. 220 :
136 I. C. 5 : 33 P. L. R. 443 : 13 Lah. 573 :
I. R. 1932 Lah. 181 : A. I. R. 1932 Lah. 345.

—Evidence—Medical evidence—Witnesses changing their story in Court of Session—Duty of Court.

It cannot be laid down as a general rule that medical evidence is of less value than the evidence of eye-witnesses. Where the medical evidence is merely an opinion of an expert on a question which may admit of two explanations, it is not always of first importance, but such evidence is very valuable where it lays before the Court definite facts from which the Judge himself may draw his conclusions. Where witnesses alter their statements in the Court of Session in order to make them fit in which the medical or other evidence which has been brought forward in the Magistrate's Court, their statements must receive very careful scrutiny. *Dwarka v. Emperor*.

31 Cr. L. J. 181 :
120 I. C. 820 : 6 O. W. N. 270 : 4 Luck. 705 :
A. I. R. 1929 Oudh 248.

—Evidence—Medical Officer examined before Committing Court but not before Sessions Court—Duty of Counsel for accused.

The omission to examine the Medical Officer as witness in the Sessions, if he is examined before the Committing Court is likely to cause a miscarriage of justice of a grave character. In such a case, Counsel for the accused should insist upon his coming before the Sessions Court. *Bahadur Singh Arjan Singh v. Emperor*.

39 Cr. L. J. 410 :
174 I. C. 420 : 10 R. L. 563 : 40 P. L. R. 484 :
A. I. R. 1938 Lah. 176.

—Evidence—Miscellaneous.

Evidence regarded insufficient to convict on dacoity charge, can be used to show accused is a dangerous and desperate character. *Parbati Charan Baisya v. Emperor*.

35 Cr. L. J. 952 :
149 I. C. 460 : 61 Cal. 588 :
6 R. C. 593 : A. I. R. 1934 Cal. 482.

—Evidence—Miscellaneous.

Magistrate should not express opinion whether evidence of witness whom complainant wishes to examine, is or is not necessary. *Tulsi-das Janglydas Koshta v. Chetandas Dosudas*.

35 Cr. L. J. 404 (2) :
147 I. C. 275 : 16 N. L. J. 310 :
30 N. L. R. 76 : 6 R. N. 117 :
A. I. R. 1933 Nag. 374.

—Evidence—Miscellaneous—Recording of Duty of Court—Post mortem report—Contradicting appearance—Effect.

The tendency of Judges in the lower Courts to look upon themselves as mere recording machines and failing to take an intelligent interest in the cases before them or to ask necessary questions to clear doubtful points

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deprecated: *Held*, after considering the medical report that the story told by the approver was false and also that the Police diary had been fabricated. *Nikka v. Emperor*.

38 Cr. L. J. 314 :
166 I. C. 848 : 17 Lah. 541 :
38 P. L. R. 964 : 9 R. L. 428.

—Evidence—Miscellaneous.

Rule that facts should be incompatible with accused's innocence for inference of guilt does not strictly apply to cases not dependent on circumstantial evidence alone. *Manar Ali v. Emperor*.

147 I. C. 1203 :
37 C. W. N. 1066 : 58 C. L. J. 66 :
60 Cal. 1339 : 6 R. C. 411 :
A. I. R. 1934 Cal. 124.

—Evidence, mode of appreciating.

Though a Magistrate is at liberty to refer to the evidence in a criminal proceeding in a manner equally appropriate to civil proceedings, he should not lose sight of the fact that he is dealing with a criminal matter and should ultimately dispose of the case purely from the standpoint of the Criminal Law. *Bhabani Prosad Moitra v. Hari Charan Bhuttacharjee*.

24 Cr. L. J. 714 :
73 I. C. 938 : 38 C. L. J. 7.

—Evidence—Motive.

In criminal trial, it is not the bounden duty of the prosecution to prove the motive. *Ratan Lal v. Emperor*.

35 Cr. L. J. 45 :
146 I. C. 381 : 10 O. W. N. 557 :
8 Luck. 570 : 6 R. O. 107 :
A. I. R. 1933 Oudh 333.

—Evidence—Motive.

It is unsafe to base a conviction in a murder case on the evidence of the only witness who is not believed by the Sessions Judge on several points, when no motive for the commission of the offence is made out. *Bhagwait Prasad v. Emperor*.

35 Cr. L. J. 1265 :
151 I. C. 274 : 1934 O. L. R. 699 :
11 O. W. N. 969 : 7 R. O. 99 :
A. I. R. 1934 Oudh 373.

—Evidence—Motive.

It is not very natural that an accused person should merely from the annoyance at not getting his proper share of the loot take an action which he must know will put himself in jail. *Ram Charan v. Emperor*.

36 Cr. L. J. 636 :
155 I. C. 119 : 1935 A. L. J. 478 :
1935 A. W. R. 388 : 7 R. A. 894 :
A. I. R. 1935 All. 549.

—Evidence—Motive.

Subsequent events can merely show the reflections of what a man's mind may have been; previous events are of more importance as showing the influence which have worked upon the man's mind to bring it into the condition that it was at the moment of commission of offence. *N. N. Burjorjee v. Emperor*.

37 Cr. L. J. 217 :
159 I. C. 1065 : 8 R. Rang. 321 :
A. I. R. 1935 Rang. 456.

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bit and kept on the record. *Emperor v. Bharat Prasad.* 154 I. C. 187 :

7 R. P. 431 : A. I. R. 1935 Pat. 73.

————Evidence—Document, proof of.

Mere production of a document is not tantamount to proof, especially when the production is by a person who is neither the writer of the document nor the person on whose behalf the document has been written. *Hasta Ismail v. Emperor.* 38 Cr. L. J. 1073 :

171 I. C. 351 : 39 P. L. R. 327 :
10 R. L. 187 : A. I. R. 1937 Lah. 593.

————Evidence—Document prepared by Police during investigation, admissibility of.

A document which is not evidence, does not become so by being formally proved and exhibited in the case. A document prepared by the Police during the investigation cannot, therefore, be treated as evidence even though formally proved. *Yaru v. Emperor.*

28 Cr. L. J. 112 :
99 I. C. 240 : A. I. R. 1927 Lah. 79.

————Evidence—Doubtful.

Persons procuring false evidence or fabricating false evidence — Warning administered. *Ashiq Mahomed v. Emperor.*

37 Cr. L. J. 562 (2) :
162 I. C. 342 : 8 R. L. 885 :
A. I. R. 1936 Lah. 330.

————Evidence—Doubtful.

The evidence of prosecution witnesses who implicate the accused only when they are faced with the necessity of exculpating themselves is open to grave suspicion. *Nanhu Mahlon v. Emperor.*

32 Cr. L. J. 438 :
129 I. C. 666 : 11 P. L. T. 772 :
12 P. L. T. 239 : I. R. 1931 Pat. 122 :
A. I. R. 1930 Pat. 338.

————Evidence—Doubtful—Zemindar attacked by unknown persons and murdered—Servant also attacked—Accused suspected and tried owing to ill-feeling—Evidence of servant alone—Accused held could not be convicted on such evidence.

In the course of his journey a zemindar was attacked by certain unknown persons and killed, his servant who was also attacked from behind lost his head and fled dropping the lantern without making any attempt to render any first aid to his master. As there was ill-feeling between the accused and the deceased, they were suspected of the murder and were tried. There was evidence of the servant alone and the Jury and the Judge relying upon his evidence and his recognition of the accused, convicted the accused : Held, that it was doubtful whether the servant could recognize the assailants in the circumstances and it was unsafe to convict any one upon the evidence of the servant. The motive assigned to murder was inadequate and the ill-feeling between the accused and the deceased explained how they were implicated on mere suspicion. *Kumarish Chandra Karmakar v. Emperor.*

39 Cr. L. J. 541 (b) :
175 I. C. 193 : 65 C. L. J. 423 :
10 R. C. 764 : A. I. R. 1938 Cal. 220.

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————Evidence doubtful against one accused—Effect.

Once doubts are entertained as to the truth of the prosecution case as a whole, there is no logical ground on which to differentiate the case of one accused from that of another. *Mir Sahib Khan v. Emperor.* 35 Cr. L. J. 860 :
148 I. C. 760 : 6 R. Pesh. 54 :
A. I. R. 1934 Pesh. 53.

————Evidence—Duty of Court—Making new case, what is.

It is an everyday happening that the Courts have to sift the evidence, and they frequently find that the complainant has enhanced the part taken by the accused and minimised the part taken by himself in order to make the case look as black as possible against the accused. Removing of excrescences or ornamentation by the Magistrate does not amount to the setting up of new case. *Taqi Mohammad v. Mohammad Jan.* 40 Cr. L. J. 1 :

178 I. C. 169 : 11 R. O. 93 :
1938 O. L. R. 465 : 1938 O. W. N. 1064 :
A. I. R. 1938 Oudh 253.

————Evidence—Duty of prosecution.

In a criminal trial, the Public Prosecutor is not bound to call as evidence for the Crown any person whose evidence, in his opinion, is unnecessary. *Doraiswami Udayan v. Emperor.*

25 Cr. L. J. 75 :
75 I. C. 987 : 1923 M. W. N. 782 :
45 M. L. J. 846 : 33 M. L. T. 213 :
A. I. R. 1924 Mad. 239.

————Evidence—Duty of prosecution.

It is not the duty of the prosecution to call as witnesses every one whose statements have been taken by the Police but only to call such people as may be likely to give truthful and reliable evidence with regard to the matter in question. *Nga Kyaw Hla v. The King.*

39 Cr. L. J. 248 :
173 I. C. 94 : 10 R. Rang. 306 :
A. I. R. 1938 Rang. 45.

————Evidence—Duty of prosecution.

The prosecution has no right to usurp the function of the Court and the conduct of the prosecution authorities in keeping back such evidence deserves the strongest condemnation. *Nem Singh v. Emperor.*

36 Cr. L. J. 152 :
152 I. C. 741 : 4 A. W. R. 5 :
7 R. A. 373 : A. I. R. 1934 All. 908.

————Evidence—Duty of prosecution.

There is no duty upon those who are charged with the preparation of a prosecution case to produce in Court every person examined by the Police. But in a murder case where a witness has given evidence which supports a plea of alibi taken by one of those who have been charged with the murder, that witness ought to be produced. *Nem Singh v. Emperor.*

36 Cr. L. J. 152 :
152 I. C. 741 : 4 A. W. R. 5 :
7 R. A. 373 : A. I. R. 1934 All. 908.

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been detected in fabricating false evidence will stop in such fabrication. *Hasnu Khan v. Emperor*. 26 Cr. L. J. 1297 (b) : 89 I. C. 241 : A. I. R. 1926 Oudh 26.

—Evidence—Police Officer—Admissibility of their belief on certain matters—Admissibility of Police records as to suspected members of gang.

From their experience, Police Officers are able to diagnose the nature of crime just as a doctor is able to diagnose a disease. So, their belief that a gang was operating is entitled to respect. Statement in Police records as to the suspected members of the gang, however, is an entirely different matter and such lists should not be included in the evidence. *Amdu Miyan v. Emperor*. 38 Cr. L. J. 251 : 166 I. C. 587 : I. L. R. 1937 Nag. 315 at p. 324 : 9 R. N. 132 : A. I. R. 1937 Nag. 17 at p. 23.

—Evidence—Police report—Certified copy of Police Report—Admissibility.

A mere certified copy from the Police records does not prove itself in the sense that its contents do not require further proof before being used. Consequently in the absence of any legal proof of this document, it is unfair for the Public Prosecutor to produce the document and improper for the Judge to allow him to do so. *Hasla Ismail v. Emperor*. 38 Cr. L. J. 1073 : 171 I. C. 351 : 39 P. L. R. 327 : 10 R. L. 187 : A. I. R. 1937 Lah. 593.

—Evidence—Prosecution witnesses knowing facts likely to turn hostile—Duty of Police Prosecutor—Duty of Court to arrive at truth by all lawful means.

There may be some doubt as to the duty of the Police Prosecutor to call prosecution witnesses who know facts but are likely to turn hostile, but there is a duty cast upon the Court to arrive at the truth by all lawful means and one of such is the examination of witnesses of its own accord, when for certain obvious reasons, neither party is prepared to call witnesses who are known to be in a position to speak to important relevant facts. When the trial Court fails to do this, the Appellate Court should avail itself of the power conferred by S. 428. *In re : Donald Dixon*. 40 Cr. L. J. 35 : 178 I. C. 341 : 1938 M. W. N. 817 : 48 L. W. 363 : 11 R. M. 443 : A. I. R. 1938 Mad. 900.

—Evidence—Presence of injuries on body of person—Inference.

It cannot be presumed merely from the circumstance that a person has injuries on his body, that he was present at the scene of occurrence. *Jowand Singh v. Emperor*. 39 Cr. L. J. 426 : 174 I. C. 431 : 10 R. L. 564 : A. I. R. 1938 Lah. 150.

—Evidence—Presumption—Failure to call necessary witness.

Where a person is charged with criminal misappropriation but the accounts show that the

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amount in question is paid to some person, and the prosecution contends that the amount has not been paid to him but does not call him as witness, the presumption arises that if he were called, he would not support the prosecution case. *Ong Boon Hock v. Emperor*. 38 Cr. L. J. 887 : 170 I. C. 257 : 10 R. Rang. 72 : A. I. R. 1937 Rang. 280.

—Evidence—Presumption—Murder—Presumption—Accused's recent possession of property of murdered person—Cause of death not proved—Presumption of guilt.

Where the charge is specific, that the murder was caused by throttling and it is not proved and there is no evidence to show that the deceased was murdered at all, the presumption of guilt cannot be drawn from the recent possession by the accused of jewellery taken from the murdered person. *Emperor v. Taduru Poligadu*. 41 Cr. L. J. 242 : 185 I. C. 829 : 1939 M. W. N. 873 : 50 L. W. 435 : 12 R. M. 612 : A. I. R. 1940 Mad. 12.

—Evidence—Presumption.

On failure of prosecution to prove stains on clothes of accused to be of human blood, no presumption can be made against him. But if it is proved to be such, accused can be called upon to explain. *Bhagwati Prasad v. Emperor*. 35 Cr. L. J. 1265 : 151 I. C. 274 : 1934 O. L. R. 699 : 11 O. W. N. 969 : 7 R. O. 99 : A. I. R. 1934 Oudh 373.

—Evidence—Presumption—Presumption of guilt—Discretion of Court.

The presumption arising out of the accused's recent possession of stolen property which had been removed from the person of deceased at or about the time of his murder, is one of fact which are inferences which the Court naturally and logically draws from given facts without the help of legal direction and, therefore, fall more properly within the province of logic and do not constitute a branch of jurisprudence. Such presumptions are always permissive in the sense that the Court has the discretion to draw or not to draw them. *Nga Toke Hla v. Emperor*. 39 Cr. L. J. 47 : 172 I. C. 66 : 10 R. Rang. 214 : A. I. R. 1937 Rang. 439.

—Evidence—Presumption.

Prosecution is not under obligation to call relevant evidence and presumption under S. 114, Illus. (g), Evidence Act, need not be raised simply because prosecution does not call certain witnesses. *Bhuban Bijoy Singh v. Emperor*. 35 Cr. L. J. 33 (2) : 146 I. C. 378 : 37 C. W. N. 1098 : 60 Cal. 1361 : 6 R. C. 210 : A. I. R. 1933 Cal. 600.

—Evidence—Presumption.

Stains of blood not proved by prosecution to be human blood—Inference that stains were

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—Evidence—Examination.

A Magistrate should not treat a prosecution witness as an accused person and to record her evidence in jail instead of examining her in open Court or at his own house if he found that more convenient. *Ghirrao v. Emperor*.

34 Cr. L. J. 1009 :
145 I. C. 470 : 10 O. W. N. 1108 :
6 R. O. 53 : A. I. R. 1933 Oudh 265.

—Evidence—Examination of medical witness, mode of.

A medical witness, like any other witness in a case, must be examined orally in the presence of the accused and cannot, in lieu of such examination, be allowed to prove statements made by him at the trial of other accused persons in the absence of the accused against whom his evidence is being recorded. *Sardara v. Emperor*.

27 Cr. L. J. 571 :
94 I. C. 139 : A. I. R. 1926 Lah. 675.

—Evidence—Examination of eye-witnesses.

The fact that certain eye-witnesses to the crime are related to the accused is no ground for dispensing with their examination in Sessions Court. *Nga Mai Shai v. Emperor*.

32 Cr. L. J. 1067 :
133 I. C. 488 : I. R. 1931 Rang. 264 :
A. I. R. 1931 Rang. 163.

—Evidence—Examination of witness.

There is no law to prevent the examination of any witness because he had not been examined in the previous case. *Sheoshankar Dhondbaji Mahar v. Emperor*.

41 Cr. L. J. 697 :
188 I. C. 885 : 1940 N. L. J. 165 :
13 R. N. 14.

—Evidence—Examination of witness on Commission.

The issue of a Commission for the examination of an important witness, such as an eye-witness in a serious criminal trial is not desirable and should only be adopted for the most cogent reasons. *Lachhmi Lal v. Emperor*.

23 Cr. L. J. 218 :
65 I. C. 1002 : 1922 Pat. 159 :
3 P. L. T. 338 : A. I. R. 1922 Pat. 40.

—Evidence—Expert evidence.

Chemical Examiner's report containing quantitative analysis—It should be shown to Medical Officer who conducted *post mortem* examination to enable him to state before trial Court medico-legal inferences. *Happu v. Emperor*.

35 Cr. L. J. 280 :
146 I. C. 1089 : 1934 A. L. J. 173 :
6 R. A. 397 : A. I. R. 1933 All. 837.

—Evidence—Expert evidence—Court acting as expert, danger of.

There is considerable danger of a miscarriage of justice when a Criminal Court relies on its own comparison of a disputed signature with another signature for the purpose of determining its authenticity. It is usually desirable to obtain the opinion of an expert with regard to this or better still the evidence of persons who can speak to the signature having been

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written in their presence. *Ram Sobhag Singh v. Emperor*.

166 I. C. 136 : 17 P. L. T. 896 :
9 R. P. 260 : 3 B. R. 134 :
A. I. R. 1937 Pat. 146.

—Evidence—Expert evidence.

Corroborative evidence unsatisfactory—Expert not familiar with characters in which abusive document is written : *Held*, on facts that accused was not writer. *Saglain Ahmad v. Emperor*.

37 Cr. L. J. 263 :
160 I. C. 264 : 1936 A. L. J. 317 :
8 R. A. 582 : 1936 A. W. R. 119 :
A. I. R. 1936 All. 165.

—Evidence—Expert evidence—Hand-writing-expert—Duty of Court.

A comparison of hand-writing is something hazardous and inconclusive, and should be made with care and caution in the light of assistance that may be available in the shape of expert evidence or arguments on behalf of parties concerned. The rejection even *in toto* of an expert's opinion would not exonerate the Court from the duty of coming to an independent finding on the question of an authorship of hand-writing, the Court has to examine the opinion and come to its own decision. The most important things are to examine the general characteristics, formation of letters, fixed pen habits and mannerisms, and discern the identity of the writer. The identity or resemblance in hand-writing has to be found out on the value of the effect of various considerations arising from individual characteristics and idiosyncracies which have been embodied in technical language of experts. *Jitendra Nath Gupta v. Emperor*. (F. B.)

38 Cr. L. J. 818 :
169 I. C. 977 : 10 R. C. 69 :
A. I. R. 1937 Cal. 99.

—Evidence—Expert evidence.

Opinion of expert on lunacy cannot be brushed aside on the strength of the lay opinion of the trial Judge. *Onkar Datt Nigam v. Emperor*.

36 Cr. L. J. 392 (2) :
153 I. C. 780 : 1935 O. W. N. 53 :
7 R. O. 386 : A. I. R. 1935 Oudh 143.

—Evidence—Expert evidence.

The fact that the hand-writing expert is not acquainted with the characters (Urdu) in which the disputed document is written and he cannot read or write them, will not make him incompetent as an expert in hand-writing. *Saglain Ahmad v. Emperor*.

37 Cr. L. J. 263 :
160 I. C. 264 : 1936 A. L. J. 317 :
1936 A. W. R. 119 : 8 R. A. 582 :
A. I. R. 1936 All. 165.

—Evidence—Expert evidence.

The value of expert evidence depends largely on the cogency of the reasons on which it is based. *Saglain Ahmad v. Emperor*.

37 Cr. L. J. 263 :
160 I. C. 264 : 1936 A. W. R. 119 :
1936 A. L. J. 317 : 8 R. A. 582 :
A. I. R. 1936 All. 165.

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exhibit and kept on the record for the purpose of enabling the Appellate Court to inspect it. *Emperor v. Bharat Prasad Singh*.

154 I. C. 187 : 1 B. R. 286 (2) :
7 R. P. 431 : A. I. R. 1935 Pat. 73.

—Evidence.

Prosecution story false—Judge can arrive at some theory of actual happenings if he can fairly do so on evidence. *Habibur Rahman v. Emperor*.

32 Cr. L. J. 736 :
131 I. C. 536 (2) : 12 P. L. T. 516 :
I. R. 1931 Pat. 339 : A. I. R. 1931 Pat. 339.

—Evidence—Prosecution.

The Magistrate discharging the functions of a Judge cannot afford to ignore the weak points of the prosecution in reaching a conclusion. *Nalhu v. Emperor*.

37 Cr. L. J. 89 :
159 I. C. 238 : 18 N. L. J. 90 : 8 R. N. 124.

—Evidence—Prosecution witnesses examined at committal proceedings—Public Prosecutor's right to give up at trial.

Where it is perfectly plain that certain witnesses who had been cited as prosecution witnesses and who were examined before the committal proceedings and who are related to the accused are going to tell a story quite different from the case put forward by the Crown, the Public Prosecutor should refuse to call them at Sessions trial. *Nga Ba U v. Emperor*.

39 Cr. L. J. 217 :
172 I. C. 926 : 10 R. Rang. 289 :
A. I. R. 1937 Rang. 429.

—Evidence—Prosecution witnesses inter-related.

The mere fact that the principal prosecution witnesses are inter-related is not sufficient to disbelieve their statements *in toto* especially when they were present on the spot and their version is amply corroborated by other facts and circumstances. *Sohna v. Emperor*.

41 Cr. L. J. 348 :
186 I. C. 603 : 41 P. L. R. 802 : 12 R. L. 420 :
A. I. R. 1940 Lah. 53.

—Evidence—Prosecution witnesses trying to magnify and improve case—Value of their testimony.

It would be wholly unsafe to depend on the testimony of the prosecution witnesses who have tried to magnify the case and to improve upon it at different stages of the trial. *Thakur Singh v. Emperor*.

40 Cr. L. J. 948 :
184 I. C. 409 : 12 R. A. 226 :
1939 A. L. J. 547 :
1939 A. W. R. 577 :
A. I. R. 1939 All. 665.

—Evidence—Public document—Order-sheet—Presumption.

An order-sheet is a public document being a record of acts of a public judicial officer and the presumption is that it is genuine. The Court would require evidence and not mere suggestion to justify its rejection. *Nand Kumar Sinha v. Emperor*.

39 Cr. L. J. 103 :
172 I. C. 237 : 4 B. R. 141 : 10 R. P. 316 :
A. I. R. 1937 Pat. 534.

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—Evidence—Public Prosecutor failing to put material question—Duty of Court.

If the Public Prosecutor fails to put to the doctor a question which the lower Court considers necessary, the Court should itself put it. *Emperor v. Haria Dhoobi*.

39 Cr. L. J. 156 :
172 I. C. 780 : 18 P. L. T. 857 :
10 R. P. 346 : 4 B. R. 165 :
A. I. R. 1937 Pat. 662.

—Evidence—Quantum of.

Decision should not depend on number of witnesses for either side—Proper method indicated. *Emperor v. Dipu*.

36 Cr. L. J. 1362 :
158 I. C. 424 : 8 R. A. 298 :
1935 A. W. R. 1089 :
A. I. R. 1935 All. 850.

—Evidence—Quantum of.

In a criminal case the quantity of evidence required does not vary with the enormity of the crime. Every person accused of any offence is entitled to claim that the charge against him shall be clearly established by admissible evidence. *Salu Mangan v. Emperor*.

34 Cr. L. J. 808 :
144 I. C. 664 : I. R. 1933 Sind 194 :
A. I. R. 1933 Sind 166.

—Evidence—Quantum of—Motive.

However strong and convincing the evidence of an adequate motive may be, that evidence can never counteract the harm done by the reception of inadmissible evidence or the injustice its use may lead to, nor by itself apply the want of reliable evidence direct or circumstantial of the commission of the crime with which an accused person may be charged. *Kunja Subudhi v. Emperor*.

30 Cr. L. J. 675 :
116 I. C. 770 : 8 Pat. 289 :
10 P. L. T. 549 : I. R. 1929 Pat. 338 :
A. I. R. 1929 Pat. 275.

—Evidence—Quantum of—Prosecution producing best and sufficient evidence—Evidence on less important fact, if necessary.

When the prosecution have produced sufficient evidence and the best evidence, it is not always incumbent on them to produce all possible evidence on the less important facts. *Yusuf Mia v. Emperor*.

40 Cr. L. J. 147 :
178 I. C. 934 : 20 P. L. T. 51 :
5 B. R. 185 : 11 R. P. 312 :
A. I. R. 1938 Pat. 579.

—Evidence—Recording of.

The Judge should not record the prosecution evidence without any attempt at filling up gaps in important places by getting explanations from witnesses which the Government Pleader failed to get and witnesses failed to give. *Paley Singh v. Emperor*.

32 Cr. L. J. 1052 :
133 I. C. 593 : 1931 A. L. J. 1000 :
I. R. 1931 All. 705 :
A. I. R. 1931 All. 609.

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matter and drawn the line in its own way, it is not for the Criminal Courts to abandon 'intention', the ancient and statutory test and to put in peril of their process persons of innocent intention. *P. K. Chakravarty v. Emperor*.

27 Cr. L. J. 1154 :
97 I. C. 738 : 30 C. W. N. 953 :
44 C. L. J. 172 : 54 Cal. 59 :
A. I. R. 1926 Cal. 1133.

Evidence—Judicial notice.

A Magistrate cannot import into a case his knowledge of the previous conduct of the accused. *Shambhuram v. Emperor*.

32 Cr. L. J. 923 :
132 I. C. 476 : 25 S. L. R. 213 :
I. R. 1931 Sind 92 :
A. I. R. 1931 Sind 127.

Evidence mainly disbelieved—Conviction.

Once the prosecution evidence has been refuted in a large measure and the Magistrate trusts the fate of the case to a consideration of probabilities, he is in danger of arriving at the realm of conjecture. Where a party comes into Court with a story which cannot be believed as to its essential details, it is impossible to rely on a part of the story for the purpose of convicting the accused. When the greater portion of the prosecution evidence is disbelieved, it is not open to a Magistrate to re-construct a story which is wholly inconsistent with the story told by the witnesses. *Joharmal Marwari v. Emperor*.

25 Cr. L. J. 724 :
81 I. C. 212 : 5 P. L. T. 635 :
A. I. R. 1924 Pat. 813.

Evidence—Maps and plans.

A person who prepares a map in a criminal case ought not to put upon it anything more than what he sees himself. Particulars derived from witnesses examined on the spot should not be noted on the body of the map, but on a separate sheet of paper annexed to the map as an index thereto, the spots being marked as A, B, C, D, etc. *Emperor v. Abinash Chandra*. 26 Cr. L. J. 350 :
84 I. C. 654 : 28 C. W. N. 995 : 52 Cal. 172 :
A. I. R. 1924 Cal. 1029.

Evidence—Maps and plans.

With regard to map, there are certain kinds of indices which are regarded as admissible, but if the index is of a legitimate nature, there is no reason why it should not be exhibited along with the map. *Emperor v. Lalji Rai*.

37 Cr. L. J. 235 :
160 I. C. 181 : 16 P. L. T. 730 : 2 B. R. 180 :
8 R. P. 344 : A. I. R. 1936 Pat. 11.

Evidence—Map of spot, contents of.

A person who makes a map in a criminal case, ought not to put upon it anything more than what he sees himself. Particulars derived from witnesses examined on the spot should not be noted on the body of the map but on a separate sheet of paper annexed thereto. *Emperor v. Mofizel Padda*.

26 Cr. L. J. 1298 :
89 I. C. 242 : 29 C. W. N. 842 :
A. I. R. 1925 Cal. 909.

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—Evidence—Material witnesses not examined by prosecution—Inference.

Omission to examine a material witness for the prosecution is a manifest defect in the prosecution case throwing considerable doubt on the same. *Hem Chandra Singha v. Emperor*.

27 Cr. L. J. 1244 :
92 I. C. 60 : A. I. R. 1927 Pat. 89.

—Evidence—Medical evidence—Age, ascertainment of—Doctor must express definite opinion.

Medical Officers must not forget that the Court must decide matters beyond reasonable doubt and not on a preponderance of probability. Where the age of the accused is in question, if they are convinced beyond reasonable doubt, they should say: "I feel certain accused is of particular years old," and not "I do not think he is younger than a particular years of age." *Nga Myauk Nya Po Bein v. The King*. 39 Cr. L. J. 412 :
174 I. C. 338 : 10 R. Rang. 401 :
A. I. R. 1938 Rang. 56.

—Evidence—Medical evidence—Age.

Doctor's evidence on the point of a person's age is entitled to greater weight than that of a layman. *Nasrullah v. Emperor*. 35 Cr. L. J. 498 :
147 I. C. 759 (2) : 10 O. W. N. 1274 :
6 R. O. 310 : A. I. R. 1934 Oudh 32.

—Evidence—Medical evidence—Duty of Medical Officer—Contempt of Court.

Medical Officers, like other persons, are bound to attend Court on receipt of summons and to give evidence, if required by the Court. They cannot refuse to give evidence for reasons which they may consider to be sufficient, but they should represent to the Court as regards fees payable to them. Any dictation of terms on which they would give evidence, is unnecessary and should be avoided. *Chauthi Singh v. Emperor*. 39 Cr. L. J. 113 :
172 I. C. 31 : 1937 A. L. J. 972 :
10 R. A. 389 (1) : 1937 A. W. R. 899 :
A. I. R. 1937 All. 768.

—Evidence—Medical evidence.

In murder cases, the Medical Officers should give an opinion as to the date of death. *Mehr Singh v. Emperor*. 37 Cr. L. J. 250 :
160 I. C. 187 : 38 P. L. R. 138 : 8 R. L. 505 :
A. I. R. 1935 Lah. 805.

—Evidence—Medical evidence.

No consent or admission by the prisoner's Advocate to dispense with the medical witness could relieve the prosecution of their duty of proving by evidence the nature of the injuries received by the deceased and that the injuries were the cause of death. *In re : Rangappa Goundan*.

37 Cr. L. J. 471 :
161 I. C. 663 : 1936 M. W. N. 110 :
43 L. W. 305 : 70 M. L. J. 447 : 59 Mad. 349 :
8 R. M. 845 : A. I. R. 1936 Mad. 426.

—Evidence—Medical evidence.

The absence of an early medical examina-

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record in proper way. *Nga Tha Aye v. Emperor.* 36 Cr. L. J. 1380 :

158 I. C. 441 : 8 R. Rang. 169 :
A. I. R. 1935 Rang. 299.

————Evidence—Statement of defence witness, use of.

A statement made by a defence witness against a person other than the one who had called him as a witness could not be considered as if it were evidence led on behalf of the complainant. *Chatur Bhuj v. Emperor.*

32 Cr. L. J. 672 :
131 I. C. 238 : 32 P. L. R. 300 :
I. R. 1931 Lah. 398 : 12 Lah. 385 :
A. I. R. 1931 Lah. 57.

————Evidence—Statement of formal witness for prosecution assisting defence.

Where a formal witness for the prosecution makes a statement assisting the defence, it does not have that weight which it would have if he had been a witness for the prosecution as to the material facts of the case. *Radha Kishen v. Emperor.*

40 Cr. L. J. 261 :
179 I. C. 880 : 11 R. L. 642 :
A. I. R. 1938 Lah. 714.

————Evidence—Statement.

Questions put and extracts included from depositions during trial should be included in record. *Molla Khan Kabuli v. Emperor.* (S. B.)

35 Cr. L. J. 601 :
148 I. C. 172 : 37 C. W. N. 1061 :
6 R. C. 432 : A. I. R. 1934 Cal. 169.

————Evidence—Statement—Statement by witness to Police—Statements, how to be used.

The statements made to the Police can only be put to the witnesses under S. 162, Cr. P. C. To bring the provisions of the proviso to S. 162, Cr. P. C. into operation, three conditions must be fulfilled : first, the statement of the witness in question must have been reduced into writing ; secondly, the witnesses must have been called for the prosecution and thirdly, the written statement must be proved. When those conditions exist, the proviso directs that " the Court shall, on the request of the accused, refer to such writing, and direct that the accused be furnished with a copy thereof," and then it can be used to contradict the witness. In actual practice when the first two conditions are fulfilled, the written record of the witness's statement is generally put to him on an undertaking of the prosecution to call the investigation officer to prove the statement, because it is inconvenient to prove each statement separately. So that the general practice is to call the investigating officer at a later stage of the trial and he proves the written statements which have been put to the witnesses. *Emperor v. Mahomed Adam Chohan.*

138 Cr. L. J. 327 :
167 I. C. 43 : 38 Bom. L. R. 1186 :
9 R. B. 274 : A. I. R. 1937 Bom. 60.

————Evidence—Statement—Witness making statement in examination-in-chief after giving evidence in support of charges against accused.

A statement made by a witness in examina-

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tion-in-chief after the witness had given evidence in support of the charge of cheating and misappropriation against the accused was as follows : Certain person " told me that the accused had told them he had filed a false case against me so that I may either withdraw from this case or I might have the matter compromised. The accused spoke similarly to certain other persons. The false case referred to is the case brought by one under S. 497, Penal Code, against me and which was dismissed. The accused also said to those people that he would have hundreds of cases instituted against me and would see me in jail : " Held, (in order of reference) that the statement could have no other object than to prejudice the Court against the accused by showing that he had been attempting to force the withdrawal or compromise of the case. It was evidence which the witness should not have been asked to give and which the Court should have disallowed. *Mohammad Yusuf v. Imtiaz Ahmad Khan.* (F. B.)

40 Cr. L. J. 421 :
180 I. C. 745 : 1939 O. W. N. 296 :
1939 O. L. R. 194 : 11 R. O. 248 :
11 Luck. 492 : A. I. R. 1939 Oudh 131.

————Evidence—Story of eye-witness in conflict with medical evidence—Effect.

Where the medical evidence conflicted with the story given by the eye-witnesses, who were also relations of the deceased: Held, the conviction based on their evidence is untenable. *Sher Khan v. Emperor.*

5 L. L. J. 124 :
A. I. R. 1924 Lah. 59.

————Evidence—Sub-Inspector deposing on facts which are results of investigation by predecessor-in-office—Admissibility.

Where what the Sub-Inspector states about the facts is the result of the investigation of his predecessor-in-office, his evidence amounts to hearsay and is, therefore, inadmissible. *Emperor v. Samiullah.*

40 Cr. L. J. 19 :
178 I. C. 254 : 11 R. O. 102 :
1938 O. L. R. 473 : 1938 O. W. N. 1048 :
14 Luck. 302.

————Evidence—Sufficiency.

In order to establish an offence, it is not enough that the prosecution theory is a theory which would explain the facts. It must be shown that it is the only theory which, in a reasonable sense, is compatible with the facts. *Tarapada Mitra v. Emperor.*

34 Cr. L. J. 1073 :
145 I. C. 814 : 37 C. W. N. 426 :
6 R. C. 138 : A. I. R. 1933 Cal. 603.

————Evidence—Sufficiency.

Where only evidence is presence of accused near the place of occurrence, it is not sufficient for conviction. *Mohammad v. Emperor.*

33 Cr. L. J. 375 :
137 I. C. 65 : I. R. 1932 Lah. 273 :
A. I. R. 1932 Lah. 254 (2).

————Evidence—Sufficiency of.

Assailant alleged to be seen by witnesses—Witnesses on the roof sleeping—Insufficient light burning to enable recognition of the

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———Evidence—Motive.

When on evidence crime is brought home to the accused, question of motive becomes a matter of secondary importance. *Mathura v. Emperor*. 36 Cr. L. J. 767 :

155 I. C. 527 : 1935 O. W. N. 561 :
7 R. O. 602 : A. I. R. 1935 Oudh 354.

———Evidence—Motive.

When there is direct evidence of the crime, absence of proved motive is immaterial. *Muhammad Araf v. Emperor*.

35 Cr. L. J. 420 :
147 I. C. 409 : 6 R. L. 395 :
A. I. R. 1933 Lah. 1005 (2).

———Evidence—Murder—Evidence of blood-stained nails—Medico-legal value.

The evidence of blood-stained nails is not only of no value but may be extremely dangerous to innocent persons. Giving such evidence as corroborating an approver or as circumstantial evidence connecting an accused person with [homicide, may lead to the miscarriage of justice. *Ujagar Singh v. Emperor*.

40 Cr. L. J. 576 :
181 I. C. 864 : 11 R. L. 895 :
41 P. L. R. 493 : I. L. R. 1939 Lah. 206 :
A. I. R. 1939 Lah. 149.

———Evidence—Murder case — Blood-stains on clothes of villagers.

Villagers often have blood-stains on their clothes. Their occupation is of such a nature as to render this inevitable. The existence of a few small blood-stains on a man's shirt or dhoti is not enough to found a conviction in itself though it is important corroborative evidence when the accused is directly implicated by other evidence or circumstances. *Shaligram v. Emperor*.

39 Cr. L. J. 105 :
172 I. C. 213 : 10 R. N. 185 :
A. I. R. 1938 Nag. 52.

———Evidence necessary for conviction—Practice—Conviction, whether can be based on interested and contradictory evidence.

It is not safe to base the conviction of an accused person on the evidence of interested witnesses who were not mentioned in the First Information Report as eye-witnesses of the occurrence and whose evidence is contradicted by other witnesses produced on behalf of the prosecution. *Pali v. Emperor*.

27 Cr. L. J. 223 :
92 I. C. 175 : 7 L. L. J. 256.

———Evidence—Non-production of some witnesses by Prosecution — Effect — Prosecution, failure of, to produce all witnesses, effect of.

The mere fact of the non-production of some of their witnesses by the Prosecution cannot, in any way, affect the credibility of witnesses who are produced. *Inder Singh v. Emperor*.

24 Cr. L. J. 708 :
73 I. C. 932 : 5 L. L. J. 524 :
A. I. R. 1924 Lah. 241.

———Evidence—Omission to examine all witnesses.

Where the prosecution have examined suffici-

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ent witnesses to prove their case, the mere fact that they had not examined other witnesses who could have given evidence, is not a point of sufficient gravity for setting aside the conviction. *Nafur Sardar v. Emperor*.

34 Cr. L. J. 181 :
141 I. C. 636 : 36 C. W. N. 1038 :
60 Cal. 149 : I. R. 1933 Cal. 153 :
A. I. R. 1932 Cal. 871.

———Evidence—Opinion of the trial Court, weight of.

Where the trial Judge who had the advantage of seeing and hearing the witnesses was satisfied that they were telling the truth and no important discrepancies between their depositions have been pointed out on appeal, the findings of the trial Judge should be accepted. *Ibrahim v. Emperor*.

36 Cr. L. J. 348 :
153 I. C. 466 : 7 R. P. 341 :
A. I. R. 1935 Pat. 95.

———Evidence—Plurality of accomplice—Usefulness of.

It is a recognized rule that it is ordinarily unsafe to convict on the evidence of an accomplice unless it is corroborated by independent evidence as against each of the accused. The evidence of one accomplice cannot be used as independent evidence to corroborate the evidence of another accomplice. But a plurality of accomplices might be useful in this way. They have to be considered independently and the Court might, while not losing sight of S. 114 (b) of the Evidence Act, still be able to rely on the uncorroborated testimony of one or more out of a number either on the same or on different points. *In re : Surajpalsingh*.

39 Cr. L. J. 818 :
176 I. C. 853 : 1938 N. L. J. 185 :
I. L. R. 1938 Nag. 516 : 11 R. N. 81 :
A. I. R. 1938 Nag. 328.

———Evidence—Supervision notes by superior officer—Whether should be excluded from Police diaries to Court.

It is a mistake to exclude supervision notes from the Police diaries sent to the Court. The investigation may be in the hands of Sub-Inspector and the supervision is conducted by superior officers. But the Court which may use the diaries to aid it in the inquiry or trial cannot rightly be left in ignorance of the supervision which necessarily determines the course of the investigation at point after point. The notes cannot, of course, be used as evidence, any more than can the diaries of the investigating officer himself, but they usually make these diaries more intelligible and more useful as aids in inquiries and trials. *Emperor v. Manu Chik*.

39 Cr. L. J. 635 :
175 I. C. 716 : 4 B. R. 626 :
11 R. P. 11 : A. I. R. 1938 Pat. 290.

———Evidence—Police investigation tainted—Effect.

When a Police investigation with respect to any particular accused person is tainted, a Court will have great hesitation in believing the prosecution evidence as it is very difficult to know where an Investigation Officer who has

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question to its witness. *Niru Bhagat v. Emperor.*

24 Cr. L. J. 91 :
71 I. C. 219 : 1 Pat. 630 :
4 P. L. T. 76 : A. I. R. 1922 Pat. 582.

————Evidence—Value of.

Evidence of witness not mentioned in First Information Report is not rendered valueless on sole ground of omission from Report. *Muhammad Araf v. Emperor.*

35 Cr. L. J. 420 :
140 I. C. 409 : 6 R. L. 395 :
A. I. R. 1933 Lah. 1005 (2).

————Evidence—Value of.

Recovery of corpse from accused's house during accused's absence in jail—Offence of murder held not made out. *Bhaghauti v. Emperor.*

35 Cr. L. J. 1042 :
159 I. C. 205 : 11 O. W. N. 581 :
6 R. O. 615 : A. I. R. 1934 Oudh 362.

————Evidence—Value of.

Where a co-accused in a dacoity case merely states that after the dacoity he was offered a certain sum of money which he took, the statement is not a confession of his having committed the dacoity and should not be taken into consideration as against the other accused. *In re : Ibrahim.*

26 Cr. L. J. 1146 :
88 I. C. 458 : 42 C. L. J. 496 :
A. I. R. 1926 Cal. 374.

————Evidence—Value of.

Where there is a serious discrepancy between the evidence of the approver and that of witnesses, it makes it impossible for the Court to act upon such evidence either by itself or as corroboration of the approver's testimony. *Bachcha Babu v. Emperor.*

36 Cr. L. J. 684 :
155 I. C. 369 : 1935 A. W. R. 1 :
7 R. A. 908 : A. I. R. 1935 All. 162.

————Evidence—Value of—Riot case.

Where in a case of rioting, there is agreement between a large number of reports and statements on certain main facts, those reports and statements are of value. *Emperor v. Sheodayal.*

35 Cr. L. J. 360 :
147 I. C. 15 : 55 All. 689 :
6 R. A. 437 : A. I. R. 1933 All. 535.

————Evidence—Value of—Story given by witnesses belated.

Where the story of the witnesses that the particular accused caused the vital injury to the deceased by beating with a stone in his hand during the course of a disturbance caused by a number of accused is belated, and it is in evidence that that particular accused had given evidence against the witnesses previously, it is unsafe to accept their evidence. *In re : T. Palaniswami Goundan.*

41 Cr. L. J. 923 :
190 I. C. 490 : 51 L. W. 590 :
1940 M. W. N. 538 : 13 R. M. 412 :
A. I. R. 1940 Mad. 586.

————Evidence—Withholding of document—Presumption.

Where an important document is withheld by the prosecution without sufficient justifica-

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tion, the Court may presume that it is not favourable to the prosecution. *Panchanan Mukherjee v. Emperor.*

30 Cr. L. J. 577 :
116 I. C. 160 : 33 C. W. N. 203 :
I. R. 1929 Cal. 448 : A. I. R. 1929 Cal. 257.

————Evidence—Witness—Competency.

Where neither in a complaint nor in the Police *chalan* is mention made of a person as one of those who committed the offence, the examination of such a person as a witness for the prosecution would not vitiate the trial, merely because the Court discovers, for the first time when he gives his evidence, that he might have been prosecuted. *Local Government v. Jham Singh.*

21 Cr. L. J. 820 :
58 I. C. 820 : A. I. R. 1920 Nag. 261.

————Evidence—Witness.

From the mere fact that a witness before the Sessions Court makes statements relating to a part of the prosecution case different from what he made before the Magistrate, does not necessarily make him hostile. *Nayeb Shahana v. Emperor.*

35 Cr. L. J. 1479 :
152 I. C. 44 : 38 C. W. N. 659 :
61 Cal. 399 : I. R. Cal. 225 (2) :
A. I. R. 1934 Cal. 636.

————Evidence—Witness hesitant—Effect.

The fact that the alleged eye-witnesses were disposed at the outset not to disclose what they knew, is one which should not, in any way, be regarded as tending to discredit their evidence. *Mominuddi Sardar v. Emperor.*

36 Cr. L. J. 1254 :
158 I. C. 67 : 39 C. W. N. 262 :
A. I. R. 1935 Cal. 591.

————Evidence—Witness, relations or partisans—Testimony, if should be rejected.

In case of a bitter feud between the party which supplied the prosecution witnesses and the party of the accused and in view of the conditions prevailing in most villages, it would be wrong to reject the testimony of witnesses merely because they are related or are partisans of one side unless the witnesses tell lies on material points and their conduct is unnatural. *Jowand Singh v. Emperor.*

39 Cr. L. J. 426 :
174 I. C. 431 : 10 R. L. 564 :
A. I. R. 1938 Lah. 150.

————Evidence—Witness, reliance on.

The evidence of those witnesses who have reasons falsely to implicate the particular accused should not be relied on as against that particular accused. Where, however, perjury has definitely been brought home to a witness, it would be extremely dangerous to rely on his evidence against any one. *Shukul v. Emperor.*

34 Cr. L. J. 680 :
144 I. C. 207 : 1933 A. L. J. 590 : 55 All. 378 :
I. R. 1933 All. 399 : A. I. R. 1933 All. 314.

————Evidence—Witness—Statement to Police—Repudiation of portion—Duty of Court.

When a witness is confronted with a portion of his Police statement which he repudiates,

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of human blood should not be drawn. *Imam-ud-Din v. Emperor*. 35 Cr. L. J. 1154 :

150 I. C. 862 : 1134 O. L. R. 652 :

11 O. W. N. 950 : 7 R. O. 70 :

A. I. R. 1934 Oudh 388.

————Evidence—Presumption.

The fact that there was no prosecution in Court is not evidence that no action whatever was taken. *Emperor v. Alta Ullah Shah Bukhari*. 37 Cr. L. J. 661 :

162 I. C. 624 : 38 P. L. R. 638 :
8 R. L. 925 : A. I. R. 1936 Lah. 429.

————Evidence—Previous statement of witness, proof of.

Where the prosecution first examined a Magistrate to prove the previous statement of a witness under S. 164, Cr. P. C., with a view to prevent the witness from resiling and the witness herself was not cross-examined with reference to that statement: *Held*, the procedure adopted was illegal. *Mahomed Khan v. Emperor*. 32 Cr. L. J. 172 :

128 I. C. 673 : I. R. 1931 Sind 1 :
A. I. R. 1930 Sind 308.

————Evidence—Procedure.

A provision of law which is an exception to the general rules of evidence, must be applied only to the cases to which it is confined by the Legislature. *Emperor v. Pyn Zin*. 22 Cr. L. J. 492 :

62 I. C. 188 : 3 Bur. L. T. 157.

————Evidence—Procedure—Duty of Public Prosecutor.

It is desirable that when an investigating Police Officer is being cross-examined as to previous statement made to him by the witnesses for the prosecution, the Court should have the Police diary before it and see whether the negative answer of the officer really gives a picture of what the witness in fact had stated. If not, the fact should be borne in mind and the Court should watch whether the matter is cleared up in re-examination. It is, therefore, the duty of the Public Prosecutor to see that the negative answer from an investigating officer in respect of the statement of a witness does not create a wrong impression of what the witness stated before the Police. He must, in these cases, bring about other statements to explain the matter referred to in cross-examination. *Yusuf Mia v. Emperor*. 40 Cr. L. J. 147 :

178 I. C. 934 : 20 P. L. T. 51 :
5 B. R. 185 : 11 R. P. 312 :

A. I. R. 1938 Pat. 579.

————Evidence—Evidence of witness rejected against some and accepted against other accused—Propriety.

The procedure of rejecting the evidence of certain witnesses so far as certain accused are concerned and accepting it so far as others are concerned, cannot be upheld. The witness whose evidence has to be rejected so far as certain accused are concerned, cannot safely

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be accepted or acted upon in the case of other accused. *Shenbapaperumal Naicker v. Emperor*. 41 Cr. L. J. 349 :

186 I. C. 601 : 1939 M. W. N. 1251 :
12 R. M. 66 : A. I. R. 1940 Mad. 79.

————Evidence—Procedure.

Magistrate should not act solely on report of Police Officer—He should himself record evidence of parties and come to decision on it. *Bansidhar Modi v. Emperor*. 35 Cr. L. J. 1158 :

147 I. C. 730 (1) : 14 P. L. T. 639.
6 R. P. 372 : A. I. R. 1933 Pat. 698 (1).

————Evidence—Previous conviction—Procedure—Conviction sought to be proved by finger-prints taken in previous trial—Evidence as to identity of prints.

Where it is proved that the accused before the Court had his finger-prints taken in jail far away from his native place, soon after a person of his name was convicted of an offence, that is certainly very strong evidence indeed that the person bearing his name who was convicted was the very person who shortly afterwards had his thumb impression taken. Where, however, the finger-prints were taken elsewhere and taken sometimes after the conviction, it cannot be said that the identity of the convicted person with the accused before the Court has been established. Where a calendar extract has shown previous convictions, there can be no doubt that the person last convicted was also convicted under the various charges mentioned in the calendar extract. In such cases, a list of previous convictions would be confirmatory of the other evidence establishing the identity of the convicted person in earlier cases with the accused before the Court. The list of previous convictions contained on the finger-print slips is not satisfactory evidence of the previous convictions recited therein ; although it may be true that the list of previous convictions forms part of the document. If the prosecution are able to prove—that a number of persons bearing the names of the accused are found in a calendar extract and that the finger-prints of those accused were taken in the same jail at or about the same time, that is very strong evidence indeed that those persons were jointly convicted. *Arumugam v. Emperor*. 40 Cr. L. J. 355 :

180 I. C. 431 : 1938 M. W. N. 595 :
48 L. W. 639 : 11 R. M. 700 :
A. I. R. 1938 Mad. 858.

————Evidence—Proof of guilt.

What constitutes proof of guilt explained. *Emperor v. Ram Dal*. 34 Cr. L. J. 538 :

143 I. C. 129 : 10 O. W. N. 585 :
I. R. 1933 Oudh 161 :
A. I. R. 1933 Oudh 340.

————Evidence—Prosecution relying on document—Procedure.

Where the prosecution relies on a written authority as the authority under which a Sanitary Inspector is acting, the written authority should be proved, marked as an

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false evidence although it may explain why he has given evidence at all. *Nga Mya v. The King*.

39 Cr. L. J. 481 :

174 I. C. 947 : 1938 Rang. 30 :

10 Rang. 449 : A. I. R. 1938 Rang. 92.

———Evidence — Zaildars and Sufedposhes.

Zaildars and Sufedposhes, though not Police Officers, are interested to give evidence on the Police side. *Rahman v. Emperor*.

29 Cr. L. J. 738 :

110 I. C. 674 : 29 P. L. R. 539.

———Evidence against accused—No explanation offered by accused—Effect.

An accused person is required to explain the circumstances which appear in the evidence against him, and if he cannot or will not do so, he must take the consequences. If he chooses to take up the position that he relies upon the technicality that the whole burden of proof was upon the prosecution and refuses to say anything about the matter, he can hardly be surprised if he is convicted on the evidence produced by the prosecution if that proves circumstances from which his guilt can be inferred. *Radhey Lal v. Emperor*.

39 Cr. L. J. 548 :

175 I. C. 233 : 1938 A. L. J. 222 :

10 R. A. 657 : 1938 A. W. R. 147 :

I. L. R. 1938 All. 422 :

A. I. R. 1938 All. 252.

———Evidence disclosed on medical examination of accused—Admissibility.

It is not necessary in order to make evidence disclosed on the medical examination of the accused admissible, that the fact of such consent having been obtained should be put down in writing. It is enough if his consent to the examination was obtained. *Hanuman Sarma v. Emperor*.

34 Cr. L. J. 177 :

141 I. C. 622 : 36 C. W. N. 1152 :

60 Cal. 179 : I. R. 1933 Cal. 148 :

A. I. R. 1932 Cal. 723.

———Evidence mainly false—Effect.

Major portion of prosecution evidence false—No case can be built up out of such evidence. *Gaya Din v. Emperor*.

35 Cr. L. J. 804 :

148 I. C. 870 : 11 O. W. N. 337 :

6 R. O. 448 : A. I. R. 1934 Oudh 124.

———Evidence of child, value of.

The evidence of a child whose capacity to depose is not tested, inasmuch as it is not likely for him to distinguish between those which he has seen and those which he has heard, cannot be used for the purposes of corroboration. *Ramsakhia v. Emperor*.

36 Cr. L. J. 447 :

153 I. C. 922 : 15 P. L. T. 586 :

7 R. P. 385 : A. I. R. 1934 Pat. 651.

———Evidence of identification—Value.

The value of the statement of any witness that he recognises a particular man depends ultimately on the opportunities he had of

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observing the man and on his personal veracity. *Punlu v. Emperor*.

16 Cr. L. J. 233 :

27 I. C. 905 : 8 S. L. R. 203 :

A. I. R. 1914 Sind 117.

———Evidence of inimical eye-witnesses—Corroboration, necessity of.

Where the alleged eye-witnesses are not on good terms with the accused or belong to opposite faction, it is not safe to rely on their uncorroborated testimony. *Bhartu v. Emperor*.

30 P. L. R. 582 : A. I. R. 1930 Lah. 311.

———Evidence interested on both sides—Court's duty.

Where the evidence on both sides is of an interested nature, the truth of either version and the guilt of the accused must be judged in the light of surrounding circumstances. *Mohammad Rafiq v. Emperor*.

35 Cr. L. J. 470 :

147 I. C. 722 : 6 R. L. 436 :

A. I. R. 1933 Lah. 1055.

———Evidence of Investigating Officer.

In a burglary case, the opinion of the Investigating Officer as to whether a hole in the ground was dug from inside the house or from outside, cannot be treated as legal evidence of the fact and cannot be made the basis of a finding. *Rogi v. Emperor*.

37 Cr. L. J. 44 :

159 I. C. 22 : 1935 A. L. J. 1145 :

1935 A. W. R. 1088 : 8 R. A. 413 :

A. I. R. 1935 All. 981.

———Evidence of motive, consistent with innocence—Effect.

When the evidence of motive is equally consistent with the innocence and guilt of the accused, he can be convicted only if there is corroboratory evidence of guilt. *Emperor v. Haradhan*.

35 Cr. L. J. 240 :

146 I. C. 993 (2) : 14 P. L. T. 494 :

6 R. P. 310 (2) : A. I. R. 1933 Pat. 517.

———Evidence of one party as evidence against other.

The rule of law that the evidence of one party should not be received as evidence against another party without the latter having an opportunity of testing it by cross-examination, applies with great force to a criminal case where death has been the result. *Happu v. Emperor*.

35 Cr. L. J. 280 :

146 I. C. 1089 : 1934 A. L. J. 173 :

6 R. A. 397 : A. I. R. 1933 All. 837.

———Evidence of perjured witness—Corroborative evidence.

It is only in circumstances which are free from any taint of suspicion that evidence corroborative of a witness whom the Judge considers to have perjured himself should be accepted. *Balu v. Emperor*.

17 N. L. J. 274 : A. I. R. 1935 Nag. 81.

———Evidence of Police spy, value of.

The evidence of a Police spy and agent provocateur must be looked upon with suspicion and distrust and should seldom, if ever, be

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—Evidence—Recording of prosecution evidence piecemeal, legality of.

In a criminal trial prosecution evidence should not be recorded piecemeal inasmuch as such a procedure would give every opportunity for succeeding witnesses to know what the statements of the previous witnesses are and on what lines the cross-examination of the witnesses is being conducted. *Siraj-ud-Din v. Emperor*.

29 Cr. L. J. 200 :
106 I. C. 792 : A. I. R. 1928 Lah. 152.

—Evidence—Rejection of—Witness partly disbelieved—Effect.

Where the wife of the deceased attempts to conceal her intrigues with the accused and she is disbelieved in this respect, it does not necessarily follow that although her evidence may be attacked in this particular, it should be rejected on the main question of her account of the commission of the crime. *In re : Addanki Venkadu*.

40 Cr. L. J. 606 :
181 I. C. 933 : 1938 M. W. N. 1272 :
49 L. W. 175 : 11 R. M. 883 :
A. I. R. 1939 Mad. 266.

—Evidence—Relevancy.

Where the sole point for decision is whether the accused were parties to a murderous attack on the Police, it is quite unnecessary and indeed wholly irrelevant to consider whether they were terrorists or members of any other body. *Hans Raj v. Emperor*.

37 Cr. L. J. 504 :
161 I. C. 900 : 37 P. L. R. 605 :
16 Lah. 345 : 8 R. L. 811 :
A. I. R. 1936 Lah. 341.

—Evidence—Reliability.

Evidence—Prosecution witness suppressing truth—Accused's statement can be relied on. *Allah Ditta v. Emperor*.

36 Cr. L. J. 305 :
153 I. C. 209 : 35 P. L. R. 725 : 7 R. L. 403 :
A. I. R. 1934 Lah. 696.

—Evidence—Reliability.

Where the delay in formally arresting the accused has been satisfactorily explained, the prosecution story should not be discredited as being fabricated on account of such delay. *Hayat Mohammad v. Emperor*.

36 Cr. L. J. 108 :
152 I. C. 256 : 7 R. L. 274 :
A. I. R. 1934 Lah. 158.

—Evidence—Riot—Absence of injuries on accused—Benefit of doubt.

The absence of injuries on the persons of the alleged rioters arrested shortly after the occurrence is a point which, in a case where the evidence is partisan, must operate as a ground for giving the benefit of doubt as to participation. *Mohan Singh Bath v. Emperor*.

41 Cr. L. J. 667 :
188 I. C. 717 : 42 P. L. R. 484 : 13 R. L. 56 :
A. I. R. 1940 Lah. 142.

—Evidence—Sessions Judge doubtful whether certain question is leading question—

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Interpretation in favour of accused—Action, if perverse.

Where when it is doubtful whether certain questions were leading questions or not, the Judge presumes the point in favour of the accused, the accused cannot call this attitude of the Judge perverse when the interpretation has been entirely in his own favour. *Ahsanali v. Emperor*.

39 Cr. L. J. 747 :
176 I. C. 465 : 11 R. N. 54 :
I. L. R. 1938 Nag. 595 :
A. I. R. 1938 Nag. 303.

—Evidence—Slight differences in the story of the same event—Inference.

Slight differences in the story of witnesses of the same event show that those witnesses are giving their own account of what happened and not telling a single story that has been agreed upon between them. *Jagat Singh v. Emperor*.

38 Cr. L. J. 84 :
165 I. C. 795 : 9 R. L. 317.

—Evidence—Standard of proof.

In criminal cases the standard of proof does not vary with the magnitude of enormity of the crime. *Ashraf Ali v. Emperor*.

19 Cr. L. J. 81 :
43 I. C. 241 : 21 C. W. N. 1152 :
A. I. R. 1918 Cal. 314.

—Evidence—Standard of proof.

There is only one standard of proof for all charges and that is that the Crown must prove the charge beyond all reasonable doubt. *Ujagar v. Emperor*.

35 Cr. L. J. 353 :
146 I. C. 957 : 1933 A. L. J. 1597 :
55 All. 639 : 6 R. A. 384 :
A. I. R. 1933 All. 834.

—Evidence—Statement—Conviction on statement of co-accused—Such statements, when can be used against accused.

Accused are to be convicted upon evidence produced by the prosecution and not by statements made by co-accused to the Police. A person's position as a witness or accused is, so far as the admissibility of evidence is concerned, determined not by what was done by the Police during the investigation but by his position at the trial. A statement made by the accused can be used against his co-accused, only if it is a confession within the meaning of S. 30, Evidence Act. *Shewakram Issardas v. Emperor*.

40 Cr. L. J. 661 :
182 I. C. 464 : 12 R. S. 8 :
A. I. R. 1939 Sind 130.

—Evidence—Statement.

Defence pleader asking witness question concerning his statement to Police—Judge should ask pleader if he wishes to have copy of the statement—Pleader not desiring it—Questions concerning statement to Police should be disallowed—If he does desire the copy, it should be proved and brought on the

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proceedings and the criterion is whether there has been any failure of justice. The examination of the accused contemplated by S. 342, Cr. P. C., is one by the Judge direct, without any intervention of Counsel. The putting of one general question to the accused is not a proper compliance with S. 342. Where a complicated question has been put to each of the accused without reference to the particular position of each as brought out by the evidence against him, in spite of the fact that legal advisers were present, procedure may have prejudiced the accused. *Nana v. Emperor*.

40 Cr. L. J. 197 :
179 I. C. 317 : 1938 N. L. J. 90 :
11 R. N. 290 : I. L. R. 1939 Nag. 685 :
A. I. R. 1938 Nag. 283.

— Examination of accused, nature of.

Where the examination of an accused is not such as is contemplated by the Cr. P. C., but is really a cross-examination, it should be left out of consideration. *Niru Bhagat v. Emperor*.

24 Cr. L. J. 91 :
71 I. C. 219 : 1 Pat. 630 : 4 P. L. T. 76 :
A. I. R. 1922 Pat. 582.

— Examination of witnesses, mode of.

It is contrary to the rule laid down in S. 37 of the Criminal Circulars for a Judge to be engaged in any other business while the examination of witnesses is going on. *Nga Saw v. Emperor*.

2 Cr. L. J. 133 :
11 Bur. L. R. 8.

— Examination of witnesses in absence of accused.

Where the examination-in-chief of the prosecution witnesses takes place in the absence of the accused, the defect vitiates the trial altogether, even though the cross-examination is held in his presence. *Bishmath v. Emperor*.

36 Cr. L. J. 1198 :
157 I. C. 378 : 8 R. O. 20 :
1935 O. W. N. 922 :
1935 O. L. R. 471 :
A. I. R. 1935 Oudh 488.

— Ex parte order.

No order should be passed to the prejudice of a party in his absence and he should be given an opportunity of contesting such an order before it is passed. *Dwarka Das v. Emperor*.

32 Cr. L. J. 492 :
130 I. C. 330 (2) : 32 P. L. R. 356 :
I. R. 1931 Lah. 266 :
A. I. R. 1931 Lah. 292 (2).

— Ex parte order, sustainability of.

Held, on facts that the Magistrate had not given any opportunity to the petitioners to prove their case and, therefore, his *ex parte* order in the enquiry could not be sustained and the fresh inquiry should be ordered. *Bogampedda Griddasami v. Bogum Achigadu*.

40 Cr. L. J. 32 :
178 I. C. 251 : 1938 M. W. N. 824 :
11 R. M. 436.

— Expert evidence, value of.

Tracker's evidence—Comparison of foot-prints

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two months after occurrence—Original tracks not preserved—Evidence is of little value. *Chanan Singh v. Emperor*.

35 Cr. L. J. 610 :
148 I. C. 72 : 6 R. L. 502 :
A. I. R. 1933 Lah. 299.

— Expert witness—Fee—Duty of Magistrate.

In warrant case, Magistrate should fix fee. If witness on payment of reasonable fee fixed declines to give evidence, Magistrate can compel him to do so. *Ram Narain Sharma v. Emperor*.

33 Cr. L. J. 761 :
139 I. C. 508 : 33 P. L. R. 811 :
I. R. 1932 Lah. 581 :
A. I. R. 1932 Lah. 481.

— Expunging the Remarks.

Extraordinary character of jurisdiction to be exercised with caution—Lower Court should generally be allowed to exercise their jurisdiction freely and fearlessly—Passages based on no or little evidence, remarks against persons who are not parties or who are not heard should be deleted—Jurisdiction is not limited to such cases only—Remarks damaging character and wholly irrelevant to point in issue, so also judgment couched in unjudicial language should be deleted. *Emperor v. Atta Ullah Shah Bukhari*.

37 Cr. L. J. 661 :
162 I. C. 624 : 38 P. L. R. 638 :
8 R. L. 925 : A. I. R. 1936 Lah. 429.

— Extra-judicial confession, value of.

Evidence afforded by extra-judicial confessions must be received with care and caution, but there is no reason why it should not be believed when it is clear, consistent and convincing. *Munnu v. Emperor*.

33 Cr. L. J. 45 :
134 I. C. 1018 : 8 O. W. N. 1062 :
I. R. 1931 Oudh 426 :
A. I. R. 1931 Oudh 415.

— Extraneous matters, exclusion of.

In dealing with the trial of criminal cases, any further facts which might have been within the knowledge of the Police and all other extraneous considerations must be excluded. *Jagadish Narain Tewari v. Emperor*.

34 Cr. L. J. 36 :
140 I. C. 550 : 36 C. W. N. 722 :
56 C. L. J. 231 : I. R. 1933 Cal. 8 :
A. I. R. 1933 Cal. 36.

— Eye-witness.

The mere fact that in a criminal trial the Judge has accepted as against some of the accused evidence of eye-witnesses which he has not acted upon as against others, does not, by itself, vitiate his judgment. *Samwal v. Emperor*.

33 Cr. L. J. 744 :
139 I. C. 128 : 33 P. L. R. 475 :
I. R. 1932 Lah. 563 :
A. I. R. 1932 Lah. 424.

— Failure to examine witness.

The failure of the prosecution to take any steps in regard to any person connected intimately with the alleged crime is a circum-

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assailant—One of the witnesses recognizing accused by voice only—Evidence is not sufficient to warrant conviction. *Tara Singh v. Emperor*. 151 I. C. 174 : 7 R. L. 93.

—Evidence—Sufficiency of—Discovery of parts of deceased several days after murder—Conspirators, if can be connected with it—Proof of criminal conspiracy—Nature of.

In a trial for conspiracy to murder, the mere fact that parts of the deceased's body or any of his belongings, assuming that they were identified as his, were found several days after the alleged murder, may be, concealed or scattered in suspicious circumstances, would not, by itself, establish any connection of these with any of the supposed conspirators. The acts and declaration must be acts and declaration of some member or members of the conspiracy and the circumstances from which conspiracy is sought to be deduced must be circumstances with which some members of the conspiracy are shown to be connected. *Goloke Behari Tokal v. Emperor*.

39 Cr. L. J. 161 :
173 I. C. 65 : 66 C. L. J. 225 :
42 C. W. N. 129 : 10 R. C. 441 :
I. L. R. 1938 Cal. 290 :
A. I. R. 1938 Cal. 51.

—Evidence—Sufficiency of.

In communal riot cases, it is unsafe to convict on the evidence of one witness alone unless there is satisfactory circumstantial evidence in addition. *Ujagar v. Emperor*.

35 Cr. L. J. 353 :
146 I. C. 957 : 1933 A. L. J. 1597 :
55 All. 639 : 6 R. A. 384 :
A. I. R. 1933 All. 834.

—Evidence—Sufficiency of.

When a written statement is accepted by a Court from the accused, it does not take the place of evidence, nor of such examination of the accused as is contemplated by the Cr. P. C. *Amrillal Hazra v. Emperor*.

16 Cr. L. J. 497 ;
29 I. C. 513 : 21 C. L. J. 331 :
19 C. W. N. 676 : 42 Cal. 957 :
A. I. R. 1916 Cal. 188.

—Evidence—Sufficiency of.

Where the prosecution case is strongly supported by the probabilities and circumstances of the case, the absence of evidence of independent witnesses is immaterial. *Ram Sagar v. Emperor*.

34 Cr. L. J. 609 :
143 I. C. 656 : 10 O. W. N. 389 :
I. R. 1933 Oudh 188 :
A. I. R. 1933 Oudh 123.

—Evidence—Sufficiency of.

Where there is evidence that accused are members of criminal conspiracy, question of sufficiency of corroborative evidence is immaterial. *Emperor v. Nirmal Jiban Ghose*. (S. B.)

36 Cr. L. J. 1115 :
157 I. C. 387 : 62 Cal. 238 :
39 C. W. N. 744 : 8 R. C. 106 :
A. I. R. 1935 Cal. 513.

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—Evidence—Suspicion—Conviction.

No prosecution can be founded on the suspicion of the complainant that the accused has misappropriated the money. *G. A. St. George v. Uma Dutt Sharma*. 40 Cr. L. J. 917 : 184 I. C. 313 : 1939 A. L. J. 74 :

12 R. A. 217 : I. L. R. 1939 All. 851 :
1939 A. W. R. 570 : A. I. R. 1939 All. 602.

—Evidence—Tendering of alleged eye-witnesses for cross-examination by defence, propriety of.

In conducting a case for the prosecution, all the witnesses who are alleged or are known to have knowledge of the facts ought to be brought before the Court and examined. In cases where any witness known to the prosecution is able to swear to facts material to the case, the proper procedure to follow is to get him to give evidence on oath as to the several facts known to him, which are relevant to the case though other witnesses might have spoken to the same facts. The practice of merely tendering important eye-witnesses cited by the prosecution for cross-examination is not a practice which should be encouraged, especially in murder cases, as it would be very unfair to the accused. *In re : Veera Karavan*.

31 Cr. L. J. 1006 :
126 I. C. 488 : 30 L. W. 701 :
1929 M. W. N. 799 : 58 M. L. J. 145 :
53 Mad. 69 : A. I. R. 1929 Mad. 906.

—Evidence—Value of—Accused on trial in several cases—Evidence in one case whether can be used in other cases—Procedure.

Quaere—Whether where several cases against the same accused brought by the same complainant are tried together, evidence taken in one case can be used in other cases even with consent. *Grande Venekata Ratnam v. Corporation of Calcutta*.

19 Cr. L. J. 753 :
46 I. C. 593 : 22 C. W. N. 745 :
28 C. L. J. 32 : A. I. R. 1919 Cal. 862.

—Evidence—Value of—Alibi.

The Court was satisfied that the accused had some motive for attacking the deceased and there was no evidence to show that any one else had any motive for attacking her. The recovery of a blood-stained shirt from the person of the accused and of a blood-stained knife from a room in his house strongly corroborated the rest of the prosecution evidence : *Held*, that in view of the strength of the case against the accused, it was impossible to treat seriously his *alibi* evidence especially when that evidence was given by men belonging to his caste and the person with whom the accused alleged he was at the time in question was not produced. *Kalka v. Emperor*.

37 Cr. L. J. 932 :
164 I. C. 154 : 1936 O. W. N. 603 :
1936 O. L. R. 434 : 9 R. O. 57.

—Evidence—Value of—Evidence elicited by putting leading question—Value.

No value should be attached to evidence elicited by the prosecution by putting a leading

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Identification.

Evidence should be such as to exclude possibility of mistake. *Emperor v. Ardali Mian*.

35 Cr. L. J. 56 :
146 I. C. 460 : 6 R. P. 263 :
A. I. R. 1933 Pat. 496.

Identification — How to be carried — Value of identification — Essentials of proper identification.

The value of identification depends on two most important factors, namely that the persons who identify an accused must have had no opportunity of seeing him after the commission of the crime in connection with which the suspect is put for identification, and secondly that no mistakes should have been made by those witnesses or the mistakes made by them are negligible. *Emperor v. Chhadammi Lal*.

37 Cr. L. J. 730 :
162 I. C. 948 :
8 R. A. 916 : 1936 A. W. R. 185 :
A. I. R. 1936 All. 373.

Identification—Identification as basis of conviction.

It is not a correct proposition of law that identification evidence *per se* is a very unsafe basis for a conviction. *Mathura v. Emperor*.

23 Cr. L. J. 460 :
101 I. C. 492 : 4 O. W. N. 442 :
2 Luck. 444 : A. I. R. 1927 Oudh 196.

Identification—Principles.

It is not always justifiable to infer that identification parades have not been conducted improperly because some of the persons who have been identified have very distinguishing marks. *Bhagwat v. Emperor*.

36 Cr. L. J. 1196 :
157 I. C. 545 : 1935 A. W. R. 785 :
1935 A. L. J. 1070 : 8 R. A. 212 :
A. I. R. 1935 All. 592.

Identification—Procedure.

Trial of accused turning upon question of mistaken identity of accused—Test identification should be held. *Molla Khan Kabali v. Emperor*. (F. B.)

35 Cr. L. J. 601 :
148 I. C. 172 : 37 C. W. N. 1061 ;
6 R. C. 432 : A. I. R. 1934 Cal. 169.

Identification.

Procedure to be followed indicated. *Emperor v. Chhadammi Lal*.

37 Cr. L. J. 730 :
162 I. C. 948 : 1936 A. W. R. 185 :
8 R. A. 916 : A. I. R. 1936 All. 373.

Identification—Reliability.

Three witnesses identifying accused but six others failing to identify—Trustworthiness of former is not reduced—Only the general standard can be applied. *Mohan Lal v. Emperor*.

36 Cr. L. J. 569 :
154 I. C. 812 : 1935 A. W. R. 457 :
1935 A. L. J. 479 : 7 R. A. 801 :
A. I. R. 1935 All. 477.

Illegality—Disregard of law.

A disregard of the express provision of the law is not a mere irregularity which can be

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condoned or remedied but an illegality, and the Court cannot maintain or overlook an illegal order upon any ground of administrative convenience. *Emperor v. Rai Singh*.

20 Cr. L. J. 105 :
48 I. C. 985 : A. I. R. 1918 Nag. 140.

Illiterate accused—Duty of Court—Inferences permissible.

Special care must be taken in the case of accused persons whose illiteracy or ignorance, when they come from a primitive part of the country, may militate against them, to see that they are protected from such inferences as could only safely be drawn against persons of a higher degree of intellect and education. *Sit Po Saw v. Emperor*.

37 Cr. L. J. 1137 :
165 I. C. 319 : 9 R. Rang. 204 :
A. I. R. 1936 Rang. 455.

Inconsistent defences.

An accused person is entitled to set up inconsistent defences. *Santa Singh v. Emperor*.

29 Cr. L. J. 117 :
106 I. C. 709 : A. I. R. 1927 Lah. 710.

Inference of guilty intention—Defence—Rebuttal.

A case which involves a question of intention, really rests upon the facts which are found. If those facts are such that a person of ordinary prudence and ability would come to the conclusion that they point to a guilty intent on the part of the accused, it is for the accused to rebut that guilty intention; and if he does not rebut it, the guilty intent is as much found against him as his physical acts. *Maun v. Emperor*.

A. I. R. 1924 All. 764.

Inherent powers of Court—Order of de novo trial, propriety of.

Criminal Courts have an inherent power to make such orders as may be necessary for the ends of justice. Certain persons were charged for conspiracy to commit criminal breach of trust and cheating. At the time of the framing of the charges, the Magistrate found that all the accused could not be tried together and that the case should be split up in two groups to avoid misjoinder of charges. He accordingly formed two groups of the accused and ordered a *de novo* trial of the second group as all the evidence admissible against the first group was not admissible against the second group and the evidence against the second group would have to be taken *de novo* : Held, that the Magistrate acted rightly in the exercise of his inherent power in ordering *de novo* trial. *Akhil Bandhu Ray v. Emperor*.

39 Cr. L. J. 596 ;
175 I. C. 409 : 10 R. C. 790 :
I. L. R. (1938) 1 Cal. 588 :
A. I. R. 1938 Cal. 258.

Inimical witness—Reliability.

It is altogether unsafe in a murder case to place reliance on the evidence of a witness when the Court knows that enmity exists between him and accused. *Abdul Subhan v. Emperor*.

41 Cr. L. J. 258 :
186 I. C. 192 : 1939 A. L. J. 966 :
12 R. A. 384 : A. I. R. 1940 All. 46.

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the Police Officer recording his statement should be questioned specifically with regard to that portion of the statement. The practice of merely asking the Police Officer perfunctorily whether a particular document represents the witness's statement as a whole, should be condemned. It is the obvious duty of the Judge to apply his mind to the question whether he is satisfied that the denial is to be rejected. *Emperor v. Jiwan Das Mitawa Ram*. 41 Cr. L. J. 174 :

185 I. C. 380 : I. L. R. 1939 Lah. 305 :
12 R. L. 293 : A. I. R. 1939 Lah. 521.

————Evidence—Witness examined by Commission in absence of parties—Propriety.

It is highly unsatisfactory that an important witness in a criminal case should be examined by a Commission in the absence of the parties. *Sardul Singh v. Emperor*.

27 Cr. L. J. 840 :
95 I. C. 760 : A. I. R. 1926 Lah. 567.

————Evidence—Witness producing document as containing his evidence.

A Magistrate was called as a witness in a Sessions trial to prove the identification of the accused persons held in the Jail and the methods adopted for the purpose of identification. Instead of stating in Court the details and the results, he merely referred to certain documents which were described as exhibits and in which he stated that his evidence was to be found. These documents were put on the record as his evidence: *Held*, that the procedure adopted was not merely contrary to the law, but violated the most elementary principles of evidence. *Lal Singh v. Emperor*. 27 Cr. L. J. 170 :

91 I. C. 954 : 5 Lah. 396 :
A. I. R. 1925 Lah. 19.

————Evidence—Witnesses.

Dacoity case—Persons alleging to be eye-witnesses should be examined though not tendered by prosecution. *Mir Sahib Khan v. Emperor*. 35 Cr. L. J. 860 :

148 I. C. 760 : 6 R. Pesh. 54 :
A. I. R. 1934 Pesh. 53.

————Evidence—Witnesses—Duty of prosecution.

The Public Prosecutor is not obliged to examine witnesses who he has reason to believe will not support the prosecution case. Nor is the Court bound to examine any person as a Court witness, unless the evidence of such person appeared to be essential to the just decision of the case. *Ibrahim v. Emperor*. 36 Cr. L. J. 348 :

153 I. C. 466 : 7 R. P. 341 :
A. I. R. 1935 Pat. 95.

————Evidence—Witnesses.

Evidence—Prosecution witnesses not found hostile—Prosecution cannot suggest that their evidence should be viewed with suspicion. *Abinash Chandra Sarkar v. Emperor*. 37 Cr. L. J. 439 :

161 I. C. 280 : 63 Cal. 18 : 8 R. C. 502.

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————Evidence—Witness.

Falsus in uno falsus in omnibus, is inapplicable in N.-W. F. P. *Gulzaman v. Emperor*. 36 Cr. L. J. 942 :

156 I. C. 436 : 7 R. Pesh. 123 :
A. I. R. 1935 Pesh. 50.

————Evidence—Witnesses.

Prosecution is not bound to cite every witness for prosecution who knows something about the case—Court cannot call such witness as prosecution witness at instance of defence—Court's duty pointed out. *Hpa Wa v. Emperor*. 37 Cr. L. J. 234 (2) :

160 I. C. 113 : 8 R. Rang. 341 :
A. I. R. 1935 Rang. 506.

————Evidence—Witness.

Separate trial of accused—Each is competent witness at trial of other or others. *Chandra Shekhar Prosad v. Emperor*. 36 Cr. L. J. 500 :

154 I. C. 387 : 7 R. P. 464 :
A. I. R. 1935 Pat. 91.

————Evidence—Witnesses.

The fact that witnesses are relations or friends of each other, is insufficient for discrediting their testimony. *Hayat Mohammad v. Emperor*. 36 Cr. L. J. 108 :

152 I. C. 256 : 7 R. L. 274 :
A. I. R. 1934 Lah. 158.

————Evidence—Witnesses.

There is no provision that there should be a list of witnesses along with a complaint. *Banke Lal v. Maiku*. 35 Cr. L. J. 121 :

146 I. C. 638 : 10 O. W. N. 1037 :
6 R. O. 150 (2) : A. I. R. 1933 Oudh 430.

————Evidence—Witness.

Unfinished testimony of witness, when admissible, indicated. *Diwan Singh v. Emperor*. 34 Cr. L. J. 735 :

144 I. C. 331 : 34 P. L. R. 719 :
I. R. 1933 Lah. 446 :
A. I. R. 1933 Lah. 561.

————Evidence—Witnesses.

Witness shown to be a liar—Testimony to be looked upon with suspicion—Confirmation excluding all reasonable chance of accused's innocence is necessary. *Puran Singh v. Emperor*. 35 Cr. L. J. 1005 :

149 I. C. 476 : 15 Lah. 765 :
6 R. L. 685 : A. I. R. 1934 Lah. 743 (2).

————Evidence—Witness deaf but able to speak and write—Refusal to examine witness, effect of.

A Magistrate has no jurisdiction to refuse to examine a witness who is deaf but who is able to speak and write, and such refusal, if prejudicial, vitiates the trial. *Ganoda Dassya v. Srimanta Ghosh*. 24 Cr. L. J. 688 :

73 I. C. 784 : A. I. R. 1924 Cal. 541 (1).

————Evidence—Witness on inimical terms with accused—Inference.

The enmity of the witness with the accused does not necessarily show that he has given

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to cross-examine the complainant at very great length in the interest of the prosecution on the pretext that the complainant has become a witness for the defence.

Kanhaiya Lal v. Emperor. 38 Cr. L. J. 491 :
168 I. C. 58 : 9 R. O. 432 :
1937 O. W. N. 505 : 1937 O. L. R. 202 :
A. I. R. 1937 Oudh 331.

-----*Irregular proceedings—Defence Counsel, examination of, as prosecution witness without sufficient notice to accused—Procedure, legality of.*

Where a Magistrate put the defence Counsel into the witness-box on behalf of the prosecution without proper notice to the accused and without allowing the accused an opportunity to engage some other Counsel to conduct the defence: *Held*, that the trial was vitiated by the procedure adopted by the Magistrate. It is opposed to all principles of criminal jurisprudence for the prosecution to deprive the accused suddenly of the service of their Counsel. If the prosecution wants to call the Counsel for the defence as a witness on its side, sufficient notice ought to be given to the accused to engage a competent Counsel.

In re : Manargan. 27 Cr. L. J. 33 :
91 I. C. 65 : 49 M. L. J. 95 :
1925 M. W. N. 702 : A. I. R. 1925 Mad. 1153.

-----*Irregular proceedings—Statement that party closes his case, record of—Presumption.*

Where a statement by a party that he closes his case does not bear his signature or thumb mark or any certificate that it was read over to him, the statement cannot be said to have been recorded in accordance with law and there is no presumption of its correctness.

Bholan v. Matu. 27 Cr. L. J. 1071 :
97 I. C. 47 : A. I. R. 1926 Lah. 656.

-----*Irregularity—Omission to ask accused to cross-examine—Conviction for less serious offence when facts disclose more serious offence, whether should be set aside.*

A conviction for a less serious offence need not be set aside merely because the facts disclose a more serious offence, provided the Court has jurisdiction to try the offence of which it has convicted. A failure to ask the accused, after framing the charge, whether he is willing to cross-examine the prosecution witnesses again, is a mere irregularity and the conviction is not thereby vitiated.

Munian Chetty v. Emperor. 16 Cr. L. J. 5 (a) :
26 I. C. 309 : A. I. R. 1915 Mad. 883.

-----*Irregularity—Witness, employment of, as interpreter.*

The employment as interpreter of a witness who has taken an active part during the Police investigation, has given evidence on behalf of the prosecution and is ready and willing to give evidence in the Sessions Court is an irregularity bordering on illegality.

Ah Soi v. Emperor. 27 Cr. L. J. 805 :
95 I. C. 469 : 30 C. W. N. 696 : 53 Cal. 659 :
A. I. R. 1936 Cal. 922.

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-----*Joinder of charges—Charges under S. 20, Cattle Trespass Act and S. 504, Penal Code, legality.*

A joinder of charges for offences under S. 20 of the Cattle Trespass Act and S. 504 of the Penal Code is not illegal where acts constituting the offences formed part of the same transaction.

Dcnadayalu Naidu v. Ratna Padayachi. 28 Cr. L. J. 301 :
100 I. C. 381 : 52 M. L. J. 251 :
25 L. W. 282 : 1917 M. W. N. 167 :
50 Mad. 841 : A. I. R. 1927 Mad. 396.

-----*Joint appeal, legality of.*

A joint appeal by persons with common interest convicted at the same trial is in accordance with law and should be heard. But this principle has no application where the interests of any of the appellants conflict with each other.

Mulhe v. Emperor. 38 Cr. L. J. 115 :
166 I. C. 46 : 7 Lah. 771 :
39 P. L. R. 105 : 9 R. L. 330 :
A. I. R. 1936 Lah. 859.

-----*Joint trial—Affair must constitute one transaction—Held, joint trial was legal.*

The affair took place in one village, one incident succeeding another rapidly. From the plan in the case it appeared that the houses raided by the Exeise party were in the neighbourhood of each other. The rioters were from one house to another and finally a whole mob of them surrounded the Exeise Sub-Inspector and his companions, who had to retreat. The alarm and the shouting quickly spread, and presumably everybody in the village soon knew what was afoot: *Held*, that in these circumstances, the joint trial was legal.

Nana v. Emperor. 40 Cr. L. J. 197 :
179 I. C. 317 : 1938 N. L. J. 90 :
11 R. N. 290 : I. L. R. 1939 Nag. 686 :
A. I. R. 1938 Nag. 283.

-----*Joint trial.*

Against three accused, four charges of attempt to commit rape were framed, for which they were jointly responsible. The other charges were framed as against one of them and another charge was framed as against this accused and another: *Held*, that in every case it has to be considered how far the evidence proves association and how far the various persons tried are prejudiced by a joint trial. In this case the joint trial was not only permissible but was desirable.

In re : Ganti Veera Reddi. 39 Cr. L. J. 816 :
176 I. C. 815 : 47 L. W. 640 :
1938 M. W. N. 601 : 11 R. M. 177 :
A. I. R. 1938 Mad. 605 :

-----*Joint trial—Charges of conspiracy superadded to evade provisions of law as to joint trial—Conviction on the conspiracy basis—No evidence of conspiracy—Conviction reversed.*

Originally the accused was prosecuted for criminal breach of trust and subsequently in order to evade the provisions of the law with regard to joint trial, charges of conspiracy were superadded. There was no real evidence of conspiracy and there was an illegal mul-

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relied upon in support of a conviction.
Hazura Singh v. Emperor.

30 Cr. L. J. 941 :
118 I. C. 544 : 11 L. L. J. 58 :
I. R. 1929 Lah. 800 : 30 P. L. R. 603 :
A. I. R. 1929 Lah. 436.

—————*Evidence, stage for appreciation of.*

In a criminal trial, the question of the soundness or unsoundness of the evidence is a matter to be taken into consideration before the verdict. *Tulsi Gangota v. Emperor.*

34 Cr. L. J. 395 :
142 I. C. 613 (2) : 14 P. L. T. 96 :
I. R. 1933 Pat. 165 : A. I. R. 1933 Pat. 180.

—————*Evidence of witness at enmity with accused, basis for conviction—Corroboration.*

It is unsafe to base a conviction on the testimony of persons who are at enmity with the accused unless it is supported by the evidence of reliable and disinterested witnesses. The statement of a witness who is a *spy* in the village, whose name was not mentioned in the F. I. R. and whose statement was not recorded by the Police until after the expiry of some days is not sufficient corroboration. *Dalip Singh v. Emperor.*

28 Cr. L. J. 43 :
99 I. C. 75 : A. I. R. 1927 Lah. 874 (a).

—————*Evidence of witnesses against some accused disbelieved—Conviction of others on evidence of same witnesses, legality of.*

Though the principle *falsus in uno falsus in omnibus* is not applicable to criminal trials in India where the prosecution witnesses have been disbelieved with regard to some of the accused, it is not proper to convict the remaining accused on the evidence of the same witnesses unless the case of the latter can be differentiated from that of the accused who have been found guiltless, and unless there are cogent and convincing reasons for holding that though their evidence was false against some [of the accused, it was true against the others. *Gandan Lal v. Emperor.*

32 Cr. L. J. 94 :
128 I. C. 211 : 7 O. W. N. 933 :
I. R. 1931 Oudh 19 : 6 Luck. 326 :
A. I. R. 1930 Oudh 460.

—————*Evidence of witness not cross-examined—Value.*

The evidence of a prosecution witness whose cross-examination is deferred by the accused till the framing of the charge and who is not cross-examined after the framing of the charge on account of his serious illness, is admissible but the weight to be attached to it depends upon the circumstances of each case. *Mangal Sen v. Emperor.*

30 Cr. L. J. 951 :
118 I. C. 647 : 11 L. L. J. 384 :
I. R. 1929 Lah. 807 :
A. I. R. 1929 Lah. 840.

—————*Evidence of Zaildars, etc.*

The evidence of *zaildar* and *safedposhe* is not to be discarded merely because of their position. It may be that in certain cases,

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under certain circumstances, their evidence may be suspected. *Nathu v. Emperor.*

36 Cr. L. J. 475 :
154 I. C. 130 : 36 P. L. R. 174 :
7 R. L. 515 : A. I. R. 1934 Lah. 870.

—————*Evidence to be produced.*

The evidence should be led in sufficient detail and with due regard to the sequence of events, the facts which the witnesses saw or the acts which they did and also the reasons which actuated them to do the acts being narrated in an intelligent fashion. *Rafiqueuddin Ahmad v. Emperor.*

36 Cr. L. J. 808 :
155 I. C. 687 : 39 C. W. N. 368 :
62 Cal. 572 : 7 R. C. 606 :
A. I. R. 1935 Cal. 184.

—————*Examination of accused—Accused refusing to answer.*

Where an accused practically refuses to answer questions, it would be useless for the Court to persist with them. *Nana v. Emperor.*

40 Cr. L. J. 197 :
179 I. C. 317 : 11 R. N. 290 :
1938 N. L. J. 90 :
I. L. R. 1939 Nag. 686 :
A. I. R. 1938 Nag. 283.

—————*Examination of accused—Interference by High Court in pending case.*

In a pending case the High Court should not interfere unless it is of an exceptional nature. Where the procedure adopted by the lower Appellate Court is somewhat exceptional, and the balance of convenience is in favour of deciding the points, especially as it is clear on the face of the record and recognized by the Appellate Court itself that the examination of the accused in the case has been defective, High Court can interfere. *Nana v. Emperor.*

40 Cr. L. J. 197 :
179 I. C. 317 : 11 R. N. 290 :
1938 N. L. J. 90 :
I. L. R. 1939 Nag. 686 :
A. I. R. 1938 Nag. 283.

—————*Examination of accused—Language to be used—Criminal Procedure Code, Ss. 356, 364.*

The law requires that ordinarily the examination of the accused should be recorded in the language of the person making it, the object being to represent the very words and expressions used, so as to insure accuracy and prevent misrepresentation or misconstruction of what was said. *Jaggannath Sah v. Emperor.*

38 Cr. L. J. 169 :
166 I. C. 280 (2) : 1937 O. L. R. 7 :
9 R. O. 300 : 1937 O. W. N. 37 :
A. I. R. 1937 Oudh 425.

—————*Examination of accused, mode of—Criminal Procedure Code, S. 342—When vitiates trial—Case complicated—One general question put to accused—Propriety of—Presence of Counsel, if of any effect.*

Non-compliance with a mandatory provision of the Code does not necessarily vitiate the

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of the same transaction. The criterion which makes a joint trial allowable is what the prosecution case is, not what the result may be. *Bhagolal v. Emperor*. 41 Cr. L. J. 734 :

189 I. C. 382 : 1940 N. L. J. 309 :
13 R. N. 47 : A. I. R. 1940 Nag. 249.

———Joint trial.

Same transaction—Tests to decide are proximity of time, unity of place, unity of purpose or design and continuity of action. *Mrs. M. F. Rego v. Emperor*. 34 Cr. L. J. 505 :

143 I. C. 17 : 29 N. L. R. 251 :
I. R. 1933 Nag. 153 : A. I. R. 1933 Nag. 136.

———Joint trial—Some of prosecution witnesses also witnesses for defence—Separate trial of accused desirable.

It is part of the duty of the prosecution to call defence witnesses, and if the case is put in such a way that some of the witnesses who are prosecution witnesses against one of the accused are also defence witnesses for the other, than both the accused should be tried separately. *Nga Mya Sein v. The King*.

39 Cr. L. J. 198 :
172 I. C. 868 : 10 R. Rang. 284 :
A. I. R. 1937 Rang. 512.

———Joint trial.

Theft of six cattle at same time—Possession by accused of two cattle belonging to two owners—Separate trials, held not proper.

Nga Po E v. Emperor. 37 Cr. L. J. 530 (1) :
162 I. C. 137 : 8 R. Rang. 542 :
A. I. R. 1936 Rang. 94.

———Joint trial—Trial, one and indivisible—One accused remaining absent—Exemption granted, illegal—Whole trial held vitiated.

Where certain accused are tried jointly, the trial being one and indivisible, and one of the accused remains absent throughout the trial; being granted an illegal exemption, the illegality vitiates his trial, and the trial being one and indivisible, an illegality which vitiates the trial so far as one of the accused is concerned, prevents the trial from holding good in respect of the remaining accused. (Re-trial was ordered). *Pokhar Das Ganga Ram v. Emperor*. 39 Cr. L. J. 439 :

174 I. C. 422 : 40 P. L. R. 1 : 10 R. L. 562 :
A. I. R. 1938 Lah. 216.

———Joint trial.

Two distinct offences of theft in two separate houses, and the alternative charges under S. 411, I. P. C., in respect of each of these transactions cannot be tried at one and the same trial. *In re : Boye Lingadu*.

41 Cr. L. J. 581 :
188 I. C. 381 : 1940 M. W. N. 239 :
51 L. W. 321 : 1940 I. M. L. J. 428 :
13 R. M. 23 : A. I. R. 1940 Mad. 509.

———Joint trial.

What gives jurisdiction to the Magistrate to proceed with a joint trial is the manner in which the case has been adumbrated in the

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complaint and put before the Court by the prosecution witnesses. *Baburao Tatyrao v. Emperor*. 38 Cr. L. J. 9 :

165 I. C. 867 : 38 Bom. L. R. 916 :
9 R. B. 171 : A. I. R. 1936 Bom. 379.

———Joint trial when legal—Irregularity not prejudicing accused—Effect.

To make the joint trial legal, the accusation must be a real one and not a mere excuse for a joinder of charges which cannot otherwise be joined. Where the irregularity, if any, in the joint trial of several persons at one and the same trial is not one which in the actual facts of the case caused any prejudice to the accused or entailed any failure of justice, it is no ground for quashing the proceedings. *Sanyasi Gain v. Emperor*. 38 Cr. L. J. 1018 :

171 I. C. 183 : 10 R. C. 235 :
A. I. R. 1937 Cal. 259.

———Joint trial.

Where a person charged with having stolen the property and a person charged with having received them knowing them to be stolen, are sought to be tried jointly, the property alleged to have been received should constitute the proceeds of the single act of theft and not several acts of theft. *Khiwan Kahar v. Emperor*.

39 Cr. L. J. 739 :
176 I. C. 525 : 42 C. W. N. 729 :
11 R. C. 113 : A. I. R. 1938 Cal. 525.

———Joint trial of accused and others and separate trial of accused for different offences—Evidence disbelieved in joint trial and believed in separate trial, effect of.

Where the accused and some others were tried jointly on charges of rioting and extortion and were acquitted, and there was a separate charge against accused alone of causing voluntary hurt with a sharp weapon, and relying on the same evidence, the Magistrate convicted the accused and ordered him to furnish security under S. 106, Cr. P. C. : Held, that the conviction and order for security were bad. *Sahju Koeri v. Mallar Koeri*.

18 Cr. L. J. 987 :
42 I. C. 603 : 2 P. L. W. 78 :
A. I. R. 1917 Pat. 500.

———Judgment—Appellate Court, judgment of, contents of—Reasons, failure to give.

The judgment of a Criminal Appellate Court which gives no reasons for the decision arrived at does not comply with the requirements of Ss. 367 and 424, Cr. P. C., and is bad in law. *San Dun v. Emperor*. 26 Cr. L. J. 395 :

84 I. C. 939 : 2 Rang. 641 :
A. I. R. 1925 Rang. 112.

———Judgment.

In the case of two separate trials where the law requires a judgment to be written in each, it is improper to record a single judgment. *Bhola Nath v. Emperor*. 21 Cr. L. J. 442 :

56 I. C. 234 : A. I. R. 1920 All. 79.

———Judgment.

Mistake and irregularity of Police Officer should not form part of judgment. *Mahomed Umer v. Emperor*. 35 Cr. L. J. 1138 :

150 I. C. 610 : 7 R. S. 20 :
A. I. R. 1934 Sind 68.

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stance which raises an inference adverse to the prosecution. *Indar Datt v. Emperor*.

32 Cr. L. J. 818 :

132 I. C. 185 : I. R. 1931 Lah. 537 :

A. I. R. 1931 Lah. 408.

————Finding—Language to be used.

Ipsissima verba is not required to express a finding. A Magistrate, therefore, need not use the terms of a section in recording a finding. *Richard Bruce Whigham Teasdale v. Florence Teasdale*.

39 Cr. L. J. 969 :

177 I. C. 939 : 66 C. L. J. 567 :

11 R. C. 298 : A. I. R. 1938 Cal. 623.

————First Information.

Per Harrison, J.—Where a First Information Report is merely read out to the witness and he says it is correct but no particular passage is put to him under S. 145, Evidence Act, it cannot be used for the purpose of contradicting him. *Mahla Singh v. Emperor*.

32 Cr. L. J. 522 :

130 I. C. 410 : 32 P. L. R. 259 :

I. R. 1931 Lah. 282 :

A. I. R. 1931 Lah. 38.

————First Information.

The First Information Report is not a substantive piece of evidence. It can be used merely by way of corroboration or contradiction and not any further, and is inadmissible for the purpose of proving that the facts stated in it are correct. It cannot be used to contradict other witnesses who are unanimous on a particular fact. *Gajadhar v. Emperor*.

33 Cr. L. J. 381 :

137 I. C. 79 : 9 O. W. N. 32 :

I. R. 1932 Oudh 195 :

A. I. R. 1932 Oudh 99.

————First Information.

The First Information Report, putting aside wholly the question of its use under S. 145, or S. 155, Evidence Act, if proved, may be of value as one of *res gestæ*. *Mahla Singh v. Emperor*.

32 Cr. L. J. 522 :

130 I. C. 410 : 32 P. L. R. 259 :

I. R. 1931 Lah. 282 :

A. I. R. 1931 Lah. 38.

————First Information.

Writer not examined—No satisfactory explanation for omission—Procedure is improper. *Debendra Chandra Sarkar v. Emperor*.

35 Cr. L. J. 904 :

149 I. C. 139 (2) : 6 R. C. 521 :

A. I. R. 1934 Cal. 458.

————F. I. R.—Delay in making report—Effect.

Delay in making a report to the Police is only a suspicious circumstance which puts the Court on its guard and cannot by itself be held to be a reason for rejecting evidence which is otherwise fully entitled to credit. *Radha Kishen v. Emperor*.

40 Cr. L. J. 261 :

179 I. C. 880 : 11 R. L. 642 :

A. I. R. 1938 Lah. 714.

————F. I. R.—Omission to name in F. I. R., effect of.

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The mention of the names of alleged offenders in the F. I. R. is always and quite properly relied upon by the prosecution as affording strong corroboration of evidence of identification. But conversely when the names are not mentioned at the earliest opportunity, it must necessarily follow that the evidence of identification is rendered more or less suspect, unless some satisfactory explanation is forthcoming of the failure to mention the names. *Emperor v. Shivputraya Baslingaya*.

31 Cr. L. J. 1104 :

126 I. C. 876 : 32 Bom. L. R. 574 :

A. I. R. 1930 Bom. 244.

————First report—Story told in Court—Striking discrepancies, effect of.

Where there are striking discrepancies between the first report and the story told by prosecution witnesses in Court, a conviction cannot be maintained. *Mohabli v. Emperor*.

16 Cr. L. J. 699 :

30 I. C. 747 : 128 P. L. R. 1915 :

34 P. W. R. 1915 Cr. :

A. I. R. 1915 Lah. 438.

————Forgery trial.

It is in the public interest that offenders in forgery cases should be brought to book in spite of the difficulties and expense necessarily involved in such trials. *Satwarao Nagorao Halkar v. Kanbaro Bhago Rao Halkar*.

39 Cr. L. J. 458 :

174 I. C. 510 : 10 R. N. 403 :

1938 N. L. J. 12 : A. I. R. 1938 Nag. 334.

————Gambling case—Police agent, value of, evidence of.

The evidence of a Police agent in gambling cases must always be corroborated before it can be acted upon. The case is not improved by providing the Police agent with a companion and calling him a *panch*, and in such a case, the evidence of the *panch* is not enough to corroborate the Police agent. *Harilal Gordhan v. Emperor*.

38 Cr. L. J. 1047 :

171 I. C. 282 : 39 Bom. L. R. 613 :

I. L. R. 1937 Bom. 670 : 10 R. B. 184 :

A. I. R. 1937 Bom. 385.

————Guilt of accused, determination of.

The guilt or innocence of the accused is to be determined by the tribunals appointed by law and not according to the tastes of anyone else. *Nga Lu v. Emperor*.

35 Cr. L. J. 792 :

148 I. C. 810 : 6 R. Rang. 254 :

A. I. R. 1933 Rang. 378.

————High Court—Reference—Maintainability.

There is no provision in the Cr. P. C. under which a Magistrate can refer a case to the High Court for a ruling on a point of law but it is open to the High Court to treat the case as one which has come to its knowledge under S. 439, Cr. P. C. *Emperor v. Mir Ahmad*.

38 Cr. L. J. 838 :

169 I. C. 681 : 10 R. Pesh. 9 :

A. I. R. 1937 Pesh. 73.

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———Jurisdiction.

A Magistrate is not authorised to split up an offence so as to give himself jurisdiction over the parts which he would not have over the whole, thereby depriving the accused of his right to appeal. *Dipchand v. Emperor*.

19 Cr. L. J. 1003 :
48 I. C. 343 : 14 N. L. R. 190 :
A. I. R. 1918 Nag. 150.

———Jurisdiction.

Per Spencer, J.—The ordinary rule as to jurisdiction is that it is the area within which the offence is committed and not the place where the offender may be found that determines the Court which has jurisdiction to try the offence. *In re : Kochunni Elaya Nair*.

23 Cr. L. J. 490 :
68 I. C. 26 : 41 M. L. J. 441 :
14 L. W. 465 : 1921 M. W. N. 708 :
45 Mad. 14 : A. I. R. 1922 Mad. 215.

———Jurisdiction.

The characteristics of a Court of competent jurisdiction are: (i) power to deal with offence or matters of the class in question, and (ii) power conferred to deal with the offenders or persons of the class in question. *Madan Mohan Lal v. Sheoraj Kunwar*.

34 Cr. L. J. 156 :
141 I. C. 131 : 1932 A. L. J. 503 :
I. R. 1933 All. 63 : A. I. R. 1932 All. 446.

———Jurisdiction—Accused charged for cheating and breach of trust—Accused having account in Bank—Magistrate, if can order Bank not to give money to accused.

The accused was charged with cheating or, alternatively, criminal breach of trust. Accused had an account with a Bank, and the Police served a stop order on the Bank to prevent the accused from operating on his account. The Magistrate modified this by making an order that Rs. 75, out of the account might be paid to the petitioner for the purposes of his defence or otherwise; but the rest of the money would be detained pending the disposal of the case: *Held*, that there was no jurisdiction in the Magistrate for making any such order. Ss. 516 and 517, Cr. P. C. were clearly not applicable. The position in law was that the accused had lent this money to his bankers upon the understanding that they would re-pay it to him at any time on demand, and there was no provision of law which could authorise the Court to make an order upon the accused not to ask the Bank to re-pay the money which he had lent to them. Further, there was nothing to show that the money in the Bank was part of the proceeds of the cheating or breach of trust. *Makhan Lal Chatterjee v. Emperor*.

37 Cr. L. J. 935 (a) :
164 I. C. 377 : 40 C. W. N. 96 :
9 R. C. 201 (1).

———Jurisdiction.

Complaint by Commander of steamer against members of crew for rioting, etc.—Accused surrendering themselves before Court—Absence

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of evidence to show presence of accused within jurisdiction of Court on date of taking cognizance of case—Court can try case. *Superintendent and Remembrancer of Legal Affairs Bengal v. Raisalce*.

34 Cr. L. J. 631 :
143 I. C. 774 : 60 Cal. 44 :
I. R. 1933 Cal. 447 : A. I. R. 1933 Cal. 145.

———Jurisdiction — Complaint dismissed under S. 203, Criminal Procedure Code, by Sub-Divisional Magistrate—Sessions Judge ordering further inquiry—Sub-Divisional Magistrate ordering other Magistrate to hold enquiry and report.

The complaint in the case was referred to the Police, and on receipt of the Police report, the Sub-Divisional Magistrate, after considering it and various aspects of the case, dismissed it under S. 203, Cr. P. C. The Sessions Judge was moved by the complainant and he directed a further inquiry into the complaint. On receipt of this order the Sub-Divisional Magistrate sent the case to another Magistrate to hold inquiry and ordered for a report by certain date. The Magistrate summoned the accused and proceeded to try the case. He examined some witnesses and discharged the accused under S. 253 (2), Cr. P. C. and recommended to the Sub-Divisional Officer for a proceeding under S. 145 of the Code. When the matter was put up before the Sub-Divisional Magistrate, he, holding that the discharge of the accused by the Magistrate was entirely without jurisdiction, ignored it and ordered summons to be issued against the accused who were subsequently convicted: *Held*, that as the Magistrate was only ordered to hold inquiry and make a report, he had no jurisdiction to try the case and hence the Sub-Divisional Magistrate was perfectly justified in ignoring

the trial. As the magistrate ignored the order that he was directed to make a report and overlooked it, he could not be said to have acted with care and caution within the meaning of S. 529, Cr. P. C. and his action could not be allowed to stand. *Udit Narayan Patwari v. Emperor*.

39 Cr. L. J. 778 :
176 I. C. 715 : 19 P. L. T. 336 :
4 B. R. 750 : 11 R. P. 100 :
A. I. R. 1938 Pat. 369.

———Jurisdiction—Complaint not mentioning name of one accused—Magistrate, if can try him of offence complained along with other accused complained against.

Cognizance is taken of an offence and not of the individual offenders, and it would ordinarily follow that once a complaint has been made according to the provisions of the Cr. P. C., cognizance can be taken in respect of the offenders named in the complaint and also others who may be shown to have taken part in the transaction, although no complaint has been specifically made against them. *Emperor v. Vithu*.

38 Cr. L. J. 717 :
169 I. C. 74 : 9 R. N. 297 :
I. L. R. 1937 Nag. 492.

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———*Inspection—Note by Magistrate—Evidentiary value of.*

An inspection note by a Magistrate is not evidence and is nothing more than a record made by the Magistrate to enable him to understand better the evidence to be recorded. He is entitled to embody in his note only facts observed by himself on the spot and not the result of statements made to him there.

Daljit Singh v. Emperor. 39 Cr. L. J. 92 :
172 I. C. 204 : 10 R. N. 177 :
A. I. R. 1937 Nag. 274.

———*Intention.*

The law looks as regards intention to the natural results of a man's act and not to the condition of his mind. From a legal point of view, a person intends whatever he gives others reasonable grounds for supposing that he does intend. *Emperor v. Patan.*

33 Cr. L. J. 537 :
137 I. C. 817 : 9 O. W. N. 350 :
I. R. 1932 Oudh 275.

———*Intention.*

The question of intention in any case is a question of fact and it must be decided in each case on the proved facts of that case. *Nga E. v. Emperor.*

32 Cr. L. J. 495 :
130 I. C. 355 : 8 Rang. 603 :
I. R. 1931 Rang. 99 : A. I. R. 1931 Rang. 1.

———*Investigation.*

Investigating Officer—Duties of, pointed out. *Emperor v. Rai Singh Narain Singh.*

35 Cr. L. J. 137 :
146 I. C. 665 : 34 P. L. R. 1010 :
6 R. L. 254 : A. I. R. 1933 Lah. 871.

———*Investigation.*

It is not proper to abandon an investigation and resume it after some days, as a delay of this kind may cause serious prejudice to an accused person. *Emperor v. C. Barwick.*

33 Cr. L. J. 220 :
136 I. C. 5 : 33 P. L. R. 443 : 13 Lah. 573 :
I. R. 1932 Lah. 181 : A. I. R. 1932 Lah. 345.

———*Investigation.*

Judicial Officers are not permitted to find out the facts of a case by personal investigation; they must decide it on the evidence properly produced before them. *Jailal Jha v. Emperor.*

25 Cr. L. J. 954 :
81 I. C. 602 : A. I. R. 1923 Pat. 537.

———*Investigation, report of—Duty of Magistrate.*

The provisions of the Cr. P. C. contemplate that a Magistrate should exercise his own independent judgment when he receives the report of the investigation or inquiry that he has ordered, and when he merely accepts without giving reasons the opinion of the Police Prosecutor, he cannot be said to have exercised his independent judgment. *Joomal Tikumdas v. Emperor.*

40 Cr. L. J. 807 :
183 I. C. 449 : 1939 Kar. 277 : 12 R. S. 57 :
A. I. R. 1939 Sind 208.

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———*Irregular proceedings—Accused made to point out spot where certain incident occurred.*

In a criminal case the accused put forward a defence, the principal incident of which was stated by them to have occurred on a certain spot in the neighbourhood of a village. In order to test the accuracy of the story told by the accused, the Magistrate, on his own motion, took them to the neighbourhood of the village and made them point out the spot in turn. In deciding the case he attached great importance to the fact that they did not all point out the same place. There was no evidence on the record as to what occurred when the Magistrate went to the spot and the Magistrate relied entirely on his own knowledge of the incident: *Held*, (1) that in the absence of any evidence regarding this episode, it must be totally ignored. *Nura v. Emperor.*

23 Cr. L. J. 431 :
67 I. C. 591 : A. I. R. 1922 Lah. 456.

———*Irregular proceedings—Commitment—Dacoity case.*

The Magistrate discharged the accused in a dacoity case after holding a preliminary enquiry in the case. The Magistrate gave perfectly adequate reasons in support of his conclusion that no *prima facie* case had been made out against the accused. In fact, he went to the length of saying that most of the important prosecution witnesses were totally unworthy of credit, and that the prosecution evidence was on the face of it, absolutely incredible. It was impossible to say that the Magistrate acted improperly in assessing the evidence that was put before him. The Sessions Judge's opinion about the evidence was different from that of the Magistrate. He had not specifically found that there was *prima facie* evidence of the commission of an offence exclusively triable by a Court of Session: *Held*, that the Sessions Judge in ordering the accused to be committed for trial for dacoity, acted improperly in committing the accused for trial to the Court of Session. *Palaniappa Thevan v. Karuppa Gounden.*

40 Cr. L. J. 392 :
180 I. C. 576 : 1938 M. W. N. 1311 :
11 R. M. 727 : A. I. R. 1939 Mad. 253.

———*Irregular proceedings—Complainant cross-examined by Police after close of case—Prejudice to accused—Conviction will be set aside.*

Where after the close of the trial the complainant was summoned to produce certain account books and the summons clearly stated that the witness was to file certain account books, but advantage was taken of this fact, after the whole prosecution case had been closed to cross-examine the complainant on behalf of the Crown in respect of everything connected with this case and to fill up all the gaps in the prosecution evidence: *Held*, that such unheard of procedure could not be too severely condemned and there was no doubt whatsoever that the accused was greatly prejudiced in his defence on the merits by the trying Magistrate allowing the prosecution

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—————*Jury—Charge—Duty of Judge stated—Misdirection—Law not explained—Held, there was misdirection.*

Where the case is one in which there are two diametrically opposite stories supported on oath by two sets of witnesses, one set of whom must be perjuring themselves before the Court, by no means an easy case to try, the presiding Judge ought to exercise the greatest possible vigilance and the greatest possible care in assisting the Jury. But if he feels that there is something extremely suspicious about the prosecution case and he finds that the main witness for the prosecution is a person whose testimony should be regarded with the greatest caution, then he ought to show his hand to the Jury. The Judge should not bother about any report of Police Authorities. His duty is to act as a check and an effective check upon the wrongful conviction of persons who may be innocent or may be in that position which justifies the benefit of the doubt being exercised in their favour. It is absolutely necessary that the heads of charge should show clearly and distinctly what the exposition of the law actually was. Where the Judge suggested in his charge that if the Jury did not believe the defence version, they must automatically accept the prosecution story as true, and while dealing with the law, he merely read and explained some sections of the Penal Code, but did not make out to the Jury what the law actually was: *Held*, that the Judge should have explained that both versions might be false, and if the Jury were not satisfied that the defence version was true, they were by no means to regard this as helping the prosecution to establish the truth of their version. *Madan Tilakdas v. Emperor.*

38 Cr. L. J. 767 :

169 I. C. 306 : 41 C. W. N. 508 :
9 R. C. 914 (2) ; A. I. R. 1937 Cal. 266.

—————*Jury—Charge.*

In cases tried by Jury, the charges upon which the accused are to be tried and upon which they are likely to be convicted, should be specifically mentioned and the verdict of the Jury should be taken on each of such charges. *In re : Virumandi Thevan.*

28 Cr. L. J. 1007 :

105 I. C. 831 ; A. I. R. 1928 Mad. 207.

—————*Jury—Charge—Weakness of prosecution not pointed out—Points in favour of accused omitted—Effect.*

Where in a charge to the Jury, the evidence is not properly put before the Jurors and the weaknesses in the prosecution case not pointed out, and the points in favour of the accused omitted, the charge is defective and the conviction should be set aside. *Sanyasi Gain v. Emperor.*

38 Cr. L. J. 1018 :

171 I. C. 183 : 10 R. C. 235 :
A. I. R. 1937 Cal. 269.

—————*Jury—Charges of sexual criminal character—Duty of Judge to insist on necessity of corroboration.*

It is necessary for Judges to warn the Jury that when charges of a sexual criminal char-

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acter are brought against an accused person in a Criminal Court without corroborating evidence, then the Jury must be told that whereas after due and careful consideration they are entitled to accept that uncorroborated evidence, it is rarely safe to do so and for the good reason which exists in all charges of this character made by women against men and more especially when the person accused is the subject of dislike or enmity on the part of those connected with the woman or on the part of the woman herself. This want of caution on the part of a Judge in cases of a sexual nature vitiates in law to a considerable degree a charge to a Jury, however good in other respects. *Sarat Chandra Chakravarty v. Emperor.*

38 Cr. L. J. 931 :

170 I. C. 519 : 65 C. L. J. 83 :

10 R. C. 151 : A. I. R. 1937 Cal. 463.

—————*Jury—Charge to Jury in form of judgment—Opinions given as definite facts.*

In a case under S. 304, Penal Code, the charge to the Jury was in form and was nothing less than a judgment. The Judge did not make any attempt to explain any law to the Jury and gave no explanation of what constitutes an offence under S. 304. He summed up the evidence in the manner of a judgment and throughout gave his conclusions and opinions as definite facts. At the very end of the charge, he rendered lip-service to the duties which have been enjoined on him. The whole charge was vitiated by a strong bias in favour of the prosecution and a strong bias against the defence. The disputed evidence was not submitted to the Jury in detail and the whole evidence was full of discrepancies and was sufficiently dubious: *Held*, that the charge was very defective and should not have been delivered in such a manner, and it would be unjust to uphold the conviction by a Judge whose charge to the Jury was open to such severe criticism. *Fateh Muhammad v. Emperor.*

38 Cr. L. J. 589 :

168 I. C. 741 : I. L. R. 1937 Nag. 123 :

9 R. N. 264 : A. I. R. 1937 Nag. 110.

—————*Jury—Charge to Jury, legality of.*

A charge to the Jury which takes the form of a considered argument tending in favour of the prosecution rather than an impartial summing up of the evidence to the Jury, is entirely illegal. *Tajali Mian v. Emperor.*

28 Cr. L. J. 843 :

104 I. C. 459 : 9 P. L. T. 57 :

I. L. T. 40 Pat. 50 : 7 Pat. 50 :

A. I. R. 1928 Pat. 31.

—————*Jury—Direction—Duty of Judge—Direction as to testimony of approver.*

It is the duty of the Judge to warn a Jury not to convict on the uncorroborated testimony of the approver, and to inform them that in law, if after they have been warned not so to convict, they can do so. *Khadim v. Emperor.*

38 Cr. L. J. 808 :

169 I. C. 716 : 31 S. L. R. 82 :

10 R. S. 17 : A. I. R. 1937 Sind 162.

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tiplicity of charges against the accused in the trial Court. He was convicted on the conspiracy basis: *Held*, that the conviction should be set aside and a re-trial ordered. *Amilava Ghose v. Emperor*.

38 Cr. L. J. 201 :
166 I. C. 384 : 9 R. C. 512 :
A. I. R. 1936 Cal. 693.

———*Joint trial—Charge under S. 147, Penal Code—Matters for consideration.*

In a case where several persons are jointly tried for the offence of being members of an unlawful assembly, the offence of each of the accused should be considered, the common object must be set out, and the case against each of the accused must be considered separately. *Thangaya Nadar v Emperor*.

27 Cr. L. J. 1164 :
97 I. C. 748 : A. I. R. 1927 Mad. 56.

———*Joint trial—Commission of rape by different persons on different occasions—Joint trial—Legality.*

B, S, A and O forcibly broke into the house of the complainant and carried the wife of the complainant off. They then and there raped her in a field. She was subsequently taken to the house of K and raped there by him. Finally she was taken to a hut in a field where she was raped by K and other people and eventually she was made over to M who took her to his house and there raped her. All of them were tried jointly: *Held*, that the joint trial was illegal as subsequent acts committed by K and M were not committed in the course of the same transaction: *Held*, further, that even supposing the joint trial to be legal, it was in no sense compulsory, and the Judge would have been well advised to try separately inasmuch as M and K were liable to be prejudiced by the admission of evidence which was quite irrelevant so far as the charges against them were concerned. *Bhola Sardar v. Emperor*.

38 Cr. L. J. 750 (a) :
169 I. C. 256 : 9 R. C. 913 :
A. I. R. 1937 Cal. 22.

———*Joint trial—Complicated case—Duty of Court.*

In a complicated case, where many accused are involved, the position of each accused must be individually considered, and a careful examination is necessary. *Nana v. Emperor*.

40 Cr. L. J. 197 :
179 I. C. 317 : 1938 N. L. J. 90 :
11 R. N. 290 : I. L. R. 1939 Nag. 686 :
A. I. R. 1938 Nag. 283.

———*Joint trial—Different unlawful assembly with same object.*

Where there were three different unlawful assemblies at three different places, each with a different common object but all in pursuance of a common purpose or design, viz., to prevent Police Officers from searching a place and the whole occurrence arose out of a common cause: *Held*, that the acts of all the accused were parts of the same transaction and might be the subject of charge in one and the same trial. The evidence of the whole

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occurrence must be before the Court before it can come to a proper conclusion as to the nature of the offences committed by the different persons concerned in the occurrence. *Krishna Ayyar v. Emperor*.

20 Cr. L. J. 145 (b) :
49 I. C. 337 : 24 M. L. T. 96 :
1918 M. W. N. 526 : 8 L. W. 225 :
A. I. R. 1919 Mad. 353.

———*Joint trial—Fight at spur of moment without intention.*

If, in the course of some quarrel, arising accidentally, among persons who have collected to witness a festival, there happens to be a fight, and if some people inflict injury on others, without any common object, they would be committing different offences of hurt. But if they do not act with any common intention, it cannot be said that they have caused hurt in the course of the 'same transaction,' although all the persons committing the offences are there at the one and same place and at the same time. A joint trial of such persons is, therefore, contrary to S. 239, Cr. P. C. *Tufail Ahmad v. Emperor*.

26 Cr. L. J. 734 :
86 I. C. 222 : 23 A. L. J. 5 :
A. I. R. 1925 All. 301.

———*Joint trial—Misjoinder of charges—Murder and grievous hurt.*

Where an accused has committed murder of two persons and caused a grievous hurt to a third person in the same night but at different times and different places and there is no evidence to suggest any connection between them, a single charge cannot be framed in respect of all these offences. The charges of murder are charges of the offences of the same kind, but the charge of grievous hurt is not. Moreover, though the charges of murder may be legally tried together under S. 234, Cr. P. C., it is undesirable to lump together two separate offences of murder under the one head of charge. *Emperor v. Afsaruddi Nassraddi*.

40 Cr. L. J. 290 :
179 I. C. 910 : 67 C. L. J. 580 :
42 C. W. N. 1235 : 11 R. C. 632 :
A. I. R. 1939 Cal. 32.

———*Joint trial—Offence under S. 302 and Ss. 302, 34.*

An accused can be charged, in the same trial, with an offence under S. 302 as also an offence under S. 302 read with S. 34. *Emperor v. Nogensra Nath Sen Gupta*.

16 Cr. L. J. 576 :
30 I. C. 128 : 21 C. L. J. 396 :
19 C. W. N. 923 : A. I. R. 1916 Cal. 524.

———*Joint trial—Prosecution alleging association and community of purpose—Joint trial, legality of.*

Where the prosecution case alleges association and community of purpose among the accused, their joint trial is permissible and this would not be affected although in the result it is found that there was no such common purpose. For S. 239, Cr. P. C., it is enough if the different offences are committed in the course

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direct evidence could be obtained on such matters. The attention of the Jury was drawn to the position that there was, on the evidence, no question of exceeding the right of private defence and also of presence of grave and sudden provocation: *Held*, that there was neither misdirection nor non-direction which could result in prejudice to the accused or miscarriage of justice. *Emperor v. Durga Charan Singh*.

39 Cr. L. J. 308 :
173 I. C. 475 : 10 R. C. 524 :
41 C. W. N. 1312 :
A. I. R. 1938 Cal. 6.

———Jury—Misdirection.

In a trial for rioting, it is one thing to say that the common object was to get possession of the disputed land, and it is quite another thing to say that the common object was to beat apparently for the mere pleasure of beating. It is quite wrong to include those two contradictory cases at the same trial even more so in one charge. Consequently, where the Judge tells the Jury that in the event of the prosecution failing to establish the case with which they came into Court or in the event of the Jury being unable to come to a decision on the real point at issue between the parties, they were to consider the possibility as to the existence of another common object merely because certain persons were injured and weapons used. Such a procedure is wrong and the Judge ought to strike it out of the charge. *Alkasulla v. Emperor*.

38 Cr. L. J. 68 :
165 I. C. 666 : 9 R. C. 444 :
40 C. W. N. 1409 :
A. I. R. 1936 Cal. 429.

———Jury—Misdirection.

Where in a case under S. 397, Penal Code, the Judge in his charge drew the attention of the Jury that it was necessary for them to find that the accused were armed with *arwals*, but that portion of his charge in which he pointed this out to the Jury was separated by a considerable time from that portion of his charge in which he referred to the discrepancies with regard to the accused's being armed with a stick or an *arwal*: *Held*, that the charge did not amount to misdirection prejudicing the accused. *In re : Thevar Servai*.

39 Cr. L. J. 323 :
173 I. C. 450 : 10 R. M. 587 :
1938 M. W. N. 215 :
A. I. R. 1938 Mad. 477.

———Jury—Misdirection—What is.

In the course of his address to the Jury, the Judge said: "Nevertheless if you find that the defence case is a false one, it is certainly an element in favour of the prosecution and against the accused. The falsity of the defence case may have the effect of confirming you in your belief that the prosecution story is true: *Held*, that those words or sentiments of this kind ought not to be used to a Jury. But it is of paramount necessity that if such language is employed, it should always be accompanied

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by the legal caution that the onus of proving explicit guilt is upon the prosecution and the prosecution alone. *Sarat Chandra Chakravarty v. Emperor*.

38 Cr. L. J. 931 :
170 I. C. 519 : 65 C. L. J. 83 :
10 R. C. 151 : A. I. R. 1937 Cal. 463.

———Jury—Misdirection.

Where in a case which did not depend upon expert evidence, the Judge told the Jury that the true rule is that no man can be convicted of giving false evidence except on proof of facts which, if accepted as true, show not merely that it is incredible but that it is impossible that the statements of the accused party made on oath can be true, without explaining how far this dictum was applicable to the evidence then before the Jury: *Held*, that there was a misdirection. *Government of Bengal v. Santiram Mandal*.

32 Cr. L. J. 10 :
127 I. C. 657 : 58 Cal. 96 :
I. R. 1930 Cal. 865 :
A. I. R. 1930 Cal. 370.

———Jury—Misconduct.

Question of misconduct is within discretion of Judge to determine—Decision of Judge is not open to review—Judge may discharge Jury after verdict. *Nagen Kundu v. Emperor*.

35 Cr. L. J. 941 :
149 I. C. 345 : 61 Cal. 498 :
38 C. W. N. 501 :
59 C. L. J. 516 : 6 R. C. 565 :
A. I. R. 1934 Cal. 428.

———Jury—Murder by poisoning—Duty of Court.

There is no doubt that in all cases of murder by poisoning, the only way in which the case of an accused can be successfully placed before the Jury so that they are in an unassailable position to give their opinion one way or the other, is by the most minute analysis of the whole of the evidence in the case. *Akabbur Mandal v. Emperor*.

39 Cr. L. J. 182 :
172 I. C. 891 : 10 R. C. 461 :
I. L. R. 1937 2 Cal. 315 :
A. I. R. 1937 Cal. 756.

———Jury—Non-direction.

Omission to direct that accused is entitled to benefit of doubt is material non-direction vitiating verdict. *Basil Ranger Lawrence v. The King*.

34 Cr. L. J. 886 :
145 I. C. 209 : 1933 A. L. J. 1025 :
38 L. W. 635 : 66 M. L. J. 216 P. C. :
A. I. R. 1933 P. C. 218.

———Jury—Non-direction.

Omission to direct that burden of proof is on Crown, vitiates verdict. *Basil Ranger Lawrence v. The King*.

34 Cr. L. J. 886 :
145 I. C. 209 : 1933 A. L. J. 1025 :
38 L. W. 635 : 66 M. L. J. 216 P. C. :
A. I. R. 1933 P. C. 218.

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—Judgment.

Trial Courts are expected to record finding with definiteness and precision and not to indulge in airy generalities. *Dhum Bahadur v. Hori Lal*.

35 Cr. L. J. 1289 :
151 I. C. 350 : 7 R. A. 139 :
3 A. W. R. 564 : A. I. R. 1934 All. 714.

—Judgment.

Where a Magistrate in convicting an accused remarks in the judgment: "his appearance and the manner of his speech are such that I have no doubt he committed the offence", it is quite sufficient to condemn the whole judgment. *Ghulam Mohammad v. Emperor*.

23 Cr. L. J. 161 :
65 I. C. 625.

—Judgment.

Where after the other members of the Bench had left the Court premises, the Presiding Officer prepared the judgment and delivered it and other members had no opportunity to express either consent or dissent from the reasons given: *Held*, that the judgment was not a proper judgment. *Sreeram Ramakottiah v. Chintalapudi Subba Rao*.

29 Cr. L. J. 973 :
112 I. C. 61 : 28 L. W. 498 :
'55 M. L. J. 576 : 1928 M. W. N. 785 :
52 Mad. 237 : A. I. R. 1928 Mad. 1172.

—Judgment—Contents of.

A judgment is not required to be a resume or reproduction of all the evidence on record; a Court is entitled to and should select such important evidence as it considers necessary to support a decision on material points arising for consideration. *Jitendra Nath Gupta v. Emperor*. (S. B.)

38 Cr. L. J. 818 :
169 I. C. 977 : 10 R. C. 69 :
A. I. R. 1937 Cal. 99.

—Judgment—Libellous remarks.

Libellous remarks in judgment against person without opportunity to explain—Care to be taken by Judicial Officers in making them. *Tejmal Naraindas v. Emperor*.

34 Cr. L. J. 367 :
142 I. C. 587 : 27 S. L. R. 13 :
I. R. 1933 Sind 105 : A. I. R. 1933 Sind 91.

—Judgment—Mode of delivery.

The judgment of a Criminal Court must be delivered in open Court when the Court is sitting. Although the mere delivery of a judgment may be left to the Presiding Officer by the other members of the Bench, they must be aware of what the judgment contains and, therefore, they must approve of the whole of the judgment if a judgment is written, and if no judgment is written, the requirements of S. 263, Cr. P. C. must be complied with. *Sreeram Ramakottiah v. Chintalapudi Subba Rao*.

29 Cr. L. J. 973 :
112 I. C. 61 : 28 L. W. 498 :
55 M. L. J. 576 : 1928 M. W. N. 785 :
52 Mad. 237 : A. I. R. 1928 Mad. 1172.

—Judgment of not guilty—Effect.

It would be a very dangerous principle to adopt to regard a judgment of not guilty as

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not fully establishing the innocence of the person to whom it relates. *Dodraj Mahton v. Emperor*.

36 Cr. L. J. 416 :
153 I. C. 767 : 7 R. P. 383 :
A. I. R. 1934 Pat. 505.

—Judgment—Requirements of.

In Criminal trials, it is the duty of the Court to give a judicial finding with reference to the case of each individual accused, and the evidence adduced on behalf of the accused in support of their case must also be carefully and fully considered. It is not expected that the Court would come to a conclusion in favour of the defence in every case but justice must appear to be done to the accused, as well as in fact, it must be done to the accused. *Mewalal Singh v. Emperor*.

39 Cr. L. J. 221 :
172 I. C. 933 : 18 P. L. T. 869 :
10 R. P. 368 : 4 B. R. 202 :
A. I. R. 1938 Pat. 31.

—Judgment—Requirements of.

It is the duty of an Appellate Criminal Court to show by its judgment that it has duly weighed and examined the evidence against the accused, has appreciated the points both for, and against him, and has brought a judicial mind to bear upon the case. Its findings must be supported by reasons, however brief they may be. *Bansi Dhar v. Emperor*.

18 Cr. L. J. 649 :
40 I. C. 297 : 4 O. L. J. 141 :
A. I. R. 1917 Oudh 113.

—Judgment—Signing of.

One of the Magistrates not present on all hearings but only on the date when judgment was delivered—Signing judgment—Failure of justice cannot be said to have taken place. *Emperor v. Jafar Khan*.

36 Cr. L. J. 907 :
156 I. C. 101 : 1935 A. L. J. 969 :
7 R. A. 1056 : A. I. R. 1935 All. 814.

—Judgment, signing of.

The judgment of the Bench of Magistrates ought to be signed by all the members of the Bench. Where, however, all the members of the Bench sign the register in which the sentence is embodied and agree in the judgment, their omission to comply with the technical requirements of the law as to the signing of it is nothing more than an irregularity. *In re : T. M. A. Nathan*.

31 Cr. L. J. 715 :
124 I. C. 501 : 57 M. L. J. 763 :
30 L. W. 883 : 53 Mad. 165 :
1930 M. W. N. 78 : A. I. R. 1930 Mad. 187.

—Judicial proceedings—Duty of Officers—Practice.

When a matter has reached a judicial stage, the executive officers should be careful to see that judicial proceedings are conducted in such a manner as not to shake in the least the confidence of the public. *In the matter of : Narendra Nath Jha v. Emperor*.

39 Cr. L. J. 811 :
176 I. C. 849 : 19 P. L. T. 542 :
4 B. R. 767 : 11 R. P. 116 :
A. I. R. 1938 Pat. 533.

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to omit delivering a serious caution to the jury with regard to accepting the uncorroborated evidence of a woman to support a sexual charge against an accused person. The way the rule has developed now is that the presiding Judge should tell the jury that they ought to scrutinise the uncorroborated evidence of the woman or girl with the greatest possible care, because it has been found by experience extending over many years that it is often dangerous that a man should be convicted on such uncorroborated testimony. *Sikandar Mian v. Emperor*.

39 Cr. L. J. 371 :
173 I. C. 881 : 41 C. W. N. 641 :
I. L. R. (1937) 2 Cal. 345 :
10 R. C. 594 : A. I. R. 1937 Cal. 321.

—Jury—Stolen goods in possession of accused—Presumption—Rebuttal—Jury, charge to—Misdirection.

In a case where the evidence of the guilt of an accused as a thief or dacoit rests upon discovery of stolen property from his possession and which is tried by the Jury, the proper course is to direct that the Jury are entitled to take the explanation offered by the accused of his possession. It is not the law that if the prosecution succeeds in proving possession by the accused of recently stolen goods, it is his duty to prove his innocence, and that the presumption raised of his guilt cannot be rebutted by mere denial. Such a statement of the law laid down by a Judge in his charge to the Jury amounts to a misdirection which vitiates the charge. *Kabatulla v. Emperor*.

26 Cr. L. J. 1582 :
90 I. C. 542 : 42 C. L. J. 212 : 53 Cal. 157 :
A. I. R. 1925 Cal. 1241.

—Jury—Verdict.

Verdict as to valuation on evidence—Question to be considered is whether Jury had evidence before them for their verdict. *Mount Royal Assurance Co. v. Comeran Lumber Co., Ltd.*

151 I. C. 600 :
40 L. W. 180 : 7 R. P. C. 77 :
A. I. R. 1934 P. C. 196.

—Jury—Verdict of 'not guilty'—Judge convicting without assigning reasons—Legality—Absence of notification directing trial by Jury in such cases.

The accused were charged with offences punishable under Ss. 395 and 399, Penal Code. They were further charged with a conspiracy to commit both those offences. The Jury brought in a unanimous verdict of 'not guilty'. The Judge acquitted all the accused persons of the main charges and then proceeded to convict them of an offence punishable under S. 395 read with S. 120-B, holding that the Jury were assessors and that he was entitled to take a contrary view. It was contended that the trial was with Jury and not with assessors and the Judge had no jurisdiction to convict them in the face of the verdict of acquittal: *Held*, that in the absence of a notification of the Local Government directing that such an offence is triable by Jury, the trial was not vitiated in view of the fact that the normal procedure

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under S. 269, Cr. P. C. is trial by Jury. *Jogneswar Ghose v. Emperor*.

38 Cr. L. J. 212 :
166 I. C. 418 : 40 C. W. N. 1186 :
9 R. C. 520 : I. L. R. 1937 1 Cal. 306 :
65 C. L. J. 351 : A. I. R. 1936 Cal. 527.

—Jury—Warning that conviction cannot be based on uncorroborated testimony of accomplice—Necessity of.

Where there is a Jury, the Judge should warn the Jury of the danger of convicting a prisoner on the uncorroborated testimony of an accomplice or accomplices and may, if he chooses, advise them not to convict, but he may point out to them that it is within their legal province to convict if they believe his testimony. *Nga Aung Pe v. Emperor*.

38 Cr. L. J. 785 :
169 I. C. 705 : 1937 Rang. 110 :
10 R. Rang. 19 : A. I. R. 1937 Rang. 209.

—Jury trial—Misdirection.

A Judge's omission to draw the attention of the Jury to the failure to put in evidence an Inquest Report, when that is material for the case, and his omission to mention the existence of enmity between the accused and the prosecution witnesses when there is clear evidence to support it, are misdirections which vitiate the conviction. *In re : Sennimalai Goundan*.

16 Cr. L. J. 717 :
30 I. C. 1005 : 2 L. W. 933 :
A. I. R. 1916 Mad. 762.

—Jury trial—Unanimous verdict—Reference.

Murder—Accused found guilty by unanimous verdict of jury—Sessions Judge disagreeing and making reference—Accused is to be kept in custody pending final decision of High Court. *Emperor v. Benat Pramanik*.

36 Cr. L. J. 944 :
(S. B.).
156 I. C. 481 : 39 C. W. N. 954 : 62 Cal. 900 :
8 R. C. 1 : A. I. R. 1935 Cal. 407.

—Legal practitioner, when not to appear in case.

Gentlemen of the Bar should not appear in case in which they may have to give evidence or in which their personal interests are concerned. *Ghadially v. Emperor*.

25 Cr. L. J. 571 :
81 I. C. 59 : 18 S. L. R. 30 :
A. I. R. 1925 Sind 99.

—Local enquiry by Magistrate for obtaining information not appearing from evidence, legality of.

Where a Magistrate made a local enquiry and used that, not for the purpose of understanding the evidence only but for the purpose of obtaining information which did not appear from the evidence of the witnesses: *Held*, that in a sense the Magistrate made himself a witness in the case and the procedure was quite irregular and the trial was, consequently, vitiated. *Emperor v. Fakira Mahanti*.

29 Cr. L. J. 656 :
110 I. C. 112 : 10 P. L. T. 279 :
A. I. R. 1928 Pat. 567.

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———Jurisdiction.

Magistrates should not usurp jurisdiction that they have not got. *Shambhooram v. Emperor*.

37 Cr. L. J. 80 :
159 I. C. 271 : 8 R. S. 79 :
A. I. R. 1935 Sind 221.

———Jurisdiction—Offence committed in past—Courts are not precluded from dealing on merits.

If the offence has been committed with impunity on any number of occasions in the past, that is no reason why when it is detected and brought before a Court, it should not be dealt with on its own merits. *Emperor v. Sultan Mahmud*.

40 Cr. L. J. 910 :
184 I. C. 318 : 41 P. L. R. 432 :
I. L. R. 1939 Lah. 119 : 12 R. L. 203 :
A. I. R. 1939 Lah. 340.

———Jurisdiction—Offence of misappropriation of partnership funds.

A case of misappropriation of partnership funds cannot be tried by a Court within whose jurisdiction the accused is not bound to submit accounts or to pay profits to the complainant. *Behari Lal v. Gangadin*.

27 Cr. L. J. 1104 :
97 I. C. 368 : A. I. R. 1927 All. 69.

———Jurisdiction—Trial by Magistrate of lesser offence when graver offence beyond jurisdiction is disclosed, validity—Objection by accused—Interference—Revision.

Where, in a trial of an offence, a Magistrate entirely overlooks some facts which would carry the case beyond his jurisdiction and tries the accused for a lesser offence, he is not held to have acted without jurisdiction. The question whether he has or has not entirely overlooked the circumstances is one of fact. If, on the other hand, he does not overlook the circumstances, but, after his attention has been drawn to it, he deliberately ignores it, his proceedings would be improper though not void. When the accused has himself objected to the jurisdiction, the High Court would feel itself bound to interfere. No Tribunal can properly clutch jurisdiction by intentionally ignoring facts of aggravation which make an offence really cognizable only by a higher Tribunal. *Kattuva Rowther v. Suppan Asari*.

28 Cr. L. J. 164 :
99 I. C. 596 : 25 L. W. 86 :
A. I. R. 1927 Mad. 307.

———Jurisdiction of British Indian Courts.

A person abroad may, by the employment as well of a conscious as of an unconscious agent, render himself amenable to the law of British Courts or British Indian Courts when he comes within the jurisdiction of such Courts. *Gokaldas Amarsee v. Emperor*.

35 Cr. L. J. 585 :
148 I. C. 135 (2) : 27 S. L. R. 392 :
6 R. S. 180 : A. I. R. 1933 Sind 333.

———Jury—Admission of evidence of similar offence—Duty of Judge.

Where a Judge admits evidence to the effect that the accused had attempted to commit

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similar offences against the complainant as well as others, it is the duty of the Judge to explain most carefully to the Jury that they are not entitled to take it that the accused had committed the offence charged because they had previously been found to have attempted to commit similar offences. *Azimaddy v. Emperor*.

28 Cr. L. J. 99 :
99 I. C. 227 : 44 C. L. J. 253 :
54 Cal. 237 : A. I. R. 1927 Cal. 17.

———Jury—Attack by armed men on unarmed men—Death of some—Direction to jury to consider accused's cases under Ss. 304, 109, Penal Code—Misdirection.

Where on a property dispute, there was an armed attack against unarmed men, resulting in death of some person and at the trial instead of directing trial for murder, the Judge directed the Jury that the cases should be considered firstly under the aspect that they are guilty of crimes under S. 304 read with S. 149: Held, that there was a misdirection and nothing more puzzling to the Jury could be imagined. *Sahedali Mirdha v. Emperor*.

38 Cr. L. J. 1067 :
171 I. C. 269 : 10 R. C. 258 :
I. L. R. 1937 2 Cal. 308 :
A. I. R. 1937 Cal. 309.

———Jury—Criminal breach of trust—Jury should bear in mind difference between civil and criminal liability.

In dealing with a case of criminal breach of trust, the Jury should bear in mind the difference between civil and criminal liability. *Rex v. V. Krishnan*.

41 Cr. L. J. 824 :
190 I. C. 123 : 1939 M. W. N. 1213 :
13 R. M. 386 : A. I. R. 1940 Mad. 329.

———Jury—Charge—Amendment of common object, when amounts to alternative charge—Omission to find from Jury as to common object—Legality of trial.

In the original charge drawn up against the accused for being members of an unlawful assembly, the common object was stated to be to loot the paddy crops lying in a *kalihan* for division under S. 69, Bengal Tenancy Act. After examining some witnesses for the prosecution, the Sessions Judge made an addition to the charge with the words 'and to assault the landlord's man and others: Held, that the addition of the words did not constitute an alternative charge and there was no duty on the part of the Judge to find from the Jury on which common object they were depending. *Nathuni Nonia v. Emperor*.

29 Cr. L. J. 626 :
109 I. C. 898 : 6 Pat. 572 :
A. I. R. 1928 Pat. 139.

———Jury, discharge of—Verdict after discharge—Conviction.

Where the Jury gives a verdict after they are discharged, the verdict is not competent and a conviction based on such verdict is wrong and must be set aside. *Wanch Ducane Smith v. The King*.

151 I. C. 529 (2) P. C. :
7 R. P. C. 66 (1) : 40 L. W. 419 :
1934 A. L. J. 1000 : 36 P. L. R. 247 :
4 A. W. R. 1152 : 1934 M. W. N. 1020 :
A. I. R. 1934 P. C. 227 (1).

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accused, and ought never to be included.
Dwarka Nath Varma v. Emperor.

- 34 Cr. L. J. 322 :
142 I. C. 335 : 37 L. W. 584 :
64 M. L. J. 466 : 10 O. W. N. 522 :
1933 M. W. N. 409 :
37 C. W. N. 514 : 57 C. L. J. 177 :
14 P. L. T. 305 : 1933 A. L. J. 645 :
35 Bom. L. R. 507 :
I. R. 1933 P. C. 65 P. C. :
A. I. R. 1933 P. C. 124.

—————*Miscellaneous.*

Articles of same kind seized—Court should give exhibit numbers to articles identified.
A. R. Rajalingam v. Emperor.

- 35 Cr. L. J. 994 :
149 I. C. 31 : 6 R. Rang. 300 :
A. I. R. 1934 Rang. 80.

—————*Miscellaneous—Case under S. 379, Penal Code—Property seized—After investigation case referred as of civil nature.*

In a case under S. 379, I. P. C., against five persons in respect of articles used in cultivation, the Police seized the property, and after investigation, referred the case as one of civil nature. The Magistrate struck off the case from the Police file but on the recommendation of the station house officer, ordered that the property be returned to the complainant: *Held*, that the subsequent order was wrong and the property had to be returned to the persons from whom it was seized. *In re : Paidi Subbaya.*

- 41 Cr. L. J. 203 :
185 I. C. 440 (1) : 1939 M. W. N. 739 (2) :
12 R. M. 573 : A. I. R. 1939 Mad. 905.

—————*Miscellaneous—Charge—Each witness deposing about instances concerning himself—Number of charges extending over three months gathered together in same trial—Accused not prejudiced.*

In a trial under the U. P. Sugarcane Rules, each of the prosecution witnesses gave evidence about the particular instances with which he himself was concerned and a number of what should have been separate charges were gathered together in one case: *Held*, that it could not be said that the accused found it difficult to meet the various charges and that no real failure of justice had occurred, although there might have been irregularities in the trial. *Raghubar Dayal v. Emperor.*

- 37 Cr. L. J. 782 :
163 I. C. 250 : 1936 A. L. J. 60 :
8 R. A. 926 : 1936 A. W. R. 163 :
A. I. R. 1936 All. 370.

—————*Miscellaneous—Civil Court doing everything to obtain possession—Assistance of Criminal Court.*

A complainant who has exhausted the resources of a Civil Court in obtaining possession, should receive assistance from the Criminal Courts. *Emperor v. Amru.*

- 37 Cr. L. J. 720 :
162 I. C. 813 : 18 N. L. J. 307 :
8 R. N. 286.

—————*Miscellaneous—Compounding of offence*

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—*Magistrate should use his own discretion after hearing parties in open Court.*

Allowing a case to be compounded is a judicial act and any argument whether composition should be allowed or not, must be addressed to the Magistrate in open Court either by the prosecuting Counsel or the prosecuting Inspector on behalf of the Crown or by those who desire the composition. Where the prosecution protests against the proposed compromise in open Court and if the Magistrate comes to a decision after hearing both sides, there would be no objection to a considered order, but to pass an order setting out his opinion that the offence was a minor one and would clearly be compoundable but refusing to allow permission to compound on a statement made by the District Superintendent of Police which the Magistrate is not certain that he believes, is to exercise no discretion whatever and to shirk his responsibilities as a Magistrate. *In re : Harprashad.*

- 39 Cr. L. J. 120 :
172 I. C. 352 : 10 R. N. 196 (2) :
A. I. R. 1938 Nag. 39.

—————*Miscellaneous.*

Conviction or acquittal depends upon the credibility of the witnesses as assessed by the Court and not on the question whether their presence on the scene of the alleged offence was in accordance with a particular legal procedure. The failure to comply with the provisions regulating searches may cast doubt upon the *bona fides* of the officers conducting the search. But when once the evidence has been believed, it is obviously no defence to say that the evidence was obtained in an irregular manner. *Bonomali Bhattacharjee v. Emperor.*

- 41 Cr. L. J. 316 :
186 I. C. 471 : I. L. R. 1939 Cal. 210 :
12 R. C. 499 : A. I. R. 1940 Cal. 85.

—————*Miscellaneous—Court evolving new theory.*

A Court is not justified in evolving a new theory different from the one put forward either by the prosecution or by the defence. *Harphul v. Emperor.*

- 28 Cr. L. J. 405 :
101 I. C. 181 : 28 P. L. R. 215 :
A. I. R. 1927 Lah. 728.

—————*Miscellaneous.*

Custom of implicating relatives of suspected murderers referred to. *Sanwal v. Emperor.*

- 33 Cr. L. J. 744 :
139 I. C. 128 : 33 P. L. R. 475 :
I. R. 1932 Lah. 563 :
A. I. R. 1932 Lah. 424.

—————*Miscellaneous.*

Dacoity case—Accused recently wounded and unable to give satisfactory explanation of injury—No adverse inference arises. *Mir Sahib Khan v. Emperor.*

- 35 Cr. L. J. 860 :
148 I. C. 760 : 6 R. Pesh. 54 :
A. I. R. 1934 Pesh. 53.

—————*Miscellaneous—Decision of case on special oath of complainant, legality of.*

It is entirely illegal to decide a criminal

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—Jury—Empanelling of—Making up deficiency—Requisition of persons from outside—Legality of—Re-trial.

Requisition of persons from outside the Court to make up the deficiency in the number of jurors to be empanelled is not proper, and as this is an irregularity which affects the constitution of the Court, there must be a re-trial. If the Court has to make up deficiency of jurors, he is to select persons actually present in Court whom he considers suitable. If the Court is unable to do this, the only other course is to postpone the trial and summon another jury. *Suba v. Emperor*. 38 Cr. L. J. 870 : 170 I. C. 237 : I. L. R. 1937 2 Cal. 482 : 10 R. C. 123 : A. I. R. 1937 Cal. 389.

—Jury—Index—Index containing notes embodying statements, notes, whether can be placed before jury.

Where the notes in the index embody statements regarding things said to have happened at the various points referred to, such notes are not properly to be put before the jury and where the index contains such objectionable material, the better course is to have a fresh index prepared with the objectionable material eliminated. *Emperor v. Mayadhar Pothal*.

40 Cr. L. J. 625 :
181 I. C. 1001 : 20 P. L. T. 420 :
5 B. R. 706 : 11 R. P. 653 :
18 Pat. 450 : A. I. R. 1939 Pat. 577.

—Jury—Jury and distinction—Assessors—Distinction.

The fundamental conception underlying all jury trials is that the jury are there actually to try the case and not merely to aid the Judge in arriving at a conclusion. They are invested with a special status and given special powers, and the ultimate responsibility for all decisions within their sphere is meant to be theirs and theirs alone. No charge is delivered to the assessors ; on the contrary, the Judge is given a discretion to "sum up" the evidence for the prosecution and the defence or not as he thinks fit. He has not got anything like the same freedom of action in a jury trial. If he agrees with the verdict, then of course, no difficulty arises, but if he disagrees, then his hands are very considerably tied. In the first place, he has no powers of acquittal or conviction or even of ordering a fresh trial. He can only "submit the case" to the High Court. But even this he cannot do merely because he disagrees. He has to be "clearly of opinion that it is necessary for the ends of justice" to submit the case. *Dattatraya Sadashiv Karve v. Emperor*.

41 Cr. L. J. 289 :
186 I. C. 402 : I. L. R. 1940 Nag. 394 :
12 R. N. 204 : A. I. R. 1940 Nag. 17.

—Jury—Interference with verdict.

Powers of interference with the verdict of the Jury are strictly limited and can only arise if the accused succeed in showing that there are misdirections in the learned Judge's charge to the Jury. *Mohi-ud-Din v. Emperor*.

32 Cr. L. J. 455 :
129 I. C. 834 : I. R. 1931 Cal. 274 :
51 C. L. J. 352 : A. I. R. 1930 Cal. 437.

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—Jury—Juror unable to understand language of evidence—Conviction, illegal.

Where a juror has been empanelled and has joined in a verdict of guilty but he could not understand the language in which the evidence was given, such inability is a good ground for objection under the law of India and the conviction will be set aside. *Alexander Kennedy v. The King*.

38 Cr. L. J. 503 :
168 I. C. 67 : 1937 M. W. N. 385 :
9 R. P. C. 225 : 46 L. W. 125 :
42 C. W. N. 1 P. C. : A. I. R. 1937 P. C. 108.

—Jury—Misdirection.

If the defence relies upon certain omissions made by witnesses either before the Police or before the Magistrate, the best course is to draw the attention of the Jury to those alleged omissions and then if, in the opinion of the Judge, the omissions are of no consequence and were possibly due to certain circumstances, it will be quite open to him to place them before the jury and then leave them to decide whether those omissions considered in the light of the circumstances placed before them are of such consequence as to discredit the testimony of the witnesses in Court. General observations devoid of facts in the charge to the jury are likely at some occasions to create an impression in the mind of the jury that every omission in every case is of no consequence whatsoever. *Bulak Gope v. Emperor*.

40 Cr. L. J. 34 :
178 I. C. 354 : 11 R. P. 248 :
5 B. R. 88 : A. I. R. 1938 Pat. 575.

—Jury—Material for successful challenge not made for excusable reasons—Adverse verdict, if should be set aside.

There is nothing in the decision of the Board in *Ras Behari Lal v. King-Emperor*. 60 I. A. 354 to warrant the wide proposition that in every case in which there was material for a successful challenge and it was not made for excusable reasons, an adverse verdict should be set aside. Such a proposition is ill-founded and is contrary to the well settled principles laid down by the Board with regard to its intervention in criminal matters. *Alexander Kennedy v. The King*.

38 Cr. L. J. 503 :
168 I. C. 67 : 1937 M. W. N. 385 :
9 R. P. C. 225 : 46 L. W. 125 :
42 C. W. N. 1 : A. I. R. 1937 P. C. 108.

—Jury—Misdirection.

In a case under S. 302, Penal Code, the Judge after placing before the Jury all the statements made by the accused at different times, none of which were inadmissible or irrelevant, placed before them the evidence of witnesses referring to the discrepancies in their statements. He also referred to the nature of the injuries on the deceased and expressed the opinion that the deceased might have stood up before the assault. He also dealt with the questions of motive and intention and knowledge of the guilt and pointed out that the evidence on these matters was meagre but observed that no

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Where while the deceased and others were grazing their cattle on land in the ownership of the accused, the accused came with *lathis* and began to drive the cattle away towards the pound, and on the deceased and his party rescuing the cattle, there was a *lathi* fight between the accused and the deceased and his party, during which the deceased received fatal injuries: *Held*, that although the accused had a right to drive the cattle that strayed into their land to the cattle pound, that right did not extend to the causing of the death of the deceased. But as it appeared that the deceased and his men did attack the accused while the accused were not free from blame, in awarding sentences consideration may legitimately be given to that fact that they were really in the right at first and were performing a legitimate duty in taking the cattle of the deceased and others to the pound which had strayed into their land, although in doing so, they exceeded the right of private defence of person and property. Consequently the conviction for offences under Ss. 147 and 304, Penal Code, would stand but their sentences might be reduced. *Shankar Bakhsh Singh v. Emperor*. 37 Cr. L. J. 931 : 164 I. C. 151 : 1936 O. L. R. 433 : 9 R. O. 55 : 1936 O. W. N. 766 : A. I. R. 1937 Oudh 54.

—————Miscellaneous—“Same transaction”.

The expression ‘the same transaction’ has not been defined in the Cr. P. C., and it must depend on the facts of each particular case whether offences are to be regarded as forming parts of one and the same transaction. *Abdur Rahim v. Emperor*. 32 Cr. L. J. 611 : 130 I. C. 796 : 12 P. L. T. 12 : I. R. 1931 Pat. 204 : A. I. R. 1931 Pat. 102.

—————Miscellaneous — Sessions trial—Evidence not produced in trying Court if can be produced in Sessions Court.

The general effect of a consideration of Ss. 208 (1), (3), 209, 210, 211, 213, 216, 217, 219, 286 and 540, Cr. P. C. is, that the prosecution is at liberty to examine witnesses in the Sessions Court which it has not produced in the Court of the Committing Magistrate but only those witnesses so examined in the Committing Magistrate’s Court can be bound down to attend in the Sessions Court. The prosecution in the Sessions Court, if the witnesses are not examined in the Court of the Committing Magistrate, has to depend upon such witnesses being willing to give evidence without being bound down to appear, or upon being able to persuade the Court to act under S. 540 and summon such a witness. *Niamal v. Emperor*. (F. B.) 37 Cr. L. J. 742 : 162 I. C. 976 : 17 Lah. 176 : 38 P. L. R. 421 : 8 R. L. 985 : A. I. R. 1936 Lah. 533.

—————Soldier killing another under illegal orders of superior, whether excused.

Even when a soldier obeys the orders of a superior officer, if the order is obviously improper or illegal, the soldier is not excused even though he may be put in the awkward predicament of choosing whether he will risk

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being shot by order of a Court Martial for not obeying the order, or being hanged by the Criminal Court for murder for obeying it. Obedience to an illegal order can only be used in mitigation of punishment. *Chaman Lal v. Emperor*. 41 Cr. L. J. 639 : 188 I. C. 440 : I. L. R. 1940 Lah. 521 : 13 R. L. 41 : A. I. R. 1940 Lah. 210.

—————Miscellaneous—Subsequent trial of another accused on same evidence whether barred—Circumstantial evidence.

Because an accused has been either acquitted or convicted, there is nothing in law to prevent another accused being subsequently tried and acquitted or convicted even if the decision in the second trial differs from that of the original trial on exactly the same evidence. It is probable that on exactly the same evidence two equally competent Judges will arrive at the same conclusion but it is the duty of a Court to decide a case on the evidence before it without being influenced by the fact that another Court has, on the same evidence on a previous occasion, come to a certain conclusion. *Awal Khan v. Emperor*. 37 Cr. L. J. 889 : 164 I. C. 145 : 9 R. Pesh. 11 : A. I. R. 1936 Pesh. 152.

—————Miscellaneous—Test of similarity of offence—Criminal Procedure Code—Ss. 403 (1) (iv), 236, 237, Scope of.

Where a person beat another with a shoe in the presence of a Deputy Magistrate sitting in a judicial proceeding and was fined for contempt of Court by the said Magistrate under S. 228, Penal Code, and was subsequently charged on the same facts for an offence under S. 355, Penal Code and convicted by a Sub-Divisional Officer: *Held*, that the second conviction was not illegal inasmuch as the Magistrate had no cognisance of the offence under S. 355 when the accused was tried for contempt and was consequently not competent to try this offence within the meaning of S. 403, Cr. P. C. The words competent to try in S. 403, Cr. P. C., refer narrowly to the legal position of the Court at the time of the former trial in relation to the particular offence committed by the accused and not broadly to the jurisdiction of the Court in regard to the class of offence in general. *Babu Lal Mahton v. Ram Saran Singh*. 30 Cr. L. J. 806 : 117 I. C. 625 : I. R. 1929 Pat. 433 : A. I. R. 1930 Pat. 26.

—————Miscellaneous.

The Court before whom a charge of bigamy or the like is brought, must come to a decision on a point of law as regards the marriage. *Imamuddin v. Emperor*. 35 Cr. L. J. 1154 : 150 I. C. 862 : 1934 O. L. R. 652 : 11 O. W. N. 950 : 7 R. O. 70 : A. I. R. 1934 Oudh 388.

—————Miscellaneous.

The law does not favour legal and strained intendments, when over-minute precision may confound legal certainty. *Emperor v. Nabu*. 26 Cr. L. J. 1554 : 90 I. C. 434 : A. I. R. 1926 Sind 1.

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———*Jury—One of Jurymen not entitled to sit—Legality of verdict—Re-trial, when ordered.*

Where one of the Jurymen is not entitled to sit in the Jury, the Court is not properly constituted and the verdict of the Jury is a nullity. But the High Court will not order a re-trial even though the verdict of a Jury acquitting an accused is a nullity, if the verdict is in accordance with the facts of the case. *Irjan v. Emperor.*

28 Cr. L. J. 874 :
104 I. C. 714 : 46 C. L. J. 241 :
A. I. R. 1927 Cal. 820.

———*Jury—Opening address of Prosecution Counsel, scope of—Prosecution Counsel, duties of.*

It is a rule of universal application that in a criminal trial, Counsel for the prosecution in opening the case to the Jury, can only state all that it is proposed or intended to prove in the case so that the Jury may see if there is any discrepancy between the opening statements of Counsel and the evidence afterwards adduced in support of them and that it is wholly improper for Counsel for the prosecution to open any matter to the Jury in respect whereof no evidence is intended to be or can be adduced at the trial. Counsel for the prosecution ought not to struggle to obtain a conviction but should regard themselves rather as ministers of justice assisting in its administration than as Advocates. *Padam Prasad v. Emperor.*

30 Cr. L. J. 993 :
119 I. C. 193 : 30 C. L. J. 106 :
33 C. W. N. 1121 : I. R. 1929 Cal. 753 :
A. I. R. 1929 Cal. 617.

———*Jury—Penal Code, Ss. 120-B, 326—Trial for murder—Conviction for conspiracy to commit offence under S. 326—Absence of evidence of agreement—Judge not explaining implication of charge—Legality of conviction.*

The accused were put on their trial in connection with a murder. They were convicted of conspiracy to commit an offence punishable under S. 326, Penal Code, which was one of the many charges brought against them. The Jury returned a verdict of 'not guilty' and on being asked by the Judge if they had to add anything, they returned a verdict of 'guilty of conspiracy' by a bare majority. The Judge never explained to the jury the implication of a conspiracy to commit an offence under S. 326, and he did not put the evidence before the Jury at all with reference to this charge. The evidence did not prove a conspiracy to commit an offence under S. 326 : *Held*, that the conviction could not be upheld as there was never any evidence to support the particular conspiracy of which the appellants have been found guilty : *Held*, further that as the accused had a long and a protracted trial and the Jury were not satisfied that the main charges relating to the actual assault were made out against them, a new trial should not be ordered. *Mohammad Shariff Khan v. Emperor.*

38 Cr. L. J. 966 :
170 I. C. 838 : 10 R. C. 203 :
A. I. R. 1937 Cal. 458.

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———*Jury—Presiding Judge, powers of—Reference to High Court.*

The duty of deciding whether the verdict of the Jury shall be accepted or not, lies upon the Judge who presides at the trial and upon him alone. If he decides that he ought not to make a reference, there is an end of the matter. The High Court cannot, in its revisional jurisdiction, direct the Judge to make a reference to it. *Afsar Shaikh v. Emperor.*

38 Cr. L. J. 1075 :
171 I. C. 320 : 41 C. W. N. 1020 :
10 R. C. 263 : I. L. R. (1937) 2 Cal. 694 :
A. I. R. 1937 Cal. 540.

———*Jury—Prosecution's failure to call material witness—Inference.*

Where the prosecution fails to call a material witness, this fact should be pointed out to the Jury and they should be left to draw their own conclusions from it. *Tajali Mian v. Emperor.*

28 Cr. L. J. 843 :
104 I. C. 459 : 9 P. L. T. 57 :
I. L. T. 40 Pat. 50 : 7 Pat. 50 :
A. I. R. 1928 Pat. 31.

———*Jury—Question of fact—Accused unable to explain circumstances against him—Inference to be drawn therefrom is a question of fact.*

In a murder case where an accused has failed to give any explanation of the suspicious circumstances against him, it is better to treat the circumstances as establishing a crime as a point of fact. Evidence of this nature would certainly in England be left to a Jury by a Judge. The question in each case is whether circumstantial evidence of this nature satisfies a Jury of the guilt of the accused under S. 302, Penal Code. The question is not one of law. *Mangal Singh v. Emperor.*

38 Cr. L. J. 472 :
167 I. C. 861 : 17 Lah. 547 :
38 P. L. R. 1018 : 9 R. L. 562 :
A. I. R. 1937 Lah. 127.

———*Jury—Re-trial—Grounds for.*

Where there is a sufficient material on which a Jury could reasonably come to a conclusion that the accused were guilty, the mere fact that the Jury might reasonably come to a contrary conclusion is not a sufficient reason for the Court of the Judicial Commissioner to take upon itself the duty of acquitting them. It should order a re-trial when in its opinion there is sufficient evidence on record to justify the re-trial and it is in the interests of justice to make such an order. *Shewaram Jethanand Shivdasani v. Emperor.*

41 Cr. L. J. 28 :
184 I. C. 474 : 1940 Kar. 249 :
12 R. S. 107 : A. I. R. 1939 Sind 209.

———*Jury—Sexual offences—Charge to Jury—Duty of Judge—Jury must be directed to scrutinise uncorroborated evidence of woman.*

Charges brought against a man by one of the opposite sex, accusing the male of having committed sexual offence, should be very carefully presented to the Jury, and as it has been pointed out both in England and in India, a rule has grown up that Judges when they charge Juries in cases of this kind, ought never

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in fact been committed by a certain person. But where there is no adequate evidence, and on the evidence that is led, the Court entertains serious doubt as to the accused's complicity in the crime, the absence of any adequate motive for the crime becomes a matter of some importance. *Mata Din v. Emperor*.

38 Cr. L. J. 424 :
167 I. C. 579 : 1937 O. W. N. 291 :
1937 O. L. R. 122 ; 9 R. O. 392 :
A. I. R. 1937 Oudh 236.

———Motive.

The absence of adequate motive is immaterial where the commission of the crime is clear. *Nihar v. Emperor*.

34 Cr. L. J. 838 :
144 I. C. 769 : 10 O. W. N. 642 : 6 R. O. 10 :
A. I. R. 1933 Oudh 299.

———Motive—Case of murder depending entirely on circumstantial evidence—Motive should be found out.

Where the case entirely depends on circumstantial evidence, the failure of the Judge to give a definite finding on the point of the motive can be explained only on the ground that, he has failed to discover, from the evidence on record, any motive whatsoever on the part of the accused to have committed alleged diabolical murder. *Parwati v. Emperor*.

37 Cr. L. J. 821 :
163 I. C. 319 : 8 R. N. 307 :
A. I. R. 1936 Nag. 88.

———Motive.

Dictum.—When the prosecution are unable to prove satisfactorily the intention or knowledge of an accused person, they generally ascribe to him certain words which he is supposed to have spoken in order to supply the missing proof. *Fatta v. Emperor*.

32 Cr. L. J. 582 :
130 I. C. 649 : 31 P. L. R. 1004 :
I. R. 1931 Lah. 329 : A. I. R. 1931 Lah. 63.

———Motive, duty of prosecution to prove.

Though prosecution is not bound in every case to prove the motive for the crime, absence of any motive on the part of the accused is a factor which may be considered in determining his guilt. *Hans Raj v. Emperor*.

30 Cr. L. J. 478 :
115 I. C. 464 : 10 L. L. J. 555 :
30 P. L. R. 424 : I. R. 1929 Lah. 389.

———Motive.

Enmity is a double-edged weapon and what would be a reason for murder might also be reason for fabricating a false case. *Ujja v. Emperor*.

35 Cr. L. J. 299 :
147 I. C. 41 : 10 O. W. N. 976 : 6 R. O. 220 :
A. I. R. 1933 Oudh 457.

———Motive, existence of—Effect.

The existence of the motive does not necessarily lead to the conclusion that persons having the same must have committed the offence. It can also be the cause for a false charge. *Government Advocate, N.-W. F. P. v. Amir Hamza*.

36 Cr. L. J. 443 :
153 I. C. 35 : 7 R. Pesh. 70 :
A. I. R. 1934 Pesh. 129.

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———Motive—Failure to prove motive—Effect.

The fact that the prosecution has not proved any sufficient motive for the commission of a crime is not a fatal defect in the prosecution case, and is not a sufficient reason for disbelieving the eye-witnesses. *Sewa Singh v. Emperor*.

31 Cr. L. J. 1069 :
126 I. C. 573 : A. I. R. 1930 Lah. 490.

———Motive—Ignorance of law.

An accused person must be given the benefit of the assumption that he knows the law. The Crown cannot, therefore, impute ignorance of law as a motive. *Public Prosecutor v. Polasnapalle Nagaraju*.

32 Cr. L. J. 262 :
129 I. C. 229 : 1930 M. W. N. 350 :
59 M. L. J. 114 : 32 L. W. 285 :
I. R. 1931 Mad. 229 ;
A. I. R. 1931 Mad. 42.

———Motive—Importance of.

The practice of beginning with the evidence of motive and assigning to that branch of the case an exaggerated importance deprecated. *Emperor v. Mahomed Khabar*.

35 Cr. L. J. 736 :
148 I. C. 672 : 6 R. S. 196 :
A. I. R. 1934 Sind 6.

———Motive.

In a criminal trial, it is not the duty of the prosecution to prove an adequate motive in every case. *Chaman Das v. Emperor*.

35 Cr. L. J. 1283 :
151 I. C. 238 : 7 R. L. 113 :
A. I. R. 1934 Lah. 368.

———Motive.

It is not proper to consider first whether evidence establishes a motive for the crime. The proper course to adopt is to examine the evidence as to the commission of the crime. *Diwarka v. Emperor*.

32 Cr. L. J. 697 :
131 I. C. 439 : 8 O. W. N. 107 :
I. R. 1931 Oudh 199 :
A. I. R. 1931 Oudh 119.

———Motive—Judging of.

Motive for crime is a matter of guess work on the part of those who do not take part in the offence, and what may appear insufficient to one may be a compelling spring of action for another, but it has to be judged by reasonable standards. *Akbar Badr Din v. Emperor*.

39 Cr. L. J. 907 (b) :
177 I. C. 617 : 40 P. L. R. 890 :
11 R. L. 339 : A. I. R. 1938 Lah. 594.

———Motive.

Mere motive cannot be considered as sufficient evidence to show that a crime had been committed. *Dila Ram v. Emperor*.

33 Cr. L. J. 501 :
137 I. C. 681 : 33 P. L. R. 86 :
I. R. 1932 Lah. 349 : A. I. R. 1932 Lah. 195.

———Motive.

Offence proved beyond reasonable doubt—Question of motive need not be considered. *Nareh Singh v. Emperor*.

36 Cr. L. J. 529 :
154 I. C. 691 : 1935 O. W. N. 321 :
7 R. O. 484 : A. I. R. 1935 Oudh 265.

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———Local inspection by Magistrate—
Duty of Magistrate to give opportunity to parties to explain—Omission—Effect.

A Magistrate is entitled to inspect a place in order to understand the evidence. But if he receives an impression which is in favour of one side or the other, he should give an opportunity to the side against which he forms an impression to explain away, if possible, the impression created in his mind by the inspection. *In re: Kader Batcha Sahib.*

29 Cr. L. J. 539 :
109 I. C. 363 : 1928 M. W. N. 69 :
54 M. L. J. 442 : 27 L. W. 654 :
A. I. R. 1928 Mad. 494.

———Local inspection.

For the correct understanding of a case, the Court may visit the place of occurrence. *Emperor v. Nagendra Nath Sen Gupta.*

16 Cr. L. J. 576 :
30 I. C. 128 : 21 C. L. J. 396 :
19 C. W. N. 923 :
A. I. R. 1916 Cal. 524.

———Local inspection—Murder case.

It is a commendable procedure on the part of the trying Judge to visit the spot on the conclusion of a murder case and to prepare a plan of the locality showing as to who are the witnesses who live in close proximity to the house of the deceased. *Mukta Prasad v. Emperor.*

27 Cr. L. J. 577 :
94 I. C. 193 : 13 O. L. J. 69.

———Local inspection, legality of.

The law allows a trying Magistrate to make local inspection for the purpose of understanding the evidence. It does not limit the power of making such local inspection to a period subsequent to the commencement of the hearing of witnesses. All that is required is that the inspection should be limited to actual observation and should not include the taking of depositions. It is, however, not competent to a trying Magistrate in the course of a local inspection to bring upon the record the statements of persons which the accused can have no chance of submitting to the test of cross-examination. *Raghunandan Prasad v. Ramadhin Singh.*

19 Cr. L. J. 6 :
42 I. C. 918 : 2 P. L. W. 218 :
A. I. R. 1918 Pat. 656.

———Local inspection—Procedure.

It is not only not objectionable but in many cases, highly advisable that a Magistrate trying a criminal case should himself inspect the scene of occurrence, in order to understand fully the bearing of the evidence given in Court; but if he does so, he should be careful not to allow any one on either side to say anything to him, which might prejudice his mind one way or another. *Faqiray Lal v. Emperor.*

21 Cr. L. J. 166 :
54 I. C. 774 : 6 O. L. J. 680 :
A. I. R. 1919 Oudh 97.

———Magistrate getting information of commission of offence—Procedure.

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Where a Magistrate gets information of an offence, he should examine one or more complainants and take action under S. 202 or, if he is taking action on his own knowledge, he should transfer the proceedings completely to the Court of a Subordinate Magistrate so that the Magistrate may proceed to inquiry or trial after recording the statement of the complainant. He can also make a report to the Police who can take action under S. 167 of the Code. *Anand Bchhari Lal v. Emperor.*

31 Cr. L. J. 998 :
126 I. C. 256 : 1930 A. L. J. 635 :
A. I. R. 1930 All. 259.

———Magistrate not hearing all evidence—
Conviction, legality of.

A conviction is illegal if the Magistrate who signed the judgment did not hear all evidence. *Alla Veeraswami Reddi v. Gunisetty Venkataswami.*

39 Cr. L. J. 680 :
175 I. C. 874 : 48 L. W. 149 :
11 R. M. 1 (1) : 1938 M. W. N. 591.

———Meaning of—Pronouncement of judgment.

The word trial as used in Cr. P. C. does not include the pronouncing of judgment. *Public Prosecutor, Madras v. Chokalingam Ambalam.*

30 Cr. L. J. 908 :
118 I. C. 274 : 29 L. W. 108 :
1929 M. W. N. 60 :
52 Mad. 355 : 56 M. L. J. 216 :
I. R. 1929 Mad. 770 :
A. I. R. 1929 Mad. 201.

———Medical evidence, use of.

The medical evidence can only be used as corroborative of the charge and not the evidence of the charge. *Muhammad Khan v. Emperor.*

35 Cr. L. J. 961 :
148 I. C. 1043 : 6 R. Pesh. 68 :
A. I. R. 1934 Pesh. 27.

———Miscellaneous.

A Police enquiry is always regarded as a harassment, and anxiety to avoid it is not necessarily an indication of guilt. *Emperor v. Azhar Mian.*

37 Cr. L. J. 559 :
161 I. C. 939 (2) : 2 B. R. 396 :
8 R. P. 498 : A. I. R. 1936 Pat. 425.

———Miscellaneous.

A private complainant who leads evidence and tries to establish the guilt of the accused as a prosecutor is a party to the criminal proceeding. *Kanhaiya Lal v. Bhagwan Das.*

26 Cr. L. J. 1485 :
89 I. C. 1053 : 23 A. L. J. 956 :
48 All. 60 : A. I. R. 1926 All. 30.

———Miscellaneous.

Allegations as to the opinion of the executive are quite out of place in a criminal information, likely to be very prejudicial to the

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give an explanation as to how the deceased met his death. *Hayat v. Emperor*.

33 Cr. L. J. 411 :
137 I. C. 59 : 33 P. L. R. 23 :
I. R. 1932 Lah. 291 :
A. I. R. 1932 Lah. 243.

—————*Murder — Medical report inconsistent with prosecution evidence—Duty of prosecution to examine doctor.*

In a case of murder or man-slaughter, where the medical report is inconsistent with the prosecution evidence, it is the duty of the prosecution to call the Medical Officer himself or to give other medical evidence in the hearing of the Jury. The prosecution has no right to stand merely upon the deposition given by the Medical Officer before the Committing Magistrate in its recorded form. *Debendra Narayan Chakravarty v. Emperor*.

30 Cr. L. J. 1031 :
119 I. C. 378 : 32 C. W. N. 632 :
56 Cal. 566 : 50 C. L. J. 1 :
I. R. 1929 Cal. 794 :
A. I. R. 1929 Cal. 244.

—————*Murder — Motive — Question of motive immaterial when direct evidence available.*

In a case where there is direct evidence of the act of the accused, the question of motive is not material if the acts themselves are sufficient to disclose the intention of the actor. *Murgi Munda v. Emperor*.

40 Cr. L. J. 786 :
183 I. C. 499 : 18 Pat. 101 :
12 R. P. 162 : 5 B. R. 955 :
20 P. L. T. 802 : A. I. R. 1939 Pat. 443.

—————*Murder—Right of private defence—Held, that accused acted in right of private defence and did not exceed it.*

The deceased's party felt themselves aggrieved at the accused's having taken more than their fixed share of water, and they came drunk and armed with deadly weapons such as *barchis* and *dangs* and attacked the accused and their companions, when they were quietly sitting under the mulberry trees in their land. They actually attacked them, causing an injury with a sharp-edged weapon to one of the accused's party. The whole of the incident lasted a minute only, and during the fight, the deceased person met with death : *Held*, that the accused had a reasonable apprehension that grievous hurt with deadly weapons would be caused to them and they clearly acted in the right of private defence. *Emperor v. Ujagar Singh Hakam Singh*.

40 Cr. L. J. 182 :
179 I. C. 223 : 11 R. L. 540 :
A. I. R. 1938 Lah. 791.

—————*Murder case—Circumstantial evidence, when sufficient.*

In a case of murder where the prosecution case is based on circumstantial evidence, the cumulative effect of which establishes the guilt of the accused, having settled the legal criterion applicable to the case, *viz.*, whether the evidence led would satisfy the jury beyond reasonable doubt of the guilt of the accused —It is then for the jury, or for the Judge, if

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there is no jury, to say, whether, applying that criterion to the facts proved, the verdict should or should not be one of guilty. *Mangal Singh v. Emperor*.

38 Cr. L. J. 573 :
168 I. C. 432 : 1937 O. W. N. 540 :
9 R. P. C. 284 : 3 B. R. 501 :
41 C. W. N. 805 : 39 P. L. R. 426 :
1937 O. L. R. 297 : 1937 M. W. N. 633 (2) :
46 L. W. 33 : I. L. R. 1937 Lah. 371 :
31 S. L. R. 300 : 39 Bom. L. R. 960 :
64 I. A. 134 : 1937 A. W. R. 1014 :
(1937) 2 M. L. J. 684 P. C. :
A. I. R. 1937 P. C. 179.

—————*Murder case — Condition of food in deceased's stomach, how far evidence of time of death.*

Too much stress should not be laid upon the condition of the food in a deceased man's body when the question is what time has passed between his death and his last meal inasmuch as the process of digestion is sometimes very greatly delayed when the deceased is an Indian and the food is vegetable food. *Ganga v. Emperor*.

31 Cr. L. J. 689 :
124 I. C. 444 : 6 O. W. N. 1056 :
4 Luck. 726 : A. I. R. 1930 Oudh 60.

—————*Murder case—Witness testifying on oath—Inference.*

If a witness goes into the witness-box and testifies on oath, the jury, unless there is something else to operate on their minds, may draw an inference not as a matter of law, but rather as a matter of fact that he is *prima facie* likely to be speaking the truth, particularly in capital cases. *Cyril Beatram Plueknott v. Emperor*.

41 Cr. L. J. 59 :
184 I. C. 614 : 682 I. L. R. 1939 Cal. 187 :
43 C. W. N. 133 : 12 R. C. 251 :
A. I. R. 1939 Cal. 682.

—————*Murder committed during fracas—Person taking subsidiary part—Nature of evidence.*

It is necessary in cases where there is a fracas and especially where attention is more particularly drawn to a person who is guilty of the act of stabbing, that the evidence against persons who are taking a subsidiary part should be consistent and clear from the beginning before it can be acted upon by a Court. *Nga Sse Myint v. Emperor*.

38 Cr. L. J. 366 :
166 I. C. 994 : 9 R. Rang. 303 :
A. I. R. 1937 Rang. 4.

—————*Murder or culpable homicide—Nature of weapon.*

The accused who was a boy of 18 years on his wedding day, being excited by some incident and being inflamed to some extent by drink, struck a heavy blow on the head of the deceased who was already lying prostrate owing to the assault on him by other person, which caused his death. The stick was heavy one but there was no evidence that it was specially picked out from other sticks. The medical evidence was that the blow was necessarily fatal : *Held*, it was not for the Court to invent a defence which would bring the accused within the ambit of culpable homicide merely. The injury was

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case in accordance with a statement made by the accused's father agreeing to the disposal of the case upon the special oath of the complainant. *Tirlok Nath v. Emperor*.

28 Cr. L. J. 301 :
100 I. C. 381 : A. I. R. 1927 All. 742.

—————*Miscellaneous—Dismissal for default—Re-opening of case.*

In India a Court cannot review or alter its own judgment in a criminal case, but it has jurisdiction to hear and determine a criminal case which has not been heard and determined on the merits. Therefore, where the Court discharged a rule because no one appeared in support of it: *Held*, that it had power to re-open it. *Bibhuty Mohun Roy v. Dasimoni Dassi*.

10 Cr. L. J. 287 :
3 I. C. 399 : 10 C. L. J. 80.

—————*Miscellaneous.*

Every member of the public including a Police Officer has a right to set the law in motion by complaint. *Mahomed Rafiq v. Emperor*.

33 Cr. L. J. 41 :
134 I. C. 1004 : 25 S. L. R. 9.
I. R. 1931 Sind 156 :
A. I. R. 1931 Sind 116.

—————*Miscellaneous — Evidence—Murder — Post mortem certificate by itself is no substantive evidence—Isolated statement in it cannot, without guidance of doctor, be used for drawing inferences.*

Where a post mortem certificate contains a statement that some quantity of undigested kora food was found in the stomach of the deceased, it is unsafe for the Court to act upon such an isolated statement without the guidance of the opinion of the doctor and to draw an inference that death must have taken place within a very short time of the taking of the last meal by the deceased. *In re: Ramaswami*.

40 Cr. L. J. 596 :
181 I. C. 849 : 1938 M. W. N. 36 :
47 L. W. 272 : 11 R. M. 870 :
A. I. R. 1938 Mad. 336.

—————*Miscellaneous.*

Inclusion of innocent along with guilty and ascribing principal part to guilty persons—Tendency in N.-W. F. Province deprecated. *Khatla Khan v. Emperor*.

36 Cr. L. J. 958 :
156 I. C. 433 : 7 R. Pesh. 126 :
A. I. R. 1935 Pesh. 75.

—————*Miscellaneous — Inherent powers of Criminal Courts.*

Criminal Courts, no less than Civil Courts, exist for the administration of justice, and Courts of both description have inherent power to mould the procedure, subject to the statutory provisions applicable to the matter in hand, to enable them to discharge their functions as Courts of Justice. *Budhu Lal v. Chaltu Gope*.

18 Cr. L. J. 497 :
39 I. C. 465 : 21 C. W. N. 209 :
25 C. L. J. 193 : 44 Cal. 816 :
A. I. R. 1918 Cal. 850.

—————*Miscellaneous.*

It is almost impossible for a person to recall

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definitely that a statement was not read over to a witness at a certain place when the witness does not recollect definitely where it actually was so read over. *Jahangir Lal v. Emperor*.

35 Cr. L. J. 1180 :
150 I. C. 1056 : 7 R. L. 58 :
A. I. R. 1935 Lah. 230.

—————*Miscellaneous.*

It is more important that justice should be administered strictly by Criminal Courts than that persons involved in a slight offence should be punished. *Phukan Singh v. Emperor*.

32 Cr. L. J. 1025 :
133 I. C. 449 (b) : 12 P. L. T. 471 :
I. R. 1931 Pat. 369 : A. I. R. 1931 Pat. 345.

—————*Miscellaneous—Murder—Test of live-birth of child.*

The fact that the lungs on suction floated in water is not an infallible test of live-birth. A child may breathe while its head is in the vagina, either during a presentation of the head or of the breech. *In re: Boya Latchmalika*.

41 Cr. L. J. 579 :
188 I. C. 332 : 1939 M. W. N. 1130 :
50 L. W. 791 : 17 R. M. 22 :
A. I. R. 1940 Mad. 294.

—————*Miscellaneous.*

Offence under the Penal enactment, person guilty of major offence is guilty of minor offence. *Mohammad Gul Rohilla v. Emperor*.

33 Cr. L. J. 849 :
140 I. C. 49 : 28 N. L. R. 233 :
I. R. 1932 Nag. 118 : A. I. R. 1932 Nag. 121.

—————*Miscellaneous—Precedent.*

It is always dangerous to take certain observations made in certain cases with reference to the particular facts of that case, and apply them indiscriminately. *Binda v. Emperor*.

35 Cr. L. J. 1489 :
152 I. C. 85 : 1934 O. L. R. 819 :
11 O. W. N. 1224 : 7 R. O. 177 :
A. I. R. 1934 Oudh 485.

—————*Miscellaneous—Prosecution implicating wrong persons—Effect.*

Where complainants choose to suppress the real facts and give false or unreliable evidence in order to implicate their enemies; the only result is that the persons who are probably guilty have to be acquitted. *Emperor v. Bharat Singh*.

33 Cr. L. J. 932 :
139 I. C. 740 : 9 O. W. N. 145 :
I. R. 1932 Oudh 390.

—————*Miscellaneous.*

Question of title—Expression of opinion on title must be limited to points necessary to determine. *Ghyasuddin Ahmad v. Emperor*.

33 Cr. L. J. 864 :
139 I. C. 616 : 13 P. L. T. 288 :
11 Pat. 523 : I. R. 1932 Pat. 251 :
A. I. R. 1932 Pat. 215,

—————*Miscellaneous—Right of private defence —Deceased's cattle straying into accused's land—Accused with lathis driving them—Attempt to rescue—Free fight—Death.*

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———Person guilty of culpable cowardice
Inference of perjury.

From the fact that a person is guilty of culpable cowardice, it is not safe to infer that he is not only a coward but also a perjurer. *Emperor v. Mahomed Khobar.*

35 Cr. L. J. 736 :
148 I. C. 672 : 6 R. S. 196 :
A. I. R. 1934 Sind 6.

———Plea of guilty—*Informal admission as to guilt—Whether amounts to plea of guilty—Proceedings under S. 110, Criminal Procedure Code.*

A plea of guilty in a Criminal Court can only be made in response to a charge made by the Court and an informal admission as to guilt does not amount to a formal plea of guilty, and such an admission has not the same binding effect as a plea of guilty. It has not the same effect in fact and it has not the same effect in law. It is quite obvious that an admission of guilt in proceedings under S. 110, Cr. P. C., or in proceedings of a more informal character cannot amount to a plea of guilty. *Superintendent and Remembrancer of Legal Affairs, Bengal v. Jiban Kumar De.*

37 Cr. L. J. 818 :
163 I. C. 228 (2) : 8 R. C. 727 :
A. I. R. 1936 Cal. 292.

———Plea of guilty, value of.

When no offence has been committed in the eye of law, the plea of guilty does not avail against the accused. *Darkan v. Emperor.*

29 Cr. L. J. 645 :
110 I. C. 101 : A. I. R. 1928 Lah. 827.

———Plea of guilty, what is.

An accused person does not plead to a section of a criminal Statute. He pleads guilty or not guilty to the facts alleged to disclose an offence under that section. *Bahadur Singh v. Emperor.*

33 Cr. L. J. 646 (2) :
138 I. C. 400 : 33 P. L. R. 273 :
I. R. 1932 Lah. 470 :
A. I. R. 1932 Lah. 363.

———Plea of guilty, what is.

The statements made by accused in explanation of his conduct do not amount to plea of guilty. *Ram Bali v. Emperor.*

38 Cr. L. J. 147 :
166 I. C. 219 : 1936 O. L. R. 727 :
9 R. O. 293 : 1937 O. W. N. 34 :
A. I. R. 1937 Oudh 207.

———Plea of guilty, what is.

Where the accused did not formally plead guilty, the fact that he threw himself on the mercy of the Court, should not prejudice him. *Deputy Legal Remembrancer v. Upendra Kumar.*

6 Cr. L. J. 434 :
14 C. W. N. 140.

———Plea of guilty.

Where the accused at the time of making an incriminating statement is enfeebled by illness and is undefended, a withdrawal of

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the plea can be allowed if the accused wishes to withdraw it. *Emperor v. Shuldham. (F. B.)*

16 Cr. L. J. 257 :
28 I. C. 145 : 222 P. L. R. 1915 :
14 P. W. R. 1914 Cr. :
A. I. R. 1915 Lah. 487.

———Plea of guilty.

Where to a charge under S. 376, I. P. C., the accused made the following answer: "I did not commit rape, I only held the lady's hands:" Held, that the answer constituted a plea of guilty. *Emperor v. Shuldham. (F. B.)*

16 Cr. L. J. 257 :
28 I. C. 145 : 222 P. W. R. 1915 :
14 P. W. R. 1914 Cr. :
A. I. R. 1915 Lah. 487.

———Police diary.

Accused has no right to insist on police witness referring to his diary to refresh his memory. *Mohinder Singh v. Emperor.*

33 Cr. L. J. 97 :
135 I. C. 209 : I. R. 1932 Lah. 81 :
A. I. R. 1932 Lah. 103.

———Police diary—Statements in—Value—Evidence, in rebuttal of—Nature of.

There is an initial presumption of accuracy in the case of official records, but in the case of the statements of witnesses recorded in Police diaries, the burden of rebutting it is not very heavy. Where the witness is a respectable educated man and quite disinterested and the difference between what he did say and what he is recorded as saying is very slight and could easily have been due to a misunderstanding by the Police Officer recording the statement, the Court may accept as correct his denial of the accuracy of the statement attributed to him by the Police Officer. *Radha Kishen v. Emperor.*

40 Cr. L. J. 261 :
179 I. C. 880 : 11 R. L. 642 :
A. I. R. 1938 Lah. 714.

———Police diary, witness whether can be compelled to refer to.

A Court cannot compel a Police witness to refer to the Police diary to refresh his memory. *Shaikh Dilawar v. Emperor.*

27 Cr. L. J. 757 :
95 I. C. 277.

———Police Officers, should not be allowed to raise communal questions with a view to serve their own purpose.

It will be an evil thing for the administration of criminal justice if Police Officers are permitted to raise communal questions with a view to serve their own purposes. The only pertinent point for consideration in a criminal trial is to decide the question of guilt or innocence of the accused. That matter has to be decided with reference to the evidence produced in the case and no one connected with the prosecution should be permitted to introduce into the case their personal differences which might go to throw

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———Miscellaneous.

The right of private person to arrest offenders is more restricted in India than in England. *Abdul Aziz v. Emperor*. 35 Cr. L. J. 725 :

148 I. C. 574 : 14 P. L. T. 464 :
6 R. P. 490 : A. I. R. 1933 Pat. 508.

———Miscellaneous.

There is nothing contrary to law in a trial being conducted in one Court and an enquiry into an accusation arising out of the same facts in another Court. But such a procedure is highly inconvenient and where the evidence is bound to be the same, there is a possibility of the two courts independently arriving at a different estimate of the evidence. *Kanhaya Lal v. Emperor*. 34 Cr. L. J. 519 :

143 I. C. 77 : 29 N. L. R. 201 :
I. R. 1933 Nag. 149 :
A. I. R. 1933 Nag. 78.

———Miscellaneous—Title.

It is desirable to limit one's finding as to title in criminal proceedings to those cases in which a finding is necessary and to those points only which the court is compelled to determine. *Matte Mandal v. Emperor*. 33 Cr. L. J. 509 :

137 I. C. 693 : 13 P. L. T. 193 :
I. R. 1932 Pat. 156 : A. I. R. 1932 Pat. 189.

———Miscellaneous—Technical points, value of.

Too much weight should not be given to technical points in the trial of a criminal case when those technicalities can, in no way, cause a failure of justice. *Chwa Hum Htwe v. Emperor*. 34 Cr. L. J. 652 :

143 I. C. 824 : 11 Rang. 107 :
I. R. 1933 Rang. 77 : A. I. R. 1933 Rang. 146.

———Misjoinder.

Misjoinder of charges—Charges under Ss. 302 and 201, Penal Code—Acquittal under S. 302 and conviction under S. 201—Conviction is legal. *Sawanta v. Emperor*. 33 Cr. L. J. 283 :

136 I. C. 376 : I. R. 1932 All. 200 :
A. I. R. 1932 All. 71.

———Misjoinder, tests of—Conviction under different charges—Trial, if vitiated—Proof of offences going to prove conspiracy and conspiracy to commit offence—Charges under both in one trial—Validity.

The test, whether a trial is or is not bad owing to a misjoinder of charges, is not the number of offences of which the accused has been convicted. It is the number of offences with which he has been charged. The trial is bad, not because the accused has been wrongly convicted but because he has been wrongly tried. It is the multiplicity of charges which vitiates the trial and prejudices the accused in his defence. Special considerations attach to a charge of conspiracy and things done in pursuance thereof. In many cases, the offence of conspiracy is only provable by proof of the offences done in pursuance thereof. If the proof of these offences can be used to prove the conspiracy, it follows that it is only reasonable they can be proved as substantive offences

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against the accused in the same trial. An accused can, therefore, be charged with offences under conspiracy and acts done in pursuance thereof as they form part of the same transactions. *Emperor v. Balumal Hotchand*. 39 Cr. L. J. 890 :

177 I. C. 346 : 11 R. S. 58 :
A. I. R. 1938 Sind 171.

———Misjoinder of charges—Waiver of defect by accused.

An accused person cannot, in a criminal trial, waive the benefit of the legal provisions regulating the trial, and where there is a misjoinder of the charges the conviction must be set aside. *In re : Rangaswami Chetty*. 8 Cr. L. J. 152 :

3 M. L. T. 407 : 18 M. L. J. 330.

———Misjoinder of charges.

Where the accused are charged for the offences in respect of the specific instances committed as parts of the same transaction with the offence of conspiracy, there is no misjoinder of charges. *Ram Krishna Sinha v. Emperor*. 39 Cr. L. J. 417 :

174 I. C. 513 : 42 C. W. N. 246 : 10 R. C. 693 :
A. I. R. 1938 Cal. 195.

———Misreception of evidence, effect of.

Misreception of a piece of evidence, which has little weight and which has not resulted in any substantial injustice is no ground for setting aside a conviction. *Sobrai Sao v. Emperor*. 31 Cr. L. J. 721 :

124 I. C. 836 : 11 P. L. T. 148 : 9 Pat. 474 :
A. I. R. 1930 Pat. 247.

———Motive—Absence of—Effect.

The absence of a motive is, however, not a sufficient reason for coming to the conclusion that the witnesses in the case are all telling lies, or that the confession of the accused is false. *Sukni Chamain v. Emperor*. 37 Cr. L. J. 543 :

162 I. C. 25 : 2 B. R. 410 : 8 R. P. 506 :
A. I. R. 1936 Pat. 245.

———Motive, absence of—Effect.

The absence of ascertainable motive comes to nothing, if the crime is proved to have been committed by a sane person. *Emperor v. Mahomed Khabar*. 35 Cr. L. J. 736 :

148 I. C. 672 : 6 R. S. 196 :
A. I. R. 1934 Sind 6.

———Motive, absence of—Evidence, clear, effect of.

When there is clear evidence that a person has committed an offence, it is unnecessary to prove a motive. *Mohna v. Emperor*. 26 Cr. L. J. 774 :

86 I. C. 406 : 7 L. L. J. 59 :
A. I. R. 1925 Lah. 328.

———Motive—Absence of adequate motive—Effect.

Absence of motive or the existence of an inadequate motive is a matter of comparative unimportance, where there exists absolutely cogent evidence that a crime has,

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———*Practice—Appeal from conviction on private prosecution—Complainant, if entitled to be heard by an Advocate.*

The strict rule is that in an appeal against a conviction, only the Crown is entitled to be served with notice, and heard. Nobody but the Crown is entitled to be heard, because no private citizen is technically interested in upholding a conviction. But the true rule, which should be followed in all Courts, is that in private prosecutions, the Court in its discretion may allow the complainant to appear by an Advocate, but it is not in any case bound to do so. *Pragji Bhulabhai v. Bhagwanji Bawabhai.*

41 Cr. L. J. 245 :
185 I. C. 795 : 41 Bom. L. R. 1231 :
12 R. B. 311 : A. I. R. 1940 Bom. 14.

———*Practice—Calendar cases triable by First Class Magistrate.*

The Sub-Divisional Magistrate has no power to direct the Second Class Sub-Magistrate to treat the calendar cases which are triable by a First Class Magistrate as Sessions cases. If he thinks that those cases ought to be tried by the Court of Session, he should proceed himself to commit them to the Sessions Court under S. 347. His order practically amounts to a refusal to exercise his jurisdiction and to perform his duty. *In re : Gorrepaty Ramasubbayya.*

39 Cr. L. J. 715 :
176 I. C. 182 : 1938 M. L. J. 403 :
47 L. W. 486 : 1938 M. W. N. 417 :
11 R. M. 45 : A. I. R. 1938 Mad. 529.

———*Practice—Copies necessary to move superior Court—Magistrate's right to dictate—Copies, application for.*

It is not for the Magistrate to decide what copies the litigant should have in order to move a superior Court. An order of a Magistrate which thrusts upon an applicant copies which he does not want and makes him pay for them, is without any justification and must be deprecated. *Amar Singh v. Sadhu Singh.*

26 Cr. L. J. 853 :
86 I. C. 709 : 2 Lah. Cas. 28 : 6 Lah. 396 :
7 L. L. J. 241 : A. I. R. 1925 Lah. 361.

———*Practice—Counsel cited as witness by Police in criminal case—Legal practitioner.*

The mere fact that a Lawyer is cited as a witness by the prosecution will not disqualify him from appearing as Counsel for the accused in the case. The mere citing of an Advocate as a witness by the Police does not operate as a disqualification. It is easy to imagine the extraordinary results which might follow otherwise. *Kandan Padayachi v. T. S. Arumugam.*

40 Cr. L. J. 92 :
178 I. C. 532 : 48 L. W. 276 :
1938 2 M. L. J. 446 : 1938 M. W. N. 976 :
11 R. M. 470 : A. I. R. 1938 Mad. 878.

———*Practice.*

Difficult Sessions case should be tried by Sessions Judge himself. *Nga Ba Din v. Emperor.*

37 Cr. L. J. 196 :
159 I. C. 1050 : 8 R. Rang. 317 :
A. I. R. 1935 Rang. 406.

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———*Practice—Disposal of application in.*

Where a Magistrate passes no orders on the application made by the defence for permission to cross-examine a witness examined by it as a defence witness, but merely says "file", on it, this is not a proper way of disposing of an application in the course of a criminal trial. *Chokat Ahir v. Suraj Singh.*

41 Cr. L. J. 257 :
186 I. C. 182 : 6 B. R. 301 :
21 P. L. T. 627 : 12 R. P. 474 :
A. I. R. 1940 Pat. 299.

———*Practice—Duty of Criminal Courts to protect possession.*

It is the duty of the Criminal Court to protect possession which has been given to a person by a Rent Court, whether the possession is symbolic or physical. *Chandran v. Emperor.*

34 Cr. L. J. 728 :
144 I. C. 241 : 14 P. L. T. 570 :
I. R. 1933 Pat. 224 : A. I. R. 1933 Pat. 194.

———*Practice—English Law.*

It is opposed to the principles of English justice to commence proceedings by subjecting an accused person who has not offered to make a confession to a searching cross-examination. *Chedan v. Emperor.*

1 Cr. L. J. 699 :
7 O. C. 191.

———*Practice—Evidence—Conflict in evidence of witness—Effect.*

A criminal trial is not a litigious proceeding. When there is unmistakable conflict in the evidence of a witness for the prosecution, the alternative most unfavourable to the accused is not to be accepted as a necessity, merely because the witness has not been asked which version he prefers. *Emperor v. Rashid.*

5 Cr. L. J. 202 :
9 Bom. L. R. 212.

———*Practice—Examination of witness in committal Court—Public Prosecutor, if should call him or tender him for cross-examination.*

Where a witness had been examined as a witness in the committal Court, it is not the duty of the Public Prosecutor to call him unless it is thought that he can give material information in connection with the offence charged; nor is it his duty to tender him for cross-examination. If the Judge advises the Public Prosecutor as to how the latter should exercise his discretion, no exception can be taken to it; but if the Judge goes further and instructs the Public Prosecutor not to call him, this is going too far. *Brahmayya v. The King.*

40 Cr. L. J. 265 :
179 I. C. 783 : 11 R. Rang. 347 :
A. I. R. 1938 Rang. 442.

———*Practice—Hearing of cases can be accelerated.*

There is nothing in the Cr. P. C. to prevent a Magistrate from accelerating the hearing of a case. *Ramditta Mal Dunichand v. Emperor.*

40 Cr. L. J. 847 :
184 I. C. 10 : 12 R. Pesh. 22 :
[A. I. R. 1939 Pesh. 38.

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———Motive.

The absence of a strong motive cannot be conclusive. *Paucha v. Emperor*.

33 Cr. L. J. 714 :
139 I. C. 147 : I. R. 1932 All. 536 :
A. I. R. 1932 All. 233.

———Motive.

The existence of hostility as a motive for a criminal act is no more than a piece of circumstantial evidence and falls short of proving the participation of the accused in the offence, which is sought to be fastened upon him. *Emperor v. Shambhu*.

33 Cr. L. J. 201 :
135 I. C. 838 : 1932 A. L. J. 162 :
I. R. 1932 All. 102 : A. I. R. 1932 All. 228.

———Motive.

What may be a sufficient motive for one individual, may not be sufficient motive for others. *Hofijuddi v. Emperor*.

35 Cr. L. J. 1357 :
151 I. C. 486 : 38 C. W. N. 777 :
7 R. C. 136 : A. I. R. 1934 Cal. 678.

———Murder—Burden to show that murder was act of person other than deceased.

The burden lies on the prosecution to establish that the act alleged to constitute murder was really the act of a person other than the deceased. The burden is not cast upon an accused person of proving that no crime has been committed though it has been established that the accused has special knowledge on the point whether a crime was committed or not. *In re : Kanakasabai Pillai*.

41 Cr. L. J. 369 :
186 I. C. 704 : 1939 M. W. N. 883 :
50 L. W. 452 : 12 R. M. 682 :
A. I. R. 1940 Mad. 1.

———Murder, charge of — Plea of guilty, acting on.

When an accused is on his trial on a capital charge, it is not expedient that the Sessions Court should convict him even upon a plea of guilty entered before the Trial Court itself. *Sukhia v. Emperor*.

24 Cr. L. J. 609 :
73 I. C. 497 : 20 A. L. J. 669 :
A. I. R. 1922 All. 266.

———Murder—Circumstantial evidence.

The accused set out one afternoon with his wife who had been unfaithful to him, from one village to another village. The woman was not subsequently seen alive by anyone. The woman did not return to the village nor was she seen with the accused when he visited a village near about the same night or at any of the places which he later on visited. The body of the woman was discovered between the two villages : *Held*, that there was a heavy onus on the accused under the circumstances of the case and in view of the strong motive for murdering his wife, to explain what happened to his wife on the afternoon on which they started. The fact that he did not say a word about his wife from that date till his arrest, along with the circumstances of the case was strong circumstantial evidence that

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he was responsible for the death of his wife. *Fazal Karim v. Emperor*.

A. I. R. 1936 Lah. 580.

———Murder—Conviction for—Tampered evidence—Guilt not proved beyond reasonable doubt—Conviction.

Where there are strong reasons for suspecting that evidence had been tampered with and there are grave reasons for suspecting that the accused was the man who committed the murder, but on the record as it stands, it is impossible to say that his guilt has been proved beyond all reasonable doubt and there is a support given to the dying declaration of the deceased by an incredible witness, the conviction of the accused is not warranted. *Nga Kin Maung v. The King*.

39 Cr. L. J. 70 :
172 I. C. 110 : 10 R. Rang. 219 :
A. I. R. 1937 Rang. 431.

———Murder.

Death must be proved—Identification of corpse is unnecessary—Discovery of blood-stained weapons should show connection with murder. *Mehr Singh v. Emperor*.

37 Cr. L. J. 250 :
160 I. C. 187 : 38 P. L. R. 138 :
8 R. L. 505 : A. I. R. 1935 Lah. 805.

———Murder—Evidence—Conspiracy to wrongly implicate some person—Dying declaration of deceased also showing such conspiracy—Duty of Court.

Where in a case there is clearly a conspiracy wrongly to implicate a particular individual, and the dying declaration of the person murdered points to the same effect before the Courts can rely upon the evidence of witnesses who have so conspired and who had such influence over the dying man that they can induce him to serve their purpose, there must be some other evidence which will enable the Court to distinguish the true from the false. *Deugo Kadero v. Emperor*.

39 Cr. L. J. 545 :
175 I. C. 99 : 10 R. S. 282 :
A. I. R. 1938 Sind 94.

———Murder—Evidence—Investigating Police Officer, testimony of, value of—Corroboration, necessity of.

If in a trial for murder it is intended to rest the prosecution case to a material extent upon observations said to have been made on the spot by the investigating Police Officer, it is well that such officer should be taught the advisability of securing for his observations the same sort of corroboration by independent witnesses that he is required to secure in connection with his first inspection of the corpse and the preparation of the Inquest Report on the same. *Hansraj Singh v. Emperor*.

18 Cr. L. J. 1028 :
42 I. C. 772 : 15 A. L. J. 340 :
A. I. R. 1917 All. 224.

———Murder—Evidence.

Where two persons are seen together and shortly afterwards one of them is found to have been murdered, the survivor is not bound to

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factorily and without any reasonable doubt shown that the guilt is brought home to the accused. *Basdeo Koiri v. Emperor*.

39 Cr. L. J. 254 :
172 I. C. 944 : 18 P. L. T. 915 :
4 B. R. 204 : 10 R. P. 369 :
A. I. R. 1938 Pat. 12.

-----Presumption of innocence—Rebuttal.

Every accused person is entitled to be presumed to be innocent till there is evidence of his guilt; and the presumption ought not to be too easily displaced and it may be right to have regard to the position in life of the accused in considering whether it is displaced. That is not to say that by reason of wealth, position or age, any subject is to be deemed to be immune from the consequences of his actions if in fact they are criminal. *Chandreshwar Prasad Narain Singh v. Arunendra Mohan Ghose*.

38 Cr. L. J. 2 :
165 I. C. 931 : 17 P. L. T. 794 :
3 B. R. 104 : 9 R. P. 231 :
A. I. R. 1936 Pat. 626.

-----Presumption of innocence.

It is a fundamental principle of Criminal Law that every accused person must be presumed to be innocent unless and until he has been proved beyond reasonable doubt to be guilty. *Major Robert Stuart Wanhope v. Emperor*.

35 Cr. L. J. 156 :
146 I. C. 767 : 58 C. L. J. 405 :
33 C. W. N. 187 : 6 R. C. 257 :
A. I. R. 1933 Cal. 800.

-----Presumption of innocence.

Only inference of guilt possible—Conviction—Penal Code, S. 405—Held, on facts that offence was committed. *Abdus Salam v. Emperor*.

37 Cr. L. J. 219 :
160 I. C. 12 : 2 B. R. 153 :
8 R. P. 326 : A. I. R. 1936 Pat. 108.

-----Presumption of innocence.

Prima facie case against accused—Presumption of innocence is displaced. *Emperor v. Bhuro*.

35 Cr. L. J. 1142 :
150 I. C. 726 : 7 R. S. 21 :
A. I. R. 1934 Sind 84.

-----Presumption of innocence.

Prosecution not proving case against accused—No inference from defence need be drawn. *Emperor v. C. Barwick*.

33 Cr. L. J. 220 :
136 I. C. 5 : 33 P. L. R. 443 :
13 Lah. 573 : I. R. 1932 Lah. 181 :
A. I. R. 1932 Lah. 345.

-----Previous conviction—Admissibility.

No evidence of a previous conviction should be allowed to be adduced in the course of a trial save in a few well-defined and exceptional circumstances. *Parbati Dasi v. Emperor*.

35 Cr. L. J. 722 :
148 I. C. 597 : 58 C. L. J. 1 :
6 R. C. 472 : A. I. R. 1934 Cal. 198.

-----Previous conviction, cognizance of.

Where the record does not show either that the accused admitted the previous convictions or that any legal evidence of them was ad-

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duced, the High Court cannot take them into consideration. *Emperor v. Appa Ganpat*.

37 Cr. L. J. 43 :
159 I. C. 176 : 37 Bom. L. R. 656 :
8 R. B. 182 : A. I. R. 1935 Bom. 399.

-----*Prima facie* case established against accused—Accused withholding rebuttal evidence—Inference.

Per Teunon, J.—Where after a *prima facie* case of circumstances making out or tending to support a charge against the accused having been established, the accused withholds evidence in disproof or explanation available to him and not accessible to the prosecution, inferences unfavourable to the accused may legitimately be drawn. The prosecution is not required to produce and examine a witness whom the Crown regards and has reasonable grounds for regarding him as an accomplice. *Ashraf Ali v. Emperor*. 19 Cr. L. J. 81 :
43 I. C. 241 : 21 C. W. N. 1152 :
A. I. R. 1918 Cal. 314.

-----Privy Council—Appeal to Privy Council—Special leave.

Points not properly raised at the trial are not points which, in ordinary circumstances, deserve much consideration as grounds for special leave to the Privy Council. Appeals in criminal matters under Cl. 41 of the Letters Patent (Cal.) should not be encouraged where no point of law has been raised by the Trial Judge nor will an application for special leave to appeal as an alternative be granted as a matter of course. *Barendra Kumar Ghose v. Emperor*.

26 Cr. L. J. 431 :
85 I. C. 47 : 29 C. W. N. 181 :
1925 M. W. N. 26 : 26 P. L. R. 50 :
27 Bom. L. R. 148 : 6 P. L. T. 169 :
23 A. L. J. 314 : 41 C. L. J. 240 :
48 M. L. J. 543 : 1 O. W. N. 935 :
52 Cal. 197 : 52 I. A. 40 P. C. :
A. I. R. 1925 P. C. 1.

-----Procedure—Adjournments.

The intention of the Cr. P. C. is that a trial before a Court of Session should proceed and be dealt with continuously from its inception to its finish. Adjournments should be granted only on the strongest possible ground and for the shortest possible period. *Badri Parsad v. Emperor*. 13 Cr. L. J. 861 :
17 I. C. 797 : 10 A. L. J. 473.

-----Procedure—Calling upon accused before complainant.

It is not only irregular but illegal for a Magistrate to whom a complaint is made to call upon the accused for a report as to the truth or falsity of the charge preferred against him before calling upon complainant to substantiate his allegations. *Mukti Narayan Gir v. Emperor*.

41 Cr. L. J. 349 :
186 I. C. 627 : 20 P. L. T. 947 :
6 B. R. 377 : 12 R. P. 534 :
A. I. R. 1940 Pat. 97.

-----Procedure—Change.

A Magistrate cannot, to the prejudice of the accused, change his procedure in the middle of

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inflicted upon a person who was already lying prostrate which was necessarily fatal, and as such, the offence was one of murder. *Nga Paw v. The King*. 39 Cr. L. J. 403 :

174 I. C. 442 : 10 R. Rang. 406 :
A. I. R. 1938 Rang. 62.

———Nature of defence should be ascertained from evidence and argument as well as from accused's statement—*Plea of private defence not raised in written statement—Duty of Judge to leave the question to Jury if there is some evidence in support of plea.*

In a criminal trial the nature of the defence is to be ascertained not only from the statements of the accused persons themselves, but also from the trend of the cross-examination of the prosecution witnesses and from the arguments of the accused's Pleader at the close of the trial : Therefore, where there is some evidence in support of the plea of private defence, even if the plea was not set up in the accused's written statement, the Judge should leave it to the Jury to decide on a consideration of the evidence as a whole, whether the existence of the right of private defence had or had not been established, and if so, what would be the effect of the existence of that right on the question of the liability of the various accused persons in respect of the charges on which they had been tried. *Kuti v. Emperor*.

31 Cr. L. J. 1203 :
127 I. C. 263 : 51 C. L. J. 339 :
A. I. R. 1930 Cal. 442.

———Oath, nature of.

Unsatisfactory nature of the oath administered to Indian witnesses in Indian courts pointed out. *Ujagar v. Emperor*. 35 Cr. L. J. 353 :

146 I. C. 957 : 1933 A. L. J. 1597 :
55 All. 639 : 6 R. A. 384 :
A. I. R. 1933 All. 834.

———Offences falling both under special and general laws—*Procedure.*

Offence covered by special as well as general law—It is more appropriate to prosecute under special law. *Emperor v. Jiwa Ram*.

33 Cr. L. J. 309 :
136 I. C. 571 : 1932 A. L. J. 519 :
I. R. 1932 All. 219 : A. I. R. 1932 All. 69.

———Offence falling under special and general law—*Conviction under special law.*

Where an act is an offence under a specific law and such an offence can also be punished under that specific law, that law, and not the general law would apply. *In re : Oudh Bar Association, Lucknow, through the President : Emperor v. Mohan Lal Saksena*. 32 Cr. L. J. 104 :

128 I. C. 221 : 7 O. W. N. 895 :
I. R. 1931 Oudh 29 : 6 Luck. 266 :
A. I. R. 1930 Oudh 497.

———Offence punishable under two separate provisions of law—*Option of prosecution.*

The fact that making false statements in any return, report or certificate required under the provisions of the Companies Act is made punishable under S. 282 of the said Act, does

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not bar a prosecution for such an offence under S. 477-A, Penal Code, inasmuch as when an offence is punishable under two separate provisions of law, in the absence of an express provision to the contrary, it is open to the prosecution to choose the law under which the offender should be prosecuted. *Ram Chand Gurwala v. Emperor*. 27 Cr. L. J. 1383 :
98 I. C. 599 : A. I. R. 1926 Lah. 382.

———Opinion in prior trial—*Previous convict—Magistrate, duty of.*

It is not easy for a Magistrate to keep his mind entirely free from prejudice when the record and Police papers show that the prisoner in the dock is an ex-convict. But the provision of S. 310, Cr. P. C. whereby, in Sessions trials, all knowledge of previous conviction is rightly withheld from Jurors and Assessors until after the accused has either pleaded, or been found guilty, indicate the importance of the complete exclusion of such knowledge when weighing the evidence as to the truth or otherwise of the main charge. The principle underlying this legal provision may also be seen in S. 54, Evidence Act, under which a previous conviction is declared inadmissible against an accused person except where evidence of bad character is relevant. *Maung E Gyi v. Emperor*. 25 Cr. L. J. 618 :

81 I. C. 106 : 1 Rang. 520 :
A. I. R. 1924 Rang. 91.

———Oral testimony, value of.

Oral testimony of witnesses is evidence only when right and opportunity to cross-examine exists—Otherwise it is a mere statement. *Mohamed Husain v. Fakhruallah Beg*.

34 Cr. L. J. 58 :
140 I. C. 689 : 9 O. W. N. 782 :
8 Luck. 135 : I. R. 1933 Oudh 10 :
A. I. R. 1932 Oudh 298.

———Pardon.

Inquiry into one conspiracy disclosing another—Accused in latter, witness in former—Trial by former Court, is not necessary—Pardon in his favour can be implied. *Chandra Shekhar Prosad v. Emperor*. 36 Cr. L. J. 500 :

154 I. C. 387 : 7 R. P. 464 :
A. I. R. 1935 Pat. 91.

———Party feuds—*Duty of Court.*

Great care and caution must be exercised in such cases so that the chances of innocent persons being punished may be entirely eliminated or at least may be reduced to the lowest possible minimum. *Emperor v. Muzaffar*.

32 Cr. L. J. 1079 :
133 I. C. 865 : 32 P. L. R. 405 :
I. R. 1931 Lah. 833 : A. I. R. 1931 Lah. 465.

———Parties' right of arguments.

There should not be any arbitrary and undue curtailment by the Court of the parties' right of argument. *Samarendra Kumar Chakravarty v. Emperor*. 38 Cr. L. J. 673 :

169 I. C. 48 : 15 Pat. 817 :
9 R. P. 526 : 3 B. R. 514 :
18 P. L. T. 535 : A. I. R. 1937 Pat. 263.

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persons, he is practically bound to commit both the cases to the Court of Session, and leave to that Court to attempt to discover which of the two stories is true. The Sessions Court has then to try two cases instead of one, and the Government Pleader prosecuting is faced with the difficulty of pressing before the Court with equal assiduity two cases which cannot both be true. When each case ends in a conviction, and there are appeals, the Government Advocate finds himself here also in an extremely difficult position, since it is clearly impossible for him to urge the correctness of both the opposing versions, and it is extremely difficult for him to decide which case to represent as the correct one. *Mangali v. Emperor*.

37 Cr. L. J. 1109 :
165 I. C. 237 : 9 R. O. 172 :
1936 O. W. N. 928 :
1936 O. L. R. 610 :
A. I. R. 1937 Oudh 72.

—————*Procedure—Duty of prosecution.*

Duty of Sessions Judge and the Prosecution to clear important points in a murder case, connecting the accused with the murder and to place on record detailed and accurate plan showing all the important places and tracks connected with the crime, pointed out. *Khair Din v. Emperor*.

6 Cr L. J. 266 :
2 P. W. R. Cr. 70.

—————*Procedure—Duty of prosecution—Prosecution, whether bound to examine all witnesses alleged to know about offence.*

It is not the duty of a prosecution to adopt an attitude of non-committal to any version of the case and to examine all witnesses alleged to have known something about the offence, whether or not they will support the prosecution case and whether or not the prosecution regards them as true or false. The prosecution ought to put forward a definite case and refrain from calling witnesses whom it regards as false or unnecessary. It is the duty of the prosecution to put forward the earliest information in the case, and if it does not do so the defence is entitled to ask the Jury to draw adverse inference. *In re: Muthaya Thevan*.

28 Cr L. J. 307 :
100 I. C. 531 : 25 L. W. 487 :
A. I. R. 1927 Mad. 475.

—————*Procedure.*

In all penal matters the utmost strictness as to procedure must be observed. Where the mode in which a criminal trial is to be conducted is regulated by Statute, a departure from the authorised procedure can itself only be sanctioned by a statutory provision. *Allu v. Emperor*.

25 Cr. L. J. 68 :
75 I. C. 980 : 4 Lah. 376 :
6 L. L. J. 103 : A. I. R. 1924 Lah. 104.

—————*Procedure—Jurisdiction.*

Though a civil suit and criminal prosecution may be based on exactly the same cause of action, the parties are not the same. The burden of proof is differently placed and different considerations may come in. The

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result may, therefore, be a conflict in decision. The risk of such conflict is one that is inherent in the division of causes into criminal and civil. The judgment of neither Court is binding on the other and each must decide the cause on the evidence before it. The fact therefore that the matter in issue had already been decided in favour of the accused in a civil suit between the same parties does not debar the Criminal Court from taking cognizance of the case and holding a trial. *Maung Po Nwe v. Ma Pwa Chone*. 41 Cr. L. J. 139 : 184 I. C. 842 : 1940 Rang. 163 :

12 R. Rang. 176 : A. I. R. 1939 Rang. 394.

—————*Procedure—Jurisdiction—Cognizance taken by different Magistrates, legality of.*

Proceedings under Ss. 120-A and 420, Penal Code, were taken against the accused in the Court of a Deputy Magistrate before whom the case remained pending and no evidence was taken upto a certain date, when a formal complaint was laid before the District Magistrate by the Police on which the District Magistrate took proceedings which ended in the committal of the accused to the Court of Session: *Held*, that there was no illegality in the District Magistrate taking cognizance of the case, as though the law prevents a person being tried twice over for the same offence, there is no provision that if cognizance is taken by two different Magistrates at different times, the trial can be before one of them only. *Hari Satya Bishnu v. Emperor*.

24 Cr. L. J. 710 :
73 I. C. 934 : 37 C. L. J. 327 : 50 Cal. 482 :
A. I. R. 1923 Cal. 652.

—————*Procedure—Jurisdiction—Court's power to invent rules—Method of dealing with technicalities.*

Per *Sadasiva Aiyar, J.*—Courts should always lean in favour of that view of the law which would enable a party who has got an order in his favour to obtain the fruits of that order and not in favour of highly technical objections which render the Court's order infructuous and a mere piece of waste paper. Courts have the power within reasonable limits to invent rules of procedure for this purpose when the Legislature has not enacted such rules, unless the Legislature prohibits them from doing so. *Subbiah Servai v. Chokkalinga Thevan*.

15 Cr. L. J. 676 :
25 I. C. 1004 : 16 M. L. T. 248 :
1914 M. W. N. 790 : 27 M. L. J. 613 :
A. I. R. 1915 Mad. 92.

—————*Procedure—Making Mukhtiar's consent to things, impropriety of.*

*Mukhtiar*s or other people should not be made to consent to something which is not in itself proper without their consent. *Dwijapada Halder v. Emperor*.

29 Cr. L. J. 638 :
109 I. C. 910 : 47 C. L. J. 449 :
A. I. R. 1928 Cal. 401.

—————*Procedure—Miscellaneous.*

When a man is sought to be made criminally liable for any alleged omission on his part, then his case must be brought within

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wholly unnecessary difficulties in the case. *Abdul Subhan v. Emperor*.

41 Cr. L. J. 258 :
186 I. C. 192 : 12 R. A. 384 :
1939 A. L. J. 966 :
A. I. R. 1940 All. 46.

———Police witness.

A Police Officer cannot be allowed to depose to the statements made to him by refreshing his memory by reference to the record made by him of such statements. *Bhulai Singh v. Emperor*.

11 Cr. L. J. 117 :
5 I. C. 357 : 13 O. C. 7.

———Police witness—Reproduction of statement from memory.

Quære.—Can the Police Officer to whom a statement is made and who reduced it to writing, be permitted in his evidence to reproduce the contents of the statement from his recollection? *Bhulai Singh v. Emperor*.

11 Cr. L. J. 117 :
5 I. C. 357 : 13 O. C. 7.

———Police witness—Statement from memory.

Obiter dicta. (Per Piggott, A. J. C.)—It is a very dangerous procedure to allow a Police Officer to say from his own memory what certain persons had said to him, without referring to the statements recorded by him. *Bhulai Singh v. Emperor*.

11 Cr. L. J. 117 :
5 I. C. 357 : 13 O. C. 7.

———Possession necessary to constitute criminal liability.

To constitute criminal liability, possession must be actual and not constructive. Possession, of which a man is not conscious, cannot constitute an offence. *Sundar Singh v. Emperor*.

37 Cr. L. J. 939 :
164 I. C. 435 : 9 R. L. 126 :
38 P. L. R. 1059 : A. I. R. 1936 Lah. 758.

———Post mortem report, use of.

A *post mortem* report is not evidence and can only be used by the witness who conducted the *post mortem* inquiry as an aid to memory. *In re: Rangappa Goundan*.

37 Cr. L. J. 471 :
161 I. C. 663 : 43 L. W. 305 :
70 M. L. J. 447 : 59 Mad. 349 :
8 R. M. 845 : 1936 M. W. N. 110 :
A. I. R. 1936 Mad. 426.

———Power of Appellate Court.

There is no provision in the Cr. P. C., for allowing the complainant to be heard when the Crown does not wish to argue the case. It is, however, open to the Appellate Court to hear the complainant in suitable cases, and a discretion in this matter is left to the Appellate Court. *Raghunath Mal v. Patiram*.

39 Cr. L. J. 75 :
172 I. C. 177 : 10 R. N. 172 :
I. L. R. 1938 Nag. 157 :
A. I. R. 1937 Nag. 394.

———Powers of Court.

Case under Ss. 366, 376, 372, 373, 344 and

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366-A, I. P. C., over—Order for custody of girl against whom offence was committed—Order held was without jurisdiction. *Kher Singh v. Hari Punjabi*.

36 Cr. L. J. 231 (1) :
152 I. C. 973 : 7 R. C. 338 :
38 C. W. N. 1211 :
A. I. R. 1934 Cal. 753.

———Powers of Court.

Court can order parties to make full disclosure of relevant facts and can visit punishment upon party avoiding to do so—Crown stands in the same position as ordinary litigant. *Kundan Lal v. Emperor*.

32 Cr. L. J. 909 :
132 I. C. 515 : 12 Lah. 623 :
32 P. L. R. 498 : I. R. 1931 Lah. 611 :
A. I. R. 1931 Lah. 473.

———Powers of Court—Shorthand notes of proceedings at trials—Object of trial—All facts must be disclosed.

Shorthand writers should be employed by Judges exercising original, civil or criminal jurisdiction for taking full and accurate notes of proceedings. It is not the duty of a Counsel to approach the trial Judge and to apprise him that in his opinion a man whose fate is entrusted to his care has no defence to make. A man's rights are to be determined by the Court, not by his Attorney or Counsel. If an Advocate rejects a story because it seems improbable to him, he usurps the office of the Judge: his client wants his advocacy, not his judgment. *Emperor v. Barendra Kumar Ghose*.

25 Cr. L. J. 817 :
81 I. C. 353 : 38 C. L. J. 411 :
28 C. W. N. 170 : A. I. R. 1924 Cal. 257.

———Powers of Court.

The power to try a case would necessarily include the power to take cognizance. *K. R. Bhat v. Emperor*.

33 Cr. L. J. 68 :
134 I. C. 1230 : 33 Bom. L. R. 1192 :
I. R. 1932 Bom. 14 : A. I. R. 1931 Bom. 517.

———Practice—Appeal admitted on question of sentence only, if can be argued on merits.

Per Din Muhammad, J.—The mere fact that the appeal has been admitted on a question of sentence does not preclude the same being argued on merits, and if it is found on merits that no offence has been committed by the accused in the eye of the law, he is entitled to be acquitted. *Harnum Singh v. Emperor*.

40 Cr. L. J. 760 :
183 I. C. 318 : 41 P. L. R. 487 : 12 R. L. 107 :
I. L. R. 1939 Lah. 148 : A. I. R. 1939 Lah. 295.

———Practice.

Appeal against conviction—If after appeal has been argued Court concludes that there is a case for enhancing sentence, the Court should not pass order on appeal until notice to enhance can be dealt with. *Babu Pandurang Mhaske v. Emperor*.

35 Cr. L. J. 1435 :
151 I. C. 865 : 36 Bom. L. R. 382 :
58 Bom. 392 : 7 R. B. 88 :
A. I. R. 1934 Bom. 198.

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Code, it includes in connection with a trial, the whole bundle of actions taken and recorded by the Court from the moment of taking cognizance of the case until its disposal. The "proceedings" in a joint trial cannot be differentiated into separate "proceedings" against each accused person. *Emperor v. Fazal Rahman*.

38 Cr. L. J. 1042 :
170 I. C. 772 : 10 R. Pesh. 23 :
A. I. R. 1937 Pesh. 52.

—Proof of guilt—Association with offenders, effect of.

The association of a person with other persons who actually take part in the commission of an offence, and his presence at the time when the offence is committed, may raise a high degree of suspicion that he was concerned in the offence but unless the evidence shows that he was aware of what the other persons were doing and abetted their act or took part in it with such knowledge, he cannot be held guilty of the offence. *Abdul Aziz v. Emperor*.

28 Cr. L. J. 209 :
99 I. C. 1009 : 27 P. L. R. 441.

—Proof of guilt, how far influence, measure of punishment.

If the evidence in a case affords such a degree of certainty of the guilt of the accused as is mentioned in S. 3 of the Evidence Act, the sentence including that of death must be based on the facts found proved by howsoever little the proof of them exceeds the standard stated in the section, otherwise the accused must be acquitted and the Judge or Magistrate contradicts himself if he says that an accused person is proved guilty but should be lightly punished because the proof of his guilt is weak. *Dadi Lodhi v. Emperor*.

27 Cr. L. J. 731 :
95 I. C. 59 : A. I. R. 1926 Nag. 368.

—Proof of statements of persons not witnesses in Court.

(Per *Sundar Lal, A. J. C.*)—A Police Officer cannot be allowed to prove the statements made to him by persons who have not been called as witnesses in the Court. *Bhulai Singh v. Emperor*.

11 Cr. L. J. 117 :
5 I. C. 357 : 13 O. C. 7.

—Prosecuting Counsel—Duty of.

The duty of a Prosecuting Counsel in examining his own witness and in conducting the case, is to elicit the truth rather than to exercise his ingenuity in pressing the case unduly against the accused, and what might be a forensic duty in a civil action is not necessarily one in a criminal case. *Daljit Singh v. Emperor*.

39 Cr. L. J. 92 :
172 I. C. 204 : 10 R. N. 177 :
A. I. R. 1937 Nag. 274.

—Prosecution—Abetment of conspiracy—Duty of prosecution.

In a case of abetment by conspiracy, the prosecution has to prove an agreement between the alleged conspirators to do the criminal Act. *National Bank of India, Ltd. v. Kothandarama Chetti*.

14 Cr. L. J. 529 :
21 I. C. 129 : 14 M. L. T. 200 :
1913 M. W. N. 728.

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—Prosecution—Admissions.

The prosecution cannot rely upon an admission made by an accused person to the Police without other proof and, even if it could so rely, it would be bound to take the admission as a whole. *In re : Kodangi*.

33 Cr. L. J. 173 :
135 I. C. 590 (a) : 34 L. W. 858 :
1931 M. W. N. 1138 : 61 M. L. J. 860 :
I. R. 1932 Mad. 174 (1) :
A. I. R. 1932 Mad. 24.

—Prosecution bringing false case—New case in Appellate Court.

When the prosecution brings a false case, it is almost impossible to bring out a new one in the Court of Appeal. *Moslem Khalifa v. Emperor*.

41 Cr. L. J. 792 :
189 I. C. 734 : 13 R. C. 127 :
A. I. R. 1940 Cal. 350.

—Prosecution by public servant.

A criminal prosecution by a public servant should never be launched merely to feed the grudge of some private individual. *Wajid Ali v. Emperor*.

35 Cr. L. J. 824 :
148 I. C. 1075 : 8 Luck. 638 :
11 O. W. N. 490 : 6 R. O. 495 :
A. I. R. 1934 Oudh. 344 (2).

—Prosecution case found to be untrue—Acquittal—Procedure.

Where in a riot case it is found that the case presented to the Court by the prosecution is definitely untrue, it is not necessary for the accused to plead the right of private defence or to show that they have not exceeded the right of private defence. On the finding that the case for the prosecution is untrue, the accused are entitled to an acquittal. *Radne Sahi v. Emperor*.

26 Cr. L. J. 647 :
85 I. C. 935 : 2 P. L. T. 217 Cr. :
A. I. R. 1925 Pat. 175.

—Prosecution concealing facts—Conviction, legality of.

Where the prosecution conceals the true facts of an occurrence, and does not disclose the origin of the occurrence, so that it is impossible for the Court to apportion liability and to decide which of the two parties to a fight commenced the fight and which acted in self-defence, it is not possible to hold either party responsible for what took place. *Jalal v. Emperor*.

27 Cr. L. J. 821 :
95 I. C. 597 : 8 L. L. J. 183 :
27 P. L. R. 22.

—Prosecution.

Court *Jamadar* is generally empowered to conduct prosecution—Court *Jamadar* present—Magistrate cannot give permission to some other person to conduct prosecution. *Janki Gopal Koli v. Emperor*.

37 Cr. L. J. 333 :
160 I. C. 689 : 37 Bom. L. R. 967 :
8 R. B. 277 : A. I. R. 1936 Bom. 35.

—Prosecution—Duty of.

It is not sufficient in the case of the trial of an accused in a criminal case for the Crown merely to establish a *prima facie* case of guilt.

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———Practice.

In all cases opinion of Police officer should not be accepted as final. When Magistrate does so, Sessions Judge should consider desirability of procedure. *Gopal Singh v. Ragannath Singh*.

34 Cr. L. J. 1140 :
145 I. C. 1031 : 6 R. P. 223 :
A. I. R. 1933 Pat. 499.

———Practice—Joinder of charges—Charges of murder and preferring false complaint of murder—Whether should be tried jointly.

Where an accused has committed murder and has preferred a false complaint of murder immediately after committing the murder, it cannot be said that strictly speaking a joint trial held for the two offences under Ss. 302 and 211, Penal Code, is illegal. It can be fairly contended that the two acts were connected together and formed part of the same transaction. But offences of this nature ought not to be tried together because it is obviously very embarrassing to the accused to have to answer a charge of murder at the same time as a charge of wilfully preferring a false complaint of murder. *In re : Uppara Dodda Narasa*.

40 Cr. L. J. 211 :
179 I. C. 518 : 48 L. W. 601 :
1938, 2 M. L. J. 771 ; 1938 M. W. N. 1116 :
11 R. M. 593 : A. I. R. 1939 Mad. 59.

———Practice of comparing statements of witnesses in Court with statements made to Police.

The practice of Criminal Courts of comparing statements made by witnesses in Court under oath, with statements which they are alleged to have made to the Police during the course of the investigation held by the Police prior to the trial cannot be too strongly condemned. *Mohammad v. Emperor*.

26 Cr. L. J. 1308 :
89 I. C. 252 : 1 Lah. Cas. 193 :
A. I. R. 1926 Lah. 54.

———Practice — Persons jointly committing breach of law—Responsibility, nature of.

As a general principle of Criminal Law, all who participate in the commission of an offence are severally responsible, as though the offence were committed by each of them acting alone; consequently, although as joint actors in the commission of the crime, they may be jointly tried and convicted, each must be separately punished as if he had committed the offence alone. *Amrita Lal Bose v. Corporation of Calcutta*.

18 Cr. L. J. 945 :
42 I. C. 305 : 21 C. W. N. 1016 :
26 C. L. J. 215 : 44 Cal. 1025 :
A. I. R. 1917 Cal. 348.

———Practice—Statement of accused to Police—Doubtful version—One more favourable to accused should be accepted.

Where it is doubtful whether the accused said to the Sub-Inspector of Police that he would show the place where the deceased had been murdered or that he would show the place where he murdered the deceased, it must be taken that he stated that he would show the

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place where the deceased was murdered. *Bahram Singh v. Emperor*. 40 Cr. L. J. 937 :
184 I. C. 274 : 12 R. N. 106 :
1939 N. L. J. 442 : A. I. R. 1939 Nag. 295.

———Practice.

The practice of granting numerous adjournments in petty criminal cases is to be condemned. *Birdhi Chand Jaipuria v. Darbari Jayaswal*.

34 Cr. L. J. 263 :
142 I. C. 144 : 13 P. L. T. 480 :
I. R. 1933 Pat. 122 : A. I. R. 1932 Pat. 276.

———Preliminary enquiry—Accused, whether bound to disclose his defence—No inference from non-disclosure—Failure of the essentials of prosecution case—Theories consistent with innocence to be accepted.

There is no duty cast upon an accused person to disclose his defence in the course of a preliminary enquiry, and no inference can be drawn against the accused from non-disclosure of his defence at that stage. Where the essentials of the case for the prosecution fail and the Court has to rest the case for conviction, not upon evidence, direct or circumstantial, but upon one or two alternative theories, and where one of the said theories is consistent with innocence and the other inconsistent, there is no justification for accepting the theory which is inconsistent with such innocence. Such a course is contrary to the fundamental principles of British Justice. *Kamar Prasad v. Emperor*.

28 Cr. L. J. 611 :
102 I. C. 899 : 8 P. L. T. 656 :
A. I. R. 1927 Pat. 292.

———Presumption — Presumption against accused.

In a criminal case the Court cannot proceed upon an assumption that the accused must have done what he was required by the rules of his employment to do, in order to fasten liability upon the accused with regard to his knowledge of certain transactions which form the subject-matter of the charge. *Prafulla Kumar Roy v. Emperor*.

27 Cr. L. J. 147 :
91 I. C. 883 : 30 C. W. N. 94 :
A. I. R. 1926 Cal. 345.

———Presumption of innocence.

An accused person is entitled to be considered innocent until he is actually found to be guilty both during the preparation of his trial and during the hearing of his case. *Sudha Sindhu Dey v. Emperor*.

36 Cr. L. J. 615 :
154 I. C. 1006 : 39 C. W. N. 259 :
62 Cal. 384 : 7 R. C. 545 :
A. I. R. 1935 Cal. 101.

———Presumption of innocence—Duty of prosecution.

To deal with a case simply upon the ground that when the complainant brings his case, he must be assumed to have a real grievance, is not the manner in which criminal trials should be conducted. The presumption is just the other way. The accused must be presumed to be innocent unless the prosecution have satis-

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fundamental aspects has been found by the Sessions Judge to be untrue, it will rarely, if ever, be possible to accept the evidence of the prosecution witnesses who have obviously conspired together to tell that false story. *Sadhu Dome v. Emperor*.

34 Cr. L. J. 227 :
141 I. C. 786 : 13 P. L. T. 765 :
I. R. 1933 Pat. 87.

Public Prosecutor.

A Public Prosecutor must not, during the examination of a witness, make any remark which is likely to suggest to the witness that he has made a mistake and that he should amend his statement. *Param Sukh v. Emperor*.

27 Cr. L. J. 11 :
91 I. C. 43 : 23 A. L. J. 1037 :
A. I. R. 1926 All. 147.

Public Prosecutor, duty of.

In a criminal case, the duty of the Public Prosecutor is not to support, at all costs, a theory, but to investigate the offence. *Nga Lu v. Emperor*.

35 Cr. L. J. 792 :
148 I. C. 810 : 6 R. Rang. 254 :
A. I. R. 1933 Rang. 378.

Public Prosecutor, functions of—Capital case—Duty of Crown.

The purpose of a criminal trial is not to support at all costs a theory but to investigate the offence and to determine the guilt or innocence of the accused, and the duty of a Public Prosecutor is to represent not the Police but the Crown and this duty should be discharged fairly and fearlessly and with a full sense of the responsibility attaching to this position. In a capital case, it is the duty of the Crown to place before the Court all materials irrespective of the question as to whether they help the accused or go against him, and it has been rightly observed that the rule is not merely a technical one but founded on common sense and humanity. *Kunja Subudhi v. Emperor*.

30 Cr. L. J. 675 :
116 I. C. 770 : 8 Pat. 289 : I. R. 1929 Pat. 338 :
10 P. L. T. 549 : A. I. R. 1929 Pat. 275.

Public Prosecutor.

If the case is thought to be beyond the capacity of the Prosecuting Inspector, than the services of the Public Prosecutor should be secured. *Satwarao Nagorao Halkar v. Kanbarao Bhagorao Halkar*.

39 Cr. L. J. 458 :
174 I. C. 510 : 10 R. N. 403 : 1938 N. L. J. 12 :
A. I. R. 1938 Nag. 334.

Public Prosecutor—Services should be sought in complicated cases.

In a complicated case the services of the Public Prosecutor, or if necessary, of a special Public Prosecutor should be requisitioned at the trial or to investigate the case and not merely at the stage of appeal. *Ghulam Haider v. Emperor*.

39 Cr. L. J. 851 :
177 I. C. 278 : 40 P. L. R. 870 : 11 R. L. 288 :
A. I. R. 1938 Lah. 634.

Punishment, object and measure of.

The causing of merely retributive harm,

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whether by the community or the individual, is itself a crime. Punishment is in itself an evil, justified only by its effects in deterring the offender from a repetition of the offence, and in deterring others by the example from the commission of it. In each case, punishment must be the least that will produce both these effects. *Nanhi Gond v. Emperor*.

28 Cr. L. J. 493 :
101 I. C. 669 : A. I. R. 1927 Nag. 221.

Recovery of fine.

Attachment of property to recover fine from son—Father objecting it to be his own property—Magistrate not making inquiries himself but dismissing father's application on *Tahsildar's* report : Held, procedure was unwarranted and attachment should be set aside. *Parshotam Das v. Emperor*.

32 Cr. L. J. 812 :
131 I. C. 912 : A. I. R. 1931 Lah. 543 (1).

Reference—Interference by High Court.

High Court will not interfere on a reference made by Additional Sessions Judge in a pending proceeding on the ground that he took a different view on the credibility of witnesses. *Chandreshwar Prasad Narain Singh v. Arumendra Mohan Ghose*.

38 Cr. L. J. 2 :
165 I. C. 931 : 17 P. L. T. 794 : 3 B. R. 104 :
9 R. P. 231 : A. I. R. 1936 Pat. 626.

Refusal by accused to answer questions—Inference.

Though the prosecution case has to be judged on its merits, an accused person cannot defeat the ends of justice by merely refusing to answer questions. S. 342, Cr. P. C., clearly provides that the Court may draw such inferences from the accused's refusal, to answer questions as it thinks just. *Sher Jang v. Emperor*.

32 Cr. L. J. 684 :
131 I. C. 277 : I. R. 1931 Lah. 405 :
A. I. R. 1931 Lah. 178.

Repugnancy in record—Conspiracy, trial for—Two conspirators—Separate trials—Acquittal of one—Conviction of other, whether sustainable—English principle, application of—Appeal against conviction.

In the absence of provision in the Indian Statute Law, the Courts are not bound to follow the rule of English Law that repugnancy or contradiction on the face of the record is a ground for quashing the conviction. Repugnancy in the verdict of the Jury in India is not by itself a sufficient ground for quashing a conviction, and there is no provision in the Cr. P. C. justifying interference with a conviction on the ground of repugnancy in the record. In India, the acquittal of one of two alleged conspirators in a subsequent trial, does not form the ground of reversal of the conviction of the other tried before. However, if on the merits it is established on appeal by the other conspirator, that the evidence against him is weak or there are inherent improbabilities or infirmities in the case against him, then perhaps the fact that the same witnesses were disbelieved in a subsequent trial may be

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a trial. *Gasto Bchary Basu v. Baistom Das Devre*.
24 Cr. L. J. 157 :

71 I. C. 509 : 26 C. W. N. 831 :
37 C. L. J. 105 : A. I. R. 1923 Cal. 105.

-----*Procedure—Charge—Date of misappropriation wrongly mentioned—Accused aware of the true date—No prejudice.*

Where the charge under S. 409, Penal Code, was indeed erroneous in respect of the date as well as the place of payment but there was nothing in the case to show that the accused was misled by the error and the correct date was mentioned to him in his examination under S. 304, Cr. P. C., and he did not raise any dispute as to the place where it had been paid, no prejudice can be said to have resulted to the accused and the error in the charge is immaterial and cannot affect the legality of the trial. *Provincial Government, Central Provinces and Berar v. Shankar Gopal Brahmam, Patwari*.

39 Cr. L. J. 895 :
177 I. C. 396 : 11 R. N. 139 :
1938 N. L. J. 259 :
A. I. R. 1938 Nag. 445.

-----*Procedure—Charge—Duty of Appellate Court—Separate trial—Misjoinder.*

A Court of Appeal or revision in dealing with a question of misjoinder, must look to the position as it appeared when charges were framed. In deciding whether charges were rightly framed, one must look at the position as it appeared to the Magistrate, when he framed them. But it does not follow, that a Magistrate must wait till the stage of framing charges before he makes up his mind whether to split a case up. *Akhil Bandhu Roy v. Emperor*.

39 Cr. L. J. 596 :
175 I. C. 409 : 10 R. C. 790 :
I. L. R. 1938, 1 Cal. 588 :
A. I. R. 1938 Cal. 258.

-----*Procedure—Charge for substantive offence—Conviction for abetment—Failure of Police investigation—Legality of trial—Duty of Magistrate.*

A trial is not necessarily void simply because it is preceded by a Police investigation which has failed to comply with Ch. V of the Cr. P. C. A Magistrate who finds that there is a chance of getting a conviction against a person not charged, is not bound to stop the proceedings at any stage of the trial, arrest such person and start the original trial *de novo*. A man who is charged with a substantive offence and nothing else, can always, without framing a further charge, be convicted of abetment of it. *Joseph v. Emperor*.

26 Cr. L. J. 492 :
85 I. C. 236 : 3 Rang. 11 :
3 Bur. L. J. 265 : A. I. R. 1925 Rang. 122.

-----*Procedure—Compliance, necessity of.*

While prompt disposal of a criminal case is a matter of importance, it is of equal or even greater importance to pay proper attention to the procedure prescribed by law so as to ensure, on the one hand, a fair trial to the accused and, at the same time, to leave no

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loophole for any failure of justice resulting from defects in procedure. *Faqir Singh v. Emperor*.

29 Cr. L. J. 769 :
110 I. C. 801 : 10 Lah. 223 :
30 P. L. R. 385 : A. I. R. 1929 Lah. 382.

-----*Procedure—Counsel for accused cited as prosecution witness, whether debarred from conducting case for accused.*

The mere fact that Counsel for an accused person has been cited as a witness for the prosecution, in the case, would not debar him from appearing and conducting the offence of the accused, and would, therefore, not render the rule as to the exclusion of witnesses from the Court-room until they have been examined, applicable to him. *In re : Vemureddi Babureddi*.

22 Cr. L. J. 588 :
62 I. C. 828 : 13 L. W. 702 :
1921 M. W. N. 440 :
4 M. L. J. 158 : 44 Mad. 916 :
A. I. R. 1921 Mad. 424.

-----*Procedure—Code, duty of, to pass orders on petitions.*

When petitions are made to the Court, it is improper merely to direct them to be filed with the record. *Mahomed Zamiruddin v. Emperor*.

19 Cr. L. J. 902 :
47 I. C. 274 : 3 P. L. J. 632 :
A. I. R. 1918 Pat. 272.

-----*Procedure—Court receiving written notes of arguments, legality of.*

It is highly irregular for a Criminal Court to receive written notes of arguments from the Counsel for the prosecution especially without the knowledge of the accused. *In re : Mannen Venkayya*.

29 Cr. L. J. 929 :
111 I. C. 849 : 28 L. W. 511 :
1928 M. W. N. 788 :
55 M. L. J. 712 : A. I. R. 1928 Mad. 1130.

-----*Procedure—Duty of Court.*

Where the legislature has directed certain procedure to be followed and certain forms to be adopted in a criminal case, the Magistrate ought to adhere to the law and see that no prejudice is created so far as the accused is concerned. *Suleman Adam v. Emperor*.

10 Cr. L. J. 375 :
3 I. C. 774 : 11 Bom. L. R. 740.

-----*Procedure—Duty of Police—Conflicting versions of occurrence—Duty of Police.*

Where there are conflicting versions of an occurrence, the Police should make up their minds which of the conflicting versions is true, and should send accused for trial accordingly. When there are two versions of an occurrence which cannot be reconciled and both of which cannot possibly be true, it is clearly improper that persons should be sent up for trial on the basis both of one version and of the other. When this is done, the Magistrate before whom the two cases come is apt to take the view that as he has "*prima facie*" evidence before him against both sets of accused

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———*Re-trial—Ground for.*

The marking of an irrelevant document in evidence is not a ground for ordering re-trial. *S. Ramaswami Ayyar v. Commissioner, Chittoor Municipality.*

41 Cr. L. J. 897 :
190 I. C. 317 : 1940 M. W. N. 386 :
51 L. W. 542 (1) : 13 R. M. 402 :
A. I. R. 1940 Mad. 685.

———*Re-trial—Ground for.*

When there is enmity between the parties in the case, and the Court is doubtful as to the value of any evidence adduced upon a re-hearing of the case, it would be dangerous to order a re-hearing. *Feroze Kazi v. Emperor.*

41 Cr. L. J. 267 :
186 I. C. 227 : 6 B. R. 307 :
21 P. L. T. 931 : 12 R. P. 477 :
A. I. R. 1940 Pat. 295.

———*Re-trial.*

It is open to the High Court to order re-trial from any stage of a criminal proceeding it thinks fit. *Emperor v. Attur Singh.*

33 Cr. L. J. 650 :
138 I. C. 618 : 26 S. L. R. 191 :
I. R. 1932 Sind 81 (2) :
A. I. R. 1932 Sind 64.

———*Re-trial—Magistrate having knowledge of case during investigation—Trial, propriety of.*

A Magistrate, who has some knowledge of the case while it is under investigation, should not try the case. But a conviction cannot be set aside or re-trial ordered on this ground where the accused is not shown to have been prejudiced. *Emperor v. Ghulam Nabi.*

29 Cr. L. J. 301 :
107 I. C. 835 : 6 Pat. 768 :
A. I. R. 1928 Pat. 146.

———*Re-trial—Partial re-trial.*

An Appellate Court cannot direct a partial re-trial. It can either direct a complete re-trial or call for further evidence to be placed before itself. *Ramchandra Prasad v. Emperor.*

38 Cr. L. J. 657 :
168 I. C. 979 : 3 B. R. 508 :
9 R. P. 522 : 18 P. L. T. 483 :
A. I. R. 1937 Pat. 246.

———*Re-trial—Power of Appellate Court.*

An Appellate Court has a power to order a re-trial, but it can pass such an order only upon proper grounds such as the ground that the original trial has been vitiated by some irregularity. The Appellate Court is not entitled to order a re-trial merely because it disagrees with the finding of the lower Court that the accused had not committed the more serious offence but a lesser one. *Motiram v. Emperor.*

38 Cr. L. J. 71 :
165 I. C. 734 : 1936 A. L. J. 1083 :
9 R. A. 301 : 1936 A. W. R. 921 :
A. I. R. 1936 All. 758.

———*Re-trial—Powers of Judicial Commissioner's Court.*

No doubt the Judicial Commissioner's Court has power in a case of misdirection to order a re-trial of the accused or to enter into the

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merits of the case and dispose of it. Where, however, a case is essentially one where the guilt or innocence of the accused should be determined by a Judge and jury, who have seen the witnesses and heard them give their evidence, who have seen the accused and who have heard them give their statements, there should be a re-trial which should be before another Judge and Jury and Judicial Commissioner's Court should not proceed to decide the case finally upon the paper record before it. *Shewaram Jethanand Shivadasani v. Emperor.*

41 Cr. L. J. 28 :
184 I. C. 474 : 1940 Kar. 249 :
12 R. S. 107 : A. I. R. 1939 Sind 209.

———*Re-trial.*

Proceedings under S. 16, Motor Vehicles Act—Case going on for long time—Accused already incurring expense in defence—Prosecution responsible for many irregularities—Re-trial should not be ordered. *Lalchand v. Emperor.*

35 Cr. L. J. 1161 (2) :
150 I. C. 941 : 1934 O. L. R. 656 :
11 O. W. N. 828 : 7 R. O. 75 :
A. I. R. 1934 Oudh 370 (2).

———*Re-trial—Prosecution evidence insufficient—Re-trial, to give prosecution another chance.*

It is an established principle of Criminal Law that if the evidence actually adduced by the prosecution is insufficient to support a conviction, a re-trial cannot be ordered to simply to give the prosecution another chance of producing further and better evidence. *Tripurari Battacharjee v. Emperor.*

39 Cr. L. J. 604 :
175 I. C. 514 : 42 C. W. N. 812 :
10 R. C. 797 : A. I. R. 1938 Cal. 361.

———*Re-trial—Prosecution launched not to vindicate law but to humiliate accused—Re-trial not advisable.*

Where the prosecution is launched not with any desire to vindicate the law in the public interest but only with a view to humiliate the accused who has been sufficiently punished for the offence committed by him by having had to undergo the trial, it is not fair or advisable for the Court to play into the hands of a party in order to enable him to satisfy his grudge. Such a case is not a fit one in which re-trial should be ordered. *Executive Officer, Municipal Board, Ghaziabad v. Harsaran Das.*

41 Cr. L. J. 281 :
186 I. C. 261 : 1939 A. L. J. 1034 :
12 R. A. 397 : A. I. R. 1940 All. 19.

———*Re-trial.*

The Prosecution is not entitled to ask for a re-trial where it comes to Court with an incomplete case which, so far as it goes, confirms the defence of the accused. *P. K. Sen v. Emperor.*

29 Cr. J. 258.
107 I. C. 529 : 9 P. L. T. 723 :
A. I. R. 1928 Pat. 293.

———*Trial for murder—Proper course.*

Where in a murder trial, the evidence of certain persons who were present and were eyewitnesses of what actually happened, had not been given, and if the accused is to be convicted and hanged on the evidence, it really means

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the terms of the rule or section he is said to have disobeyed. *Gauri Dayal v. Emperor.*

36 Cr. L. J. 630 :
154 I. C. 1059 : 4 A. W. R. 1413 :
7 R. A. 869 : A. I. R. 1935 All. 121.

-----*Procedure—Objection to trial.*

Magistrate taking cognizance on complaint by Police Inspector—Protest petition by opposite party—Omission to examine opposite party is only an irregularity. *Daroga Mahlon v. Emperor.*

36 Cr. L. J. 200 :
152 I. C. 847 (b) : 7 R. P. 266 :
13 Pat. 789 : 15 P. L. T. 756 :
A. I. R. 1934 Pat. 573.

-----*Procedure—Practice—Accused unable to offer explanation compatible with his innocence—Accused making false statement—Inference can be drawn against him.*

Where an inference adverse to an accused person can be drawn from a number of circumstances, if the accused person is unable to offer any explanation which is compatible with his innocence or if it is proved that any explanation which he offers is false, that is a further circumstance from which an inference can be drawn against him, but it is unsafe to hold that an accused person is necessarily guilty because he is making a false statement. S. 106, Evidence Act, obviously refers to cases where the defence of the accused depends on his proving a certain fact, that is, cases where his guilt is established on the evidence produced by the prosecution unless he is able to prove some other facts especially within his knowledge which would render the evidence for the prosecution nugatory. *Ram Bharosey v. Emperor.*

38 Cr. L. J. 205 :
166 I. C. 430 : 1936 A. L. J. 1124 :
9 R. P. 406 (2) : 1936 A. W. R. 927.
A. I. R. 1936 All. 833.

-----*Procedure, propriety of—Confession—Recording of—Confession not recorded properly—Magistrate taking down confession called as witness.*

In the matter of construction, Ss. 164 and 364, Cr. P. C., must be looked at and construed together and it would be an unnatural construction to hold that any other procedure was permitted than that which is laid down with such minute particular in the sections themselves. The practice of allowing Magistrates as witnesses to depose to confessions is improper and that where matters could be put on record and would be admissible when so put, there are the strongest reasons of policy for supposing that the Legislature designed that such matters should be available in that form and in no other. *Nahru v. Emperor.*

38 Cr. L. J. 642 :
168 I. C. 962 : 9 R. N. 281 :
I. L. R. 1937 Nag. 268 :
A. I. R. 1937 Nag. 220.

-----*Procedure—Prosecution — Prosecution, whether bound to examine witness mentioned in F. I. R.*

Prosecution is not bound to produce a witness who is not expected to give true evi-

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dence even though he may have been mentioned in the F. I. R. and examined in the Committing Magistrate's Court. *Amar Singh v. Emperor.*

31 Cr. L. J. 176 :
120 I. C. 674 : A. I. R. 1930 Lah. 82.

-----*Procedure—Repudiation by prosecution of documents filed and witnesses relied on at earlier stage, propriety of—Filing of documents by prosecution in anticipation of defence, legality of.*

In a criminal case it is not open to the prosecution to put forward documents and witnesses as proving part of their case and then at the last moment to repudiate them all and start a new case altogether. The prosecution ought to put forward from the beginning its real case and stick to it throughout. It is not a proper procedure for the prosecution to file documents which the defence relies on for the purpose of discrediting them before the defence has had a chance to file them for itself, inasmuch as such a course is in effect permitting the prosecution to call evidence in rebuttal of the accused's defence, a practice wholly unauthorised and not admitted by the Cr. P. C. *In re : Biswanath Das.*

28 Cr. L. J. 285 :
100 I. C. 365 : A. I. R. 1927 Mad. 533.

-----*Procedure—Search.*

A search cannot be made in writing and the observations of physical facts must always and can be allowed to be proved by oral testimony. *Ram Prosad v. Emperor.* (F. B.)

39 Cr. L. J. 796 :
176 I. C. 787 : 19 P. L. T. 461 :
4 B. R. 772 : 11 R. P. 107 : 17 Pat. 632 :
A. I. R. 1938 Pat. 403.

-----*Procedure—Stoppage of trial.*

Proceedings in a trial should not be stopped merely because the accused cited as one of his witnesses a person on whom a process could not be served and who could not be examined on commission. *Fazal Rahman Khan v. Emperor.*

37 Cr. L. J. 618 :
162 I. C. 270 : 8 R. Pesh. 192 :
A. I. R. 1936 Pesh. 101.

-----*Procedure—Summary trial—Object of—Warrant case—Accused after his examination, whether entitled to re-call prosecution witnesses for cross-examination.*

The object of Chap. XXII, Cr. P. C., is to shorten the record and the work of the Magistrate in making the record ; it is not intended to deprive the accused person of any of his rights under Chap. XX or XXI. Hence in a warrant case tried summarily, an accused, after he is examined, is entitled to re-call prosecution witnesses for further cross-examination. *Munna Gansurwa Ahir v. Emperor.*

40 Cr. L. J. 846 :
184 I. C. 44 : 1939 N. L. J. 7 :
I. L. R. 1939 Nag. 457 : 12 R. N. 89 :
A. I. R. 1939 Nag. 87.

-----*“Proceedings”, meaning of.*

The word “proceeding” is not defined in the Cr. P. C., but is frequently used therein, and from the nature of its use throughout the

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cannot be allowed in revision. *Dewan Singh v. Emperor*. 38 Cr. L. J. 1026 :

171 I. C. 16 : 39 P. L. R. 459 :

10 R. L. 175 : A. I. R. 1937 Lah. 702.

-----Revision—Practice.

As a general practice, the High Court will not entertain in the absence of most exceptional circumstances an application in its criminal revisional jurisdiction after the expiry of 60 days from the date of the decision or order impugned. *Zafar Ahsan v. Jageshwar Bux Roy*. 41 Cr. L. J. 171 :

185 I. C. 346 : 6 B. R. 155 :

12 R. P. 369 : A. I. R. 1940 Pat. 135.

-----Revision.

Revisional powers of High Court cannot be used to prevent criminal trials taking place. *Durga Prasad v. Emperor*. 36 Cr. L. J. 526 :

154 I. C. 513 : 7 R. A. 768 :

1935 A. W. R. 209 : A. I. R. 1935 All. 439.

-----Revision.

Right of appeal depends on nature of sentence—Magistrate not acting in such way as to call for interference in unappealable sentence—Revision is not proper. *Anant Singh v. Emperor*. 37 Cr. L. J. 417 :

161 I. C. 307 : 1936 All. 209 :

1936 A. W. R. 129 : 8 R. A. 722 (1) :

A. I. R. 1936 All. 147.

-----Revision—Trial for minor offence—Facts disclosing major offence—Legality of trial—Revision—Interference.

Where a Magistrate tries the accused for an offence under a less serious section, when really the offence falls under a more serious section which is beyond his competence, his proceedings are not illegal, and therefore, the High Court is not bound to interfere. *Abdul Sathar v. Emperor*. 29 Cr. L. J. 635 :

109 I. C. 907 : 54 M. L. J. 456 :

27 L. W. 683 : A. I. R. 1928 Mad. 585.

-----Revision against acquittal—Local Government not appealing—Interference.

Where it is open to the Local Government on being moved, to appeal against acquittal but no appeal has been preferred, it is not the practice of the High Court to interfere in revision except in very unusual cases. *Emperor v. Dayal Singh*. 38 Cr. L. J. 432 (a) :

167 I. C. 559 : 17 Lah. 60 :

38 P. L. R. 1015 : 9 R. L. 519 (2) :

A. I. R. 1937 Lah. 132.

-----Revision against acquittal by private complainant—Limitation of sixty days—Rule, if flexible.

The rule that a revision by a private complainant against acquittal of accused should be filed within 60 days of acquittal, plus the period required for copying is not an inflexible one and might be departed from in exceptional circumstances. If the reasons given by the applicant for the delay are not sufficient, the Court can dismiss the application. The proper procedure in such a case is for a complainant to file an application in revision before the High Court within the time, and without waiting for a decision of his application to

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the District Magistrate to take steps for an appeal. The applicant cannot claim the exclusion of time taken in moving the District Magistrate to file an appeal. Both the proceedings are distinct though the object is the same. 60 days is quite a liberal allowance without further extension, and it is very desirable that if there is to be a re-trial, it should take place as soon as possible: *Held*, after considering that the applicant was not diligent in filing revision and that there was no merit in the application, that the case was not of such an extraordinary nature that the application made at late stage and without the support of the Provincial Government, would be entertained. *Nathu Ramji v. Jagannath*. 41 Cr. L. J. 745 :

180 I. C. 479 : 1940 N. L. J. 319 :

13 R. N. 56 : A. I. R. 1940 Nag. 259.

-----Rights of accused.

A prisoner can consent to do nothing which is not authorized by law and the consent of Counsel for an accused person cannot validate a course of procedure which the law does not authorise. *Ibrahim v. Emperor*. 36 Cr. L. J. 41 :

152 I. C. 236 : 31 N. L. R. 117 :

7 R. N. 80 : A. I. R. 1934 Nag. 209.

-----Rights of accused.

However guilty a man may be, he is entitled to a trial which is not a sham but a real trial, where the accused knows something about what is happening. *Nihal v. Emperor*. 28 Cr. L. J. 9 :

99 I. C. 41 : 49 All. 5 : 24 A. L. J. 908 :

A. I. R. 1926 All. 759.

-----Rights of accused.

It is the right of every man, be he guilty or innocent, to insist that he be tried according to the principles to be observed in investigating criminal charges. *Nem Singh v. Emperor*. 36 Cr. L. J. 152 :

152 I. C. 741 : 4 A. W. R. 5 :

7 R. A. 373 : A. I. R. 1934 All. 908.

-----Rights of accused.

The accused has no right to inspect the paper from which a Police Officer is refreshing his memory. *Bhulai Singh v. Emperor*. 11 Cr. L. J. 117 :

5 I. C. 357 : 13 O. C. 7.

-----Riot—Free fight—Prosecution charging both factions, properly of.

Where there is fight and riot between two factions, it is wrong for the prosecution to charge both the parties without making an attempt to discover who acted on the aggressive and who acted on the defensive. *G. Venkataratnam v. D. Ramasastrulu*. 41 Cr. L. J. 903 :

190 I. C. 366 : 13 R. M. 405 :

1939 M. W. N. 1256.

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They must establish, so far as they can, by every reasonable means in their power, evidence to support the facts proving conclusively the guilt of the accused. *Luchmi Singh v. Emperor*.
19 Cr. L. J. 344 :
44 I. C. 456 : 1918 Pat. 35 :
A. I. R. 1917 Pat. 111.

—————*Prosecution, duty of—Use of defence.*

It is one of the fundamentals of criminal jurisprudence that an accused person should never be condemned out of his own mouth. It is the duty of the prosecution to prove, and to prove beyond any reasonable doubt, that the accused is guilty. It should not improve its case by utilizing the defects in the evidence of the defence witnesses or by the false statement which the accused may make. *Emperor v. Nga Mya Maung*.
38 Cr. L. J. 927 :
170 I. C. 502 : 10 R. Rang. 92 :
A. I. R. 1936 Rang. 90.

—————*Prosecution evidence disbelieved in material portion—Conviction on remaining portion, legality of.*

When the prosecution witnesses have been disbelieved in the most material part of their evidence, the rest of their evidence cannot be properly treated as affording the basis of a conviction. *Ragho Prasad v. Emperor*.
30 Cr. L. J. 896 :
118 I. C. 333 : I. R. 1929 Pat. 525 :
A. I. R. 1929 Pat. 180.

—————*Prosecution evidence false—Court's duty.*

Per Young, J.—The plain duty of the Court when it finds the prosecution case false and manufactured in material and vital particulars, and supported by perjured evidence, is to throw the whole case out without delay. *Asmatullah v. Emperor*.
35 Cr. L. J. 236 :
146 I. C. 914 : 1933 A. L. J. 1119 :
6 R. A. 380 : A. I. R. 1933 All. 896.

—————*Prosecution evidence false though case true—Duty of Magistrate to discharge.*

If the prosecution does not choose to put the correct version of facts before the Court and itself attempts to spoil a true case by adducing false and perjured evidence, a Magistrate cannot but discharge the accused. *Alam v. Emperor*.
28 Cr. L. J. 601 :
25 A. L. J. 703 : 49 All. 879 :
A. I. R. 1927 All. 804.

—————*Prosecution evidence, gaps in—Examination of accused to fill in gaps, legality of—Criminal Procedure Code, S. 342.*

The gap in the prosecution evidence cannot be filled by examining the accused persons under S. 342, Cr. P. C. The examination of the accused for this purpose is contrary to law and the prosecution cannot be permitted to rely on admissions obtained from the accused in these circumstances. *G. N. Subba Rao v. Anna M. Venkatachalapathi Ayyar*.
40 Cr. L. J. 69 :
178 I. C. 478 : 1938 M. W. N. 871 (2) :
48 L. W. 320 : (1938) 2 M. L. J. 397 :
11 R. M. 459 : A. I. R. 1938 Mad. 904.

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—————*Prosecution, failure of, to produce witnesses—Presumption.*

Where the prosecution fails to examine witnesses who appear to have been present at the time of the occurrence, which is the subject of the trial, it may be presumed that if those witnesses had been examined, they would not have supported the prosecution ; but this presumption cannot render ineffective or outweigh unimpeachable evidence which has been produced in the case. *Emperor v. Alimaddin Nasrkar*.
26 Cr. L. J. 631 :
85 I. C. 919 : 29 C. W. N. 231 :
41 C. L. J. 101 : 52 Cal. 522 :
A. I. R. 1925 Cal. 361.

—————*Prosecution—Gang cases.*

Police should leave gang cases alone and proceed with substantive case. *Surjan Singh v. Emperor*.
33 Cr. L. J. 251 :
136 I. C. 27 : 33 P. L. R. 602 :
I. R. 1932 Lah. 203 : A. I. R. 1932 Lah. 298.

—————*Prosecution—Legality.*

Where the main allegation against the accused is disobedience of an order of the Magistrate trying the case, the prosecution is objectionable as the Magistrate makes himself Judge in his own case. *Maung Chan Tha v. Emperor*.
37 Cr. L. J. 527 :
161 I. C. 993 : 8 R. Rang. 53 :
A. I. R. 1936 Rang. 116.

—————*Prosecution of public servant after inordinate delay—Effect.*

A prosecution launched against a public servant after an inordinate delay (of about 4 years) rouses suspicion in one's mind that this has been done to serve some end, either of the complainant or of others who are interested in disgracing the public servant. *Kali Prasad Singh, Chairman, Municipality, Buxar v. Sri-Krishun Chaturvedi*.
39 Cr. L. J. 774 :
176 I. C. 725 : 4 B. R. 755 :
11 R. P. 98 : A. I. R. 1938 Pat. 543.

—————*Prosecution—Story not believable as whole—Effect.*

There is no general principle of law that where a party comes into Court with a story, which cannot be believed as to its essential details, it is impossible to rely on a part of the story for the purposes of convicting the accused. *Leda Bhagat v. Emperor*.
33 Cr. L. J. 111 :
135 I. C. 81 : 10 Pat. 590 : 12 P. L. T. 864 :
I. R. 1932 Pat. 1 : A. I. R. 1931 Pat. 384.

—————*Prosecution, whether bound to examine hostile material witnesses.*

Per Rupchand, A. J. C.—The prosecution is not under an obligation to call all available material witnesses if they reasonably believe that, if called, they would not speak the truth. *Mohammed Yusif v. Emperor*.
31 Cr. L. J. 1026 :
126 I. C. 449 : A. I. R. 1930 Sind 225.

—————*Prosecution story untrue in fundamentals—Effect.*

If the story of the occurrence in its

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sentence in revision. It is recognized that a person who has, even wrongly, got the benefit of a lenient sentence at his trial, may sometimes to allowed to benefit by his good fortune, provided the sentence passed is one which is legal. *Nga Bo Thin v. Emperor*.

38 Cr. L. J. 1051 :

171 I. C. 285 : 10 R. Rang. 141 :

1937 Rang. 169 : A. I. R. 1937 Rang. 254.

———*Sentence—Enhancement in revision—Principles—Conviction under S. 247, Penal Code—Sentence reduced—Sound reasons given—Held, it would not be enhanced in revision.*

Where a sentence passed is substantial even though inadequate, it will not be enhanced in revision, on the mere ground that the High Court as a Court of first instance would have passed a heavier sentence. Where on an appeal from a conviction under S. 247, Penal Code, and sentence of one year's rigorous imprisonment, the Sessions Judge maintained the conviction but reduced the sentence to a term of six months giving sound reasons for reducing it: *Held*, that there being sound reasons and the sentence not being grossly inadequate, the High Court would not enhance it in revision. *Manna Singh v. Emperor*.

38 Cr. L. J. 720 :

169 I. C. 171 : 9 R. L. 720 :

A. I. R. 1937 Lah. 215.

———*Sentence—Enhancement.*

In the absence of express words limiting the powers of the High Court in cases of sentences passed by Assistant Sessions Judges, the High Court can enhance such sentence up to the maximum sentence prescribed by law for the offence. *Emperor v. Ram Nath*.

37 Cr. L. J. 49 :

159 I. C. 290 : 1935 A. W. R. 1236 :

8 R. A. 419 : A. I. R. 1935 All. 989.

———*Sentence—Enhancement.*

An appeal to impose a substantial fine in place of a sentence of imprisonment passed by the trial Court and maintain the same sentence of imprisonment in default of payment, does amount to enhancement. For the accused may not be able to pay the fine, then they will have to undergo the imprisonment and their property is liable to attachment for payment of the fine as well. If the argument that the accused themselves asked the Magistrate to impose a fine in place of imprisonment were correct, an absolutely crushing fine might be imposed. The question depends upon the circumstances of each case. *Shanker Singh v. Emperor*.

38 Cr. L. J. 935 :

170 I. C. 538 : 1937 O. W. N. 754 :

10 R. O. 35 : 1937 O. L. R. 452 :

A. I. R. 1937 Oudh 462.

———*Sentence—Enhancement — Rash driving causing death.*

The accused while driving his car at an excessive speed, on a straight road which was uncrowded, wanted to pass over another car in front of him. Having got past the other car, the accused swerved to the left in order to get back to the proper side of the road, and in so

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doing, he lost control of his car which ran off the road, collided with a tamarind tree, and was thrown into a field, with the result that three of the passengers sitting in the back seat were killed. He was tried under S. 304-A, Penal Code, and sentenced to four months' rigorous imprisonment. The case was referred to the High Court for the enhancement of sentence: *Held*, that in a case of this sort, the sentence to be imposed could not be measured by the consequences of the act, unless those consequences were necessarily inherent in the act, and that the fact that three deaths resulted, was not a circumstance which ought greatly to enhance the punishment to be inflicted for the rash and negligent act of the accused. The death of the three persons was not at all a natural and probable consequence of his act. *Emperor v. Marshal*.

38 Cr. L. J. 658 :

168 I. C. 865 : 9 R. B. 410 :

38 Bom. L. R. 1111 at page 1113 :

A. I. R. 1937 Bom. 80.

———*Sentence—Extent.*

Where a murder was deliberately planned and carried out in brutal fashion, an innocent man being done to death for the sake of money, the capital sentence is fully justified. *Mallu Markita v. Emperor*.

35 Cr. L. J. 213 :

146 I. C. 701 : 16 N. L. J. 186 : 6 R. N. 93 :

A. I. R. 1933 Nag. 352.

———*Sentence—Extenuating circumstances—Youth, whether by itself extenuating circumstance.*

Youth alone in every case is not such an extenuating circumstance as would justify the imposition of the lesser penalty in cases of murder, but it should be taken into consideration with the other facts of the case. *Nga Saw Htum v. Emperor*.

38 Cr. L. J. 1022 :

171 I. C. 125 : 10 R. Rang. 131 :

A. I. R. 1937 Rang. 121.

———*Sentence—Factors for decision—False defence that Prosecution story is a concoction by Police—Aggravation of sentence—Legal practitioners—Gross misconduct.*

Where a false defence that the Prosecution story is an entire concoction on the part of the Police is raised on the direct instructions of the accused, he adds to the heinousness of the offence with which he is charged by a baseless accusation of outrageous conduct on the part of the Police or other prosecutors. In a clear case of this kind the Tribunal should take this into account as a circumstance of aggravation in awarding the sentence. Where the suggestion is made by the legal practitioner without reasonable cause, the legal practitioner is guilty of the grossest professional misconduct. Moreover, cross-examination on these lines is often grossly abused and it is the duty of the Tribunal if it has any suspicion when an Advocate begins an attack upon a prosecutor or a witness by way of so-called "suggestions" involving dishonourable conduct to demand from the Advocate an assurance that he

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taken into consideration. *Singleton v. Emperor*. 26 Cr. L. J. 662 :

86 I. C. 38 : 29 C. W. N. 260 :
41 C. L. J. 87 : A. I. R. 1925 Cal. 501.

———**Repugnancy on face of record—Conviction, whether sustainable.**

Mere repugnancy on the face of the record is not by itself sufficient to ensure the quashing of a conviction. *Umadasi Dasi v. Emperor*.

26 Cr. L. J. 11 :
83 I. C. 491 : 40 C. L. J. 143 :
28 C. W. N. 1046 : 52 Cal. 112 :
A. I. R. 1924 Cal. 1031.

———**Res-judicata, application of.**

Per *Lakshmana Rao, J.*—There is no rule of *res judicata* in criminal matters except when proceedings end in an acquittal or conviction. *Emperor v. John McIver*. (F. B.)

37 Cr. L. J. 637 :
162 I. C. 592 (2) : 1936 M. W. N. 281 :
43 L. W. 548 : 70 M. L. J. 635 :
8 R. M. 1000 : A. I. R. 1936 Mad. 353.

———**Retracted Confession—Conviction.**

A conviction may be based on a retracted confession when the confession is voluntary and there is sufficient corroboration. *Iqbal Khan v. Emperor*.

28 Cr. L. J. 656 :
103 I. C. 112 (a) : A. I. R. 1927 Lah. 780 (b).

———**Retracted confession.**

It can form basis of conviction, but corroboration is necessary from independent quarters. *Nahmum v. Emperor*.

35 Cr. L. J. 1390 :
151 I. C. 716 : 36 P. L. R. 2 : 7 R. L. 198 :
A. I. R. 1934 Lah. 715.

———**Retracted confession—Use against co-accused.**

A confession of an exculpatory nature made by an accused and subsequently retracted cannot be used against a co-accused. *Emperor v. Ramsidh Rai*.

39 Cr. L. J. 725 :
176 I. C. 530 : 4 B. R. 724 : 11 R. P. 79 :
A. I. R. 1938 Pat. 352.

———**Retracted confession Value.**

Confession made 14 days after arrest by the Police and retracted at the earliest opportunity before the trial Magistrate has no evidentiary value as against the co-accused. *Kuldip Chand v. Emperor*.

36 Cr. L. J. 300 (2) :
153 I. C. 139 : 37 P. L. R. 132 :
7 R. L. 392 (2) : A. I. R. 1934 Lah. 718.

———**Retracted confession.**

Value against co-accused is very weak and requires material corroboration—Confession by accused after being given opportunity to think over his position—Court may presume it is made voluntarily but must carefully scrutinize its value. *Shcoratan v. Emperor*.

35 Cr. L. J. 1290 :
151 I. C. 298 : 1934 O. L. R. 710 :
11 O. W. N. 1012 : 7 R. O. 109 :
A. I. R. 1934 Oudh 418.

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———**Retracted confession—Value.**

The retracted confession of an accused has really little or no evidential value against a co-accused but it can be taken into consideration along with the other evidence against that accused, especially when the Court considers that the confession was both voluntary and true. *Mathura v. Emperor*. 36 Cr. L. J. 767 :

155 I. C. 527 : 1935 O. W. N. 561 :
7 R. O. 602 : A. I. R. 1935 Oudh 354.

———**Re-trial.**

A re-trial on the ground of illegal joint trial can be refused by the Judge if he considers that accused have already undergone sufficient punishment. *Nur Hussain v. Emperor*.

33 Cr. L. J. 145 (2) :
135 I. C. 508 : 33 P. L. R. 530 :
I. R. 1932 Lah. 108 :
A. I. R. 1931 Lah. 767.

———**Re-trial—Accused charged with murder and conspiracy to commit dacoity—Conviction for murder set aside—Case not sent back for re-trial for murder.**

In a conviction for murder and conspiracy to commit dacoity, the conviction on the murder count was set aside as the charge to the jury was defective. It appeared that the murder took place two years before and the witnesses would be liable to confuse what they had heard since the occurrence with what they had seen. The accused was sentenced to transportation on being convicted for conspiracy to commit dacoities: *Held*, that under the circumstances, the case should not be sent back for re-trial on the charge of murder. *Sanyasi Gain v. Emperor*.

38 Cr. L. J. 1018 :
171 I. C. 183 : 10 R. C. 235 :
A. I. R. 1937 Cal. 269.

———**Re-trial, duty of Court ordering.**

The duty of an Appellate or Revisional Court, as to ordering the re-trial of a person, whose conviction has been set aside by such Court on the ground of irregularity in the trial, discussed. *Emperor v. Balwant Singh*.

8 Cr. L. J. 11 :
4 N. L. R. 71.

———**Re-trial—Evidence.**

In a trial for murder, the recorded evidence in the Sessions Court included some evidence which should not have been admitted to record as being inadmissible under S. 122, Evidence Act, and some evidence was also totally inconsistent with other evidence. The statements of the prosecution witnesses before trial were inconsistent and the Committing Magistrate had directed two of them to be prosecuted for perjury and they were examined at the trial on a date when presumably they might have been standing their trial for perjury. This fact was not noted by the trial Judge. Further, Counsel for the accused and the Court did not consult all records available: *Held*, that there was no fair trial for the accused and that he should, under S. 376, Cr. P. C., be directed to be re-tried. *Najab Gul Mohammad v. Emperor*.

38 Cr. L. J. 741 :
169 I. C. 257 : 9 R. Pesh. 143 :
A. I. R. 1937 Pesh. 71.

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from examining in the Committing Magistrate's Court the principal witnesses for the prosecution. *Nandram Bhimbahadur v. Emperor*.

36 Cr. L. J. 563 :
154 I. C. 455 : 28 S. L. R. 317 :
7 R. S. 159 : A. I. R. 1935 Sind 31.

———*Sessions case—Procedure.*

Where a Magistrate thinks from the first that a case ought to be tried by a Court of Session, procedure laid down in Chap. XVIII, Cr. P. C., is *prima facie* obligatory on him and he must, under S. 208, take all such evidence as may be produced for the prosecution or on behalf of accused and give the accused an opportunity to cross-examine the prosecution witnesses. S. 347 has no applicability in such a case. *Emperor v. Channing Arnold*.

13 Cr. L. J. 877 (b) :
17 I. C. 813 : 5 Bur. L. T. 239.

———*Sessions case—Transfer of statement in Magistrate's Court to Sessions Court, ground for.*

A statement of a witness made before the Committing Magistrate cannot be transferred to the Sessions Record simply on the ground that the witness was "shy and speechless." *Moti Ram v. Emperor*.

24 Cr. L. J. 904 :
75 I. C. 152.

———*Sessions case—Witness in Committing Court not examined in Sessions—Powers of Judge.*

Crown not calling prosecution witness examined by it in Committing Magistrate's Court, in Sessions—Sessions Judge thinking him to be material witness—Court cannot compel the Crown to examine him as Crown witness or to tender him for cross-examination. *Emperor v. Dulo*.

36 Cr. L. J. 869 (2) :
155 I. C. 1114 : 7 R. S. 221 (2) :
A. I. R. 1935 Sind 60.

———*Sessions Court—Production of witness not produced in trying Court.*

Evidence not produced in trying Court can be produced in Sessions Court—Witness not examined in trying Court cannot be bound down to appear and give evidence in Sessions Court—Summary of evidence proposed to be given in Sessions Court should be given to Court and accused before commencement of Sessions trial. *Niamat v. Emperor*.

37 Cr. L. J. 742 :
162 I. C. 976 : 17 Lah. 176 :
38 P. L. R. 421 : 8 R. L. 985 :
A. I. R. 1936 Lah. 533.

———*Sessions Court—Right of taking cognizance.*

Sessions Judge can take cognizance of case only when it has been properly committed to his Court—If commitment is wholly irregular, he has no option but to refer case to High Court. *Mohammad Mehdi v. Emperor*.

36 Cr. L. J. 137 :
152 I. C. 667 : 4 A. W. R. 524 :
1934 A. L. J. 965 : 7 R. A. 365 :
A. I. R. 1934 All. 963.

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———*Sessions Judge, duty of, to take interest in case from very beginning of trial—Revenue Officials—Prosecution before departmental enquiry, propriety of.*

During trials, Sessions Judges rely far too much on a badly instructed Government Pleader or on the evidence of the prosecution shaping itself as best it may. It is much to be desired that a Sessions Judge should start his interest in a case at the very beginning of the trial and not when the time comes to write or dictate the judgment. First of all, the ingredients of an offence ought to be clearly grasped and then attempts made continuously to discover whether the evidence of the complainant and that of the prosecution witnesses did satisfy those ingredients or not. It is unfortunate that a private person can prosecute a *patwari* without any departmental inquiry being made on the subject. Some kind of protection should be given to these Revenue Officials by making a departmental inquiry necessary before a criminal prosecution is launched. *Suraj Prasad v. Emperor*.

32 Cr. L. J. 158 ;
128 I. C. 601 : I. R. 1931 All. 73 :
A. I. R. 1930 All. 534.

———*Sessions Judge setting up case not supported by evidence, propriety of.*

A Sessions Judge is not justified in setting up a case of his own not supported by the evidence. *Saraj v. Emperor*. 30 Cr. L. J. 1126 :
120 I. C. 6 : 11 L. L. J. 299 :

I. R. 1929 Lah. 950 : A. I. R. 1929 Lah. 788.

———*Sessions trial—Appeal, forum of.*

An appeal lies to the Judicial Commissioner's Court against convictions and sentences passed by a Judge of the Judicial Commissioner's Court sitting in its Sessions Court jurisdiction with a Jury, only on a point of law. *Shewaram Jethanand Shivdasani v. Emperor*.

41 Cr. L. J. 28 :
184 I. C. 474 : 1940 Kar. 249 : 12 R. S. 107 :
A. I. R. 1939 Sind 209.

———*Sessions trial—Evidence—Judge admitting first information report—Duty to give reason for same, to Jury.*

The Judge in Sessions trial commits no error if he admits a first information report in evidence. It is his duty to decide on the arguments of the two sides and decide in the way he thinks best. But once he admits it, it is his duty to leave the matter entirely free to the Jury as to what weight they would allow to the evidence. The Judge would not be wise in giving his reasons for admitting the document in evidence. He should merely state that he admits the document in evidence and lays it to the Jury. *Ebadi Khan v. Emperor*.

39 Cr. L. J. 679 :
176 I. C. 10 : 11 R. C. 36 :
A. I. R. 1938 Cal. 460.

———*Sessions trial.*

Witness not examined before Committing Magistrate proposed to be examined in Sessions Court—Statement of such witness should be

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that he has to be convicted and hanged in circumstances in which, on the face of the matters on the record, the whole story has not been given. Whether it is of value or it is of no value, about what happened, it is not safe to convict him upon the evidence as it stands: *Held*, that the accused should be re-tried: *Held*, also, that if the prosecution failed to call such witnesses, they should be examined as witnesses called by the Court under S. 540, Cr. P. C. *Nga Kan Chai v. Emperor*.

38 Cr. L. J. 1040 :
171 I. C. 129 : 10 R. Rang. 133 :
A. I. R. 1937 Rang. 139.

—————*Re-trial, when proper.*

In the absence of any material irregularity in a trial in which all available evidence was produced, an order of re-trial would merely amount to an expression of dissatisfaction with the result. An order of re-trial should not be given merely because the revisional authority disagrees with the trial Judge as to the offences constituted by proved facts. *Bavwar Shah v. Emperor*.

37 Cr. L. J. 1039 :
164 I. C. 899 : 9 R. Pesh. 31 :
A. I. R. 1936 Pesh. 172.

—————*Re-trial.*

When the first trial breaks down on account of any illegality in conducting it, the normal course is a re-trial. *Diwan Singh v. Emperor*.

36 Cr. L. J. 744 :
155 I. C. 450 : 7 R. N. 176 :
A. I. R. 1935 Nag. 90.

—————*Re-trial on account of irregularity.*

The fact that the trial of an accused was irregularly conducted, is no reason why he should be harassed again by a re-trial. *Chholey Lal v. Emperor*.

28 Cr. L. J. 756 :
103 I. C. 836 : 1 Luck. Cas. 265 :
A. I. R. 1927 Oudh 353.

—————*Review—High Court, if can alter or review its on judgment.*

A High Court has no power to alter or review its own judgment in a criminal case, once it has been pronounced and signed except in cases where it was passed without jurisdiction or in default of appearance without an adjudication on the merits or to correct a clerical error. The High Court cannot review a judgment passed by the Bench which heard the appeal. The proper course is to file an appeal. *Diwan Singh v. Emperor*.

38 Cr. L. J. 390 :
167 I. C. 465 : I. L. R. 1936 Nag. 99 :
9 R. N. 186 : A. I. R. 1936 Nag. 132.

—————*Revision — Acquittal — Interference by High Court, when proper—Failure to appreciate question of fact—Refusal of District Magistrate to make reference on order of acquittal—High Court allowing complainant's revision—Whether implies.*

Where the trying Magistrate has failed to appreciate the questions of fact which he had to determine in order to adjudicate on the plea of right of private defence, and therefore there has been no proper trial of these questions, a re-trial will be ordered.

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Where the District Magistrate or Sessions Judge merely differs from the first Court's appreciation of facts, or where he suspects an error of law, then, unless he is clearly of opinion that the public interest demands that there should be intervention by the High Court, he is under no obligation to refer the case. Where the only interests affected are those of private parties, he will more often do better by leaving the party aggrieved to pursue his remedy by application to the High Court. *Abdul Manir v. Kadir Khan*.

38 Cr. L. J. 470 :
167 I. C. 894 : 18 P. L. T. 227 :
3 B. R. 377 : 9 R. P. 447 :
A. I. R. 1937 Pat. 110.

—————*Revision.*

Court cannot revise its own revisional order. *In re : Bhogi Reddi An Karma*.

34 Cr. L. J. 278 :
142 I. C. 138 : 1932 M. W. N. 1162 :
65 M. L. J. 6 : I. R. 1933 Mad. 199.
A. I. R. 1933 Mad. 247.

—————*Revision—Discretion exercised by lower Court.*

The discretion of Magistrate in dismissing complaints is not lightly to be interfered with. Where he has used his discretion in dismissing a complaint, if there is as much to be said in its favour as against it, the discretion should not be interfered with. Jurisdiction in revision should not be lightly exercised. *Sadhuram Chimandas v. Chimandas Budhuram*.

38 Cr. L. J. 742 :
169 I. C. 112 : 9 R. S. 277 :
A. I. R. 1937 Sind 81.

—————*Revision.*

In many cases where, in orders, there has been irregularity of form but where it appears that no harm would be done to the parties, although by a wrong method a right result may have been reached, it is undesirable that the High Court should exercise its discretionary jurisdiction in revision. *Bansidhar Marwari v. Indar Narain Singh*.

24 Cr. L. J. 865 :
75 I. C. 65 : A. I. R. 1923 Pat. 438.

—————*Revision—Interference with decision on facts.*

It is not the rule of the Court to interfere with decisions on facts upon evidence, except for special reasons. The objections to making a reference or to interfering in revision are still stronger when the proceeding is a pending proceeding instituted in accordance with law and carried on regularly and in which no error of procedure is suggested to have been committed by the Magistrate before whom those proceedings are pending. *Chandreshwar Prasad Narain Singh v. Arunendra Mohan Ghose*.

38 Cr. L. J. 2 :
165 I. C. 931 : 17 P. L. T. 794 :
3 B. R. 104 : 9 R. P. 231 :
A. I. R. 1936 Pat. 626.

—————*Revision—New plea cannot be allowed.*

Pleas not raised before the trial Magistrate

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tion to be exercised depends on circumstances of each case. *In re : Ramchandra Babaji Gujjar.*

34 Cr. L. J. 900 (2) :
145 I. C. 161 : 6 R. B. 42 :
35 Bom. L. R. 384 :
A. I. R. 1933 Bom. 307.

—————*Stay pending civil proceedings.*

Mere fact that civil case is pending is not by itself sufficient ground for staying criminal proceedings. Neither priority of time nor intention to prejudice civil litigation is the only test. Circumstances of each case should be considered. *Louis Phillip Dias v. Mahadev Barik Rout.*

35 Cr. L. J. 311 :
147 I. C. 230 : 35 Bom. L. R. 1054 :
58 Bom. 49 : 6 R. B. 177 :
A. I. R. 1933 Bom. 485.

—————*Stay pending civil proceedings.*

Proceedings in a criminal case should be stayed during the pendency of a civil suit where the subject-matter for consideration in both the cases is the same. *Bishambhar Das v. Emperor.*

27 Cr. L. J. 1114 :
97 I. C. 426 : A. I. R. 1927 Lah. 17.

—————*Stay pending civil proceedings—Speedy trial.*

In certain proceedings under S. 145, Cr. P. C., the petitioner was found to be in possession on the strength of a sale-deed. The respondent filed a suit to declare that the deed was a forgery and, during the pendency of it, filed also a complaint against the petitioner alleging that he was guilty of an offence under S. 474, Penal Code, suppressing the further fact that the document was actually used in Court, a circumstance that would have attracted the provisions of S. 195, Cr. P. C., as to sanction which had not been granted. On an application by the petitioner to the High Court for stay of the criminal proceedings during pendency of the civil suit : *Held*, that the criminal proceedings ought not to be stayed, but must, under the circumstances, be disposed of without delay. *Bolla Venkata Reddy v. Gadi Linga Reddy.*

28 Cr. L. J. 225 :
99 I. C. 1025 : A. I. R. 1927 Mad. 1060.

—————*Stay pending civil proceedings.*

Stay of criminal proceedings pending civil actions—When proper, stated. *U Tha Zan v. U. Pyant.*

37 Cr. L. J. 261 :
160 I. C. 175 (b) : 8 R. Rang. 353 :
A. I. R. 1935 Rang. 487.

—————*Stay pending civil proceedings.*

When matter involved in civil suit and criminal complaint is same and is one which can best be decided in Civil Court, criminal proceedings should be stayed. *Mani Ram v. Emperor.*

32 Cr. L. J. 463 (2) :
129 I. C. 765 : 12 L. L. J. 87 :
I. R. 1931 Lah. 237 :
A. I. R. 1930 Lah. 664.

—————*Stay pending civil proceedings.*

Where the accused denied the execution of a

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sale-deed before a Sub-Registrar, and on appeal the District Registrar registered the deed and ordered prosecution of the executant under S. 82 (a) of the Registration Act, whereupon she instituted a suit in the Civil Court for a declaration that the sale-deed was a forged one, and moved the High Court for stay of the criminal proceedings : *Held*, (1) that the criminal case ought to be stayed pending the decision of the civil suit ; (2) that in such a case, the hearing of the civil suit should be expedited. *Phuleshra Kuer v. Emperor.*

22 Cr. L. J. 489 :
62 I. C. 185 : 1 P. L. T. 697 :
A. I. R. 1920 Pat. 816.

—————*Strictures on defence counsel.*

Making of strictures against the conduct of the defence Counsel by the Sessions Judge, deprecated. *Bhagauti v. Emperor.*

35 Cr. L. J. 1042 :
150 I. C. 205 : 6 R. O. 615 :
11 O. W. N. 581 :
A. I. R. 1934 Oudh 362.

—————*Sudden death during police inquiry—Procedure.*

Where a person connected with Police inquiry suddenly dies, necessity of holding magisterial investigation pointed out. *Nahru v. Emperor.*

38 Cr. L. J. 642 :
168 I. C. 962 : 9 R. N. 281 :
I. L. R. 1937 Nag. 268 :
A. I. R. 1937 Nag. 220.

—————*Summary trial.*

A summary trial implies speedy disposal of a case which can be heard and disposed of at once, and is not extended for a contentious and complicated case. *Mohammad Abdullah v. Emperor.*

35 Cr. L. J. 1094 :
150 I. C. 24 : 36 P. L. R. 126 :
15 Lah. 610 : 6 R. L. 835 :
A. I. R. 1934 Lah. 243.

—————*Summary trial—Case against Government servant.*

It cannot be laid down as a proposition that a Government servant should not be tried summarily or that generally the summary procedure is inappropriate in cases in which Government servants are accused. There are cases in which, though Government servants are involved, the summary procedure would be more appropriate than an ordinary and protracted trial. Where in a case under S. 447, Penal Code, the only point of law that has been hinted at is that the trespass, if any, was committed not on Railway land but on land belonging to the P. W. D., then a contest on this point, even assuming that it has an important bearing on the merits of the case, does not make the case one which should not be tried summarily. *M. A. Khan v. Emperor.*

41 Cr. L. J. 19 :
184 I. C. 458 : I. L. R. 1939 Lah. 221 :
41 P. L. R. 743 : 12 R. L. 225 :
A. I. R. 1939 Lah. 467.

—————*Summary trial—Duty of Court to state facts and record evidence.*

In summary trials care should be taken to

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———*Riot case—Duty of Police to ascertain guilty party—Duty of Court.*

It is not the duty of the Police to determine in a riot case "which of two mutually destructive stories is the correct one." The Police are not called upon, nor is it within their province, to determine in a case of this kind which of the two parties concerned was in the wrong. It is for the Courts to determine upon the evidence on the record which of the two parties has been guilty of the offence charged against them, and nonetheless so because the record is lengthy and the case complicated and difficult. *Emperor v. Chanda Singh*. 13 Cr. L. J. 737 :

17 I. C. 49 : 7 P. L. R. 1913 :
43 P. W. R. 1912 Cr. : 2 P. R. 1913 Cr.

———*Riot case—Evidence, value of.*

In riot cases the oral evidence must generally be approached with caution and carefully scrutinised. *Ramhit v. Emperor*.

35 Cr. L. J. 919 :
149 I. C. 210 : 4 A. W. R. 191 :
6 R. A. 872 : A. I. R. 1934 All. 776.

———*Rules of pleadings, whether applicable to criminal trials.*

The rules of pleadings in civil suits do not apply to criminal trials. *Gaffar Buksh Khan v. Emperor*.

28 Cr. L. J. 411 :
101 I. C. 187 : 8 P. L. T. 393.

———*Sanction.*

When the law has permitted certain sanctions, it cannot be permitted that the same action may be taken without sanction by adopting a different course. *Chiranji Lal v. Emperor*.

30 Cr. L. J. 216 :
114 I. C. 48 : 26 A. L. J. 813 :
50 All. 854 : I. R. 1929 All. 940 :
A. I. R. 1928 All. 344.

———*Sanction to prosecute—Inherent powers of Appellate Court.*

An Appellate Court when acting under S. 476-B, Cr. P. C., cannot invoke the inherent powers conferred on the Appellate Court when hearing an appeal from acquittal or appeal from conviction or appeal from any other order, and has not got ample power to remand the case for further enquiry. *Manni Lal v. Emperor*. (F. B.)

38 Cr. L. J. 561 :
168 I. C. 434 : 1937 A. L. J. 192 :
9 R. A. 639 : 1937 A. W. R. 290 :
I. L. R. 1937 All. 517 :
A. I. R. 1937 All. 305.

———*Self-defence—Duty of Court.*

If the circumstances show that the right of private defence was legitimately exercised, the Court is bound to take it into consideration even though self-defence was not specifically pleaded. *Nga Ba Sein v. Emperor*.

37 Cr. L. J. 293 :
160 I. C. 463 : 8 R. Rang. 384 :
A. I. R. 1936 Rang. 1.

SENTENCE

———*Alteration.*

———*Considerations.*

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———*Conviction under two sections.*

———*Enhancement.*

———*Extent.*

———*Extenuating circumstances.*

———*Factors for decision.*

———*Fine.*

———*Murder.*

———*Previous convictions.*

———*Reduction.*

———*Sentence—Alteration.*

Trial means all proceedings including sentence. Alteration of sentence in absence of accused is illegal. *Basil Ranger Lawrence v. The King*. 34 Cr. L. J. 886 :

145 I. C. 209 : 1933 A. L. J. 1025 :
38 L. W. 635 : 66 M. L. J. 216 (P. C.) :
A. I. R. 1933 P. C. 218.

———*Sentence—Considerations.*

The motive for the crime should be considered in inflicting the sentence. *Chintaman v. Emperor*.

10 O. L. J. 54 :
A. I. R. 1923 Oudh 180.

———*Sentence—Conviction under two sections*

———*Appeal—Conviction under one section quashed—Sentence not reduced—Whether enhancement.*

A Court of Appeal is not bound to reduce a sentence in a case where the appellant is convicted under two sections and the conviction under one section is quashed, when the true inference to be drawn from the sentence is that the Magistrate did not mean to pass a separate sentence for the offence of which the petitioner was acquitted and consequently there was no enhancement of sentence. *In re : Mari*.

11 Cr. L. J. 243 :
5 I. C. 754 : 7 M. L. T. 81.

———*Sentence—Enhancement—Application for enhancement by private persons—Court whether should enhance sentence.*

In dealing with applications for enhancement of sentences, the High Court will have regard to what those responsible for maintenance of peace and order in the locality think of the matter. The fact that the private applicants' application for enhancement of the sentence was rejected by the District Magistrate, the head of the Magistracy in the District, shows that an enhancement of the sentence of the accused was not considered necessary in the interests of justice. *Emperor v. Som Nath*.

40 Cr. L. J. 181 :
179 I. C. 250 : 1931 O. W. N. 1366 :
11 R. O. 153 : 1939 O. L. R. 9 :
14 Luck. 401 : A. I. R. 1939 Oudh 54.

———*Sentence—Enhancement by High Court—Accused getting benefit of lenient but legal sentence—Whether will be enhanced in revision.*

Where a Sessions Judge passes a more lenient sentence in contravention of the rulings of law which are laid down from time to time for the guidance of those dealing with criminal cases, the High Court will interfere and will enhance the sentence. But it does not necessarily follow that the High Court must enhance the

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that an innocent party can explain suspicious or circumstantial appearances connected with his person, dress or conduct, that the desire of self-preservation, if not a regard for truth will prompt him to do so and that whenever the party attempts no explanation of facts, or attempts to account for them by false representations, the force of suspicious circumstances proved against him is thereby augmented. *Mohammed Yusif v. Emperor.*

31 Cr. L. J. 1026 :
126 I. C. 449 : A. I. R. 1930 Sind 225.

———Suspicion.

Prosecution and defence cases not free from criticism—Guilt of accused is not proved. *Nga Ba Pa v. Emperor.*

34 Cr. L. J. 794 :
144 I. C. 430 : I. R. 1933 Rang. 108 :
A. I. R. 1933 Rang. 117.

———Suspicion.

Suspicion, however strong, is not sufficient to justify a conviction when the case for the prosecution is not substantial. *Rahmat Shah v. Emperor.*

34 Cr. L. J. 386 :
142 I. C. 392 : I. R. 1933 Pesh. 11 :
A. I. R. 1933 Pesh. 28.

———Suspicion.

The gravest suspicion against the accused will not suffice to convict him of a crime unless evidence establishes it beyond doubt. *Emperor v. Parmeshwar Din.*

35 Cr. L. J. 66 :
146 I. C. 431 : 10 O. W. N. 742 :
6 R. O. 116 : A. I. R. 1933 Oudh 372.

———Suspicion.

The gravest suspicion against an accused will not suffice to convict him of a crime unless evidence establishes it beyond doubt. *Pattu v. Emperor.*

33 Cr. L. J. 514 (2) :
137 I. C. 290 : 9 O. W. N. 243 :
I. R. 1932 Oudh 225.

———Suspicion.

The gravest suspicion against the accused will not suffice to convict them of a crime unless evidence establishes it beyond doubt. *Hawaladar Singh v. Emperor.*

33 Cr. L. J. 379 :
137 I. C. 63 : 9 O. W. N. 170 :
I. R. 1932 Oudh 199 : A. I. R. 1932 Oudh 324.

———Suspicion, whether ground for conviction.

Suspicion though a ground for scrutiny should not be the basis of a judicial pronouncement and the Court's decision must rest not upon suspicion but upon legal grounds established by legal testimony. *Brijpal Singh v. Emperor.*

37 Cr. L. J. 1065 :
165 I. C. 138 : 1936 O. W. N. 892 :
1936 O. L. R. 596 : 9 R. O. 157 :
A. I. R. 1936 Oudh 413.

———Suspicion whether evidence.

Any suspicion entertained by a Police Officer against the accused, cannot be treated as evidence. That circumstance should be excluded from consideration. *Sher Muhammad v. Emperor.*

33 Cr. L. J. 677 :
138 I. C. 704 : 33 P. L. R. 182 :
I. R. 1932 Lah. 538 (1).

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———Suspicion whether sufficient to justify conviction.

Mere suspicion cannot take the place of legal evidence and proof, and an accused cannot be convicted on the strength of mere suspicion. *Emperor v. Soopi.*

31 Cr. L. J. 141 :
120 I. C. 539 : 31 P. L. R. 391 :
A. I. R. 1930 Lah. 84.

———Thumb impression—Power of Court to ask accused to give his thumb-impression—Adverse inference on refusal.

A Court has power to ask an accused person whether he would consent to have his thumb-impression taken for comparison and may draw an inference adverse to him if he refuses to give his thumb-impression. *Zakuri Sahu v. Emperor.*

28 Cr. L. J. 1028 :
106 I. C. 212 : 6 Pat. 623 :
8 P. L. T. 847 : A. I. R. 1928 Pat. 103.

———Transfer.

Accused appearing as defence witness in another case before same Magistrate—Remarks in judgment in latter case against accused : Held, case should be transferred. *Mohammad Isahuck v. Emperor.*

37 Cr. L. J. 220 :
160 I. C. 85 : 8 R. Rang. 333 :
A. I. R. 1935 Rang. 446.

———Transfer—Accused applying for transfer on ground that there were rumours that he had bribed Magistrate—Magistrate ordering payment of subsistence allowance to witnesses on application for adjournment—Whether sufficient grounds for transfer.

In an application for transfer, the accused stated that there were rumours that the Magistrate had received bribes from him, and that he apprehended he would not get a fair and impartial trial as when he applied for adjournment, the Magistrate ordered him to pay subsistence allowance for the witnesses : Held, that the Magistrate has no power to order subsistence allowance and this in itself was sufficient to raise an apprehension in the mind of the applicant that he will not get a fair and impartial trial, and on this ground alone, the case should be transferred. *Lay Tin Ngar v. Emperor.*

38 Cr. L. J. 963 :
170 I. C. 841 : 10 R. Rang. 105 :
A. I. R. 1937 Rang. 311.

———Transfer—Accused's apprehension real.

In a criminal case, it is not enough that justice is done but what is more important is that the parties must feel that justice has been done. Where the accused's apprehensions, however foolish, appear to be real and no prejudice is likely to be caused to the complainant, the case should be transferred to another Magistrate. *Balaji Bari v. Punabay.*

37 Cr. L. J. 855 (a) :
163 I. C. 677 (1) : 18 N. L. J. 293 :
9 R. N. 12.

———Transfer—Accused, clerk to Bench of Magistrates—Investigation by District Magistrate who held offence prima facie made out.

The accused was a clerk to the Bench of Honorary Magistrates. The District Magistrate

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has good grounds for making the suggestions. If the assurance is not received, the cross-examination on these lines should be stopped promptly. *Banslochan Lal v. Emperor*.

31 Cr. L. J. 641 :
124 I. C. 396 : 10 P. L. T. 703 : 9 Pat. 31 :
1930 Pat. 428 : A. I. R. 1930 Pat. 195.

———*Sentence—Fine—Fine paid by stranger on behalf of accused—Sentence of fine reversed.*

There is no provision in the Cr. P. C. that on the reversal of a sentence of fine, the Crown must return the amount paid as fine to anybody other than the accused even if the amount had been paid by another person. Where an insolvent was fined and another person paid the amount of the fine and the sentence of fine was reversed by the High Court: *Held*, that the person who paid the fine on behalf of the accused was not entitled to claim the money back from the Crown. His right was only against the insolvent's estate and whether he was entitled to claim it back in whole or in part would depend on whether he made a present of it to the insolvent or merely lent it to him. *Hiralal Jindani v. The Official Assignee of Madras*.

38 Cr. L. J. 199 :
166 I. C. 344 : 1936 M. W. N. 1246 :
9 R. M. 363 : 1937 1 M. L. J. 130 :
45 L. W. 222 : A. I. R. 1937 Mad. 191.

———*Sentence—Murder—Capital sentence.*

Accused young and inflicting injuries in dark—Murder—Capital sentence is uncalled for. *Nga Thein Maung v. Emperor*.

37 Cr. L. J. 290 :
160 I. C. 459 : 8 R. Rang. 383 :
A. I. R. 1936 Rang. 46.

———*Sentence—Previous convictions, whether may be taken into account in assessing sentence—English and Indian practice.*

In England as well as in India, the law makes a distinction between the question of the guilt or innocence and the question, arising after conviction, of assessment of the punishment which ought to be imposed. On the first question, the rules of evidence are strictly enforced and only matters properly relevant to that question can be proved. But in assessing punishment, the Court takes into consideration not only the nature and the circumstances of the crime itself but also matters extraneous to that crime. These may be matters concerning the accused himself, such as his character and antecedents, or matters which have no direct relation to him, such as the state of crime in the country generally or in the particular locality. *Emperor v. Nga Ba Shein*.

29 Cr. L. J. 869 :
111 I. C. 453 : 6 Rang. 391 :
A. I. R. 1928 Rang. 200.

———*Sentence—Reduction—Appeal against conviction—High Court finding conviction right but sentence rather too high—Procedure to be followed stated—Cr. P. C., Ss. 439, 421.*

In cases where in an appeal against a con-

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viction, the High Court thinks that though on merits the conviction is right but the sentence is rather too severe, the correct procedure is that when the appeal first comes on for hearing, it should not be dismissed summarily, but should be directed to stand over, and at the same time, notice should be served on Government on the revisional powers conferred upon the Court by S. 439, Cr. P. C., to show cause why the sentence should not be reduced. The notice and the appeal will then be heard on the same day. If after hearing the Government Pleader, the Court comes to the conclusion that the sentence ought to be reduced, it can be reduced under the revisional powers. *Bai Dhankor v. Emperor*.

38 Cr. L. J. 572 (b) :
168 I. C. 504 : 39 Bom. L. R. 74 :
9 R. B. 372 : I. L. R. 1937 Bom. 365 :
A. I. R. 1937 Bom. 148.

———*Sentence—Sessions case—Committal for offences under Ss. 457, 75, Penal Code—Charge under S. 75.*

In a case in which the prisoner was committed to the Sessions on charges under Ss. 457 and 75, Penal Code, the Sessions Judge omitted the charge under S. 75, Penal Code, and after trying the prisoner on the other charges, convicted him under Ss. 457, 511, Penal Code. He then put to the prisoner the previous convictions, and on his admitting them, took into consideration the existence of such previous convictions and passed a sentence which was legal even without proof of the said previous convictions: *Held*, that the sentence was legal, even though the same was influenced by a consideration of the gravity of the offence for which the prisoner had previously been convicted. *Subramanian v. Emperor*.

17 Cr. L. J. 288 :
34 I. C. 1008 : 3 L. W. 403 :
1914 M. W. N. 327 : A. I. R. 1917 Mad. 968.

———*Sessions case—Accused not bound to disclose his defence before Magistrate.*

The accused is not under any obligation to indicate before the Committing Magistrate the nature of the defence which he is going to make in the Sessions Court. *Kali Bilash Hazra v. Emperor*.

31 Cr. L. J. 695 :
124 I. C. 513 : A. I. R. 1930 Cal. 188.

———*Sessions case—Assessors not permitted joint deliberation—Effect.*

There is nothing in Cr. P. C. authorising or forbidding a Judge to allow consultation between the Assessors: a Judge is entitled to have before him each Assessor's individual and independent opinion, and is not guilty of an irregularity if he refuses such consultation. *In re: Sennimalai Goundan*.

16 Cr. L. J. 717 :
30 I. C. 1005 : 2 L. W. 933 :
A. I. R. 1916 Mad. 762.

———*Sessions cases—Committal proceedings, nature of.*

In a case exclusively triable by the Sessions Court, the committal proceedings need not necessarily assume the form of a trial. But there is no justification in law for abstaining

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person that he would not have a fair and impartial trial, then the case must be transferred. *M. De Camro Lobo v. G. C. Bhattacharjee*. 38 Cr. L. J. 882 : 170 I. C. 270 : 10 R. Rang. 71 : A. I. R. 1937 Rang. 272.

-----*Transfer—Illegal orders—Apprehension—Transfer.*

Courts may pass orders which may either be legal or illegal, but the mere passing of an illegal order will not justify an inference against their honesty or impartiality. *K. L. Gauba v. Emperor*. 38 Cr. L. J. 955 : 170 I. C. 586 : I. L. R. 1937 Lah. 114 : 39 P. L. R. 643 : 10 R. L. 135 : A. I. R. 1937 Lah. 411.

-----*Transfer—Informality of proceedings—Duty of Magistrates—Magistrate calling to witnesses to his chamber—Transfer application on the ground that he induced them to give evidence against applicant: Held, application should be allowed.*

Although there may be a certain informality about proceedings due to local conditions, Magistrates must be careful that this informality is not such as to lead or reasonably to appear to lead to favour partiality or injustice or to affect or to appear to affect the substance of justice. Where the Magistrate calls two of the complainant's witnesses for interview in his Chamber and the complainant thereupon files a transfer application on the ground that the Magistrate induced them not to give evidence against the accused, the application must be allowed as the circumstances are such as to give rise to reasonable apprehension in the mind of the complainant that his case will be prejudiced if it is heard further by that Magistrate. *Kazi Muhammad v. Harkishendass*. 38 Cr. L. J. 500 : 168 I. C. 44 : 29 S. L. R. 329 : 9 R. S. 217 : A. I. R. 1937 Sind 65.

-----*Transfer.*

It is an elementary principle of natural justice that an accused person shall have free access at any time during the trial to all the records which are before the Court. The same considerations apply to the refusal to permit reference in cross-examination to the contents of the charge-sheet, for, this also forms part of the committal record. The defence Pleaders should be allowed to see the records of statements made by the prosecution witnesses to a Magistrate under the provisions of S. 164, Cr. P. C., or to cross-examine the witnesses thereon. Where the Judge declined to grant all these privileges to the defence: *Held*, that this created an apprehension in the mind of the accused that he would not get the fair trial and hence the case should be transferred. *Brahmayya v. The King*. 40 Cr. L. J. 265 : 179 I. C. 783 : 11 R. Rang. 347 : A. I. R. 1938 Rang. 442.

-----*Transfer—Judge taking proceedings for contempt—Transfer.*

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Where after hearing of the day was finished, the accused was called back and convicted under S. 228, Penal Code, and apprehending that he might not get a fair trial, he applied for transfer: *Held*, that the mere conviction of the accused by the Judge did not warrant the transfer of the Sessions case from his Court. *Salag Ram v. Emperor*. 38 Cr. L. J. 416 (b) : 167 I. C. 515 : 9 R. A. 550 : 1936 A. W. R. 967 : A. I. R. 1937 All. 174.

-----*Transfer—Magistrate calling for defence list prematurely—Transfer, ground for.*

Strictly speaking, the accused cannot be called upon to enter into his defence until all the prosecution witnesses have been exhausted, and till then under the law, the Magistrate cannot ask the accused to file the list of his defence witnesses. But the mere fact that he is called upon to submit the list before the cross-examination of all prosecution witnesses is not an irregularity which will afford sufficient ground for transfer. *Ishar Singh v. Shama Dasadh*. 38 Cr. L. J. 484 : 167 I. C. 881 : 17 P. L. T. 627 : 3 B. R. 379 : 9 R. P. 449 : A. I. R. 1937 Pat. 131.

-----*Transfer—Proceedings before Bench Court—Application for transfer on ground of difficult question arising—Procedure.*

If a Bench Court thinks that a case pending before it should be transferred to the file of some other Court, on the ground that the case involves difficult questions which cannot be properly tried by a Bench, it should move the matter officially and not leave it to the party to move. *In re: V. A. Gopal Nair*. 29 Cr. L. J. 123 : 106 I. C. 715 : A. I. R. 1929 Mad. 403.

-----*Transfer—Refusing securities on insufficient grounds.*

An action of the Magistrate in persistently refusing to accept the securities and refusing to allow bail to the accused, is such as can reasonably create an apprehension in the mind of the applicant that he will not get a fair trial in the district, and in matters like this, considerations of justice must prevail over those of convenience. *Brij Mohan Pandey v. Emperor*. 38 Cr. L. J. 105 : 165 I. C. 873 : 1936 O. W. N. 1232 : 1936 O. L. R. 691 : 9 R. O. 266 : A. I. R. 1937 Oudh 79.

-----*Transfer—Transfer application admitted—Stay order implied.*

Where the High Court admits an application for transfer, invariably, there is an order of stay of proceedings. Even if the order is not expressly made, it is implied, because it will be meaningless to issue a rule and send for the record and then allow the proceedings in the lower Court to continue. *Ishar Singh v. Shama Dasadh*. 38 Cr. L. J. 484 : 167 I. C. 881 : 17 P. L. T. 627 : 3 B. R. 379 : 9 R. P. 449 : A. I. R. 1937 Pat. 131.

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furnished to defence. *Emperor v. Dhondiba Santoo Shinde.*

36 Cr. L. J. 344 :
153 I. C. 278 : 7 R. B. 228 :
36 Bom. L. R. 950 :
A. I. R. 1934 Bom. 487.

—Sessions trial—Written statement by accused.

There is no authority for the alleged practice allowing an accused person in a Sessions trial to put in a written statement. There is no provision in the Cr. P. C. for any such practice. *Emperor v. Tarak Nath Baidya.*

37 Cr. L. J. 30 :
159 I. C. 149 : 63 Cal. 481 :
8 R. C. 281 : 39 C. W. N. 1309 :
A. I. R. 1935 Cal. 687.

—Special diary.

Statements of witnesses taken down in writing such as is referred to in S. 162, should not be entered in the special diary. *Hafiz Muhammad Sani v. Emperor.*

32 Cr. L. J. 638 :
131 I. C. 17 : 12 P. L. T. 393 :
A. I. R. 1931 Pat. 150.

—Statement of accused—Admissibility.

A statement made by an accused to the Magistrate that a particular window was the window through which they effected their entrance, is admissible in evidence. *Sucha Singh v. Emperor.*

34 Cr. L. J. 379 :
142 I. C. 699 (2) : 34 P. L. R. 405 :
I. R. 1933 Lah. 241 :
A. I. R. 1932 Lah. 488.

—Stay of criminal proceedings pending civil ones.

A Criminal Court has power to stay criminal proceedings pending before it, until disposal of civil litigation between the parties respecting the same subject-matter; but if the defence is that accused was in possession on the date of criminal trespass, no stay need be made; but where only title and attempt to get possession are pleaded, stay should be ordered. *Periaswamy Mullirian v. Emperor.*

20 L. W. 544 :
1924 M. W. N. 762 : 35 M. L. T. 99 :
A. I. R. 1924 Mad. 888.

—Stay of criminal proceedings pending civil suit—Suit for recovery of money—Cheating.

Where an accused alleges that the complainant having failed to pay him a sum borrowed on a hand-note, he sued him in the Civil Court for recovery of the same, but thereafter the complainant lodged a complaint against him under S. 420, Penal Code, on the ground that the petitioner having been re-paid, failed to deliver up the hand-note and he was thereby cheated, the criminal proceedings should be stayed pending the decision of the Civil Court on the point whether the complainant's plea of payment and refusal of petitioner to return the hand-note is a genuine plea or not. *Banambar Chhotra v. Nata Behera.*

26 Cr. L. J. 286 :
84 I. C. 350 : 6 P. L. T. 348 :
A. I. R. 1925 Pat. 193.

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—Stay pending civil proceedings.

An application for stay of trial in a criminal case pending the decision of a Civil Court ought to be made in the first instance to the Magistrate trying the case under S. 344 of the Cr. P. C., and if the party fails to get a reasonable order, a revision against the order of refusal, should be filed to the High Court. *Yalavarty Ankanna v. Pillameri Adribholu.*

24 Cr. L. J. 640 :
73 I. C. 528 : 18 L. W. 236 :
A. I. R. 1924 Mad. 235.

—Stay pending civil proceedings.

Civil and criminal proceedings—Issue in criminal proceedings likely to be included in civil proceedings—Conflict of jurisdiction, possibility of—Stay of criminal proceedings is proper. *Sri Kissan Beriwalla v. Emperor.*

37 Cr. L. J. 187 :
159 I. C. 964 : 8 R. C. 367 :
A. I. R. 1935 Cal. 182.

—Stay pending civil proceedings.

Criminal proceedings should not be stayed pending the disposal of civil suits unless there is some very good reason for doing so. *Madan Lal Brij Lal v. Emperor.*

36 Cr. L. J. 496 :
154 I. C. 367 : 7 R. P. 457 :
A. I. R. 1934 Pat. 113.

—Stay pending civil proceedings—Discretion of Magistrate to order stay—High Court, when shall interfere.

In the matter of stay of criminal cases during the pendency of civil dispute, in dealing with question of convenience, the Court of first instance has a discretion and the High Court ordinarily will be by no means eager to interfere with the exercise of that discretion if it is judicially exercised. But where the Magistrate has not judicially exercised his discretion by not staying criminal proceedings during pendency of civil dispute, the High Court shall interfere and order stay of the criminal proceedings. *Molhu Rai v. Emperor.*

38 Cr. L. J. 264 :
166 I. C. 692 : 9 R. P. 336 : 3 B. R. 215 :
A. I. R. 1937 Pat. 8.

—Stay pending civil proceedings.

Disputes in criminal proceedings and civil suit intimately connected—Civil suit prior in time—Common issue capable of being decided more properly in civil suit: *Held*, Criminal case should be stayed. *Faiz Muhammad v. Abbas Jafferli.*

36 Cr. L. J. 1350 :
158 I. C. 256 : 8 R. S. 45 :
A. I. R. 1935 Sind 187.

—Stay pending civil proceedings.

If application is filed after civil suit, intention to prejudice civil litigation may be suspected especially when there is long delay. Discre-

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such cases cannot be said to have affected the verdict of the Jury, and is not therefore a ground on which a conviction should be set aside. *Abdul Gafur Kotwal v. Emperor*.

40 Cr. L. J. 101 :
178 I. C. 637 : 11 R. C. 383 :
I. L. R. (1938) 1 Cal. 636 :
A. I. R. 1938 Cal. 658.

—————*Trial by Jury—Charge—Evidence must be marshalled and not catalogued.*

Cataloguing of the witnesses may be useful in a way, but it can never be a substitute for marshalling of the evidence, point by point, which is so necessary for presenting to the Jury a complete picture with all its lights and its shades. *Goloke Behari Takal v. Emperor*.

39 Cr. L. J. 161 :
173 I. C. 65 : 66 C. L. J. 225 :
42 C. W. N. 129 : 10 R. C. 441 :
I. L. R. (1938) 1 Cal. 290 :
A. I. R. 1938 Cal. 51.

—————*Trial by Jury—Charge for one offence and conviction for other, legality of.*

In a trial under S. 397, Penal Code, if the entire offence has been placed before the Jury, it would be open to the Jury to return the verdict of not guilty under S. 397 and to find the accused guilty under S. 323 or S. 325 even though no charge had been framed under those sections. *Emperor v. Haria Dhobi*.

39 Cr. L. J. 156 :
172 I. C. 780 : 18 P. L. T. 857 :
10 R. P. 346 : 4 B. R. 165 :
A. I. R. 1937 Pat. 662.

—————*Trial by Jury.*

Charge for several offences of fabrication — Direction that if one offence is proved, accused may be found guilty — Omission to draw attention of Jury to offences separately — Conviction held should be set aside. *Dwarka Nath Varma v. Emperor*.

34 Cr. L. J. 322 :
142 I. C. 335 : 37 L. W. 584 :
64 M. L. J. 466 : 1933 M. W. N. 409 :
10 O. W. N. 522 : 37 C. W. N. 514 :
57 C. L. J. 177 : 14 P. L. T. 305 :
1933 A. L. J. 645 : 35 Bom. L. R. 507 :
I. R. 1933 P. C. 65 P. C. :
A. I. R. 1933 P. C. 124.

—————*Trial by Jury—Charge—Intention to cause death, and actual death, proved.*

If there was a common intention to cause death, and death was caused, the charge should be culpable homicide amounting to murder under S. 302. It is for the Jury to determine whether the case falls under one of the exceptions to S. 300, so as to reduce the offence from one of murder to one of culpable homicide not amounting to murder. *Emperor v. Mahomed Adam Chohan*.

38 Cr. L. J. 327 :
167 I. C. 43 : 38 Bom. L. R. 1186 :
9 R. B. 274 : A. I. R. 1937 Bom. 60.

—————*Trial by Jury—Charge—Misdirection against two persons—Offence against one not proved—Proper direction to Jury.*

Where an allegation is made that two persons have joined in taking or enticing another, the

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direction should be certainly that the prosecution must prove that the taking or enticing was by the accused persons or either of them. To say that if the Jury was not satisfied that the offence under S. 306 was made out in the case of both the accused, the alternative was under S. 306-A, is wrong. If the intention required by S. 306 is not proved in the case, then it is the duty of the Judge to say that the jury is bound to acquit them or one of them with regard to whom intention had not been made out. *Kalyayani Dasi v. Emperor*.

39 Cr. L. J. 751 :
176 I. C. 456 : 11 R. C. 139 :
A. I. R. 1938 Cal. 475.

—————*Trial by Jury.*

Charge should be read as a whole to see if prejudice has been caused to accused. *Hossain Ali Mir v. Emperor*.

35 Cr. L. J. 1487 :
152 I. C. 40 : 59 C. L. J. 396 :
7 R. C. 231 : A. I. R. 1934 Cal. 757.

—————*Trial by Jury; charge to.*

In charging the Jury, it is impracticable to set forth every bit of evidence on either side to the minutest detail and dilate on the minor discrepancies. *James Dowdall v. Emperor*.

37 Cr. L. J. 607 :
162 I. C. 430 : 31 N. L. R. 215 Sup. :
8 R. N. 262 : A. I. R. 1936 Nag. 103.

—————*Trial by Jury—Charge to Jury—Circumstantial evidence.*

In a case dependent upon circumstantial evidence, it is the duty of the Judge to point out to the Jury very clearly that in the case of circumstantial evidence, a conviction is only right and proper, if from the proved circumstances the inference of guilt only can reasonably be drawn, and if from the proved circumstances, two inferences can reasonably be drawn, the inference of innocence as well as the inference of guilt, the Jury is bound to draw the inference of innocence. *Shewaram Jethanand Shivdasani v. Emperor*.

41 Cr. L. J. 28 :
184 I. C. 474 : 1940 Kar. 249 :
12 R. S. 107 : A. I. R. 1939 Sind 209.

—————*Trial by Jury—Charge to Jury—Misdirection—Prosecution for forging entry in Birth Register.*

Where a person is being tried for forgery for making a false entry in the Birth Register of a Municipality, the direction by the Judge to the Jury to the effect that in order to satisfy themselves that the entry was forged, they must reach the conclusion that the age of the person about whose birth the entry was made, is wrongly entered, is beside the point. But if after admitting the evidence about the real age of such person, the Jury are not satisfied with it and come to the conclusion that the entry is not a genuine one, there is no misdirection as the only effect of such evidence would have been to give them an opportunity of bringing in an improper verdict of not guilty, if they would have been satisfied with it and such evidence would not have

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record evidence and facts in a way to give accurate idea of facts to the Court of Revision. *Benarsi Das v. Emperor*.

31 Cr. L. J. 866 :
125 I. C. 503 : 1930 A. L. J. 911 :
A. I. R. 1930 All. 595.

———Summary trial.

However summary a trial may be, the vital evidence against each accused must be recorded. *Emperor v. Bhujbal*.

37 Cr. L. J. 292 :
160 I. C. 413 : 18 N. L. J. 140 :
8 R. N. 186 (2).

———Summary trial—Magistrate, whether bound to make notes of evidence.

A Magistrate is bound to make a precis of the evidence adduced before him even in a summary trial. *In re : Kappal Nadar*.

29 Cr. L. J. 584 :
109 I. C. 600 : A. I. R. 1928 Mad. 928.

———Summary trial—Offence of criminal trespass—Propriety of summary trial.

Where the question in a case under S. 447, Penal Code, is an intricate one dealing with the title and possession of the parties and the evidence led in the case by the parties is not convincing as to the exact location and the identity of the land, a summary trial is not proper and the case should be tried in the ordinary way. *Parmeshwar Lal Miller v. Emperor*.

23 Cr. L. J. 440 :
67 I. C. 646 : 3 P. L. T. 347 :
A. I. R. 1922 Pat. 296.

———Summons case—Omission to enter in summons full particulars with which accused is charged—Effect.

Mere omission in the summons to enter full particulars of the offence with which the accused is charged, does not by itself, vitiate the trial, unless the accused is prejudiced by such an omission or by a defect in the proceedings at the trial. Such a defect is cured by S. 537, Cr. P. C. *Emperor v. Abdul*.

41 Cr. L. J. 92 (b) :
184 I. C. 742 : 1939 O. L. R. 647 :
1939 O. W. N. 960 : 12 R. O. 138 :
A. I. R. 1940 Oudh 77.

———Surety—Liability for non-appearance of accused—Criminal Procedure Code (Act V of 1898), S. 500—Release under, what amounts to—Accused kept in custody of Mahila Ashram—Whether release within S. 500—Surety, if liable for movements of accused.

When a Court orders the release of an accused under S. 500, Cr. P. C., it has no right or power to put any restrictions on the accused's movements. Therefore, an order of the Magistrate that the accused should be kept in the Mahila Ashram, relieves the surety of his responsibility under the bond as the accused in such a case is not actually "released." The surety, therefore, will not be liable for the non-appearance of the accused on the date of the hearing. *Raghubar Dayal v. Emperor*.

39 Cr. L. J. 219 :
172 I. C. 862 : 10 R. O. 196 :
1938 O. W. N. 47 : 1938 O. L. R. 34 :
13 Luck. 720 : A. I. R. 1938 Oudh 81.

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———Suspicion—Benefit of doubt.

If the evidence is legally insufficient, the gravest suspicion, amounting even to moral certainty, is not enough to sustain a conviction. *Sardar Ahmad v. Emperor*.

36 Cr. L. J. 778 :
155 I. C. 478 : 35 P. L. R. 697 :
7 R. L. 721 : A. I. R. 1934 Lah. 693.

———Conviction.

A conviction based on mere suspicion is bad. *Noor v. Emperor*.

21 Cr. L. J. 189 :
54 I. C. 898 : 18 A. L. J. 87 :
2 U. P. L. R. All. 37 : A. I. R. 1919 All. 13.

———Suspicion—Conviction.

Suspicion though a ground for scrutiny, cannot justify the conviction of an accused person in a criminal trial for an offence and the difficulties of the prosecution afford no legal justification for convicting the accused on mere suspicion. *Chandika Prasad v. Emperor*.

31 Cr. L. J. 1081 :
126 I. C. 684 : 7 O. W. N. 564 :
A. I. R. 1930 Oudh 324.

———Suspicion—Conviction.

The gravest suspicion against the accused will not suffice to convict him of a crime unless evidence establishes it beyond doubt. *Rama Murti v. Jai Indra Bahadur Singh*.

34 Cr. L. J. 661 :
143 I. C. 852 : 10 O. W. N. 345 :
I. R. 1933 Oudh 215 : A. I. R. 1933 Oudh 257.

———Suspicion.

Decision must not rest on suspicion. *Hari Krishna v. Emperor*.

36 Cr. L. J. 1007 :
156 I. C. 819 : 1935 O. W. N. 781 :
8 R. O. 6 : A. I. R. 1935 Oudh 477.

———Suspicion.

Dictum—Suspicion can never take the place of judicial proof. *Dila Ram v. Emperor*.

33 Cr. L. J. 501 :
137 I. C. 681 : 33 P. L. R. 86 :
I. R. 1932 Lah. 349 : A. I. R. 1932 Lah. 195.

———Suspicion.

Grave suspicion against accused—Whether sufficient for conviction. *Emperor v. Parmeshwar Din*.

35 Cr. L. J. 66 :
146 I. C. 431 : 10 O. W. N. 742 :
6 R. O. 116 : A. I. R. 1933 Oudh 372.

———Suspicion.

Gravest suspicion is not enough for conviction unless evidence establishes crime beyond doubt. *Ujja v. Emperor*.

35 Cr. L. J. 299 :
147 I. C. 111 : 10 O. W. N. 976 :
6 R. O. 220 : A. I. R. 1933 Oudh 457.

———Suspicion.

In a criminal trial, suspicion cannot take the place of judicial proof. *Amar Nath v. Emperor*.

32 Cr. L. J. 1049 :
133 I. C. 639 : I. R. 1931 Lah. 815 :
A. I. R. 1931 Lah. 406.

———Suspicion—Omission to explain adverse circumstances—Inference.

As a general rule, it is reasonable to expect

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and for this purpose, he is entitled to express his opinion on the evidence. *Satdeo v. Emperor*.

37 Cr. L. J. 182 :
159 I. C. 919 : 1936 O. L. R. 18 :
1936 O. W. N. 28 : 8 R. O. 225 :
A. I. R. 1936 Oudh 164.

—————*Trial by Jury—Duty of Judge.*

Judge must make distinction between pure law and expression of his own opinion on question of fact or of mixed law and fact—In latter cases, he must make Jury understand that Jury are at liberty to accept or reject his opinion—Duty of Judge in dealing with evidence of accomplice mentioned. *Nahnak Ahir v. Emperor*.

35 Cr. L. J. 1104 :
150 I. C. 687 : 15 P. L. T. 264 :
13 Pat. 529 : 7 R. P. 12 (2) :
A. I. R. 1934 Pat. 309.

—————*Trial by Jury—Error of law—Burden of proving innocence put on accused—Error of law.*

While the prosecution must prove the guilt of the accused, there is no such burden laid on the accused to prove his innocence and it is sufficient for him to raise a doubt as to his guilt, he is not bound to satisfy the Jury of his innocence. It is a serious error of law when a Judge while rightly putting the burden of proof of the guilt of the accused upon the prosecution, wrongly puts the proof of their innocence upon the accused, and where such an error appears to colour the whole of his charge to the Jury and finds expression in specific misdirections to the Jury in certain passages, accused are sure to be prejudiced, and therefore the verdict of the Jury and the convictions of the accused should not be allowed to stand. *Shewaram Jethanand Shivdasani v. Emperor*.

41 Cr. L. J. 28 :
184 I. C. 474 : 1940 Kar. 249 :
12 R. S. 107 : A. I. R. 1939 Sind 209.

—————*Trial by Jury—Evidence—Duty of Judge.*

It is not enough merely to read the evidence to the Jury ; the Judge must analyse the evidence and place before the Jury all facts which legitimately arise in favour of the accused. *Emperor v. Hari*.

36 Cr. L. J. 1161 (2) :
157 I. C. 697 : 28 S. L. R. 397 :
A. I. R. 1935 Sind 145.

—————*Trial by Jury—Evidence of bad character, effect on Jury—Failure to point out that deceased had not been cross-examined—Effect.*

The Judge should always remember in charging the Jury that they should be cautioned against being influenced against the accused by evidence which shows or tends to show that the accused is of bad character. Mere evidence that proceedings under S. 110, Cr. P. C. were pending against the accused is not evidence of bad character. The failure of a Judge to point out to the Jury that the deceased had not been cross-examined cannot have much effect as the Jury know perfectly well that the deceased had not been cross-examined and after they have spent several days in hearing the case

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they know what cross-examination is and the purpose it serves. *Moseladdi v. Emperor*.

40 Cr. L. J. 877 :
184 I. C. 206 : 12 R. C. 212 (2) :
A. I. R. 1939 Cal. 497.

—————*Trial by Jury.*

Expression of opinion by Juror before delivery of charge—Fresh trial with fresh Jury should be held. *Bideshi v. Emperor*.

37 Cr. L. J. 749 :
162 I. C. 705 : 1936 O. W. N. 457 :
1936 O. L. R. 287 : 8 R. O. 395 :
A. I. R. 1936 Oudh 268.

—————*Trial by Jury—F. I. R.*

The earliest version of an occurrence, as given by an informant or prosecutrix who is the principal witness to the occurrence, and on whose testimony practically the whole case depends, has always to be placed before the Jury in order to judge of the truth or falsity of the prosecution case. *Abdul Aziz Musalman v. Emperor*.

35 Cr. L. J. 957 :
149 I. C. 447 : 30 N. L. R. 262 :
6 R. N. 229 : A. I. R. 1934 Nag. 94.

—————*Trial by Jury—Heads of charge, recording of—Court's duty.*

Even though the law requires only that the heads of a charge to the Jury should be recorded, but it is equally clear that as the law allows an appeal in cases of trial by Jury on the ground of misdirections, the charge should be in such a form as to enable the Court of Appeal to be satisfied that it was delivered with sufficient fullness to the Jury and that it is such as to enable the Court of Appeal to say that all points of law and fact were clearly and correctly explained to the Jury, having regard to the evidence adduced in the case. It is the duty of the presiding officers in criminal trials to see that the requirements of law as laid down in the Cr. P. C. and insisted upon by High Courts are complied with. *Tuka Mia v. Emperor*.

28 Cr. L. J. 478 :
101 I. C. 606 : 31 C. W. N. 387 :
A. I. R. 1927 Cal. 936 (a).

—————*Trial by Jury—Identification.*

Identification—Jury trial—Witnesses identifying accused in diffused electric torch light—Jury allowed to experiment in absence of accused—Verdict held should be set aside. *Sarup Ali v. Emperor*.

36 Cr. L. J. 129 :
152 I. C. 661 : 38 C. W. N. 1154 :
60 C. L. J. 191 : 7 R. C. 305 :
A. I. R. 1934 Cal. 741.

—————*Trial by Jury—Interference with verdict.*

No Court will interfere with the verdict of a Jury, even if it may itself think differently of the evidence, or because it thinks that another Jury may have come to a different conclusion. To lightly interfere with the verdict of a Jury with which the Sessions Judge has agreed would be to reduce trial by Jury in this country to a farce. *Emperor v. Jhina Soma*.

41 Cr. L. J. 176 :
185 I. C. 382 : 41 Bom. L. R. 965 :
I. L. R. 1939 Bom. 648 : 12 R. B. 248 :
A. I. R. 1939 Bom. 457.

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after conducting an investigation into the manner in which the accused had been performing his work came to the conclusion that he committed defalcations of money paid in as fines by persons convicted before the Honorary Magistrates. In his report to the Police to prosecute the accused, the District Magistrate stated that there was sufficient ground for believing that he was guilty of an offence under S. 409, Penal Code. The accused applied for transfer to a Magistrate outside the District: *Held*, that though an apprehension that he would not receive an impartial trial might actually be groundless, but it was not unlikely that a fear might arise in the accused's mind and that for the ends of justice, the case should be transferred to Magistrate who was not under the immediate control of the District Magistrate. *Maung Than Shwe v. Deputy Commissioner, Hanthawaddy.*

38 Cr. L. J. 923 :
170 I. C. 420 : 10 R. Rang. 81 :
A. I. R. 1937 Rang. 284.

———*Transfer—Accused placing sinister interpretation on Magistrate's innocent act—Whether ground for transfer.*

An accused is not entitled to have his case transferred from the Court of a Magistrate who is seised of it merely because he chooses to place a sinister interpretation on an innocent act of the Magistrate. *K. L. Gauba v. Emperor.*

38 Cr. L. J. 955 :
170 I. C. 586 : I. L. R. 1937 Lah. 114 :
39 P. L. R. 643 : 10 R. L. 135 :
A. I. R. 1937 Lah. 411.

———*Transfer—Ample opportunity to file application—Test to determine—Criminal Procedure Code (Act V of 1898), S. 526 (9).*

In considering the question whether or not the applicant had ample opportunity before to file an application for transfer, regard must be had to the act whether or not the ground on which the application for transfer is proposed to be based did exist earlier. Where the applicant has had no reasonable opportunity to apply for transfer, the case does not fall under S. 526 (9), Cr. P. C. *Salag Ram v. Emperor.*

38 Cr. L. J. 416 (b) :
167 I. C. 515 : 9 R. A. 550 :
1936 A. W. R. 967 : A. I. R. 1937 All. 171.

———*Transfer—Case complete except for judgment—Transfer.*

The transfer of a part-heard case should be made only in circumstances of an exceptional character, and to transfer a case which has been completely heard on the mere ground that the Magistrate is overworked is an occurrence which is unheard of. *In re : Kisni.*

38 Cr. L. J. 719 :
169 I. C. 96 : 9 R. N. 301 :
I. L. R. 1937 Nag. 163 :
A. I. R. 1937 Nag. 103.

———*Transfer—Complaint against District Superintendent of Police in respect of actions done by him in official capacity—Complaint should be tried by Magistrate of equal rank.*

A complaint against the District Superinten-

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dent of Police was filed before the District Magistrate, was transferred by him to the Sub-Divisional Magistrate for disposal. The accused was the relation of the District Magistrate, the acts that gave rise to the complaint occurred 10 years ago and the case, had it come up for trial, would certainly have been a *cause celebre*. The complainant objected to the case being tried by the Magistrate on the ground that he himself would have to be called as witness in the trial and prayed for its transfer. Notwithstanding the objection, the Magistrate held that he could not take cognizance of the offence for want of sanction of the Local Government and discharged the accused: *Held*, that the action of the Sub-Divisional Magistrate could be said to be illegal; but in view of all the circumstances of the case, the matter, if it had to be put an end to, should have been put an end to in a way correct in every possible detail, and the Sub-Divisional Magistrate in the somewhat delicate position would have shown a better sense of the fitness of things if he had, under the circumstances, asked that some other Magistrate should deal with the case finally. *J. W. Atkinson v. S. W. H. Xavier.*

37 Cr. L. J. 723 :
162 I. C. 988 : 8 R. Rang. 603 :
A. I. R. 1936 Rang. 242.

———*Transfer—Complaint against Financial Commissioner—Application for transfer—Case held should be transferred.*

Where a complaint made against the Financial Commissioner was transferred for disposal to the Additional District Magistrate who was also a Collector, and as such, subordinate to the accused, and the complainant applied for transfer of the case: *Held*, that the applicant might quite reasonably have the apprehension that the particular relationship that the Additional District Magistrate had to the accused might have some influence on him, and even if it merely embarrassed him, it would be sufficient to justify the applicant's apprehension that the trial might not be all that could be desired. The case should be transferred to some other Court; for the existence of such an apprehension in the mind of one of the parties must militate against a proper trial, if for no other reason than that it places the party concerned under a very serious handicap. *Maung Chit Tin v. H. O. Reynolds (Financial Commissioner, Burma).*

39 Cr. L. J. 415 :
174 I. C. 400 : 10 R. Rang. 403 :
A. I. R. 1938 Rang. 68.

———*Transfer—Grounds.*

Where transfer of a case is applied for on the ground that on a certain date the complainant was seen going to the Chamber of the Magistrate and remaining there for some time, and this is not denied by the Magistrate, what effect the words or the notion of a trying Magistrate will have on the mind of an accused person should always be considered, and if the words or notion of the Magistrate would raise an apprehension in the mind of the accused

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———*Trial by Jury—Misdirection—Interference by High Court when warranted.*

It is not in every case when the charge to the Jury is open to criticism in matters of detail that the High Court will interfere in appeal. Language may be used too broadly or not happy in its expression; but the essential point for consideration is whether the case against the accused has been fairly brought to their notice which may appropriately guide them in deciding whether the accused is guilty or innocent. When there are more than one accused, it is in the first degree essential both that the Jury should be asked for a separate finding regarding each of the accused and that particulars of the evidence affecting each person should be placed in a manner which may enable the Jury to distinguish the cases of accused as against whom the evidence is not of the same degree of cogency. *Yusuf Mia v. Emperor.*

40 Cr. L. J. 147 :
178 I. C. 934 : 20 P. L. T. 51 :
5 B. R. 185 : 11 R. P. 312 :
A. I. R. 1938 Pat. 579.

———*Trial by Jury—Misdirection.*

It amounts to misdirection, where in his charge to the Jury, the Judge has not sufficiently distinguished the cases of each of the accused which are widely different, so as to make a difference on the admissibility of evidence. *Shearam Jethanand Shivdasani v. Emperor.*

41 Cr. L. J. 28 :
184 I. C. 474 : 1940 Kar. 249 :
12 R. S. 107 : A. I. R. 1939 Sind 209.

———*Trial by Jury—Misdirection—Judge discussing evidence in charge and leaving decision on every point to Jury expressing his own opinion.*

A Judge in his charge to the Jury, not only may but should let his opinion appear, provided that he leaves the decision fairly to the Jury and does not take it out of their hands. The essential test in a case of misdirection is to see as to whether the Judge usurps the Jury's function. Where a Judge in his charge has set out the defence case and discussed the evidence led in support of it at great length, and has left the decision on every point to the Jury; the mere fact that his presentation of it was at times coloured by the view he had formed, does not amount to misdirection. *Abdul Gafur Kotwal v. Emperor.*

40 Cr. L. J. 101 :
178 I. C. 637 : I. L. R. 1938 Cal. 636 :
11 R. C. 383 : A. I. R. 1938 Cal. 658.

———*Trial by Jury—Misdirection—Jury told that they must be satisfied as to place of occurrence—No misdirection.*

Where the Judge tells the Jury that, whatever view they might take of the defence version, they could not convict the accused unless they were satisfied as to the truth of the prosecution version as to the place of occurrence, there is no misdirection causing any prejudice to the appellants in this aspect of the case. *Naim-ud-Din Biswas v. Emperor.*

38 Cr. L. J. 243 :
166 I. C. 625 : 40 C. W. N. 1377 :
9 R. C. 561 : I. L. R. 1937 1 Cal. 475 :
A. I. R. 1936 Cal. 793.

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———*Trial by Jury—Misdirection—Omission to direct Jury on one of vital ingredients of S. 366, Penal Code, amounts to misdirection.*

In a trial for offences of kidnapping and abduction, where the girl who was not below the age of 16 years, was taken away by the accused for marriage without her consent; in the whole charge to the Jury, there was not a word by which the Jury was asked to find whether the marriage which the accused intended to perform was going to be without the consent of the girl. On this vital ingredient of S. 366, Penal Code, the Judge gave absolutely no assistance to the Jury. The accused was found guilty of abduction: *Held*, that this non-direction amounted to a serious misdirection and occasioned miscarriage of justice. *Rameshwar Singh v. Emperor.*

38 Cr. L. J. 919 :
170 I. C. 464 : 16 Pat. 413 :
18 P. L. T. 607 : 3 B. R. 734 :
10 R. P. 128 : A. I. R. 1937 Pat. 440.

———*Trial by Jury—Misdirection.*

Where a First Information Report had been judicially found to be false, and the Judge in his charge to the Jury told them that this decision was not binding on the accused or the Jury, and that it was open to the Jury to come to a different conclusion on the materials before them: *Held*, that the Judge was not bound to tell the Jury that they should discard this decision altogether from their consideration, and that the charge was not in any way defective. *Wajid Ali v. Emperor.*

30 Cr. L. J. 273 :
114 I. C. 220 : 7 Pat. 153 :
I. R. 1929 Pat. 140 : 10 P. L. T. 297 :
A. I. R. 1929 Pat. 34.

———*Trial by Jury—Misdirection.*

Where a Judge in his charge exhorts the Jury as follows: "The whole of Karachi is watching you, the whole commercial world is watching you", it introduces into the case extraneous considerations and amounts to a clear direction to the Jury to convict. It means nothing else and does not leave the Jury to come freely to their own conclusions. In such a case, the Judge passes beyond the limits of wise guidance or advice or that expression of opinion on facts which the Cr. P. C. allows in the charge of a Judge to a Jury. *Shearam Jethanand Shivdasani v. Emperor.*

41 Cr. L. J. 28 :
184 I. C. 474 : 1940 Kar. 249 : 12 R. S. 107 :
A. I. R. 1939 Sind 209.

———*Trial by Jury—Misdirection.*

Where a Judge in his charge to the Jury says that it is the duty of the accused to prove this fact or that to satisfy the jury on this point or that, and leads the jury to believe that the duty of the prosecution, and the duty of the defence so far as the "burden of proof" of their respective cases is concerned, is upon the same footing, so that as the prosecution must prove their case, so the accused must prove theirs, it amounts to

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———'Trial,' meaning of—*Transfer—Warrant case—Transfer after framing of charge—Transference Court, if can hear case de novo.*

In Bombay the word "trial" has always been understood to mean the proceeding which commences when the case is called on with the Magistrate on the Bench, the accused in the dock and the representatives of the prosecution and defence, if the accused be defended, present in Court for the hearing of the case. The trial covers the whole of the proceedings in a warrant case. Where after framing of charge, a warrant case is transferred, the transferee Court can hear the case *de novo*. *Dagdu Govindset Wani v. Punja Vedu Wani*.

38 Cr. L. J. 250 :
166 I. C. 598 : 38 Bom. L. R. 1189 :
9 R. B. 247 : I. L. R. 1937 Bom. 211 :
A. I. R. 1937 Bom. 55.

———*Trial, what is.*

"Trial" is every proceeding which is not an enquiry and begins when the accused is called on to answer. *Emperor v. John Mc Iyer*. (F. B.)

37 Cr. L. J. 637 :
162 I. C. 592 (2) : 1936 M. W. N. 281 :
43 L. W. 548 : 70 M. L. J. 635 :
8 R. M. 1000 : A. I. R. 1936 Mad. 353.

———*Trial by jury—Abduction case—Misdirection.*

In a case of abduction, evidence had been given for nearly three weeks, and had wandered into by-paths of remotely connected facts; arguments had gone on for three days. The opening words of the Judge's charge to the Jury were: "You have before you a simple case of abduction of a young married girl for immoral purposes". It was objected that this was a misdirection at the very outset; that the case was in reality far from simple, and that the Judge in calling it a simple case was suggesting to the Jury that they would have no difficulty in finding it a true case: *Held*, that the Judge struck the right note in reminding the Jury that the issue before them was a plain and simple one. It was impossible to read into these words the sinister intention which was suggested. *Abdul Gafur Kotwal v. Emperor*.

40 Cr. L. J. 101 :
178 I. C. 637 : I. L. R. 1938 1 Cal. 636 :
11 R. C. 383 : A. I. R. 1938 Cal. 658.

———*Trial by Jury—Accused charged with abduction and kidnapping—Separate verdict on each charge should be taken.*

In a case where an accused person is charged with both kidnapping and abduction, it is essential to take a separate verdict on each charge. If this is not done, it may become a mere matter of speculation what the decision of the Jury really was. *Nanda Ghosh v. Emperor*.

40 Cr. L. J. 649 :
182 I. C. 322 : 12 R. C. 40 :
A. I. R. 1939 Cal. 321.

———*Trial by Jury—Accused charged with theft—Evidence of receiver of stolen property, value of—Absence of direction—Misdirection.*

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Where in a case an accused was charged with theft, the only evidence connecting the accused was that of a person who had received the stolen property, the position of such a person is little different from that of an accomplice and if the Judge in his charge to the Jury does not point out with sufficient force the unsafety of relying on his evidence, it amounts to a misdirection. *In re: Kalli Koravan*.

39 Cr. L. J. 580 :
175 I. C. 416 : 1938 M. W. N. 96 :
47 L. W. 158 : (1938) 1 M. L. J. 234 :
10 R. M. 774 : A. I. R. 1938 Mad. 464.

———*Trial by Jury—Adjournment after address to Jury.*

There is nothing illegal in adjourning a case after the Government Pleader and the pleader of the accused have addressed the Jury, and there is no provision in law for a fresh address on resumption of the hearing. *Sur Nath Bhaduri v. Emperor*.

28 Cr. L. J. 950 :
105 I. C. 662 : 25 A. L. J. 1077 :
50 All. 365 : A. I. R. 1927 All. 721.

———*Trial by Jury.*

An offence under S. 396, Penal Code, is not one of the offences made triable by a Jury under the Government order which is embodied in paragraph 49 of the Oudh Criminal Digest. Accused were charged with an offence under S. 396, Penal Code, and were tried by a Jury. The Jury acquitted them of the offence under S. 396 of the Code but returned a verdict of guilty under S. 395 of the Code: *Held*, (1) that the offence with which the accused were charged being an offence which was not triable by Jury, the trial should not have been by Jury at all; (2) that the accused, having been acquitted of the offence with which they were charged, could not be convicted of another offence on the same charge. *Sripal Singh v. Emperor*.

20 Cr. L. J. 691 :
52 I. C. 659 : 22 O. C. 130 :
1 U. P. L. R. (J. C.) 61 :
A. I. R. 1919 Oudh 193.

———*Trial by Jury—Approver's statement—Duty of Judge.*

Approver—Corroboration—Judge must caution Jury about danger of convicting accused on uncorroborated testimony of accomplice—Where Judge has done this, no error in charge can be held to have been committed. *James Dowdall v. Emperor*.

37 Cr. L. J. 607 :
162 I. C. 430 : 31 N. L. R. 215 Sup. :
8 R. N. 262 : A. I. R. 1936 Nag. 103.

———*Trial by Jury—Case of sexual offence—Absence of special caution does not affect Jury's verdict.*

It is true that in a case where a man is charged with a sexual offence, it is necessary that the charge to the Jury should contain the special caution, that in such cases, it is dangerous to rely on the uncorroborated evidence of the prosecutrix. If the crucial part of her story which, if believed, establishes the guilt of the accused is corroborated, the mere absence of caution which is usually given in

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———*Trial by Jury—Recommendation for mercy—Effect.*

The recommendation for mercy by the Jury along with their verdict of 'guilty', does not imply that the Jury did not believe in the accused's guilt at all. *Hari Mahto v. Emperor.*

37 Cr. L. J. 320 :
160 I. C. 675 : 2 B. R. 233 : 8 R. P. 375 :
A. I. R. 1936 Pat. 46.

———*Trial by Jury—Reference.*

Where by mistake an offence triable with the aid of Assessors is tried by Jury, the Judge when he discovers the mistake may treat the trial as legal and refer the case to the High Court under S. 307 if he disagrees with the verdict of the Jury. *Emperor v. Bhagwat Sahn.*

36 Cr. L. J. 1502 :
158 I. C. 1131 : 2 B. R. 44 :
8 R. P. 235 : 16 P. L. T. 603 :
A. I. R. 1935 Pat. 433.

———*Trial by Jury—Sexual offence—Judge not warning Jury of danger of convicting on uncorroborated story of girl—Whether non-direction.*

It is extremely dangerous and permissible only in exceptional cases to convict a man of a sexual offence on the uncorroborated testimony of the complainant. The corroboration must be by independent evidence, that is to say, by some additional evidence coming from another person altogether, and the Rule must be properly emphasized in the charge to the Jury. Failure to warn the Jury of the danger of convicting the accused on the girl's evidence alone amounts to a non-direction, which vitiates the trial. *Sachinder Rai v. Emperor.*

41 Cr. L. J. 1 :
184 I. C. 354 : 18 Pat. 698 : 6 B. R. 41 :
20 P. L. T. 898 : 12 R. P. 238 :
A. I. R. 1939 Pat. 536.

———*Trial by Jury—Sexual offence—Proper direction.*

In trials for sexual offences, the Judge should tell the Jury that if the girl was immoral, it made her story of abduction and deceit less probable and that of the accused that she had a love affair with him more probable. Where this aspect of the case has not been put to the Jury, it constitutes, misdirection. The necessity cannot be too strongly emphasised for charging the Jury in cases of this nature with extreme care, for experience has shown that Juries in this country are most liable to misunderstand the law on the subject and to misapply it. *Sachinder Rai v. Emperor.*

41 Cr. L. J. 1 :
184 I. C. 354 : 18 Pat. 698 :
6 B. R. 41 : 20 P. L. T. 898 :
A. I. R. 1939 Pat. 536.

———*Trial by Jury.*

Statement of person not examined, treated as evidence for prosecution—Jury warned—Misdirection held not constituted. *Enayet Ali v. Emperor.*

36 Cr. L. J. 619 :
154 I. C. 981 : 7 R. C. 546 :
38 C. W. N. 446 :
A. I. R. 1934 Cal. 557.

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———*Trial by Jury—Statement reduced to writing by Police during investigation—Dacoity trial—Identification of stolen property—List of property taken by Sub-Inspector, admission of—Misdirection to Jury—Re-trial.*

In his charge to the Jury in a Sessions trial for dacoity, the Judge asked the Jurors to attach weight to a list of stolen properties dictated to a Police Sub-Inspector by one of the prosecution witnesses in the course of investigation, and remarked that the material objects before the Jury were identifiable as the property of the witness; *Held*, (1) that the document should not have been admitted in evidence under S. 167 (2) that the Judge's reference to it constituted such a material misdirection that a re-trial of the accused was necessary. *Vellaya Rowther v. Emperor.*

13 Cr. L. J. 244 :
14 I. C. 596.

———*Trial by Jury—Statements to Police—Duty of Judge in giving directions on point of their reliability.*

The giving of advice to the Jury to treat all kinds of statements to the Police as of one level of unreliability, should be deprecated. If it is the prosecution case that the Sub-Inspector's notes in any particular instance are unreliable, that should be brought out in the course of the evidence of the particular officer or it may appear on the face of the notes themselves. Cr. P. C. requires the Court to refer to the statement as a preliminary to directing that the accused should have a copy, and whether the statements are exhibited or not, it is constantly found that only by reference to them can it be understood what is really meant by the answers elicited from the witness or the Sub-Inspector in cross-examination. But whether a discrepancy or omission is effective to contradict a witness in any particular case, depends on the nature of the fact in question as well as the fullness with which the statement had been recorded. An omission may amount to contradiction, if the matter omitted was one which the witness would have been expected to mention and the Sub-Inspector to make a note of in the ordinary course. *Yusuf Mia v. Emperor.*

40 Cr. L. J. 147 :
178 I. C. 934 : 20 P. L. T. 51 :
5 B. R. 185 : 11 R. P. 312 :
A. I. R. 1938 Pat. 579.

———*Trial by Jury—Summing-up, objection to—No material to come to conclusion—Ruling by lower Court correctly given in question of admissibility of evidence—Presumption of correct summing up.*

In the absence of any suggestion based on any materials, that the summing up was open to objection, their Lordships assumed that the Commissioner who heard the arguments on the admissibility of the evidence with regularity, and ruled upon it correctly, also directed the Jury adequately and properly

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any effect upon the verdict of guilty already brought in. *Asabuddin v. Emperor*.

39 Cr. L. J. 601 :
175 I. C. 523 : 10 R. C. 795 :
A. I. R. 1938 Cal. 399.

—————*Trial by Jury—Evidence—Confession—Duty of Judge.*

Two persons were tried at the same time for the offences of abduction and rape, respectively. The Judge admitted the confession of the former, though retracted, against the latter. He had warned the Jury not to rely much on this confession. The only other evidence on which the latter, *i. e.*, one tried for rape, could be convicted was that of the girl. The Judge convicted him: *Held*, that he should have told the Jury not to take the confession at all into consideration and that it might have prejudiced the accused. *Naresh Chandra v. Emperor*.

39 Cr. L. J. 723 :
176 I. C. 560 : 42 C. W. N. 814 :
11 R. C. 125 : A. I. R. 1938 Cal. 479.

—————*Trial by Jury—Confession.*

Judge should decide the evidentiary value of confession before putting it before Jury. *Nayeb Sahava v. Emperor*.

35 Cr. L. J. 1479 :
152 I. C. 44 : 38 C. W. N. 659 :
61 Cal. 399 : 7 R. C. 225 (2) :
A. I. R. 1934 Cal. 636.

—————*Trial by Jury—Contradictory evidence.*

Prosecution case based on evidence of one witness—Contradictions in his testimony—Jury has right to weigh discrepancies. *Emperor v. Suar Gola*.

36 Cr. L. J. 261 :
152 I. C. 1021 : 16 P. L. T. 95 :
7 R. P. 289 : A. I. R. 1934 Pat. 533.

—————*Trial by jury.*

Conviction of some accused—Subsequent conviction of Foreman of Jury for having taken bribe in the trial—Verdict and conviction cannot stand. *Hafiz Molla v. Emperor*.

34 Cr. L. J. 1072 :
145 I. C. 816 : 60 Cal. 751 :
6 R. C. 137 (2) : A. I. R. 1933 Cal. 639.

—————*Trial by Jury—Defective charge to Jury.*

In those cases where the accused is undefended or where he is defended by an incompetent Counsel or is too poor to engage the services of a competent lawyer, his case cannot generally be adequately placed before the Jury by means of arguments. If, however, in such cases the Judge has properly charged the Jury, the mere fact that the case has not been adequately argued on behalf of the accused cannot by itself be a good ground for ordering a re-trial. On the same principle, a re-trial should not be ordered, unless it can be shown that matters which Counsel would have placed, have not been placed before the Jury or that the charge of the Judge is defective and erroneous in material particulars. *Samarendra Kumar Chakravarty v. Emperor*.

38 Cr. L. J. 673 :
169 I. C. 48 : 15 Pat. 817 :
9 R. P. 526 : 3 B. R. 514 : 18 P. L. T. 535 :
A. I. R. 1937 Pat. 263.

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—————*Trial by Jury—Defence taken by accused in the alternative, inconsistent—Inference.*

In a criminal trial, the presumption of innocence is always in favour of the accused till he is found guilty, and he is also entitled to the benefit of a reasonable doubt. Even if the defences taken up by the accused in the alternative were inconsistent, that would not necessarily prove that the evidence led on behalf of the prosecution, who must establish the guilt of the accused, should have been believed by the jury. *Emperor v. Jhina Soma*.

41 Cr. L. J. 176 :
185 I. C. 382 : 41 Bom. L. R. 965 :
I. L. R. 1939 Bom. 148 : 12 R. B. 248 :
A. I. R. 1939 Bom. 457.

—————*Trial by Jury—Direction to Jury that failure of defence would not necessarily establish prosecution case.*

The Judge after summarizing the prosecution and defence should tell the Jury that though they do not believe the defence, it does not follow that they must believe the prosecution; that is no doubt the proper direction, and the proper place to give it, but where the Judge gives it at the end of the charge, it would not amount to misdirection. *Abdul Gafur Kotwal v. Emperor*.

40 Cr. L. J. 101 :
178 I. C. 637 : I. L. R. 1938 1 Cal. 636 :
11 R. C. 383 : A. I. R. 1938 Cal. 658.

—————*Trial by Jury.*

Direction to Jury, that if they believed there was no evidence of dacoity but of receiving stolen property, with knowledge that it was such, they might find accused guilty under S. 412, Penal Code—Stolen property not found with accused till 6 weeks of offence—No evidence of accused's knowledge of property to be stolen: *Held*, this amounted to misdirection. *Istahar Khondkar v. Emperor*.

37 Cr. L. J. 701 :
162 I. C. 927 : 62 Cal. 956 :
39 C. W. N. 620 : 8 R. C. 665 :
A. I. R. 1936 Cal. 796.

—————*Trial by Jury—Duty of Judge—Absence of relevant prosecution witnesses—Direction to Jury.*

The effect of, and the inference to be drawn or not to be drawn from the absence of relevant witnesses from the witness-box is a matter to be considered with reference to the circumstances of each particular case and the facts which the witnesses, if called, would have been required to prove; and the Jury should be asked to consider it in the light of the particular circumstances and facts. On the failure of the prosecution to examine certain relevant witness, the Judge should ask the Jury to draw an inference, if any, from this failure in the light of the particular circumstances of the case. *Yusuf Mia v. Emperor*.

40 Cr. L. J. 147 :
178 I. C. 934 : 20 P. L. T. 51 :
5 B. R. 185 : 11 R. P. 312 :
A. I. R. 1938 Pat. 579.

—————*Trial by Jury—Duty of Judge.*

In a Jury trial, it is the duty of the Judge to help the Jury to come to a right conclusion

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should not strain the evidence to show that no offence has been committed. *Narain Maharana v. Emperor*. 31 Cr. L. J. 789 : 125 I. C. 134 : 9 Pat. 113 : A. I. R. 1930 Pat. 241.

———Under-trial prisoner, right of.

Under-trial prisoner has right to assistance of Counsel and to communicate with friends and relations. *Jahangiri Lal v. Emperor*.

35 Cr. L. J. 1180 :
150 I. C. 1056 : 7 R. L. 58 :
A. I. R. 1935 Lah. 230.

———Verdict of Jury, unanimity of.

Where the Jury's verdict is unanimous, it cannot be said that simply because there is no reason to be found in the record for disbelieving the evidence of certain witnesses, the Jury's verdict must be regarded as perverse or unreasonable. The Jury are entitled to form and express their own opinion as regards the reliability of these two witnesses, and one cannot exclude the possibility that they might have formed an adverse opinion on account of the demeanour of the witnesses or some other cause which does not find any mention in the record. *In re : Boya Lingadu Dubbodu*.

41 Cr. L. J. 581 :
188 I. C. 381 : 1940 M. W. N. 239 :
51 L. W. 321 : 1940, 1 M. L. J. 428 :
13 R. M. 23 : A. I. R. 1940 Mad. 509.

———Verdict of Jury—Verdict erroneous on one of the charges only—Whole trial, if must be set aside.

Where the verdict of the Jury on one of the charges only is found by the High Court to be erroneous, it can set aside that verdict and uphold conviction on other charges on which the verdict is not found to be erroneous. It need not set aside the whole trial. *Arnold Monteath Mathews v. Emperor*.

41 Cr. L. J. 482 :
187 I. C. 456 : 12 R. L. 492 :
A. I. R. 1940 Oudh 87.

———Verification proceedings.

Verification proceedings are undertaken, with a view to testing the truth of a confession and to obtain evidence either corroborating the confession or indicating its falsity. In so far at least as such evidence may be obtained, for instance, in ascertaining that the prisoner is familiar with or wholly ignorant of the localities of which he has spoken or in furnishing clues to further enquiry, such proceedings may be useful. *Jitendra Nath Gupta v. Emperor*. (S. B.)

38 Cr. L. J. 818.
169 I. C. 977 : 10 R. C. 69 :
A. I. R. 1937 Cal. 99.

———Vitiating the trial.

The trial of a warrant case as a summons case is an illegality, and vitiates the trial. *Gayaprosad v. Emperor*.

33 Cr. L. J. 573 :
137 I. C. 150 : 28 N. L. R. 18 :
I. R. 1932 Nag. 64 :
A. I. R. 1932 Nag. 111.

———Warrant—Extension of returnable date—Warrant under Public Demands Recovery Act—

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Peon assailed—Certificate Officer, competency of, to try offence.

The returnable date of a warrant may be extended by the Certificate Officer himself who issued it, and it is not necessary to have a fresh warrant made out. The Certificate Officer who issues the warrant for recovery of a sum under Public Demands Recovery Act, can try the case of an accused who unlawfully rescues the judgment-debtor from lawful custody and assaults the peon. *Salim-ud-Din v. Emperor*.

27 Cr. L. J. 553 :
93 I. C. 1049 : 43 C. L. J. 234 :
A. I. R. 1926 Cal. 605.

———Warrant and Summons case tried together—Procedure.

When a summons case and a warrant case are tried together, the procedure to be followed is that prescribed for the warrant case. *Nga Lun Mg v. Emperor*. 34 Cr. L. J. 1180 : 146 I. C. 173 : 6 R. Rang. 75 : A. I. R. 1933 Rang. 343.

———Warrant case—Accused reserving right of cross-examination—Charge framed for summons case—Accused's right to re-cross-examine prosecution witnesses.

Where a case is tried as a warrant case and the accused reserves his right of cross-examination, he is entitled to have the prosecution witnesses summoned for cross-examination after the framing of the charge even if the charge is framed for an offence triable as a summons case. *Devi Dial v. Rattan Devi*. 29 Cr. L. J. 235 : 107 I. C. 285 : A. I. R. 1928 Lah. 294.

———Warrant case—Trial, whether can be converted into summons case—Legality of trial.

Once a trial has begun according to the provisions relating to the trial of warrant cases, it is not open to the Magistrate to alter the section and to convict the accused without framing a charge as in a summons case. Where the Magistrate adopts such a course, the trial is altogether vitiated and the conviction cannot stand. *Govind v. Emperor*. 28 Cr. L. J. 227 : 99 I. C. 1027 : A. I. R. 1927 All. 270.

———Warrants of arrests, legality of.

The fact that it has been the practice for a considerable time for arrest warrants to be signed by the Deputy Nazir, cannot make the signing of them by that officer legal in the absence of due authorisation. *In re : Yedama Subbaramiah*. 35 Cr. L. J. 782 :

148 I. C. 818 (2) : 39 L. W. 388 :
66 M. L. J. 408 : 1934 M. W. N. 399 :
6 R. N. 542 : A. I. R. 1934 Mad. 206.

———What is—Delivery of judgment and passing of sentences.

The delivery of judgment and the passing of a sentence is an integral part of a criminal trial. *Rambit v. Emperor*. 24 Cr. L. J. 584 : 73 I. C. 328 : A. I. R. 1923 Rang. 44.

———Withdrawal—Complaint of serious charges—Withdrawal—Magistrate to ascertain if

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———Trial by Jury.

It is essential that the heads of charge to Jury should be accurately described and be such as to enable the High Court to see distinctly whether the case was fairly and properly placed before the Jury. *Fanindra Nath Banerji v. Emperor*. 9 Cr. L. J. 452 :

1 I. C. 970 : 38 Cal. 281 : 9 C. L. J. 199 :
5 M. L. T. 97 : 13 C. W. N. 197.

———Trial by Jury.

It is not provided by legislature that in every case in which the trial at Sessions will enable the accused to have a Jury, he is entitled to that privilege. *Hari Moreshwar Joshi v. Emperor*. 33 Cr. L. J. 262 :

136 I. C. 187 : 33 Bom. L. R. 1515 :
56 Bom. 61 : I. R. 1932 Bom. 171 :
A. I. R. 1932 Bom. 63.

———Trial by Jury.

Joint trial by Jury and Sessions Judge with aid of assessors—Jury acquitting accused on the charges tried by it—Sessions Judge can convict accused on the same evidence of the charges tried by him with the aid of assessors. *Ram Das v. Emperor*. 35 Cr. L. J. 1349 :

151 I. C. 442 : 1934 A. L. J. 852 :
7 R. A. 163 : A. I. R. 1934 All. 61.

———Trial by Jury—Judge's duty.

Judge must guide the Jury and direct attention of Jury to essential points. *Molla Khan Kabuli v. Emperor*. (S. B.) 35 Cr. L. J. 601 :
148 I. C. 172 : 37 C. W. N. 1061 :
6 R. C. 432 : A. I. R. 1934 Cal. 169.

———Trial by Jury.

Judge must exclude inadmissible evidence from Jury. *Nayeb Shahana v. Emperor*.

35 Cr. L. J. 1479 :
152 I. C. 44 : 38 C. W. N. 659 :
61 Cal. 399 : 7 R. C. 225 (2) :
A. I. R. 1934 Cal. 636.

———Trial by Jury.

Judge omitting to tell Jury that statements attributed to individual accused would not be evidence against other accused if he is found not guilty: *Held*, this amounted to misdirection. *Benoyendra Chandra Pandey v. Emperor*.

37 Cr. L. J. 394 :
161 I. C. 74 : 40 C. W. N. 432 :
63 Cal. 929 : 8 R. C. 472 :
A. I. R. 1936 Cal. 73.

———Trial by Jury—Judge pointing out defence evidence to supply defect in prosecution—Misdirection.

Where certain accused were not named in the First Information but the Judge drew the attention of the Jury to the fact that according to the defence evidence itself, these accused were present at the scene about the time of the occurrence and suffered injuries: *Held*, that it was open to the Judge, as an argumentative point to bring to the notice of the Jury the fact that the defence involved the presence of these persons at or about the

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time and place of occurrence. *Wajid Ali v. Emperor*. 30 Cr. L. J. 273 :

114 I. C. 220 : 7 Pat. 153 :
I. R. 1929 Pat. 140 : 10 P. L. T. 297 :
A. I. R. 1929 Pat. 34.

———Trial by Jury.

Judge sitting without Jury must apply same rules as in trial with Jury treating himself as Jury. *Shibdas Daw v. Emperor*.

35 Cr. L. J. 551 :
147 I. C. 1172 : 37 C. W. N. 934 :
6 R. C. 399 : A. I. R. 1934 Cal. 114.

———Trial by Jury.

Jury adding finding of fact to their verdict—Verdict is not bad in law. *Kassim-ud-Din v. Emperor*. 36 Cr. L. J. 480 :

154 I. C. 110 : 60 C. L. J. 45 :
7 R. C. 436 : A. I. R. 1935 Cal. 31.

———Trial by Jury.

Jury—Misdirection—Evidence weak to find accused guilty—Jury not directed to give benefit of doubt amounts to misdirection prejudicing accused. *Kassim-ud-Din v. Emperor*.

36 Cr. L. J. 480 :
154 I. C. 110 : 60 C. L. J. 45 :
7 R. C. 436 : A. I. R. 1935 Cal. 31.

———Trial by Jury—Jury told of confession but Court sending them out of Court while discussing, if confession ought to be admitted.

It is no good telling the Jury first that the accused has made a confession and then sending them out of Court while the question is discussed whether the confession ought to be admitted or not. *Daud Sheik v. Emperor*.

37 Cr. L. J. 976 :
164 I. C. 721 : 62 C. L. J. 257 :
40 C. W. N. 159 : 9 R. C. 265.

———Trial by Jury.

Jury—Verdict depending upon credibility of witnesses—Verdict not perverse—Weight of such verdict is great and should not be interfered with. *Emperor v. Bhagwat Sahu*.

36 Cr. L. J. 1502 :
158 I. C. 1131 : 16 P. L. T. 603 :
2 B. R. 44 : 8 R. P. 235 :
A. I. R. 1935 Pat. 433.

———Trial by Jury—Misdirection.

Case under S. 366, Penal Code—Father's delay in First Information Report—Explanation given—Judge directing Jury to take this into consideration—No misdirection. *Hari Mahlo v. Emperor*. 37 Cr. L. J. 320 :

160 I. C. 675 : 2 B. R. 233 :
8 R. P. 375 : A. I. R. 1936 Pat. 46.

———Trial by Jury—Misdirection.

Duty of Judge is to assist Jury to sift and weigh evidence—Charge of conspiracy to murder—Letter by stranger to complainant that accused were conspiring to kill him—Evidential value of letter not explained to Jury—Jury left to imagine it to be substantive evidence—Non-direction amounts to misdirection. *Nabi Khan v. Emperor*.

37 Cr. L. J. 673 :
162 I. C. 566 : 62 C. L. J. 43 :
A. I. R. 1936 Cal. 186.

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witnesses in a criminal case, but on the application of the complainant, the Magistrate declined to send for and examine witnesses who are included with a view to cause vexation to those witnesses themselves: *Held*, that though the Magistrate should not have acted on the representation of the complainant, the Magistrate was perfectly justified, when the matter was brought to his notice that certain witnesses were cited only for the purpose of causing vexation and delay, in ordering that they should not be compelled to appear in Court. *Saminatha Nayinan v. Kuppusawmi Iyyar*. 29 Cr. L. J. 725 : 110 I. C. 581 : A. I. R. 1928 Mad. 652.

—————Witnesses—Co-accused, when competent witness.

Where the prosecution desires to examine one of the co-accused as a principal witness, he can be competent witness to give evidence against others, if the Magistrate places his name on a separate charge-sheet and orders a separate trial with regard to that accused. *Emperor v. Karamalli Gulamalli*.

40 Cr. L. J. 118 :
178 I. C. 706 : 11 R. B. 184 :
40 Bom. L. R. 1092 :
I. L. R. 1938 Bom. 42 :
A. I. R. 1938 Bom. 481.

—————Witnesses — Credibility — Witnesses neither mentioned in F. I. R. nor independent—Credibility of.

The facts, that none of the witnesses were mentioned in the F. I. R. and that most of them were not independent and made some statements which were contrary to what was stated before the Committing Magistrate or the Police, are not always sufficient to totally discard their evidence though they are sufficient to raise a suspicion against their truthfulness and to lead the trying Judge to scrutinize the evidence with caution. If their oral evidence is corroborated by medical or other reliable evidence, there is no reason why it should not be believed even though the witnesses were not named in the F. I. R. or are not totally independent. *Dildar Khan v. Emperor*.

39 Cr. L. J. 330 :
173 I. C. 339 : 10 R. O. 220 :
1938 O. L. R. 108 :
1938 O. W. N. 184 :
A. I. R. 1938 Oudh 88.

—————Witnesses—Duty of prosecution to call all eye-witnesses.

Witnesses essential to the unfolding of a narrative on which the prosecution is based must, of course, be called by the prosecution whether in the result, the effect of their testimony is for or against the case for the prosecution. Where the eye-witnesses are not numerous, all of them must be examined by the prosecution and none of them should be treated as redundant because being eye-witnesses, each of them is likely to throw some

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light on the facts of the case. *Mukhtawandas v. Emperor*.

40 Cr. L. J. 393 :
180 I. C. 602 : 12 R. N. 377 :
1938 N. L. J. 434 :
I. L. R. 1939 Nag. 109 :
A. I. R. 1939 Nag. 13.

—————Witness's evidence partially false—Duty of Court—Rejection.

Even if a portion of a witness's evidence is found to be untrue, it is generally not a ground for rejecting the whole of his evidence altogether. It is the Magistrate's duty to sift the truth from falsehood. *Ram Dayal v. Mala Din*.

38 Cr. L. J. 329 :
166 I. C. 987 (1) : 9 R. O. 352 :
1937 O. L. R. 82 :
1937 O. W. N. 281 :
A. I. R. 1937 Oudh 283.

—————Witnesses—Mode of examination—Lady witnesses—Procedure.

In criminal trials it is desirable, where possible, that the normal procedure of the Court should be followed, witnesses should ordinarily be examined in the Court precincts, and the Magistrate who tries the case should himself see the witnesses. Ladies may be examined in chamber in the presence of the parties. *Saleh v. Emperor*.

38 Cr. L. J. 127 :
166 I. C. 45 : 9 R. S. 119 :
30 S. L. R. 366 : A. I. R. 1936 Sind 221.

—————Writing order pending trial, legality of.

There is no provision in Cr. P. C. for writing orders in the course of a case, and Magistrates will be well advised to defer all writing till after the conclusion of the trial. *S. Sendiappa Nadar v. President, District Board, Madura*.

32 Cr. L. J. 895 :
132 I. C. 319 : 54 Mad. 595 :
1930 M. W. N. 1271 :
33 L. W. 475 : 60 M. L. J. 495 :
I. R. 1931 Mad. 671 :
A. I. R. 1931 Mad. 419.

—————Written statement by accused—Practice.

The Cr. P. C. does not provide for filing written statements by the accused. Such statements are entirely irresponsible and should not be allowed to be filed. *Deputy Legal Remembrancer, Behar and Orissa v. Matukdhari Singh*.

17 Cr. L. J. 9 :
32 I. C. 137 : 20 C. W. N. 128 :
A. I. R. 1917 Cal. 687.

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—————Ss. 18 (7)-19—Roll-call of registered persons—Local Government Rule No. 13—Power to order, who may be authorised to exercise.

Under R. 13 of the Rules made under S. 18 (7), Criminal Tribes Act, the only officer who can order a roll-call of registered persons is the District Magistrate, or, if authorized by the District Magistrate in that behalf, the District

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misdirection. *Shewaram Jethanand Shivdasani v. Emperor.* 41 Cr. L. J. 28 :

184 I. C. 474 : 1940 Kar. 249 :
12 R. S. 107 : A. I. R. 1939 Sind 209.

—————*Trial by Jury—Misdirection.*

Where a Judge summarizes before the jurors the entire evidence in which all the main features of the case are exhaustively dealt with, mere non-reference to minor matters of detail does not amount to misdirection or non-direction. *Brenchopada Dafadar v. Emperor.* 39 Cr. L. J. 964 :

177 I. C. 929 : 67 C. L. J. 45 :
11 R. C. 296 : A. I. R. 1938 Cal. 625.

—————*Trial by Jury—Misdirection.*

Where a witness denies the truth in the Sessions Court of the statement made by himself before the Committing Magistrate, the statement before the Magistrate, although may be treated as an evidence, yet the Sessions Judge in his charge to the Jury must emphasize the necessity for very great care and caution on the part of the Jury before they decide to act upon a statement of such a character. Where a Judge places before the Jury an inadmissible and irrelevant evidence, the admission of such evidence is prejudicial to the accused and the charge is bad. *Ram Gobind Ghose v. Emperor.* 39 Cr. L. J. 625 :

175 I. C. 529 : 42 C. W. N. 781 :
10 R. C. 802 : A. I. R. 1938 Cal. 364.

—————*Trial by Jury—Misdirection.*

Where in a trial by Jury the Judge has expressed his opinion on matters of evidence but the expression of opinion is not of such a nature as to leave nothing for the Jury for their consideration, there is no misdirection. *Hossain Ali Mir v. Emperor.*

35 Cr. L. J. 1487 :
152 I. C. 40 : 59 C. L. J. 396 :
7 R. C. 231 : A. I. R. 1934 Cal. 757.

—————*Trial by Jury—Mixed trials with aid of jurors and assessors deprecated.*

The cumbrous device of a mixed trial with the help of jurors and assessors is apt to lead to unsatisfactory and illogical results. *Sakhawat v. Emperor.* 38 Cr. L. J. 330 :

167 I. C. 61 : 19 N. L. J. 320 :
9 R. N. 163 : I. L. R. 1937 Nag. 277 :
A. I. R. 1937 Nag. 50.

—————*Trial by Jury—Non-direction.*

Charge to Jury—Penal Code, S. 471—Charge under—Knowledge of accused, that certain entry was a forgery, depending on time when document came into existence—Judge not referring to this in charge to Jury—Charge held defective. *Muhammad Samir-ud-Din v. Emperor.* 35 Cr. L. J. 1216 :

150 I. C. 1122 : 7 R. C. 63 :
A. I. R. 1934 Cal. 622.

—————*Trial by Jury—Numerous points arising in case—Duty of Judge.*

In a case where numerous points arise with a greater or less bearing on the main issue, the Judge cannot be expected to place them

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all before the Jury, nor is it fair to criticize every phrase in his summing-up. *Abdul Gofur Kotwal v. Emperor.* 40 Cr. L. J. 101 :

178 I. C. 637 : 11 R. C. 383 :
I. L. R. 1939, 1 Cal. 636 :
A. I. R. 1938 Cal. 658.

—————*Trial by Jury—Omission to examine material witness—Duty to ask Jury to make presumption.*

It is misdirection not to tell the Jury that it should be presumed from the fact of non-examination of a material witness by the prosecution that his evidence would not have supported the prosecution case. But the omission to give such a direction to the Jury cannot have any effect on the verdict if the Jury have themselves drawn such an inference. *Hachni Khan v. Emperor.*

32 Cr. L. J. 33 (b) :
127 I. C. 767 : 34 C. W. N. 390 :
I. R. 1930 Cal. 895 :
A. I. R. 1930 Cal. 481.

—————*Trial by Jury.*

Point of law as to necessity of charge for conviction not brought to notice of jurors : *Held*, misdirection—Fresh trial was ordered. *Lal Behari Singh v. Emperor.*

35 Cr. L. J. 1066 :
150 I. C. 509 : 1934 O. L. R. 586 :
11 O. W. N. 831 : 7 R. O. 12 :
A. I. R. 1934 Oudh 354.

—————*Trial by Jury—Police alleged to have tampered with statements.*

The prosecution case was that the *Fouzdar* had deliberately tampered with the statements of witnesses, that he had been actuated by a desire to save accused from any prosecution, and in furtherance of that desire, had not recorded correctly the statements made to him by the persons whom he was examining : *Held*, that it was essentially a matter for the Jury to consider whether that was the correct view of the matter or not. *Emperor v. Mohamed Adam Chohan.* 38 Cr. L. J. 327 :

167 I. C. 43 : 9 R. B. 274 :
38 Bom. L. R. 1186 :
A. I. R. 1937 Bom. 60.

—————*Trial by Jury—Possession of stolen goods*
—Recent possession, meaning of—Leaving it to Jury to decide whether possession was recent—*Misdirection.*

The question of recent possession of a stolen article depends not only on lapse of time but upon the nature of the property and the concomitant circumstances of each particular case. Where an accused person was found to be in possession of goods alleged to have been obtained by dacoity after a lapse of 14 months from the date of the dacoity, and the Judge, in his charge to the Jury, left it to the Jury to decide whether possession was so recent as to raise a presumption that they were received with the knowledge that they were stolen property : *Held*, that the Judge should not have left the question to the Jury but should have said there was no evidence of recent possession. *In re : Muthu Veera Velan.*

30 Cr. L. J. 542 :
115 I. C. 831 : 1929 M. W. N. 517 :
I. R. 1929 Mad. 495.

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case where the conviction was for an offence not mentioned in the Schedule. *Emperor v. Chittira*.

34 Cr. L. J. 459 :

146 I. C. 789 (1) : 1932 A. L. J. 1070 :

I. R. 1933 All. 143 : A. I. R. 1933 All. 115.

———S. 23—*Applicability*.

S. 23, Criminal Tribes Act, applies to the case of a previously convicted accused who is a member of a notified criminal tribe at the time of his present conviction, although his tribe had not been notified as such at the time of the previous conviction. *Emperor v. Mendai*.

17 Cr. L. J. 392 :

35 I. C. 824 : 3 O. L. J. 265 :

A. I. R. 1916 Oudh 252.

———S. 23—*Convictions before Act*.

By virtue of the proviso to S. 23 of the Criminal Tribes Act, all convictions recorded against an accused person before the coming into force of the Act, must count as one conviction and not more than one. *In re : Samanathu Kusungahu*.

26 Cr. L. J. 859 :

86 I. C. 715 : 21 L. W. 37 :

A. I. R. 1925 Mad. 466.

———S. 23—*Scope—Previous conviction, whether must be after registration*.

The operation of S. 23, Criminal Tribes Act, is not confined to offences that have been committed since the convict was registered. The second conviction referred to in the section does not signify that the previous conviction should have been obtained after the registration of the convict. It is enough for the purposes of the section if the convict has been previously convicted, whether before or after his registration. *Emperor v. Nakchhedi*.

20 Cr. L. J. 772 :

53 I. C. 612 : A. I. R. 1919 All. 413.

———S. 23—*Second conviction—Meaning of*.

For the purposes of S. 23, Criminal Tribes Act, the accused at the time of his second conviction must be a member of a criminal tribe, that is to say, the second conviction must be after registration of the accused as a member of a criminal tribe. *In re : Samanathu Kusunugadlu*.

26 Cr. L. J. 859 :

86 I. C. 715 : 21 L. W. 37 :

A. I. R. 1925 Mad. 466.

———S. 23—*Second and third convictions, what are*.

The second conviction contemplated by Cl. (a) of Sub-s. (1) of S. 23 of the Criminal Tribes Act, need not be the second conviction after the Act, nor is it necessary that it should be the second in fact. Taking the conviction or convictions prior to the Act as one group constituting one conviction, the first one after the Act would be the second conviction for the purpose of the section though, in point of fact, it may be one more in a series of convictions prior to the Act. Similarly, a third conviction within the meaning of Cl. (b) of the same sub-section must be at least the second after the Act. *Emperor v. Tuka Nano Ramoshii*.

22 Cr. L. J. 317 :

60 I. C. 1005 : 23 Bom. L. R. 347 :

45 Bom. 1082 : A. I. R. 1921 Bom. 68.

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———Ss. 23, 3—*Enhancement of sentence*.

Once a tribe has been notified under S. 3, Criminal Tribes Act, any member of the tribe who has been convicted subsequent to the date of the notification and who has had previous conviction, is liable to enhanced punishment under S. 23 of the Act. *Emperor v. Adhin*.

17 Cr. L. J. 463 :

36 I. C. 143 : 14 A. L. J. 687 :

A. I. R. 1916 All. 56.

———S. 23 (1)—*“Second conviction” meaning of—Accused, whether liable to enhanced punishment on first conviction after the Act*.

The words “second conviction”, in S. 23 (1) of the Criminal Tribes Act, III of 1911, signify a first conviction for a scheduled offence after the coming into force of the Act following upon one or many convictions of scheduled offences prior to the Act and a third conviction in Cl. (b) signifies a second conviction so following. Where, therefore, an accused was first convicted in 1907, and was subsequently convicted of the same offence after the Criminal Tribes Act came into force: *Held*, that this was a “second conviction” within the meaning of S. 23 (1) of the Criminal Tribes Act, and the accused was liable to the severer punishment under Cl. (a). *In re : Sellamani*.

17 Cr. L. J. 149 :

33 I. C. 629 : A. I. R. 1917 Mad. 162.

———S. 23 (1)—*Scope—Section relates to time of conviction of accused and not to occurrence ending in conviction*.

S. 23 (1), Criminal Tribes Act, relates to the time of conviction and not to the time of occurrence which is the subject-matter of the case which ends in conviction of the accused. *In re : Manikyam Kondayya*.

41 Cr. L. J. 898 :

190 I. C. 313 : 1940 M. W. N. 242 :

51 L. W. 484 : 1940, 1 M. L. J. 775 :

13 R. M. 403 : A. I. R. 1940 Mad. 298.

———S. 23 (1) (a)—*“Special reason to the contrary”—Circumstances constituting special reasons, stated*.

They must, in every case, consider all the circumstances in determining whether there are special reasons for not inflicting the minimum sentence. One circumstance is that the previous conviction took place a long time ago, other circumstances are the nature of the offence of which the accused is convicted, and the seriousness of the previous offence, to be judged generally from the sentence imposed. The circumstances that the previous offence was not of a serious nature and that the present offence is not of a very grave character, are special reasons within S. 23 (1) (a), Criminal Tribes Act. *Magan Bhikha v. Emperor*.

40 Cr. L. J. 565 :

181 I. C. 787 : 41 Bom. L. R. 284 :

I. L. R. 1939 Bom. 169 : 11 R. B. 350 :

A. I. R. 1939 Bom. 153.

———S. 23 (1) (b)—*Prior conviction under Ss. 457 and 380 or S. 411, Penal Code—Punishment whether can be enhanced—Benefit of doubt*.

Where an accused person's previous conviction

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as to the weight of the evidence. *Alexandar Pereira Chandra Sekera v. The King*.

- 38 Cr. L. J. 281 :
166 I. C. 330 : 45 L. W. 78 :
9 R. P. C. 138 : 41 C. W. N. 513 :
1937 O. W. N. 218 :
1937 M. W. N. 169 :
1937 A. L. J. 420 :
1937 A. W. R. 275 :
39 Bom. L. R. 359 :
1937, 1 M. L. J. 600 P. C. :
A. I. R. 1937 P. C. 24.

—————*Trial by Jury.*

The failure of a Judge to unambiguously warn the Jury against taking the retracted confession of an accused into consideration as against his co-accused, amounts to misdirection, and is likely to cause miscarriage of justice, and necessitates a re-trial of the co-accused. *In re : Ibrahim*.

- 26 Cr. L. J. 1146 :
88 I. C. 458 : 42 C. L. J. 496 :
A. I. R. 1926 Cal. 374.

—————*Trial by Jury.*

The statements made in the course of a criminal trial to the Jury by the Judge are part of the judicial record. *In re : Mahomed Aslam*.

- 37 Cr. L. J. 783 :
162 I. C. 919 : 8 R. S. 177 :
A. I. R. 1936 Sind 49.

—————*Trial by Jury.*

To let evidence of approvers go to Jury without giving them proper warning is a misdirection. *Emperor v. Wajid Sheikh*.

- 147 I. C. 1160 :
6 R. P. 402 : A. I. R. 1933 Pat. 500

—————*Trial by Jury—Use of legal terms in a charge to Jury.*

Even genuine legal terms should be used as sparingly as possible in charging a Jury, especially when the jurors do not know English. *Abdul Gafur Kotwal v. Emperor*.

- 40 Cr. L. J. 101 :
178 I. C. 637 : I. L. R. 1938 1 Cal. 636 :
11 R. C. 383 : A. I. R. 1938 Cal. 658.

—————*Trial by Jury—Verdict—Interference.*

It is not for the High Court to adjudicate on the merits of the verdict of the Jury. Unless it finds a misdirection or a material non-direction, which has vitiated the trial, the Jury's verdict ought not to be disturbed. *Ebadi Khan v. Emperor*.

- 39 Cr. L. J. 674 :
176 I. C. 104 : 11 R. C. 36 :
A. I. R. 1938 Cal. 460.

—————*Trial by Jury—Verdict of not guilty—Verdict not perverse—Inference by High Court.*

Where there is evidence in a case to establish the guilt of the accused but there are also circumstances which throw some doubt on the guilt of the accused and the Jury returns a verdict of not guilty, the High Court will not be justified in interfering with the verdict and converting an acquittal into a conviction

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as the verdict cannot be held to be perverse or unreasonable. *Emperor v. Shaikat Husain*.

- 28 Cr. L. J. 895 :
104 I. C. 911 : 1 Luck. Cas. 335 :
A. I. R. 1927 Oudh 607 (a).

—————*Trial by Jury—View of Judge, value of.*

Until the verdict of the Jury or the opinion of the Assessors becomes the legal tribunal for questions of fact, the personal view of the Judge is the ultimate one. *Lakhan v. Emperor*.

- 26 Cr. L. J. 324 :
84 I. C. 548 : A. I. R. 1924 All. 511.

—————*Trial by Jury.*

Where the Jury gives a verdict after they are discharged, the verdict is not competent and a conviction based on such a verdict is wrong and must be set aside. *Warren Ducane Smith v. The King*.

- 151 I. C. 529 (b) :
40 L. W. 419 : 1934 A. L. J. 1000 :
36 P. L. R. 247 : 1934 M. W. N. 1020 :
4 A. W. R. 1152 : 7 R. P. C. 66 (1) :
A. I. R. 1934 P. C. 227 (a).

—————*Trial by Jury.*

Where there is some evidence in the case, it is for the Jury to say whether or how far the evidence is to be believed. *Rup Narain Kurmi v. Emperor*.

- 32 Cr. L. J. 975 :
132 I. C. 876 : 10 Pat. 140 :
12 P. L. T. 746 : I. R. 1931 Pat. 300 :
A. I. R. 1931 Pat. 172.

—————*Trial by Jury and Assessors—Distinction in status—Assessor, if member of Sessions Court.*

Per Ram Lal, J.—(In order of reference)—An assessor is not an essential part of the Sessions Court. A Juror stands on a higher footing, speaks with greater authority and takes a larger share in the decision of a criminal case than does an assessor, and it may be taken as axiomatic therefore that in the absence of a specific prohibition, an objection that could not be upheld regarding a Juror would be ruled out in the case of an assessor. *Emperor v. Pahlu*.

- 41 Cr. L. J. 55 :
184 I. C. 549 : I. L. R. 1939 Lah. 243 :
41 P. L. R. 731 : 12 R. L. 234 :
A. I. R. 1939 Lah. 475.

—————*Trial of case—Court hours.*

Ordinarily it is unreasonable on the part of a Magistrate trying a case from day to day to order a Counsel to begin a lengthy cross-examination when the Court is about to rise for the day. *Ghulam Nabi v. Emperor*.

- 30 Cr. L. J. 760 :
117 I. C. 377 : I. R. 1929 Lah. 649 :
A. I. R. 1929 Lah. 429.

—————*Trivial offence—Conviction.*

Where a Magistrate is of opinion that the offence committed is utterly trivial and that the prosecution was inspired by motives other than the pursuit of justice, he should give effect to his opinion by convicting the accused and imposing a purely nominal penalty. He

CRIMINAL TRIBES (AMENDMENT) ACT (VI OF 1924)

—S. 23—*Scope*—*Refers only to convictions for offences specified in Sch. I.*

S. 23, Criminal Tribes Act, refers only to convictions for offences specified in Sch. I and has no application to a conviction for an offence which is not contained in Sch. I. *Emperor v. Behari.*

39 Cr. L. J. 1002 :
178 I. C. 95 : 11 R. O. 90 (2) :
1938 O. L. R. 464 : 1938 O. W. N. 1053 :
A. I. R. 1939 Oudh 16.

—S. 23—*Scope.*

S. 23, Criminal Tribes Act, regulates the punishment to be imposed on a member of any criminal tribe who having been convicted of any offence mentioned in Sch. I, to the Act is again convicted of an offence mentioned in that schedule. *Masahib Done v. Emperor.*

40 Cr. L. J. 833 (b) :
183 I. C. 660 : 5 B. R. 978 :
12 R. P. 177 : 20 P. L. T. 879 :
A. I. R. 1940 Pat. 14.

—S. 23—*Scope.*

Where the accused had a previous conviction under S. 380, Penal Code, which is not an offence mentioned in the Sch. I, Criminal Tribes Act, the fact that he is a registered member of the criminal tribe need not be brought on the record at all, for a conviction under S. 451, more so where the conviction is converted under S. 451, which is not mentioned in the schedule. *Mosaheb Dome v. Emperor.*

40 Cr. L. J. 833 (b) :
183 I. C. 660 : 5 B. R. 978 :
12 R. P. 177 : 20 P. L. T. 879 :
A. I. R. 1940 Pat. 14.

—S. 23—*Special reason to contrary.*

Long period of good behaviour is ground for not imposing minimum sentence. *Bechar Shiva v. Emperor.*

32 Cr. L. J. 724 :
131 I. C. 478 : 33 Bom. L. R. 338 :
I. R. 1931 Bom. 302 : A. I. R. 1931 Bom. 205.

—S. 23—*Special reason to contrary—Penal Code (Act XLV of 1860), S. 75—Member of Criminal tribe—Previous convictions—Special reasons for not awarding transportation for life—Interval of time, whether special reason.*

The special reasons to the contrary mentioned in S. 23, Criminal Tribes Act, for awarding less than transportation for life for a member of a criminal tribe who has undergone 2 prior convictions include in addition to youth, age, illness or sex, the interval of time which has elapsed between the accused person coming out of prison after serving his last sentence and the commission of the subsequent offence. *In re : Sami Karuppa Tevan.*

31 Cr. L. J. 454 :
122 I. C. 655 : 30 L. W. 710 : 57 M. L. J. 743 :
53 Mad. 80 : A. I. R. 1929 Mad. 844.

—S. 23—*Proviso—Scope of.*

The proviso is only directed to ruling out of account more than one conviction before the Act came into force. It was not directed to the length of time which has elapsed since the previous conviction and

CROSS-EXAMINATION

was not intended to prevent that fact being considered a special reason. *Bechar Shiva v. Emperor.*

32 Cr. L. J. 724 :
131 I. C. 478 : 33 Bom. L. R. 338 :
I. R. 1931 Bom. 302 : A. I. R. 1931 Bom. 205.

—S. 23 (1)—*Scope.*

S. 23 (1) of the Criminal Tribes Act, has in mind not only the previous convictions of the accused but also the offence for which he is being tried. *Emperor v. Behari.*

39 Cr. L. J. 1002 :
178 I. C. 95 : 11 R. O. 90 (2) :
1938 O. L. R. 464 : 1938 O. W. N. 1053 :
A. I. R. 1939 Oudh 16.

—S. 24 (b)—*Offence under—When constitutes.*

Under S. 24 (b), Criminal Tribes Act, if a member of a registered criminal tribe is found in any place under such circumstances as to satisfy the Court that he was waiting for an opportunity to commit theft or robbery, he is guilty of an offence. *Komaragiri Bitchalugadu v. Emperor.*

29 Cr. L. J. 453 :
108 I. C. 901 : 1928 M. W. N. 71 :
54 M. L. J. 444 : 27 L. W. 734 :
A. I. R. 1928 Mad. 479.

—S. 24 (b)—*Offence under—When constitutes.*

Where the only evidence against an accused person, a member of a criminal tribe, was that he was found near a pond and he had a pair of scissors and a box of matches : *Held*, that this would not amount to an offence under S. 24 (b), Criminal Tribes Act. *Komaragiri Bitchalugadu v. Emperor.*

29 Cr. L. J. 453 :
108 I. C. 901 : 1928 M. W. N. 71 :
54 M. L. J. 444 : 27 L. W. 734 :
A. I. R. 1928 Mad. 479.

—S. 25—*Refusal to return—Procedure.*

A member of a criminal tribe whose release on probation has been cancelled and who has been ordered by a Settlement Officer to return to his settlement, is liable to be dealt with under S. 25 of the Criminal Tribes Act, if he is found in any part of British India beyond the area of his settlement. *Malhari Laxman v. Emperor.*

28 Cr. L. J. 394 :
100 I. C. 1050 : 29 Bom. L. R. 186 :
51 Bom. 409 : A. I. R. 1927 Bom. 159.

CROSS-CASES.

See also (i) Counter cases.
(ii) Cr. P. C. 1898, Ss. 438, 537.
(iii) Criminal trial.

CROSS-COMPLAINT.

See also Cr. P. C., 1898, S. 200, 202, 203, 204.

CROSS-EXAMINATION.

See also (i) Criminal trial.
(ii) Extradition Rules of Kathiawar.

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any substance in complaint or withdrawal petition.

Where after making complaint of a serious offence the complainant applies for withdrawal of the complaint on the ground that he is unable to prove the truth of the complaint, the Magistrate is right in ordering examination of witnesses in order to ascertain if there is any substance in the petition of withdrawal and in the complaint. *Dedar Bux v. Syamapada Malakar.* 15 Cr. L. J. 546 : 24 I. C. 954 : 18 C. W. N. 921 : 41 Cal. 1013 : A. I. R. 1914 Cal. 801.

———Witness acting in house search, reliability of.

The evidence of a person cannot be distrusted solely on the ground that on a previous occasion he had acted as a witness in a house search. *Local Government v. Nainsukh Teli.*

34 Cr. L. J. 721 : 144 I. C. 240 : 29 N. L. R. 69 : I. R. 1933 Nag. 227 : A. I. R. 1933 Nag. 99.

———Witness, contradiction of—Procedure.

It is unfair to the witness to seek to discredit him by referring to statements which he has made on some previous occasion without pointedly drawing his attention to them and giving him an opportunity of explaining them. *Mahla Singh v. Emperor.*

32 Cr. L. J. 522 : 130 I. C. 410 : 32 P. L. R. 259 : I. R. 1931 Lah. 282 : A. I. R. 1931 Lah. 38.

———Witness—Credibility—Poverty, if ground of discredit.

Per *Blacker, J.*—(In order of reference). Many a man is poor because he is honest, and it is no ground for discrediting his evidence. *Abdul Majid v. Emperor.* (F. B.)

39 Cr. L. J. 756 : 176 I. C. 497 : 40 P. L. R. 806 : 11 R. L. 213 : A. I. R. 1938 Lah. 534.

———Witness improving upon truth—Effect.

Where the eye-witness to the murder has tried to improve upon truth by introducing matter which is impossible, his evidence should not be accepted. *Hem Raj Lodhi v. Ramcharan Lodhi.*

A. I. R. 1934 Nag. 204.

———Witness perjurer—Effect.

The evidence of a witness proved to have committed perjury is of no value whatsoever. *Ujagar v. Emperor.*

35 Cr. L. J. 353 : 146 I. C. 957 : 1933 A. L. J. 1597 : 55 All. 639 : 6 R. A. 384 : A. I. R. 1933 All. 834.

———Witness re-called on order of prosecuting officer—Magistrate—Jurisdiction.

A complaint for misappropriation of Government moneys was filed by the order of an Assistant Collector. After the close of the case for the prosecution, the Assistant Collector directed the Magistrate to re-call and re-examine two of the prosecution witnesses, and at the same time, interviewed those witnesses and ordered them to give evidence.

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The Magistrate complied with the Assistant Collector's direction : *Held*, (reversing the conviction and sentence), that, as the Magistrate had virtually abdicated his magisterial function and become a mere delegate of the Assistant Collector, the trial was without jurisdiction. *Nabibux v. Emperor.*

15 Cr. L. J. 375 : 23 I. C. 743 : 7 S. L. R. 82 : A. I. R. 1914 Sind 89.

———Witness resiling from previous statement—Effect.

It is quite unsafe, especially in a murder case, to rely upon the evidence of witnesses who have resiled from their previous statements. *Emperor v. Ram Lal.*

36 Cr. L. J. 86 : 152 I. C. 331 : 7 R. O. 207 : 11 O. W. N. 1269 : A. I. R. 1934 Oudh 507.

———Witness—Witnesses bound over, not appearing—Duty of Court.

Where the witnesses who were bound over fail to appear, it is for the Court to take action on the breach of the Court's order, and not for the complainant. *Rahai Ali v. Muhammad Murad.*

39 Cr. L. J. 62 : 172 I. C. 113 : 10 R. N. 161 : A. I. R. 1938 Nag. 103.

———Witnesses, calling of—Option and duty of prosecution.

No rule can be laid down to fetter the discretion of the prosecution to call witnesses which is dependent on the particular circumstances of each case. Still less can any rule be laid down to discourage the utmost candour and fairness on the part of those conducting prosecutions; but at the same time they will not in general approve of an idea that a prosecution must call witnesses, irrespective of considerations of number and of reliability, or that a prosecution, ought to discharge the functions both of prosecution and defence. If it is so, confusion is very apt to result, and never is it more likely to result than if the prosecution calls witnesses and then proceeds almost automatically to discredit them by cross-examination. Witnesses essential to the unfolding of the narrative on which the prosecution is based, must, of course, be called by the prosecution, whether in the result, the effect of their testimony is for or against the case for the prosecution. *Stephen Sencviratne v The King.*

37 Cr. L. J. 963 P. C. : 164 I. C. 545 : 9 R. P. C. 83 : 44 L. W. 661 : 41 C. W. N. 65 : 1936 M. W. N. 40 : 39 Bom. L. R. 1 P. C. : A. I. R. 1936 P. C. 289.

———Witnesses cited for defence—Objection taken by complainant as to vexatious nature of application—Procedure.

Where certain persons were cited as defence

DANGEROUS DRUGS ACT (II OF 1930)

———*Evidence, admissibility of—Subsequent evidence of identification of dacoits—Corroboration.*

Where in the first report only two dacoits are alleged to have been recognised at the time of committing the dacoity, subsequent evidence that they were all identified, cannot be relied upon unless there is a strong corroboration to support it. *Nur Khan v. Emperor.*

16 Cr. L. J. 204 :

27 I. C. 764 : 8 P. W. R. 1915 Cr. :
93 P. L. R. 1915 : A. I. R. 1915 Lah. 396.

———*Evidence—Conviction of accused.*

The evidence of a person, who knew the accused previously and who had ample opportunity of observing the accused at the dacoity and who immediately named him to the villagers and the Police as one of the dacoits, is entitled to credit. *In re : Rama Mupan.*

11 Cr. L. J. 623 :

8 I. C. 317 : 8 M. L. T. 244.

———*Procedure — Trial for dacoity — Trial partly with aid of Jury, unnecessary.*

In a trial of accused for the offence of dacoity, it is not necessary to try the case partly with the aid of a Jury. *Nagamuthu Gownden v. Emperor.*

12 Cr. L. J. 488 :

12 I. C. 96 : (1911) 2 M. W. N. 6.

DAH

———*Criterion for determining whether dah an arm. See Arms Act, S. 4.*

DALHOUSIE MUNICIPALITY BYE-LAWS—BYE-LAW XXIII

———*Cls. (1) and (3) h.*

See also Punjab Municipal Act, 1911, S. 198.

DAMAGES FOR INJURY

See also Conspiracy.

DANG

See also Penal Code, 1860, Ss. 34, 397.

DANGEROUS DRUGS ACT (II OF 1930).

———*S. 10 (b).*

See also Opium Act, 1878, Ss. 3, 9 (a).

———*Applicability.*

Where a conspiracy punishable under S. 120-B, Penal Code, and the Opium Act has been formed before the Dangerous Drugs Act of 1930, but continues to exist after the coming into force of the Act, and a prosecution is started in respect of the offences, the Dangerous Drugs Act applies to the case and reference to the Act may be made in the charge. *Abdul Rahman v. Emperor.*

36 Cr. L. J. 982 :

156 I. C. 678 : 62 Cal. 749 :
8 R. C. 21 : A. I. R. 1935 Cal. 316.

———*S. 2—'Cocaine', meaning of.*

The word cocaine implies the substance prepared according to that formula, which is well-known to chemists. The expression 'cocoa

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derivatives' also includes crude cocaine. *Sadlu v. Emperor.*

36 Cr. L. J. 742 :

155 I. C. 406 : 7 R. A. 926 :

A. I. R. 1934 All. 374.

———*S. 14—Sale—Motive.*

The sale being to the informer, the motive of the informer in buying, is immaterial as to the nature of the sale. The fact that the Excise Inspector bought it when about to entrap the accused will not make it any the less sale. *Munni Lal v. Emperor.*

37 Cr. L. J. 700 :

162 I. C. 752 : 1936 A. L. J. 275 :

1936 A. W. R. 276 : 8 R. A. 895 :

A. I. R. 1936 All. 361.

———*S. 22, 23—Non-compliance, effect of.*

Where the constables are not authorized to take the steps which they have taken, under Ss. 22, 23, Dangerous Drugs Act, the irregularity does not vitiate the trial. *Habibulloh v. Emperor.*

36 Cr. L. J. 780 :

155 I. C. 267 : 7 R. Pesh. 97 :

A. I. R. 1935 Pesh. 47.

———*S. 25—Irregularity.*

Search of accused on road away from town, Inspector taking only one witness. Irregularity is no bar to conviction if Court is satisfied that smuggled article was in fact found in possession of accused. *Emperor v. Bachcha.*

36 Cr. L. J. 362 :

153 I. C. 472 : 7 R. A. 507 (2) :

A. I. R. 1934 All. 873.

DECREE

See also Cr. P. C., 1898, S. 369.

———*Joint decree—Joint decree against defendants against whom cause of action is different, legality of.*

It is not competent to a Court to pass a joint decree against two defendants with respect to each of whom there is a different cause of action. *Paresh Chandra Sen Gupta v. Jogendra Nath Roy Chowdhury.*

27 Cr. L. J. 1195 :

97 I. C. 955 : A. I. R. 1927 Cal. 93.

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———*Construction—Deed held not will but settlement.*

Where in a document the executant has stated that he has already given his property to his son, the document is not a will but a deed of settlement. *Ram Chand v. Emperor.*

41 Cr. L. J. 729 :

189 I. C. 343 : 42 P. L. R. 215 :

13 R. L. 88 : A. I. R. 1940 Lah. 274.

———*Construction—Penal condition.*

In order that a person may be liable under a penal condition, it is necessary that the wording must be clear and beyond doubt. *Mul Chand v. Emperor.*

36 Cr. L. J. 1478 :

158 I. C. 944 : 37 P. L. R. 783 :

8 R. L. 327 : A. I. R. 1935 Lah. 676.

———*Construction—Only expert can be called to explain meaning of document.*

Generally speaking, it is not permissible to call a witness to explain to the Court what a

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Superintendent of Police. The latter, when so authorized, cannot delegate his powers to subordinate officers. *Charnun v. Emperor*.

9 Cr. L. J. 94 ;
23 P. R. Cr. 1908.

———S. 19 (1)—Revision.

A member of a declared criminal tribe was convicted under S. 19 (1), Criminal Tribes Act, and sentenced only to whipping for being absent from his village without leave, and thereby committing a breach of the rules. The District Magistrate reported the case to the Chief Court on the ground that the sentence was illegal because under S. 19 (1), Criminal Tribes Act, as amended by Act II of 1897, a sentence of imprisonment must form part of the substantive sentence, and the accused having two previous convictions against him, deserved no consideration. The Chief Court declined to interfere on the ground that though under S. 5, as amended, of the Criminal Tribes Act, imprisonment should have been awarded, the convicting Magistrate might have considered sentence of imprisonment only sufficient, and the sentence of whipping being carried out, no enhancement was desirable. *Emperor v. Jhandu*.

3 Cr. L. J. 77 :
6 P. L. R. 576.

———S. 23—Scope—Conviction under S. 23—Previous convictions, nature of.

S. 23, Criminal Tribes Act, does not lay down any substantive offence and it is, therefore, inaccurate to speak of a conviction under that section. All that it provides is minimum sentences in certain contingencies unless there are special reasons to the contrary. Moreover, the section does not require that the two previous convictions should have been convictions under S. 23, Criminal Tribes Act. It only requires that the member of a Criminal Tribe should have been previously convicted of any of the offences in the Penal Code, specified in Sch. I of the Act and should again be convicted of the same or of any other such offence. *Harjan v. Emperor*.

30 Cr. L. J. 1653 :
116 I. C. 750 : 26 A. L. J. 727 :
I. R. 1929 All. 605 : A. I. R. 1928 All. 551.

CRIMINAL TRIBES ACT, 1897

———S. 18 (4)—Absence from residence.

In virtue of the provisions of Cl. 4, S. 18, it is competent to the Local Government to frame a rule to the effect that a member of a Registered Criminal Tribe shall not leave "or be absent" from the village in which he resides. *Emperor v. Udmi*.

9 Cr. L. J. 1 :
33 P. W. R. Cr. 1908 : 20 P. R. 1908 Cr.

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———S. 4.

See also Cr. P. C., 1898, Ss. 110, 118.

———S. 5—Revision—Register prepared under section—Application to remove name—Order, nature of—Revision—High Court, jurisdiction of, to interfere.

The High Court has no jurisdiction to inter-

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fere with the order of a District Magistrate directing or refusing to direct the removal of a name from the register prepared under S. 5, Criminal Tribes Act, as in making such order, the District Magistrate acts in an administrative capacity. *Karim Bux v. Emperor*.

21 Cr. L. J. 581 :
57 I. C. 101 : 24 C. W. N. 624 : 47 Cal. 843 :
A. I. R. 1920 Cal. 635.

———Ss. 22, 24—Charge—Framing of.

A charge can be framed against an accused prosecuted under the Criminal Tribes Act on his mere statement before a Magistrate if it shows that he has no real defence, and he can be convicted under S. 22 if not under S. 24 of the Act. *Janu Bhar v. Emperor*.

17 Cr. L. J. 70 :
32 I. C. 662 : A. I. R. 1916 All. 298.

———Ss. 22, 24—Defect in procedure—Effect of.

An accused was convicted under the Criminal Tribes Act without framing any charge and without being given an opportunity for cross-examining the prosecution witnesses and without any evidence that he was a registered member of the criminal tribe: *Held*, that the accused was prejudiced and his trial was bad in law. *Janu Bhar v. Emperor*.

17 Cr. L. J. 70 :
32 I. C. 662 : A. I. R. 1916 All. 298.

———S. 22 (2) (a)—Rules framed by Local Government, R. 8 (a)—'Change of residence,' meaning of—Neglect to notify absence from residence—Offence.

Accused, a member of a criminal tribe, who was registered while he was in jail, went after his release to a village which was not within the jurisdiction of the Police station within the limits of which he resided and stayed there for one or two days: *Held*, (1) that a stay for such a short period could not be considered as a change of residence within the meaning of R. 8 (a) of the rules framed by the Local Government for the purposes of the Criminal Tribes Act, (2) that the accused was guilty of neglect to notify the officer-in-charge of the Police station, within the limits of which he resided, his absence from that residence. *Girdhari Pasi v. Emperor*.

19 Cr. L. J. 689 (a) :
46 I. C. 145 : 16 A. L. J. 510 :
A. I. R. 1918 All. 387.

———S. 22 (2) (b)—Notifying residence—Refusal of—Effect of—Failure to report change of residence—Previous conviction, form of.

The failure by a member of a criminal tribe notified under S. 10, Criminal Tribes Act, to report himself and to give information of his residence or intended change of residence, renders him liable to conviction under S. 22 (2) of the Act; if he has been previously convicted, he is liable to conviction under S. 22 (2) (b) of the Act. *Emperor v. Dhagelu Dom*.

21 Cr. L. J. 434 :
56 I. C. 226 : A. I. R. 1920 All. 53.

———S. 23.

S. 23 refers only to convictions for offences specified in Sch. I, and does not apply to a

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interpretation should not be put on it. *Karunakara Menon v. Dr. T. M. Nair*.

15 Cr. L. J. 566 :
24 I. C. 974 : A. I. R. 1914 Mad. 281.

———*Libel—Defamatory matter appearing to apply to class if shown to be directly applicable to one individual of that class, such person can maintain action for defamation.*

A defamatory matter may appear only to apply to a class of individuals, yet of the descriptions in such matter are capable of being, by innuendo, shown to be directly applicable to any one individual of that class, an action may be maintained by such individual in respect of the publication of such matter. If, therefore, it is clear, the libel designates the plaintiff in such a way as to let those who know him understand that he was the person meant, it is not necessary that all the world should understand the libel, it is sufficient if those who know him can make out that he is the person meant. *Ahmedali v. Emperor*.

39 Cr. L. J. 518 :
175 I. C. 9 : 10 R. S. 274 :
A. I. R. 1938 Sind 88.

———*Prosecution for—No prosecution lies for, in respect of answers given by a party to questions asked by Court.*

It is contrary to public policy that a person bound to state the truth in answer to questions put to him by a Court should be liable to be prosecuted for defamation in respect of answers so given, though untrue and not given in good faith. *In re: Alraja Naidu*.

6 Cr. L. J. 130 :
I. L. R. 30 Mad. 222.

———*Publication of rumour by newspaper—Editor—Offence.*

The publication of a defamatory rumour is actionable as if the statement were published without qualification. Malicious publication in the sense of active ill-will against the person defamed is not a necessary constituent of the offence of defamation. In both civil and criminal cases of defamation, the whole conduct of the defendant or accused from the time of publishing the libel to the verdict or sentence has to be taken into account in assessing damages or imposing punishment. *Muhammad Nazir v. Emperor*.

30 Cr. L. J. 766 :
117 I. C. 355 : 26 A. L. J. 509 :
I. R. 1929 All. 707 : A. I. R. 1928 All. 321.

———S. 562 (1), Cr. P. C.—*Scope of.*

S. 562 (1), Cr. P. C. does not apply to offence of defamation. *Babulal v. Tundilal*.

33 Cr. L. J. 835 :
139 I. C. 401 : 28 N. L. R. 106 :
I. R. 1932 Nag. 112 : A. I. R. 1932 Nag. 97.

DEFENCE EVIDENCE

———*Right of accused—Time for producing, grant of.*

Where a large number of witnesses are examined for the prosecution, the accused is entitled to a reasonable interval for considering what evidence he should produce by way of rebuttal. A demand of two days' time for

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this purpose is not unreasonable. *Rameshwar Dusat v. Emperor*.

21 Cr. L. J. 321 (b) :
55 I. C. 593 : 1 P. L. T. 632 :
A. I. R. 1920 Pat. 25.

DEFENCE OF INDIA ACT, 1915

———R. 20—*Scope of.*

The words of R. 20, Defence of India Act, must be read as if they contained after the words 'District Magistrate' the words 'Acting District Magistrate or Magistrate executing the functions of a District Magistrate.' The rules under a power conferred by a section should be read as a part of the section. *In re: Kandasami Pillai*.

20 Cr. L. J. 129 :
49 I. C. 16 : 1918 M. W. N. 856 :
35 M. L. J. 736 : 24 M. L. T. 505 :
42 Mad. 69 : A. I. R. 1919 Mad. 24.

———Ss. I, Sub-s. (3), 2—*Scope of—"Rest of the Act", meaning of—Rules framed under S. 2, whether part of section—Notification applying rules to a Province whether necessary—Rules framed under Act, rr. 20, 30—Offences, trial of, in Provinces to which Ss. 3 to 11 not extended—Forum.*

The words 'the rest of the Act' in Section I, Sub-s. (3) of the Defence of India Act refer to the subsequent sections of the Act, and not to the rules to be framed under S. 2, which are to have effect at once and as if enacted in the Act. The rules should not be read as forming an addition to the Act, but as part of the section itself. Offences created by the rules framed under S. 2, in provinces to which Ss. 3 to 11 of the Act are not extended, are triable by the ordinary tribunals indicated by S. 29, Cr. P. C. *In re: Kandasamy Pillai*.

20 Cr. L. J. 129 :
49 I. C. 16 : 1918 M. W. N. 856 :
35 M. L. J. 736 : 24 M. L. T. 505 :
42 Mad. 69 : A. I. R. 1919 Mad. 24.

———S. 2—*Rules framed under Act, rr. 23, 29, Cr. P. C.—Procedure—Ss. 191, 200—Dissuading or attempting to dissuade person from entering military service—Cognizance of offence.*

M, a tenant of the accused, was recruited in the army and received a certain sum in advance. About a month afterwards the accused brought a suit against M for arrears of rent. M appeared before the District Magistrate and made a statement which was neither made on oath nor signed. The District Magistrate, thereupon, directed warrants without bail to issue for the arrest of the accused and took up the case himself. The accused were charged with having contravened rule 23 of the rules framed under the Defence of India Act and were convicted and sentenced under r. 29: *Held*, (1) that the proceedings in the Court of the District Magistrate were irregular in their initiation, inasmuch as the Magistrate, if he conceived himself to be taking cognizance of the offence upon information received from M within the meaning of S. 190 (c), Cr. P. C., was bound to offer the accused the option of being tried by another Court as provided by S. 191 : (2) that the facts alleged in the charge having occurred after

CRIMINAL TRIBES (AMENDMENT) ACT (VI OF 1924)

tions are under Ss. 457 and 480 or S. 411, Penal Code, his sentence cannot be enhanced under S. 23 (1) (b), Criminal Tribes Act, inasmuch as, of these sections only S. 457 appears in Sch. I to the Criminal Tribes Act and the view most favourable to the accused has to be taken and it has to be assumed that the previous convictions were under S. 411, Penal Code. *In re : Singali Pedda Ganglegadu.* 28 Cr. L. J. 944 : 105 I. C. 464 : A. I. R. 1927 Mad. 973.

—S. 26 (2) —Occupier of land, duty of, on arrival of member of criminal tribe.

S. 26 (2) of the Criminal Tribes Act makes it obligatory on every occupier of land to communicate the arrival on his land of any member of a criminal tribe to the nearest Police station, but a reasonable time must be allowed for the giving of such information. *Rajain Singh v. Emperor.* 18 Cr. L. J. 616 : 39 I. C. 984 : A. I. R. 1917 All. 143.

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—Cancellation of order of release on probation.

The Criminal Tribes Settlement Officer has power to cancel an order releasing on probation of good conduct a registered member of a criminal tribe. *Malhari Lazman v. Emperor.* 28 Cr. L. J. 394 : 100 I. C. 1050 : 29 Bom. L. R. 186 : 51 Bom. 409 : A. I. R. 1927 Bom. 159.

—S. 3—Discretion of Local Government.

The matter is one entirely within the discretion of the Local Government. *Bideshi Mian v. Emperor.* 34 Cr. L. J. 346 : 142 I. C. 298 : 13 P. L. T. 119 : I. R. 1933 Pat. 138 : A. I. R. 1932 Pat. 155.

—S. 3—Revision.

Order refusing to remove names of certain persons from register of criminal tribes is not a judicial order—High Court cannot interfere with order. *Bideshi Mian v. Emperor.* 34 Cr. L. J. 346 : 142 I. C. 298 : 13 P. L. T. 119 : I. R. 1934 Pat. 138 : A. I. R. 1932 Pat. 155.

—Ss. 3, 23 (1) (b)—Three convictions, whether should be convictions after becoming member of Criminal Tribes.

It matters not whether the three convictions required before S. 23 (1) (b), Criminal Tribes Act, came into operation, were recorded before or after the date of notification of the criminal tribe. For if the accused being a member of a criminal tribe has been convicted of scheduled offences before he has become a member of a criminal tribe, nevertheless these previous convictions must be counted against him. *Pandhi Farid v. Emperor.* 37 Cr. L. J. 948 : 164 I. C. 95 : 30 S. L. R. 100 : 9 R. S. 41 : A. I. R. 1936 Sind 91.

—S. 16—Return to settlement.

Where a Settlement Officer cancels such an

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order, special sanction of the Local Government under S. 16 of the Criminal Tribes Act is not necessary for ordering such person to return to his settlement. *Malhari Lazman v. Emperor.*

28 Cr. L. J. 394 : 100 I. C. 1050 : 29 Bom. L. R. 186 : 51 Bom. 409 : A. I. R. 1927 Bom. 159.

—Ss. 20, 22—Notifying residence—Registered member of criminal tribes—Omission to report arrival and departure—Nature of offence—Legality of summary trial—Duty of Magistrate to specify exact nature of offence charged.

Omission by a registered member of a criminal tribe to notify immediately after arrival at, and departure from, any place as required by Cl. (b) of division (c) of r. 8 of the Rules framed by the U. P. Government under S. 20, Criminal Tribes Act, is an offence punishable with the maximum sentence of six months' rigorous imprisonment and is, therefore, triable summarily under S. 260, Cr. P. C. *Emperor v. Bihari Bhar.* 30 Cr. L. J. 214 (b) : 113 I. C. 730 : 50 All. 718 : I. R. 1929 All. 206 : A. I. R. 1928 All. 719.

—S. 22.

Where the accused are absent from their residence though not from their place of residence, namely the district within which they are confined, they are guilty of an offence under S. 22 of the Act. *Emperor v. Mokhi.* 35 Cr. L. J. 1303 : 151 I. C. 359 (b) : 1934 A. L. J. 843 : 3 A. W. R. 798 : 7 R. A. 158 (2) : A. I. R. 1934 All. 767.

—S. 22—Duty of Court.

In a prosecution under S. 22, Criminal Tribes Act, Magistrate should specify clearly the exact offence with which, and the appropriate clause of the section under which the accused is charged. *Emperor v. Bihari Bhar.* 30 Cr. L. J. 214 (b) : 113 I. C. 730 : 50 All. 718 : I. R. 1929 All. 206 : A. I. R. 1928 All. 719.

—S. 23.

Conduct of accused, member of criminal tribe, after committing offence affords extenuation in the matter of punishment—Sentence reduced. *Bhagwan Din v. Emperor.* 35 Cr. L. J. 53 : 146 I. C. 479 : 10 O. W. N. 991 : 6 R. C. 135 : A. I. R. 1933 Oudh 429.

—S. 23.

S. 23 fixes only a minimum sentence. *Bhagwan Din v. Emperor.* 35 Cr. L. J. 53 : 146 I. C. 479 : 10 O. W. N. 991 : 6 R. C. 135 : A. I. R. 1933 Oudh 429.

—S. 23—Interpretation.

The words "any other such offence" used in the section mean one of those offences mentioned in the Schedule. *Emperor v. Behari.* 39 Cr. L. J. 1002 : 178 I. C. 95 : 11 R. O. 90 (2) : 1938 O. L. R. 464 : 1938 O. W. N. 1053 : A. I. R. 1939 Oudh 16.

DEFENCE WITNESS

of India Ordinance unless the two qualities of rice were proved to be similar. *Mahomed Ali Walijee v. Emperor*. 41 Cr. L. J. 737 :

189 I. C. 402 : 13 R. B. 77 :
A. I. R. 1940 Bom. 254.

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———R. 25 (1), (2)—*Challan by Police Officer—Non-cognizable offence—District Magistrate directing Superintendent of Police to take action—Challan made by Subordinate Police Officer on authorisation of Superintendent of Police—Challan, whether can be treated as complaint.*

Where a District Magistrate in pursuance of authority conferred by a Government Notification, authorises a Superintendent of Police to take action against a person for an offence under r. 25 (1), Defence of India Rule, of which offence the Police are not authorised to take cognisance, and on the authorisation of the Superintendent of Police, a Subordinate Officer makes a *challan*, the *challan* may be treated as a complaint. *Khushal Singh v. Emperor*.

23 Cr. L. J. 385 :
67 I. C. 337 ; 2 L. L. J. 707 :
86 P. L. R. 1922 : A. I. R. 1921 Lah. 345.

DEFENCE OF INDIA RULES, 1939

———R. 38 (5)—*Duty of Court—Consideration in passing sentence under R. 38 (5).*

In awarding sentences in cases falling under r. 38 (1) (a) and R. 34 (6) (e), Defence of India Rules, the Magistrate should not take into consideration the evidence led for the prosecution against the accused's character. Where in a case the accused is an educated person and knows that his speech would cause a great deal of mischief, the Court in such a case, has not to see the effect on the mind of the people, but is concerned with the construction of the speech. *Chandra Bhan Saran Singh v. King-Emperor*.

41 Cr. L. J. 927 :
190 I. C. 497 : 1940 O. W. N. 867 :
1940 O. L. R. 593 : 13 R. O. 161 :
A. I. R. 1940 Oudh 417.

———Rr. 38 (5), 38 (1) (a), 34 (2) (e)—*Speech of accused held contravened R. 38 (1) (a) can also fell under R. 34 (6) (e)—R. 129 (4) held did not apply.*

The speech of the accused contravened the provisions of Cl. (a) of Sub-cl. (1) of r. 38, Defence of India Rules. The accused by his speech intended to inflame the feelings and excite the state of mind of the people who were present at the meeting, that the speech also fell within the purview of Cl. (e) of Sub-cl. (6) of R. 34: *Held*, also that r. 129 (4) had no application whatsoever to the case. *Chandra Bhan Saran Singh v. King-Emperor*.

41 Cr. L. J. 927 :
190 I. C. 497 : 1940 O. W. N. 817 :
1940 O. L. R. 593 : 13 R. O. 161 :
A. I. R. 1940 Oudh 417.

DEFENCE WITNESS

See also Criminal Trial.

DEKHAN AGRICULTURISTS' RELIEF ACT (XVII OF 1879)

———Ss. 2 (4), 64—"Money" whether includes cattle—Creditor receiving bullocks from agriculturists—Duty to give receipt.

Money as defined in S. 2 (4), Dekhan Agriculturists' Relief Act, includes cattle, and a creditor purchasing bullocks from an agriculturist is bound to give a receipt as required by S. 64 of the Act. *Emperor v. Govinda Babaji Bobde*.

16 Cr. L. J. 114 :
27 I. C. 178 : 16 Bom. L. R. 683 :
A. I. R. 1914 Bom. 124.

DEPOSITION OF WITNESSES

See also Evidence Act, 1872, S. 33.

———*Deposition of witness not recorded in accordance with law—Conviction for perjury unsustainable.*

To sustain a conviction for perjury, the deposition of the witness should be taken properly in accordance with law. Where after the evidence of a witness had been recorded, his deposition was read to him by the Court Clerk in a place where neither the Judge nor the Vakils were present: *Held*, that the deposition, not being properly taken in accordance with law, could not be admitted in evidence and the assignment of perjury could not be based upon it. *Kamatchinathan Chetty v. Emperor*.

2 Cr. L. J. 756 :
I. L. R. 28 Mad. 308.

DESERTION

See also Penal Code, 1860, S. 408.

DETECTIVE

See Accomplice.

DIRECTION TO PROSECUTE

See also Cr. P. C., 1898, S. 195, Cl. (4).

DISCHARGE

*See also (i) Cr. P. C., 1898, S. 253.
(ii) See Criminal trial.*

DISCHARGE OF ACCUSED

See also Cr. P. C., 1898, Ss. 403, 437.

———*Revival of case by same Magistrate, if legal—Magistrate hearing case partly—Discharge of accused by another Magistrate for non-attendance of remaining prosecution witnesses—Criminal Procedure Code, Ss. 253, 369.*

A Magistrate who discharges an accused person may, on application made to him, revive the case. A Bench of Magistrates examined three witnesses for the prosecution. On the next day fixed for hearing, the Sub-Divisional Magistrate withdrew the case to his own file and discharged the accused under S. 253, Cr. P. C., as "no evidence is produced." *Held*, that the case must be sent back so that it may be heard with reference to the evidence already on the record. *Amodini Dassee v. Darson Ghose*.

13 Cr. L. J. 120 :
13 I. C. 776 : 38 Cal. 828.

CULPABLE HOMICIDE

———*Cross-examination—Limit of time for.*

It is illegal to fix an arbitrary limit of time for the cross-examination of witness by accused. *Emperor v. Asir-ud-Din Sarkar.*

22 Cr. L. J. 524 :
62 I. C. 412 : 34 C. L. J. 172 :
A. I. R. 1921 Cal. 118.

———*Object of.*

The object of cross-examination is not to produce startling effects but to elicit facts which will support the theory intended to be put forward. If the facts are clearly on record, the skilful cross-examiner knows when not to make an unskilful use of the right of cross-examination. *Bazlar Rahaman v. Emperor.*

30 Cr. L. J. 494 :
115 I. C. 561 : 48 C. L. J. 307 :
33 C. W. N. 136 : I. R. 1929 Cal. 385 :
A. I. R. 1929 Cal. 1.

———*Prosecution witnesses—Right of accused to cross-examine.*

An accused person is entitled to ask before the case for the prosecution is absolutely closed, and all the witnesses but one had been examined, to have the witnesses for the prosecution cross-examined. *Fazar Ali v. Mazharullah.*

13 Cr. L. J. 688 :
16 I. C. 336 : 16 C. L. J. 45.

———*Questions, disallowance of—Reasons to be recorded.*

Where in cross-examining a witness for the prosecution, questions are disallowed by the Court on the ground of irrelevancy or on other grounds, the evidence should show what the questions are and the reason for disallowing them. *Rameshwar Dusadh v. Emperor.*

21 Cr. L. J. 321 (b) :
55 I. C. 593 : 1 P. L. T. 632 :
A. I. R. 1920 Pat. 25.

CULPABLE HOMICIDE.

See also Penal Code, 1860, Ss. 200, 300, 304.

———*Sentence for—Wife detected in act of adultery and killed—Sentence.*

Wife-murder is so common an offence in Sind that deterrent sentences should be passed in all such cases, even where the husband has killed his wife in the provocation that he detected her in the act of committing adultery. *Emperor v. Kadir Bux.*

13 Cr. L. J. 535 :
15 I. C. 807 : 5 S. L. R. 256.

———*What constitutes—Two persons assaulting each other—Others joining fight—Death of one person from injuries received—Absence of reliable evidence to prove who was the real assailant—Penal Code (Act XLV of 1860), Ss. 160, 304.*

Where *L* and *M* met and after abuse came to blows and each struck the other down while others had also joined the fight and *M* died of the injuries received but there was no reliable evidence that *L* alone was the assailant : *Held*, that *L* could not be convicted under S. 304, Part 2, Penal Code, and that no

DACOITY

offence beyond an affray under S. 160, Penal Code, had been committed. *Langar v. Emperor.*

13 Cr. L. J. 718 :
16 I. C. 526 : 32 P. W. R. 1912 Cr.

———*What constitutes, not amounting to murder—Evidence insufficient—Charge of grievous hurt.*

Where in the course of a riot the accused who were armed with sticks gave blows, one of which fell on the temple of the deceased, in consequence of which he died four days after : *Held*, that the accused did not intend to cause death but only grievous hurt. *Pattam Ashony v. Emperor.*

12 Cr. L. J. 528 :
12 I. C. 296 : (1911) 2 M. W. N. 188.

CUSTODY

See also (i) Evidence Act, 1872, S. 27.
(ii) Penal Code, 1860, S. 225-B.

CUSTODY OF WARD

See also Cr. P. C., S. 100.

CUSTODY OF WIFE

See also Cr. P. C., 1898, S. 100.

CUSTOM

———*Karens—Marriage—Match-making—Cock and hen eating—Buddhist Law.*

The Nat-worshipping Karens have peculiar marriage ceremonies of their own. A match-maker brings the parties together, the man goes to the woman's house if the parties were not married before ; but the woman may go to the man's house if he is a widower. A cock and hen eating would apparently complete the ceremony but if the parties profess Buddhism, though Karens, they may marry according to Buddhist Law. *Mg Saw Tu v. Ma Sa Ma.*

15 Cr. L. J. 590 :
25 I. C. 342 : A. I. R. 1914 L. Bur. 10.

———*Marriage—Rathi Rajputs of Kangra District—Janjharara marriage, whether valid.*

Among Rathi Rajputs of the Kangra District, a janjharara marriage is valid. *Gobindu v. Emperor.*

20 Cr. L. J. 554 :
51 I. C. 842 : 10 P. R. 1919 Cr. :
A. I. R. 1919 Lah. 199.

D**DACOITY**

See also Penal Code, 1860, Ss. 301, 305, 390.

———*Conclusive evidence—Production of stolen article—Other evidence doubtful.*

The mere fact that a person accused of dacoity made a statement before several witnesses for the prosecution incriminating himself and produced in their presence some of the stolen articles is not convincing or conclusive of his guilt. *Fatta v. Emperor.*

14 Cr. L. J. 601 :
21 I. C. 473 : 31 P. W. R. 1913 Cr. :
314 P. L. R. 1913.

DISTRICT REGISTRAR

cannot limit or control the plain words of the section which are "no place shall be used for any one or more of the purposes" specified in the section unless licensed. *Public Prosecutor v. Mayandi Konan*. 5 Cr. L. J. 189 :

2 M. L. T. 54 : 30 Mad. 220 :
17 M. L. J. 371.

—S. 191.

See also District Municipalities Act,
S. 197.

—S. 191 (2)—Licence—Selling meat in a market.

Under S. 191 (2), District Municipalities Act, a special licence from the Municipal Chairman is required for the selling of meat in a market. *The Public Prosecutor v. Savan Rowthen*.

1 Cr. L. J. 438 :
3 L. D. R. 3.

—Ss. 197, 191—'Market,' use of—Market, definition of—Use of, as market, what amounts to.

Private property is used as a market when it is used as a public place for buying and selling. Where a private market had been ordered to be closed, a person using the place for selling fish and flesh after a licence had been refused, is guilty of an offence under S. 197, Madras District Municipalities Act, or at any rate, of an offence under S. 191. *Abu Bakar v. The Municipality of Negapatam*. 3 Cr. L. J. 458 :
I. L. R. 29 Mad. 185.

DISTRICT POLICE ACT (BOMBAY).

—Ss. 3 (1), 29 (1), (3)—'Punishment'—Scope of—Inspector of Police, whether comes under "subordinate ranks" as defined in amended S. 3 (1), Bombay District Police Act (IV of 1890).

By reason of the definition of "subordinate ranks" added by the Government of India (Adaptation of Indian Laws) Order, 1937, to S. 3, Bombay District Police Act, an Inspector of Police is included within that term. Under S. 10 of the Act, his appointment is to be made by the Inspector-General and his suspension, reduction or dismissal is governed by the provisions of S. 29, which, by virtue of S. 243, Government of India Act, must control and regulate the conditions of his service, because although S. 29 does not make special reference to suspension, reduction or removal, S. 29 (1) when read with S. 29 (3) makes it clear that the word 'punishment' in S. 29 (3) includes power to suspend, reduce or remove. Under S. 29 (3) it is the Inspector-General or the Deputy Inspector-General who is to suspend an Inspector. *Niaz Muhammad Baksh v. Emperor*. 40 Cr. L. J. 695 :

182 I. C. 513 : 12 R. S. 18 : 1939 Kar. 652 :
A. I. R. 1939 Sind 148.

DISTRICT REGISTRAR.

—District Registrar not Subordinate to High Court—High Court, powers to interfere with order of District Registrar.

A District Registrar is not a Court

DOCUMENT

subordinate to the High Court on the Civil, Criminal or Revenue side. The High Court has no power to interfere with an order of the District Registrar impounding a document and calling upon a person to show cause why he should not be prosecuted for forgery. *Udit Narain Dube v. Emperor*.

14 Cr. L. J. 144 :

18 I. C. 896 : 11 A. L. J. 55 : 35 All. 109.

DIVORCE ACT, 1869.

—S. 3.

Mere casual or temporary visits do not constitute 'residence'. *Carol v. Carol*.

144 I. C. 136 : 1933 A. L. J. 8 :
I. R. 1933 All. 385 : A. I. R. 1933 All. 39.

—S. 3 (1)—Jurisdiction—'Residence'—Intention, if material—Casual or temporary visits, if constitute residence.

In determining the question of jurisdiction to entertain a petition for divorce, intention has nothing whatever to do with the question of residence. Whether or not a person resides in a particular district is a question of fact and depends in each case upon the evidence. Mere casual or temporary visits do not constitute 'residence' within the meaning of the Divorce Act. *Mr. J. W. Carol v. Mrs. J. W. Carol*.

144 I. C. 136 :
1933 A. L. J. 8 : I. R. 1933 All. 385 :
A. I. R. 1933 All. 39.

—S. 10.

Marriage with another woman with adultery is valid ground for dissolution of marriage. *Gladys Seinapatti v. Seinapatti*.

136 I. C. 262 :
33 P. L. R. 339 : I. R. 1932 Lah. 214 :
A. I. R. 1932 Lah. 116.

—S. 61—Scope of—Right to present divorce petition, whether precludes prosecution of adulterer—Penal Code (Act XLV of 1860), S. 497.

S. 61, Divorce Act, merely precludes a civil suit for damages by a husband against an adulterer. It does not forbid the Crown to prosecute and punish an alleged adulterer under S. 497, Penal Code, when moved to do so by an injured husband, who is entitled to relief under the Divorce Act. *F. Bwyne v. Kirk*.

29 Cr. L. J. 382 :
108 I. C. 381 : 10 L. L. J. 250 :
A. I. R. 1928 Lah. 50.

DOCUMENT

—Proof of.

The fact that a statement is made in a private document is not by itself proof of its truth or any more admissible to prove the truth of the matter stated than an oral statement by the same person would be. A document does not prove itself, nor is an unproved signature proof of its having been written by the person whose signature it purports to bear. *Barindra Kumar v. Emperor*.

11 Cr. L. J. 453 :
7 I. C. 359 : 37 Cal. 467.

DEFAMATION

document means, unless such a witness is an expert under the Evidence Act. It is for the Court to ascertain what the document means, though no doubt a witness may suggest methods by which an intelligent meaning can be given to the instrument. *Emperor v. Nathalal Vamali*.

40 Cr. L. J. 891 :
184 I. C. 252 : 41 Bom. L. R. 548 :
I. L. R. 1939 Bom. 434 : 12 R. B. 155 :
A. I. R. 1939 Bom. 339.

———*Mode of proof, objection to—Must be taken when deed is sought to be put in evidence.*

Objection relating to the mode of proof only should be raised when the prosecution seeks to put the document into evidence and where it is raised at a later stage, it does not deserve serious consideration. *Kali Jiban Bhattacharjee v. Emperor*.

37 Cr. L. J. 775 :
163 I. C. 41 : 63 C. L. J. 232 :
8 R. C. 714 : 63 Cal. 1053 :
A. I. R. 1936 Cal. 316.

DEFAMATION

See also (i) Criminal trial.

(ii) Evidence Act, 1872, S. 32.

(iii) Government of India Act,
1919, S. 72-D (7).

(iv) Penal Code, 1860, Ss. 211,
499, 499 Exc. (9) ill. (a).

———*Absolute privilege.*

A person giving evidence in a Court of Law is not entitled to an absolute privilege in respect of the statements which he makes, and consequently, he is not immune from a complaint of defamation by reason of words uttered on oath in the witness-box. It cannot be held that in the case of a person who alleges that he has been defamed and has not been a party to the proceedings at all, cannot move a Magistrate to entertain a complaint in respect of defamation without moving the Court in which the statement was made to make a complaint under S. 195, Cr. P. C., in respect of perjury committed before it. *Cholelal v. Phulechand*.

38 Cr. L. J. 775 :
169 I. C. 429 : 20 N. L. J. 33 :
10 R. N. 1 : I. L. R. 1937 Nag. 425 :
A. I. R. 1937 Nag. 138.

———*Burden of proof—Publication must be proved by prosecution.*

In a defamation case, it is incumbent on the prosecution to prove affirmatively that the accused published the libel complained of, as this is one of the essential facts necessary to establish the guilt of the accused. *Jeremiah v. Vas*.

12 Cr. L. J. 585 :
12 I. C. 961 : 10 M. L. T. 506 :
(1911) 2 M. W. N. 576 : 29 M. L. J. 73.

———*Complaint for—Person making defamatory statement in course of judicial proceedings—Liability for prosecution.*

The statements made by accused in judicial proceedings are not absolutely privileged. A person making a defamatory statement in a judicial proceedings is liable to prosecution for defamation. In the matter of defamation, the Magistrate has no power to say that a person

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should be prosecuted for defamation because he has made a defamatory statement. A party who has been defamed, has not to take the sanction of the Court where the defamatory statement was made, before starting a prosecution for defamation. *Mohammad Isa v. Nazim Husain*.

41 Cr. L. J. 660 :
188 I. C. 699 : 1940 A. L. J. 79 :
I. L. R. 1940 All. 314 : 13 R. A. 72 :
A. I. R. 1940 All. 246.

———*Duty of Magistrate—Complaint defective—Duty of Magistrate to enquire from complainant further facts—Arguments of counsel—Practice.*

A Police officer is guilty of defamation if he maliciously makes to his superior officer a defamatory report against any person unless he can show that he is protected by some special statutory privilege. No such privilege is created by the Legislature in favour of Police officers. It is the duty of the Magistrate hearing the complaint to explain the procedure to the complainant, and in view of that explanation, to call upon him to state precisely what the charge is. *Abdur Razak v. Gouri Nath*.

11 Cr. L. J. 205 :
5 I. C. 714 : 4 P. W. R. 1910 Cr.

———*Duty of Court.*

When the facts brought to notice do not amount to an offence, or where, whether the facts amount to an offence or not, it is obvious that the person charged is not the person responsible, it is no part of the Court's duty to examine the complainant as to whether there are not other facts or circumstances, not brought to notice in the complaint, in respect of which he can take criminal proceedings against the accused. This is specially so where the complainant had the benefit of competent legal assistance. *Abdur Razak v. Gauri Nath*.

11 Cr. L. J. 205 :
5 I. C. 714 : 4 P. W. R. 1910 Cr.

———*Imputation in election contest, effect of—Accused issuing poster against rival Barrister saying that hollowness of his capacity as Barrister is exposed.*

In the course of an election contest, the accused issued and published a poster against his rival candidate, a Barrister-at-Law which contained the words: "The hollowness of Mr.—'s capacity as a Barrister has been exposed." Held, that these words meant that the unsoundness of the rival's knowledge or capacity as a Barrister had been exposed and the imputation undoubtedly was calculated to lower in the estimation of others the intellectual qualities and the aptitude for his profession as a Barrister in him. *Panna Lal v. Emperor*.

37 Cr. L. J. 1033 :
164 I. C. 809 : 9 R. L. 164 :
A. I. R. 1936 Lah. 294.

———*Interpretation—Newspaper article ambiguous.*

Where a newspaper article is ambiguous and capable of an interpretation making it both defamatory and innocent, it should be interpreted in favour of the accused and the more sinister

DYING DECLARATION

the statement, what the deceased said. If the statement was taken down in writing by the witness or by some one in presence of the witness, the witness would be entitled to refresh his memory by referring to it; otherwise the writing itself is not relevant unless it is in the nature of a deposition taken in the presence of the accused. Where the deceased dictated his statement and it was taken down and he signed the writing after being satisfied as to its accuracy, such writing may be regarded as a statement of the deceased in writing and would be admissible under S. 32, Evidence Act. *Public Prosecutor v. Bala Nagi Reddi*.

13 Cr. L. J. 468 :
15 I. C. 308 : 11 M. L. T. 214 :
1912 M. W. N. 405 :
22 M. L. J. 453.

—————*Duty of Magistrate while recording such deposition.*

An injured man who is waiting to be operated on, should not be subjected to anything like a third degree cross-examination by the Magistrate who records his dying deposition, but the Magistrate should not content himself with merely recording the statement made by the injured man, he should ask him such simple questions as may occur to his mind in order that the dying deposition may be an account of some value. *The King v. Kaung Po Thi*.

39 Cr. L. J. 771 :
176 I. C. 683 : 11 R. Rang. 72 :
A. I. R. 1938 Rang. 282.

—————*Magistrate taking dying deposition should not record evidence in committal Court.*

It is wrong for a Magistrate who takes the dying deposition to record the evidence in the committal Court. It means that the accused is in that Court precluded from questioning the Magistrate as to what happened when the dying deposition was taken. *Nga Chit So v. The King*.

39 Cr. L. J. 117 :
172 I. C. 197 : 10 R. Rang. 233 :
A. I. R. 1937 Rang. 467.

—————*Method of proof—Record made in absence of accused.*

Where a dying declaration is recorded in the absence of the accused, by a Magistrate who has since died, the writing made by the latter cannot be admitted to prove the declaration; it must be proved in the ordinary way by a person who heard it made, and if he swears that the written statement correctly reproduces the words used by the deceased, and was read over to the deceased who admitted its correctness, this is sufficient to prove that the deceased did use the words contained in that statement. *Emperor v. Balaram Das*.

24 Cr. L. J. 221 :
71 I. C. 685 : 49 Cal. 358 :
A. I. R. 1922 Cal. 382 (b).

—————*Mode of recording.*

The recording of a dying declaration which may subsequently be produced as evidence in a Court is a grave and solemn proceeding. Unauthorized persons should not be per-

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mitted to crowd round when the declaration is being made. It is the bounden duty of the Magistrate to ensure that no influence is brought to bear on the declarant. *Nem Singh v. Emperor*.

36 Cr. L. J. 152 :
152 I. C. 741 : 4 A. W. R. 5 :
7 R. A. 373 : A. I. R. 1934 All. 908.

—————*Necessity of proof—Declaration, recorded by Magistrate—Necessity of proof—Evidence Act (I of 1872), S. 32—Criminal Procedure Code (Act V of 1898), Sch. XLI.*

A dying declaration recorded by a Magistrate cannot be accepted in evidence unless it is proved by the statement of the Magistrate. The mere fact that the Magistrate who recorded the statement, was also the Committing Magistrate in the case would not dispense with the necessity of proving the dying declaration. Dying declarations are not covered by the provisions of Chap. XLI, Cr. P. C., and there is nothing in S. 32, Evidence Act, to justify a Court in going beyond the ordinary rule that every statement placed on the record must be properly proved. *Ghazi v. Emperor*.

14 Cr. L. J. 131 :
18 I. C. 883 : 239 P. L. R. 1912.

—————*Proof of—Declaration not bearing signature of deceased whether admissible—Proof, oral testimony of person who may have heard it.*

A dying declaration not reduced to writing must be proved by the oral evidence of any person who heard it. When a Police Officer is testifying to such a declaration, he can refresh his memory by reference to the notes he may have made or read at the time. Such notes, to be themselves admissible in evidence as proof of the statement made then by the dying person, must bear the signature of the deponent. *Bhagwan v. Emperor*.

15 Cr. L. J. 243 :
23 I. C. 195 : 10 N. L. R. 19 :
A. I. R. 1914 Nag. 70.

—————*Trial by Jury—Part of declaration found false—Value of declaration.*

No sensible Jury would refuse to accept the portion of the dying declaration corroborated by a mass of evidence merely because the deceased told a lie in his own interest and no direction nor any provision of the law would, in fact, ever prevent a Jury from believing it, if they saw fit to do so. *Naimud-Din Biswas v. Emperor*.

38 Cr. L. J. 243 :
166 I. C. 625 : 40 C. W. N. 1377 :
9 R. C. 561 : I. L. R. 1937 1 Cal. 475 :
A. I. R. 1936 Cal. 793.

—————*Value.*

A great deal of sanctity is attached to the dying declaration because it is expected that the person who is on the verge of death will tell the truth. *Ram Damodar v. Emperor*.

40 Cr. L. J. 38 :
178 I. C. 348 : 1938 O. W. N. 1103 :
11 R. O. 106 : 1938 O. L. R. 483 :
A. I. R. 1939 Oudh 33.

DEFENCE OF INDIA CONSOLIDATION RULES, 1915

M had joined the army, rule 23 of the rules framed under the Defence of India Act was not applicable to the case, inasmuch as a person cannot be said to dissuade or to attempt to dissuade another from doing something which the latter has already done. *Mahadeo Singh v. Emperor*. 20 Cr. L. J. 8 : 48 I. C. 483 : 16 A. L. J. 895 : 41 All. 164 : A. I. R. 1918 All. 17.

DEFENCE OF INDIA ACT (XXXV OF 1939).

—S. 2—Scope of—Rules under rr. 34 (6) (g), (6) (p).

An increase of roughly 10 per cent. in the price of a pair of *dhotis* can hardly be said to be an act likely to cause fear or alarm to the public or to any section of it, within the meaning of r. 34 (6) (g), whatever other consequences it may have on the public mind. Profiteering was not intended to be included in the definition of "prejudicial act" in r. 34 (6). *Kesrilal Kedia v. Emperor*. 41 Cr. L. J. 467 : 187 I. C. 533 : 6 B. R. 493 : 21 P. L. T. 273 : 12 R. P. 639 : A. I. R. 1940 Pat. 373.

DEFENCE OF INDIA CONSOLIDATION RULES, 1915.

—Rr. 21-A, 28—Conviction for attempting to melt sovereigns.

The shop of accused No. 1 was raided by the Police who found a furnace ready heated, and on it a crucible containing molten silver and near it a large number of sovereigns in an open dish or receptacle so placed as to be ready for transfer to the crucible ; he was convicted of attempting to melt sovereigns under rules 2-A and 28 of the Defence of India Consolidation Rules, 1915. On revision to the High Court : *Held*, that he had been rightly convicted. *Abu Hasan v. Emperor*. 20 Cr. L. J. 677 : 52 I. C. 597 : 21 Bom. L. R. 747 : A. I. R. 1919 Bom. 156.

—Rr. 21-A, 28, 30—Conviction without sanction from authority—Consent in writing want of, effect of—Consent authorising proceedings against one person—Initiation of proceedings against several persons, legality of—Offence not specified, effect of.

A person cannot be convicted under the Defence of India Consolidation Rules of 1915, without the written consent of the authority mentioned in r. 30 of the rules to initiate proceedings against him. *A* and *B* were tried and convicted of offences under rr. 21-A and 28 of the Defence of India Consolidation Rules, 1915. It was found that the consent in writing required by rule 30 authorised proceedings against *A* alone and that it did not specify the offence for which he was to be tried : *Held*, (1) that *B*'s conviction was illegal and must be set aside ; (2) that the defect in the consent did not invalidate the proceedings as regards *A*. *Abu Hasan v. Emperor*.

20 Cr. L. J. 677 : 52 I. C. 597 : 21 Bom. L. R. 747 : A. I. R. 1919 Bom. 156.

DEFENCE OF INDIA (CRIMINAL LAW AMENDMENT) ACT (IV OF 1915).

—S. 3 (1), Jurisdiction notification under, whether ousts jurisdiction of regular Courts.

A notification under S. 3 (1), Defence of India Act, 1915, ousts the jurisdiction of the regular Courts in respect of the offences and persons mentioned in the notification. *Samaila v. Emperor*. 18 Cr. L. J. 927 : 42 I. C. 159 : 38 P. R. 1917 Cr. : 42 P. W. R. 1917 Cr. : A. I. R. 1917 Lah. 138.

—S. 5.

See also Penal Code, 1869, S. 191.

—Ss. 8, 11—Effect of—High Court, power of superintendence of, over Commissioners appointed under Defence of India Act—Governor-General in Council, power of.

The Defence of India Act does not purport to take away any existing powers of superintendence of the High Court, but merely creates a new Court which shall be independent of the High Court. The power of superintendence conferred on the High Court by S. 15, High Courts Act, is confined to superintendence over those Courts which are subject to the appellate jurisdiction of the High Court. The Special Tribunals created under the Defence of India Act, are by the very Act which created them, subject to no appellate jurisdiction whatever. It is clearly expressed by S. 8, Defence of India Act, that the decision of the Commissioners appointed under the Act should be final and conclusive and that no other Court should have any power of interference either by way of appeal, revision or in any other way whatsoever. The Governor-General in Council had power to pass the Defence of India Act providing for the creation of new Courts of criminal jurisdiction independent of the control or superintendence of the High Courts. It is within the legislative powers of the Governor-General in council to amend or alter the Letters Patent of a High Court and to direct that a particular Court shall not be subject to the appellate jurisdiction of the High Court, thereby removing a condition which is essential to the exercise of the power of superintendence granted by S. 15, High Courts Act. *Sheo Nandan Prashad Singh v. Emperor*.

19 Cr. L. J. 833 : 46 I. C. 977 : 3 P. L. J. 581 : 1919 Pat. 1 : 5 P. L. W. 324 : A. I. R. 1918 Pat. 103.

—R. 81 (4)—Procedure—Notification prohibiting sale of rice at price exceeding that on certain date plus 20 per cent.

The dealers were prohibited by Government Notification from selling rice at more than 20 per cent, in excess of the price prevalent on September 1, 1938. The Police obtained a sample of rice from the Market Inspector on September 21, which quality was selling at Rs. 50 per *khandi* on September 1, and purchased from the accused rice similar to the sample at Rs. 70 per *khandi* : *Held*, that the conviction could not be sustained under R. 81 (4), Defence

EASTERN BENGAL AND ASSAM DIS- ORDERLY HOUSES ACT (II OF 1907)

inquiries in the case of each house, but in deciding the question whether annoyance is caused to the neighbours, the Magistrate must apply his mind to the case of each house separately. A Magistrate summoned certain persons under the provisions of the Eastern Bengal and Assam Disorderly Houses Act, and after questioning them and examining witnesses but without administering any oath to the witnesses or recording their evidence or the statements of the persons against whom the proceedings had been taken, he passed an order under S. 3 of the Act: *Held*, that the proceedings taken by the Magistrate had not been conducted within the ordinary rules of fairness and his order must, therefore, be set aside. *Rama Pada Chatterji v. Basanta Baishnabik*.

27 Cr. L. J. 145 :
91 I. C. 881 : 30 C. W. N. 91 :
A. I. R. 1926 Cal. 307.

—Ss. 2, 3—Power of Magistrate.

Under the Eastern Bengal and Assam Disorderly Houses Act, the Magistrate has power to call upon the occupier of a house which is used as a brothel to discontinue using it for such purposes, but he has no power to order him to vacate it. *Kusum Baistami v. Emperor*.

32 Cr. L. J. 320 :
129 I. C. 358 : I. R. 1931 Cal. 166 :
34 C. W. N. 451 : A. I. R. 1930 Cal. 638.

—S. 2 to 6—Power of Magistrate—Magistrate to satisfy himself that house is disorderly—Scope of enquiry.

Ss. 2 and 3 of the Act do not create any offence, the only offence created by the Act being that created by S. 6. The power conferred by Ss. 2 and 3 is not a power to hold a Criminal trial or to take any preliminary proceedings under the Cr. P. C. The Magistrate may hold the enquiry under S. 2 in any way that does not violate ordinary rules of fairness and propriety, but he is not bound to act only on legal evidence, and he need not administer oath. *Rajani Khemtawali v. Emperor*.

11 Cr. L. J. 112 ;
5 I. C. 323.

—S. 3—Criminal Court.

The Court making an order under S. 3, Eastern Bengal and Assam Disorderly Houses Act, 1907, is a Criminal Court, and, therefore, the High Court has jurisdiction to act under S. 435 and 438, Cr. P. C. in respect of such an order. *Rajani Khemtawali v. Emperor*.

11 Cr. L. J. 112 :
5 I. C. 323.

—S. 3—Jurisdiction—Order passed under—Jurisdiction of District Magistrate to interfere with.

A District Magistrate has no jurisdiction to interfere with an order passed by a Criminal Court in the exercise of its jurisdiction under S. 3, Eastern Bengal and Assam Disorderly Houses Act, 1907. *Lalla Mohan Chakravarty v. Harendra Kumar De*.

18 Cr. L. J. 736 :
40 I. C. 736 : 21 C. W. N. 1135 :
27 C. L. J. 89 : A. I. R. 1918 Cal. 507.

ELECTRICITY ACT (IX OF 1910)

—Ss. 6, 7—Procedure—Order to Inspector to inquire—Inspector directing Sub-Inspector to inquire—Report of Sub-Inspector.

Where a District Magistrate made an order to an Inspector of Police, whom he named, authorising him to make inquiry under S. 7 and the latter asked a Sub-Inspector to make the necessary inquiry, and the Sub-Inspector made a report that the woman was carrying on her profession of prostitution: *Held*, that it was open to District Magistrate to treat the report of the Sub-Inspector as a complaint of facts constituting an offence under S. 6; that S. 6 created an offence under a local law, and proceedings should only be instituted under the Cr. P. C.; that it would be necessary for the prosecution to show not only that the woman was going on with her profession of prostitution but that she was still using her house to the annoyance of the inhabitants of the vicinity. *Feroja Peshakar v. Emperor*.

13 Cr. L. J. 691 :
16 I. C. 499 : 16 C. W. N. 1049.

—Scope of.

S. 7, Eastern Bengal and Assam Disorderly Houses Act, 1907, is not a necessary part of the procedure of the Act prior to a prosecution being instituted. It is only an enabling section and it does not lay down that it is in any way necessary for anybody to enter the house if the Magistrate can be satisfied in other ways that the nuisance is still continuing. *Feroja Peshakar v. Emperor*.

13 Cr. L. J. 691 :
16 I. C. 499 : 16 C. W. N. 1049.

EDITOR

See also Defamation.

ELECTION

See also Public speech.

ELECTION RULES

—Rr. 16 and 17.

See also U. P. Municipalities Act, 1916.

ELECTRICITY ACT (IX OF 1910)

—Dishonest user—Abstraction, if a necessary ingredient under.

Abstraction is not always a necessary ingredient for an offence under S. 39. The consuming of the electricity and the regular causing of the record of that use in the shape of the figures on the dials in the meters to be altered is a dishonest user. *Rash Behari Shah (Handa) v. Emperor*.

38 Cr. L. J. 545 :
168 I. C. 657 : 41 C. W. N. 225 :
9 R. C. 853 : A. I. R. 1936 Cal. 753.

—Rules under r. 62 (3), (a)—Omission under—Liability of.

The civil rights of a person would not, in any way, protect him against criminal liability for his acts and omissions under r. 62 (3), (a). He has every right to move against the company to have the wire removed from over his land; but he is not justified in law in effecting alterations

DISCOVERY

See also (i) Cr. P. C., 1898, S. 27.
(ii) Evidence Act, 1872, S. 27.

DISCRETION

See also Penal Code, 1860, S. 193.

DISHONEST INTENTION

See also Penal Code, 1860, S. 415.

DISHONESTLY

See also (i) Cr. P. C., 1898, S. 195 (c).
(ii) Penal Code, 1860, S. 24.

DISORDERLY PERSON

See also Bengal Disorderly Houses Act, 1906, S. 2 (2).

DISPARAGING REMARKS

See also Cr. P. C., 1898, S. 501-A.

DISPOSAL OF PROPERTY

See also Cr. P. C., 1898, S. 517.

DISPUTE

See also Cr. P. C., 1898, S. 107.

DISPUTE AS TO PROPERTY

See also Cr. P. C., 1898, S. 145.

DISTINCTLY

See also Evidence Act, 1872, S. 27.

DISTINCTLY RELATES

See also Evidence Act, 1872, Ss. 24, 25, 26, 27.

DISTRESS BY CRIMINAL COURT.

———Warrant of distress—Crown debt, priority of, over private attachment.

A warrant of distress issued by a Criminal Court takes precedence of a civil writ, even though the fine, if levied, does not go to the coffers of the Crown but is payable to a private party. *Pichu Vadhiar v. Secretary of State*.

18 Cr. L. J. 426 :
38 I. C. 986 : 1917 M. W. N. 20 :
21 M. L. T. 71 : 5 L. W. 664 :
40 Mad. 767 : A. I. R. 1918 Mad. 1111.

DISTRICT MAGISTRATE.

———Inquiry—Inquiry into a crime that was alleged to be committed or about to be committed—Result of the inquiry—Judicial value of the inquiry.

A District Magistrate received information which he apparently believed and which, if true, showed that a grave crime was being, or was about to be, committed which, if successful, would result in a great wrong with respect to properties in his district, and he took such steps as seemed to him necessary, in the emergency, for the prevention of the crime, and ordered inquiries to be instituted into the matter. The inquiries were conducted in secret, no previous intimation was given to the parties of the inquiry and the boy in question who was alleged to have

DISTRICT MUNICIPALITIES ACT (III OF 1880)

been substituted, was not represented by any pleader, and was subjected to an examination : *Held*, that the inquiries, if they can be called official in any sense, were certainly not judicial : *Held*, further, as to the alleged statement by the boy himself at the inquiries, assuming it to have been correctly reported, there was nothing to show whether the language was in any part his own, or whether it was put in his mouth by the person conducting the examination. *Chaudrasang v. Mohansang*.

4 Cr. L. J. 334 :
8 Bom. L. R. 705 : 1 M. L. T. 301 :
4 C. L. J. 181 : 30 Bom. 523 :
31 I. A. 981 (P. C.).

DISTRICT MUNICIPALITIES ACT (BOMBAY ACT III OF 1901)

———S. 96—Power of Municipality—Power of Municipality to require proof of ownership—Construction of words “further particulars” in the section—Date from which period of one month to be reckoned.

The question whether under S. 96, Bombay Act III of 1901, the Municipality has jurisdiction or right to call for information regarding ownership must be decided on the circumstances of each case. The Municipality has a right under the said section to call for “further particulars,” and when those particulars are furnished the applicant has to wait for one month from the date of the orders of the Municipality before he can proceed to build. *Emperor v. Pranshanker Gavrishanker*.

1 Cr. L. J. 748 :
6 Bom. L. R. 581.

DISTRICT MUNICIPALITIES ACT (III OF 1880), MADRAS

———‘Street,’ meaning of.

A street is properly paved way or road but in usage, any way or road in a city having houses on one or both sides. Therefore drain or ditch on either side of the roadway is not a part of the street. *Venkatarama Chetty v. Emperor*.

2 Cr. L. J. 148 :
I. L. R. 28 Mad. 17.

———S. 170—Object of—Granting of licence—Erection put up before the granting of licence.

The object of S. 170, District Municipalities Act, is to enable a Chairman, in a case in which he thought fit to do so to license a temporary erection though the erection had been put up before the licence was applied for. *The Public Prosecutor v. Subraya Chetty*.

1 Cr. L. J. 432 :
3 L. D. R. 25.

DISTRICT MUNICIPALITIES ACT (IV OF 1884)

———S. 188, Cl. (n)—Scope of—“Offensive and dangerous trades”—Whether words of limitation.

The words “of offensive and dangerous trades” in S. 188, Cl. (n), Madras District Municipalities Act, 1884, are merely words of general description to facilitate reference and

ELECTRICITY ACT (IX OF 1910)

———S. 44.

Sec also Electricity Act, 1910, S. 50.

———Ss. 44 (b), 26 (5)—‘Works’, meaning of—*Electricity Rules*, r. 31—S. 44 (b) requirements of—*Removal of meter from its old position after breaking of seals, to new position by extending service line—Offences under S. 44 (b) and r. 31, held, committed.*

Held, on facts that the accused in laying the additional line from the former position of the meter up to its new position, was laying “works” within the meaning of S. 44 (b), and he laid that line for the purpose of connecting it with other works belonging to the licensee, namely the old supply line which terminated at the original position of the meter. His act, therefore, clearly amounted to an offence within the meaning of S. 44 (b): *Held*, further, that as the accused broke open the seals which had been placed by the company upon the meter, his act clearly amounted to an offence under r. 31 (1), *Electricity Rules*. Rule 31 of the *Electricity Rules* does not deal with cases which S. 26 (5) contemplates but deals with the tampering with the seals placed on a meter which is already working. There is, therefore, no conflict between r. 31 and S. 26, Sub-s. (5). *M. A. Bhagwati v. Emperor*.

41 Cr. L. J. 188 :

185 I. C. 506 : 41 Bom. L. R. 878 :

I. L. R. 1939 Bom. 496 : 12 R. B. 251 :

A. I. R. 1939 Bom. 480.

———S. 44 (c)—‘Consumer,’ meaning of—*For presumption under section, accused must be “consumer”--Electricity supplied to proprietor of mill—Manager, whether “consumer.”*

The presumption given in the concluding portion of S. 44, *Electricity Act*, is not available to the prosecution unless the person who is accused as having prevented a meter from duly registering, is ‘consumer’ within the definition given in S. 2 (c). A manager of a mill cannot be a consumer when the person supplied with energy is the owner of the mill. The fact that the papers sent with electric bills are signed by the manager, does not make any difference. *Bhagalpur Electric Supply Co., Ltd. v. Profulla Kumar Ghosal*.

39 Cr. L. J. 549 :

175 I. C. 273 : 19 P. L. T. 141 :

10 R. P. 603 : 4 B. R. 563 :

A. I. R. 1938 Pat. 243.

———Ss. 44 (c), 39—*Proof of offence under—Charge under S. 39, and not under S. 44 (c), legality.*

The existence of S. 44 (c), *Electricity Act*, does not prevent the charge being made under S. 39. S. 39 is in fact the major offence. The use of electric current without the intention of paying is all that is required under S. 39, which creates a statutory theft sufficiently established against whoever dishonestly abstracts, consumes or uses the energy. The technical rules applicable to proving the theft

ELECTRICITY ACT (IX OF 1910)

of a chattel do not apply to proof of this special offence. *Babulal Chaukhani v. Emperor*.

39 Cr. L. J. 452 P. C. :

174 I. C. 1 : 1938 A. L. J. 382 :

19 P. L. T. 343 : (1938) 1 M. L. J. 647 :

42 C. W. N. 621 : 1938 O. W. N. 416 :

1938 O. L. R. 189 : 1938 M. W. N. 505 :

4 B. R. 490 : 67 C. L. J. 161 :

40 Bom. L. R. 787 : 65 I. A. 158 :

32 S. L. R. 476 : 10 R. P. C. 250 :

I. L. R. (1938) 2 Cal. 295 :

1938 A. W. R. 116 :

A. I. R. 1938 P. C. 130.

———S. 47—*Conviction under, legality of.*

Where a licensee allows the stay-wire in the road to be in an unsafe state, he fails to perform an obligation imposed upon him under the *Electricity Act* and is guilty of breach of R. 3 and can be convicted under R. 107, *Electricity Rules*, framed under the *Electricity Act*. A conviction in the alternative under R. 107 and S. 47, is not in accordance with law. *Rangoon Electric Tramway and Supply Co., Ltd. v. Emperor*.

34 Cr. L. J. 1040 :

145 I. C. 710 : 11 Rang. 162 :

6 R. Rang. 53 : A. I. R. 1933 Rang. 70.

———S. 47—*Scope of—Electricity Rules of 1911, Rr. 41, 105, 107—Breach of rules under Act—S. 47, if applies—Owner of house with electric installation charged for accident to workman breaking wire with trowel and getting electrocuted—Owner, if punishable under S. 47, or under R. 107.*

S. 47, *Electricity Act*, deals in terms with default in complying with any of the provisions of the Act, or with any order issued under it, or, in the case of a licensee, with any of the conditions of his licence, but it does not deal with a breach of any of the rules made under the Act. The accused was the owner of a house in which an accident occurred. A contractor was employed to lay *chunam* in the house, and a workman employed by the contractor, in the course of his work, broke through the lead sheathing of an electric wire and the rubber insulation by means of a metal trowel which the workman had in his hand. He thereby brought the trowel into contact with the electric wire. He was at the moment supporting himself by holding a pipe for gas, and the result was that he was electrocuted and died. The accused was prosecuted under R. 41 read with R. 107, *Electricity Rules*, 1911. The prosecution urged that if there is no rule imposing a penalty for a breach of R. 41, then a penalty can be imposed under S. 47: *Held*, that no penalty could be imposed under R. 47 as that section was not intended to deal with breaches of the rules. Further, the accused was not an owner within the meaning of the Act although he might be the owner of the defective wire in question, and Rr. 105 and 107 imposed penalties on licensees and owners who were experts and hence no penalty could be imposed on the accused for breach of the rule: *Held*, also that there was no rule providing a penalty for breach of rules which might easily be broken by a non-expert un-

DOMICILE

See Extradition Act, 1903, Ss. 3 (2), (a), 7.

DOUBT

—Degrees of.

The amount of doubt that arises in the mind of a man may be of different degrees. It is only where there is a reasonable doubt about the guilt of an accused person that he is entitled to an acquittal. Doubts will always arise in human mind but all doubts are not entitled to respect. There may be a doubt which is less than a reasonable doubt, but which is still a doubt that is entitled to respect and which is entitled to ask a Judge to be cautious in passing the sentence. *Raggha v. Emperor*.

26 Cr. L. J. 1431 :
89 I. C. 903 : 23 A. L. J. 821 :
A. I. R. 1925 All. 627.

DRUNKENNESS

See also Penal Code, 1860, S. 84.

DUTY OF COUNSEL

See also (i) Counsel and client.
(ii) Legal Practitioner.

DUTY OF PROSECUTION

The accused were charged with having abducted a girl who was not a minor, with the intention that she should be forced to illicit intercourse. The defence was that the girl went of her own accord. There were three stages in the case: (1) The time when the girl was kept in concealment by the accused, and was under the influence of the accused; (2) A period of three days when she was under the protection of English Officers, and was under the immediate influence of neither the accused nor her own parents; (3) The time after her return to her parents when she was under their influence. The prosecution alleged that during the second stage while the girl was living in the house of a respectable Burman official of high standing, she was compelled by the accused's mother to copy a false letter to support the case for the defence. It appeared that during the second stage the girl in the presence of respectable persons deliberated for an hour in making up her mind whether she would return to Rangoon with her own relatives or with the accused's relatives. With regard to the second stage, the prosecution tendered no evidence except that of the girl herself: *Held*, that in all these matters the prosecution failed in their duty. It is the duty of the prosecution to call all the persons who are shown to be connected with the transactions, and who, from such connection, must be able to give material evidence. *Emperor v. E. Maung*.

4 Cr. L. J. 98 :
3 L. B. R. 133.

DUTY TO PREPARE

See also Penal Code, 1860, S. 218.

DYING DECLARATION

See also (i) Criminal trial.
(ii) Evidence Act, 1872, S. 32.

—Admissibility of.

Statements made by a dying man relating to the cause of his death are admissible in evidence against persons accused of causing his death, but when such statements are hearsay, too much reliance cannot be placed upon their details. *Emperor v. Sukhu Bewa*.

25 Cr. L. J. 165 :
76 I. C. 389 : 38 C. L. J. 155.

—Admissibility of—Taken in absence of accused.

A dying declaration recorded in the absence of the accused by a Magistrate other than the Magistrate who held the enquiry preliminary to commitment to the Court of Session, is not admissible in evidence unless and until it has been proved by the Magistrate who recorded it. A note on the order sheet that the document was admitted without any objection on the part of the accused does not make any difference. *Jatindra Nath v. Emperor*.

5 Cr. L. J. 427 :
11 C. W. N. 666.

—Conviction.

A dying declaration alone is sufficient to found a conviction if, after applying the accepted tests, it is held to be true and genuine. It is not necessary that it should be corroborated otherwise. *Masti Khan v. Emperor*.

36 Cr. L. J. 800 :
155 I. C. 276 : 7 R. Pesh. 99 :
A. I. R. 1935 Pesh. 41.

—Corroboration—Blood spots on apparel, whether sufficient corroboration of dying declaration.

Whether the finding of a few spots of blood on the wearing apparel of an Indian is a sufficient corroboration of a dying statement for the purpose of supporting a conviction, must be considered on the facts of the particular case, and what is done in one case cannot be an authority in another set of facts. *Emperor v. Somra Bhuiyan*.

39 Cr. L. J. 332 :
173 I. C. 499 : 16 Pat. 593 :
19 P. L. T. 86 : 10 R. P. 421 :
4 B. R. 281 (2) : A. I. R. 1938 Pat. 52.

—Deposition of witnesses hearing it—Written statement by deceased—Incomplete record of deposition—Re-trial.

It is of the utmost importance that evidence as to a dying declaration should be as exact and full as possible. Where such a declaration was heard by witnesses who spoke of it but was apparently much fuller than what the record of their depositions showed,—the Sessions Judge not having recorded all they said on the point: *Held*, that there must be a re-trial. When what is sought to be proved is the verbal statement of a dying person, the proper and legal mode of proving is by eliciting from the person who heard the deceased make

EMERGENCY POWERS ORDINANCE (II OF 1932)

———S. 21—*Illegality of order.*

Magistrate empowered under Ordinance—Offence under Ordinance—Trial by Magistrate as First Class Magistrate—Fine of Rs. 1,500 is *ultra vires*. *Ramehndra v. Emperor*. (S. B.)

34 Cr. L. J. 162 :
141 I. C. 574 : 34 Bom. L. R. 1676 :
I. R. 1933 Bom. 111.
A. I. R. 1933 Bom. 58.

———S. 21—*Powers of First Class Magistrate empowered as a Special Magistrate.*

Where the First Class Magistrate has been empowered as a Special Magistrate under the Ordinance, a sentence of fine of over Rs. 1,000 passed by him is not illegal. *Gulabchand Hirachand Doshi v. Emperor*. 34 Cr. L. J. 771 :

143 I. C. 622 : 35 Bom. L. R. 185 :
I. R. 1933 Bom. 277 :
A. I. R. 1933 Bom. 148.

———S. 32—*Scope of.*

Provisions of Cr. P. C. apply when not inconsistent with Ordinance. When inconsistent, provisions of Ordinance prevail. *Abdul Majid v. Emperor*. 34 Cr. L. J. 1023 :

145 I. C. 656 : 60 Cal. 652 :
6 R. C. 124 : A. I. R. 1933 Cal. 537.

———S. 34—*'New Tribunal'.*

In the case of an appeal from a Special Judge, the ordinary Law of Limitation is to be applied, but to decide which of the provisions of ordinary law is applicable to the new tribunal, it is prescribed that the new tribunal is to be deemed as a Court of Session. *Nil Ratan Ganguli v. Emperor*. 34 Cr. L. J. 633 :

143 I. C. 802 : 37 C. W. N. 195 :
60 Cal. 571 : I. R. 1933 Cal. 478 :
A. I. R. 1933 Cal. 124.

———S. 51—*Conviction by Special Magistrate.*

Conviction by Special Magistrate—Reference by Sessions Judge to High Court is not competent. *Emperor v. Manmalka Nath Kundu*. 34 Cr. L. J. 579 :

143 I. C. 238 : 60 Cal. 851 :
I. R. 1933 Cal. 390 :
A. I. R. 1933 Cal. 401.

———S. 51—*Power of Special Magistrate.*

S. 51 does not take away the right of a Special Magistrate to try a case on the sole ground that the first Magistrate, for good reasons, did not wish to try the case or was unable to do so. *Nil Ratan Ganguli v. Emperor*. 34 Cr. L. J. 633 :

143 I. C. 802 : 37 C. W. N. 195 :
60 Cal. 571 : I. R. 1933 Cal. 478 :
A. I. R. 1933 Cal. 124.

———S. 51—*Scope of.*

District Magistrate transferring case to one Magistrate—Withdrawal to his own file and transfer to another Magistrate—Act is in contravention of S. 51, latter Magistrate cannot try the case. *Abu Hossain Mia v. Emperor*. 35 Cr. L. J. 779 :

148 I. C. 800 : 37 C. W. N. 1048 :
6 R. C. 483 : A. I. R. 1934 Cal. 256.

EMERGENCY POWERS ORDINANCE (II OF 1932)

———S. 51—*Scope of.*

The section takes away the powers of the High Court derived under the Cr. P. C. and under the Letters Patent, but not the powers derived under S. 107, Government of India Act. *Balkrishna Hari Phansalkar v. Emperor*. 34 Cr. L. J. 199 :

141 I. C. 720 : 34 Bom. L. R. 1523 :
57 Bom. 93 : I. R. 1933 Bom. 130 :
A. I. R. 1933 Bom. 1.

———S. 52.

Although the Ordinance, in so far as it attempts to deprive a Chartered High Court of its powers under the Government of India Act is *ultra vires*, the Judicial Commissioner's Court is bound by it. *Emperor v. Mulchand*. 34 Cr. L. J. 166 :

141 I. C. 533 (2) : 26 S. L. R. 402 :
I. R. 1933 Sind 59 : A. I. R. 1932 Sind 166.

———S. 52.

The Judicial Commissioner's Court has no authority to convert a sentence of simple imprisonment passed under the Ordinance into one of rigorous imprisonment, on reference made by the District Magistrate. *Emperor v. Mulchand*. 34 Cr. L. J. 166 :

141 I. C. 533 (2) : 26 S. L. R. 402 :
I. R. 1933 Sind 59 : A. I. R. 1932 Sind 166.

———S. 63—*Government established by law, meaning of.*

Government established by law means British Rule and its representatives as such. In the matter of : *The Amrita Bazar Patrika*. (F. B.) 33 Cr. L. J. 949 :

140 I. C. 304 : 56 C. L. J. 157 :
37 C. W. N. 166 : I. R. 1932 Cal. 696 :
A. I. R. 1932 Cal. 738.

———S. 63 (3)—*Miscellaneous.*

Adoption of non-violent methods may excite disaffection. In the matter of : *The Amrita Bazar Patrika*. (F. B.) 33 Cr. L. J. 949 :

140 I. C. 304 : 56 C. L. J. 157 :
37 C. W. N. 166 : I. R. 1932 Cal. 696 :
A. I. R. 1932 Cal. 738.

———S. 63 (d)—*Innocent, meaning of.*

Innocent meaning possible—Isolated expressions should not be scrutinized and ascribed to sinister motives. In the matter of : *The Amrita Bazar Patrika*. (F. B.) 33 Cr. L. J. 949 :

140 I. C. 304 : 56 C. L. J. 157 :
I. R. 1932 Cal. 696 : 37 C. W. N. 166.
A. I. R. 1932 Cal. 738.

———S. 63 (d)—*Miscellaneous.*

There is no distinction between Government established by law and Executive Government. In the matter of : *Ananda Bazar Patrika*. (F. B.) 33 Cr. L. J. 839 :

140 I. C. 5 : 37 C. W. N. 104
60 Cal. 408 : I. R. 1932 Cal. 675 :
A. I. R. 1932 Cal. 745.

EASEMENT ACT (V OF 1882)

———Value.

Too much and undue reliance should not be put on so-called dying declaration made presumably under the shadow and fear of death. *Mohammad Anis v. Emperor*.

37 Cr. L. J. 955 :
164 I. C. 482 : 1936 O. W. N. 691 :
1936 O. L. R. 459 : 9 R. O. 81 :
A. I. R. 1936 Oudh 405.

———Value of.

A difference between a dying declaration and the First Information Report renders it necessary to examine both pieces of evidence with extra care, but such a difference alone does not necessarily render a dying declaration wholly unworthy of credence. *Mula Singh v. Emperor*.

24 Cr. L. J. 177 :
71 I. C. 593 : A. I. R. 1924 Lah. 413.

———Value of—Inconsistent with other evidence.

A dying declaration inconsistent with the other prosecution evidence, full of material contradictions and discrepancies, is of no value. *Shah Din v. Emperor*.

11 Cr. L. J. 131 :
4 I. C. 993 : 20 P. W. R. 1909 Cr.

EASEMENT.

———Abatement of nuisance—Pulling down wall merely to maintain status quo, legality of.

Though a person may abate a nuisance when his rights have been infringed, a person who has not acquired any right of way or light and whose rights have not been in any way infringed, cannot take the law into his own hands and pull down a wall constructed by his neighbour merely to maintain the status quo. *Kishan Gopal v. Emperor*.

30 Cr. L. J. 305 :
114 I. C. 477 : I. R. 1929 Pat. 157 :
A. I. R. 1929 Pat. 44.

———Prescriptive right—Desuetude of right to erect bund—Maxim "sic utere tuo ut alienum non laedas."

The right to erect a bund can be acquired only as an easement. Found on facts, that the right to erect the bund had been lost by long desuetude. That the public had acquired a prescriptive right of way through the river which would be fordable all the year round but for the bund. Conceding that the right to dam the river by means of a bund existed, such right was subject to the maxim *sic utere tuo ut alienum non laedas*, and that there could be no justification for damming up the water to such an extent as to cause obstruction and nuisance to the public. *Zafcer Nawab v. Emperor*.

2 Cr. L. J. 762 : I. L. R. 32 Cal. 930.

EASEMENT ACT (V OF 1882)

———S. 13 (b).

See also Penal Code, 1860, S. 430.

———S. 18.

Market place—No such right as market franchise exists in Bengal—Nor can it be

EASTERN BENGAL AND ASSAM DISORDERLY HOUSES ACT (II OF 1907)

acquired by prescription. *Francis Duke Coleridge Summer v. Jogendra Kumar Roy*.

34 Cr. L. J. 331 :
142 I. C. 319 : I. R. 1933 Cal. 262 :
A. I. R. 1933 Cal. 348.

———S. 28—Right of way, extent of—Method of user—Dominant and servient owners, mutual rights of.

A person entitled to a right of way cannot make an excessive user of the right, much less can he act arbitrarily and in the high-handed manner so as to render the beneficial enjoyment by a servient owner of his own premises impossible or fraught with many difficulties. The latter is not, on the other hand, entitled to use the premises in a manner interfering with the enjoyment by the former of his right of way within reasonable limits. *Dadu v. Emperor*.

26 Cr. L. J. 1493 :
90 I. C. 149 : A. I. R. 1926 Nag. 221.

———S. 36.

See also Penal Code, 1860, S. 426.

———S. 52.

See also Transfer of Property Act, 1882, S. 105.

EASTERN BENGAL AND ASSAM DISORDERLY HOUSES ACT (II OF 1907)

———S. 2—Notice.

A notice requiring the person proceeded against to show cause why he should not vacate the house, is not a notice contemplated by the Eastern Bengal and Assam Disorderly Houses Act and is wholly illegal and an order, based on such a notice, for discontinuance of the use of the house as a brothel is bad. *Kashli Bashi Saha v. Emperor*.

33 Cr. L. J. 475 :
137 I. C. 528 : 35 C. W. N. 348 :
I. R. 1932 Cal. 340 : A. I. R. 1932 Cal. 369.

———Ss. 2, 3—Duty of Magistrate—Proceedings under Act—Procedure—Evidence not recorded—Order, legality of.

Proceedings under S. 3, Eastern Bengal and Assam Disorderly Houses Act, are not governed by the provisions of the Cr. P. C. It is not necessary for a Magistrate in such proceedings to act only on legal evidence and he need not administer an oath to the witnesses. But before passing an order under S. 3, the Magistrate must not only be satisfied that the houses in question are used as brothels or for the purpose of habitual prostitution or as disorderly houses, but he must further find an additional fact to bring them within the provisions of Cl. (a) or (b) or (c) of S. 2 of the Act. A Magistrate has no power to take action against the keeper of a brothel under S. 3 if the place is respectably conducted, unless it is in the neighbourhood either of an educational institution or of a Cantonment so as to attract the operation of Cl. (a) or Cl. (c) of S. 2 of the Act. It is not necessary for a Magistrate who desires to proceed against several persons under S. 3 to draw up separate proceedings and hold separate

ENTRUSTED WITH PROPERTY]

the English Law. *Ram Sagar Mondal v. Alek Naskar.* (F. B.) 23 Cr. L. J. 353 : 67 I. C. 177 : 26 C. W. N. 442 : 49 Cal. 682 : 35 C. L. J. 247 : A. I. R. 1922 Cal. 59.

ENHANCEMENT OF PUNISHMENT

———*Penal Code (Act XLV of 1860), Ss. 369, 411—Conviction under S. 369 whether may be considered in awarding enhanced punishment under S. 411.*

Where an accused person is convicted under S. 411, Penal Code, the fact that he was previously convicted under S. 369 cannot be taken into consideration in awarding enhanced punishment, as the latter is not punishment under Chapter XII or Chapter XVII of the Code. *Fattu v. Emperor.*

24 Cr. L. J. 944 : 75 I. C. 368 : 6 L. L. J. 110 : A. I. R. 1923 Lah. 286.

ENHANCEMENT OF SENTENCE

See also (i) Sentence.
(ii) Cr. P. C., 1898, Ss. 32, 439.

———*Enhancement of sentences.*

Application by private complainant supported by District Magistrate's report—Defamatory statement likely to cause breach of the peace—Delay—Substantive sentence of imprisonment. *Hosseini Allahrakhio v. Jaffar Fadu.*

11 Cr. L. J. 593 : 8 I. C. 218 : 4 S. L. R. 86.

———*Power of High Court.*

Where in a case under S. 304-II, Penal Code, a Magistrate of the First Class exercising powers under S. 30, Cr. P. C., passes the maximum sentence which he is empowered to pass, the sentence cannot be enhanced by the High Court. *Dalip Singh v. Emperor.*

26 Cr. L. J. 757 : 86 I. C. 341 : 7 L. L. J. 44 : A. I. R. 1925 Lah. 318.

ENQUIRY

See also Cr. P. C., 1898, Ss. 202, 476, Ch. XVIII.

———*Enquiry—Inherent powers—Postponement of enquiry—Inherent jurisdiction.*

Apart from S. 344, Cr. P. C., a Court has inherent jurisdiction to postpone the commencement of its enquiry. *Ram Golam Singh v. Sarat Chandra.*

31 Cr. L. J. 262 : 121 I. C. 414 : 49 C. L. J. 388 : A. I. R. 1929 Cal. 281.

ENTICEMENT

See also Penal Code, 1860, S. 408.

ENTRUSTED WITH PROPERTY

See also Penal Code, 1860, S. 405.

EPIDEMIC DISEASES ACT (III OF 1897).

———*Power of Local Government—Delegation to Collector—Delegation by Collector—Ultra vires—Rules under the Act, r. 104—Meaning of "taking measures."*

Under the Act, the Government itself can give power to an officer or officers to take measures, but it cannot empower such officer or officers to delegate those powers to others unless such powers by their very nature can only be exercised through agents. The Collector has no power to delegate his own power and the Local Government has no right to empower a Collector to delegate the power which the Local Government confers upon him except in respect of performance of acts which by their very nature can be or are usually done through agents and such agents only. The power 'to take measures' under the Act, which may be granted to any person by the Local Government, is a different matter from the regulations or orders which have to be observed or obeyed by the public or a person or class of persons in respect of those measures. Rule 104 of the Regulations under the Act is *ultra vires* of the Local Government. *Nagappa Thevan v. Emperor.*

14 Cr. L. J. 620 : 21 I. C. 668 : 1913 M. W. N. 928 : 14 M. L. T. 443.

———*S. 3—Burden of proof.*

Under S. 3, Epidemic Diseases Act, III of 1897, it is unnecessary for the prosecution to prove, in cases of disobedience of an order made under the Act, that the accused's disobedience was likely to cause danger. The only important question is whether the order was a lawful order under that Act. *Nagappa Thevan v. Emperor.*

14 Cr. L. J. 620 : 21 I. C. 668 : 1913 M. W. N. 928 : 14 M. L. T. 443.

———*S. 3—Punishment under, scope of.*

A person who merely personates another before an officer appointed under the Epidemic Diseases Act, 1897, does not commit the offence of cheating by personation under S. 419, Penal Code. An offence under S. 188, Penal Code, read with S. 3, Epidemic Diseases Act, 1897, is not punishable with rigorous imprisonment unless it is expressly found that danger was thereby caused to human life, health or safety. *Emperor v. Madhub Chandra Raj.*

4 Cr. L. J. 479 : 3 L. B. R. 214.

ERROR OF LAW.

See also Cr. P. C. 1898, S. 439.

ESTOPPEL

———*Miscellaneous—Blowing hot and cold.*

The maxim *expressio unius est exclusio alterius* is an uncertain guide to the true

ELECTRICITY ACT (IX OF 1910)

in his house making the line accessible. *Thakur Prasad v. Emperor*, 36 Cr. L. J. 2 : 152 I. C. 11 : 15 P. L. T. 761 : 7 R. P. 155 : A. I. R. 1934 Pat. 523.

-----Scheme of the Act.

The Act is an extremely technical one, and the proper performance of its requirements demands a considerable amount of technical knowledge, and the scheme of the Act is not to impose penalties upon consumers or property owners for breaches of technical requirements of the Act except after an order requiring them to comply with certain directions, and it is only the failure to obey such orders, and not the mere non-compliance with the rules, which is made punishable. *Emperor v. Nazarmally V. Nattercala*, 37 Cr. L. J. 1124 : 165 I. C. 261 : 38 Bom. L. R. 434 : 9 R. B. 131 : 60 Bom. 770 : A. I. R. 1936 Bom. 327.

-----S. 2 (c) —'Consumer'—Scope of—Rules under S. 37 (4), r. 105.

The definition of a "consumer" in S. 2 (c), Electricity Act, includes any person who is supplied with energy by a licensee, and any person whose premises are for the time being connected for the purposes of a supply of energy with the works of a licensee. *Prima facie* it should be enough to prove either that energy was supplied for the use of the persons or that the persons were owners or occupiers of premises connected up with the licensee's electric system. *Bhagalpur Electric Supply Co., Ltd. v. Hari Prasad Sahay*, 39 Cr. L. J. 206 : 172 I. C. 940 : 18 P. L. T. 986 : 10 R. P. 365 : 4 B. R. 203 : A. I. R. 1938 Pat. 15.

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-----S. 26 (5).

See also Electricity Act, 1910, S. 44 (b).

-----S. 33—'Every person', meaning of—Application of section.

In S. 33, Electricity Act, the term "every person" is not confined to persons who are licensed under Parts II and III of the Act, nor is the section confined to cases in which the accident actually results in personal injury or death. *In re Mr. Hawkins*, 16 Cr. L. J. 620 : 30 I. C. 444 : 18 M. L. T. 150 : A. I. R. 1916 Mad. 1224.

-----S. 37—Fine.

In case of a conviction under r. 100, although the breaking of a seal on a meter fixed on a consumer's premises is sufficient to render the consumer liable to a fine, the fine should be adapted to the circumstances of the case. *Raghnath Hanade v. Emperor*, 36 Cr. L. J. 36 : 151 I. C. 1039 : 17 N. L. J. 140 : 7 R. N. 77 : A. I. R. 1934 Nag. 245.

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-----S. 37, R. 106—

Rude is *ultra vires* of the Governor-General-in-Council and is, therefore, invalid. *Eng Hork v. Emperor*, 35 Cr. L. J. 1364 : 151 I. C. 632 : 12 Rang. 515 : 7 R. Rang. 100 : A. I. R. 1934 Rang. 178.

-----S. 39—Burden of proof.

The burden of proof of an offence under S. 39 is on the prosecution but proof has to be circumstantiated in character. *Bauwari Lal v. Emperor*, 35 Cr. L. J. 179 : 146 I. C. 814 : 1933 A. L. J. 1175 : 6 R. A. 344 : A. I. R. 1934 All. 60.

-----S. 39—Scope of—Abstraction, whether necessary ingredient of S. 39.

S. 39, Electricity Act, does not say that dishonest abstraction or consumption or use of energy is theft. The section means no more than that the offender is to be treated in the same way as if he had committed the offence of theft. *Rash Behari Shah (Hunda) v. Emperor*, 38 Cr. L. J. 545 : 168 I. C. 657 : 41 C. W. N. 225 : 9 R. C. 853 : A. I. R. 1936 Cal. 753.

-----S. 39—Scope of.

The purloining of electricity cannot be treated as a trivial offence. *Bauwari Lal v. Emperor*, 35 Cr. L. J. 179 : 146 I. C. 814 : 1933 A. L. J. 1175 : 6 R. A. 344 : A. I. R. 1934 All. 60.

-----Ss. 39, 41—'Separate enactments'—General Clauses Act, S. 26.

For the purpose of S. 26, General Clauses Act, it must be taken that Ss. 39 and 44, Electricity Act, are to be considered as separate enactments. *Rash Behari Shah (Hunda) v. Emperor*, 38 Cr. L. J. 545 : 168 I. C. 657 : 41 C. W. N. 225 : 9 R. C. 853 : A. I. R. 1936 Cal. 753.

-----Ss. 39, 50—'At the instance of'—meaning and scope of. Offence of theft of electricity, whether offence under S. 379, Penal Code.

The phrase "at the instance of" means merely "at the solicitation of or at the request of," and the Legislature meant only that a prosecution should not be instituted by some independent busy body who had nothing to do with the matter. Theft of electricity is an offence under S. 379, Penal Code, because of S. 39, Electricity Act, it is an offence which was created by that section and the Legislature intended S. 50 to apply to an offence of this nature. Therefore, there could be no prosecution except at the instance of the person aggrieved, that is of the Electric Company. *Fishcannath v. Emperor*, 38 Cr. L. J. 53 : 165 I. C. 689 : 1936 A. L. J. 955 : I. L. R. 1937 All. 102 : 9 R. A. 309 : 1936 A. W. R. 842 : A. I. R. 1936 All. 742.

EVIDENCE

—Admissibility.

A written information is not evidence. If it is desired to make the matter contained in it evidence, a person who can directly testify to such matter must be produced. *Mi Hawk v. Emperor*. 7 Cr. L. J. 87 :

4 L. B. R. 121 : 14 Bur. L. R. 202.

—Admissibility—Affidavit—Statement in, whether can be received as evidence of age of insured.

Quære—Whether in the ordinary course an affidavit would necessarily be receivable in a judicial proceeding as evidence to prove the age of the insured. *Kamashya Prasad Dalal v. Emperor*. 41 Cr. L. J. 21 :

184 I. C. 468 : I. L. R. 1939, 2 Cal. 459 :

43 C. W. N. 1033 : 12 R. C. 235 :

A. I. R. 1939 Cal. 657.

—Admissibility—Consent or request by Counsel, effect of.

Evidence which is legally inadmissible cannot be rendered admissible either by the request or consent of the accused's Counsel. *Abdul Gaffoor v. Govind Prasad*. 30 Cr. L. J. 736 :

117 I. C. 241 : I. R. 1929 Rang. 177 :

A. I. R. 1928 Rang. 284.

—Admissibility—Confession recorded by Magistrate taking part in investigation.

Confessions recorded by a Magistrate, who directs a Police investigation, or who holds a preliminary inquiry, are admissible in evidence when they have been voluntarily made. A Magistrate is not disqualified from performing his duty of recording voluntary confessions merely because he took part in the Police investigation. But his personal relations with the investigating Police should not be such that an accused, who had been forced to make a false confession by the Police, would think it of no avail to tell the truth to the Magistrate. *Imperator v. Misri*. 12 Cr. L. J. 489 :

12 I. C. 209 : 5 S. L. R. 31.

—Admissibility—Depositions made before Committing Magistrate.

Where the cross-examination in the Sessions Court is not full, the High Court can look into the depositions made before the Committing Magistrate to see whether the witness is giving a consistent story. *In re: Kitta Valayan*. 12 Cr. L. J. 503 :

12 I. C. 223 : 10 M. L. T. 82.

—Admissibility—Deposition read over by deponent himself, effect of.

Where a Magistrate produced to prove a confession recorded by his reading over his deposition and does not have it read over to him in the hearing of the accused, the deposition is still a legal piece of evidence. *Jagwa Dhanuk v. Emperor*. 27 Cr. L. J. 484 :

93 I. C. 884 : 5 Pat. 63 :

7 Pat. L. T. 396 : A. I. R. 1926 Pat. 232.

—Admissibility—Evidence as to identification—Accused absconding after occurrence—Identification of accused.

The accused was convicted of murder. The

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principal witness was the wife of the deceased who was sleeping close by. She stated that when the shot was fired she awoke, opened her eyes and by the flash of the fire-arm recognized the accused who ran away. She at once raised her cries to the effect that the accused had killed her husband. The husband of a sister of the deceased, who was sleeping on his roof on the other side of the lane, stated that he heard a shot and then cries of deceased's when and then going down from the roof of his house, he recognized the accused. Another witness who lived at a distance of 500 farams, deposed that having heard the cries he was going to the spot when he met the accused on the way. Other evidence was to the effect that after the occurrence, the accused absconded from the village: *Held*, that the evidence as to identification was insufficient and the fact of accused's absconding was not inconsistent with his innocence as he might have run away in fear knowing that an incorrect accusation had been brought against him. *Ahmad v. Emperor*. 16 Cr. L. J. 155 :

27 I. C. 219 : 4 P. L. R. 1915 :

2 P. W. R. 1915 Cr. : A. I. R. 1915 Lah. 106.

—Admissibility—Evidence of character—Admissibility of judgment of acquittal for injuring character of acquitted person.

Judgments of acquittal are not admissible in evidence even in a case where the character of the person is directly under enquiry under S. 110, Cr. P. C., far less can it be permitted to be used by the Magistrate in this case for the purpose for which he recorded it in his judgment, namely, to throw a slur upon the character of the Sub-Inspector for executive or administrative purpose. *Birnatarayan Singh v. Emperor*. 23 Cr. L. J. 371 :

67 I. C. 195 : 3 P. L. T. 239 :

A. I. R. 1922 Pat. 97.

—Admissibility.

In a case for damages for injuries sustained by the plaintiff due to collision with defendant's car, the plaintiff led evidence as to an admission made by one M, a passenger in the defendant's car after the collision, as to the defendant's responsibility. Counsel for the plaintiff, when this evidence was led, assumed that he could prove that the defendant was within hearing when the admission was made and stated that he had two witnesses who could depose of this fact. The trial Court ruled that its admissibility was dependent on its being shown to have been made in his hearing. It subsequently appeared, however, that this could not be shown. There was no evidence that M had authority to make such an admission. She herself denied having made it. The only questions in the case requiring detailed consideration by the Jury were those as to the contributory negligence of the plaintiff and the Jury was aware of this. New trial was sought on the ground that this evidence was wrongfully admitted: *Held*, that there was no admission of the evidence complained of; that when it was conditionally taken subject to proof of other matters, there was a sufficient direction that unless those conditions

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knowingly. *Emperor v. Nazar Ally V. Natterwala.*

37 Cr. L. J. 1124 :
165 I. C. 261 : 38 Bom. L. R. 434 :
9 R. B. 131 : 60 Bom. 770 :
A. I. R. 1936 Bom. 327.

-----S. 50.

See also Electricity Act, 1910, S. 39.

-----S. 50—'Person aggrieved,' meaning of—Seal on meter affixed by Electric Company, removal of—Company's power to initiate proceedings.

Where a seal affixed by an Electric Supply Company to a meter placed upon the premises of a consumer of electrical energy has been removed, the Company is a 'person aggrieved' within the meaning of S. 50, Electricity Act and is competent to initiate proceedings for prosecuting the offender. *Muhammad Sadiq v. Delhi Electric Supply Co.*

30 Cr. L. J. 702 :
116 I. C. 889 : I. R. 1929 Lah. 601 :
A. I. R. 1929 Lah. 867.

-----S. 50—Prosecution under.

Theft of electric energy—Prosecution not instituted by Government Electric Inspector but by Executive Officer of Cantonment Board—Prosecution should be quashed. *Dina Nath v. Emperor.*

36 Cr. L. J. 736 (1) :
155 I. C. 421 (1) : 35 P. L. R. 758 :
7 R. L. 715 : A. I. R. 1935 Lah. 191 (1).

-----Ss. 50, 44—'Person aggrieved,' meaning of—Offence against company—Person in charge of company.

A person who is directly in charge of the property of an electrical company comes within the description of the "person aggrieved" by any offence against the company, or by any tampering with its meters or wrongful appropriation of electric current. *Bhagalpur Electric Supply Co., Ltd. v. Hari Prasad Sahay.*

39 Cr. L. J. 206 :
172 I. C. 940 : 18 P. L. T. 986 :
10 R. P. 365 : 4 B. R. 203 :
A. I. R. 1938 Pat. 15.

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-----Rr. 41, 105, 107.

See also Electricity Act, 1910, S. 47.

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-----R. 48 (1)—'Replacement,' meaning of—Wires originally fixed on surface subsequently buried in walls—There is alteration in system and breach of R. 48 (1).

It is not in every case that the prosecution is called upon to prove that a re-wiring has altered the capacity or character of old installation. It is only when there is replacement of lamps, fans, fuses, switches and other component parts of the installation that the alteration in capacity and character have to be examined. This exception, however, will not apply to electrical installation work including additions, alterations, repairs and adjustments of existing installations. Where the wires originally fixed on the surface are subsequently

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buried in the walls, there is certainly an alteration in the system and not a case of replacement and a breach of R. 48 (1) is committed. Replacement means changing of old wires for new ones. *Hans Hotz v. Emperor.*

41 Cr. L. J. 230 :
185 I. C. 709 : 1939 A. L. J. 1032 :
I. L. R. 1940 All. 67 : 12 R. A. 370 :
A. I. R. 1940 All. 5.

-----R. 123—Person liable to punishment under, who is.

The person who actually carries out the installation is not guilty of any offence under R. 123, Electricity Rules, it is only the person under whose immediate supervision the work is carried out who is liable to punishment. *Hans Hotz v. Emperor.*

41 Cr. L. J. 230 :
185 I. C. 709 : 1939 A. L. J. 1032 :
I. L. R. 1940 All. 67 : 12 R. A. 370 :
A. I. R. 1940 All. 5.

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See also Government of India Act, 1919, S. 2.

EMERGENCY LEGISLATION CONTINUANCE ACT (I OF 1915)

-----Validity of whether ultra vires—Ordinances III and V of 1914—Jurisdiction of Courts to question orders of internment passed under Emergency Legislation Continuance Act.

The Emergency Legislation Continuance Act of 1915 is not ultra vires of the Governor-General-in-Council and the High Court has no power to call in question orders passed thereunder. It is for the Governor-General-in-Council to be satisfied on the materials before them and the Court cannot call for the materials or examine them. *In the matter of: Jiwa Nathoo.*

18 Cr. L. J. 64 :
37 I. C. 48 : 20 C. W. N. 327 :
44 Cal. 459 : A. I. R. 1917 Cal. 243.

EMERGENCY POWERS ORDINANCE, (II OF 1932)

-----Power of Special Magistrate.

Where a Special Magistrate tries a case under Ordinance II of 1932, and tenders pardon to an approver, it is not obligatory on him to commit the accused to the Sessions but he may try the case himself. *Abdul Majid v. Emperor.*

34 Cr. L. J. 1023 :
145 I. C. 656 : 60 Cal. 652 :
6 R. C. 124 : A. I. R. 1933 Cal. 537.

-----S. 4—Illegality of order.

An order containing directions that the person addressed shall conduct himself in such manner, abstain from such acts, or take such order about any property in his possession or under his control, as may be specified in the order, is legal. *Jethmal Parsram v. Emperor.*

33 Cr. L. J. 902 :
139 I. C. 777 : I. R. 1932 Sind 146 :
A. I. R. 1932 Sind 107.

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trate are inadmissible. *Emperor v. Rajani Kanto Koer.*
1 Cr. L. J. 10 :
8 C. W. N. 22.

———Admissibility.

When a house is searched by the Police on information that it is a common gaming house, the finding of instruments of gaming will be admissible evidence that the house is used as a common gaming house notwithstanding that the warrant under which the search is conducted is defective, though the finding of such articles may not be evidence to the extent mentioned in S. 6 of Act No. III of 1867. *Emperor v. Abdus Samad.*

2 Cr. L. J. 806 :
25 A. W. N. 257 : 28 All. 210.

———Admissibility.

Where a witness in the Sessions Court makes a statement different from the one made by him before the Magistrate or to the Police, the Sessions Judge must bring on the record, for purpose of contradiction, the deposition of the witness before the Magistrate or obtain from the Police the proof of statement made to them by the witness. The Sessions Judge's note that the witness did make a particular statement to the Magistrate or to the Police is not evidence and is not proof that such a statement was made. *Emperor v. Balogh Khan.*

11 Cr. L. J. 498 :
7 I. C. 601 : 4 S. L. R. 38.

———Admissibility.

Where the finding of a corpse was due, not to anything that the accused had said, but to his conduct in pointing out the place, a record of the accused's conduct is inadmissible in evidence. *Emperor v. Ranchhod Gokal.*

12 Cr. L. J. 429 :
11 I. C. 613 : 13 Bom. L. R. 499.

———Admissibility—First Information Report by accused.

While a First Information Report is valuable corroborative evidence of the testimony of the person who makes it, it cannot by itself support a conviction when the maker himself is an accused person and cannot, therefore, be examined as a witness. Where, however, a First Information Report made by an accused person himself contains an admission which does not amount to a confession, the admission is admissible in evidence as against the accused person. *Kaku v. Emperor.*

22 Cr. L. J. 694 :
63 I. C. 822.

———Admissibility—Witness produced by accused in defence—Evidence not believed—Accused convicted—Witnesses tried for perjury acquitted—Conviction of accused set aside for irregularity—Fresh trial—Accused applying for consideration of defence evidence formerly produced without producing witnesses—Application refused—Exercise of discretion by Magistrate.

D was tried for an offence under S. 395, Penal Code. He pleaded an alibi and pro-

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duced six witnesses to prove it. The Magistrate thought that all this evidence was false. D was convicted and proceedings were taken against the witnesses for perjury. On appeal by D, his conviction was set aside on the ground of serious irregularity in the trial and it was left to the District Magistrate to see if any fresh trial of D was advisable. The witnesses tried for perjury were also acquitted, some by the Sessions Judge, and others by the Chief Court. D was, however, again tried for the same offence, and in defence, he said that he would not produce these witnesses again though he wished their evidence already taken to be considered. The Magistrate declined to consider the previous defence evidence unless the men were again produced in Court: *Held*, that under the circumstances, the Magistrate exercised a wrong discretion in refusing to consider the evidence. *Daim v. Emperor.*

15 Cr. L. J. 62 :
22 I. C. 334 : 41 P. L. R. 1914 :
17 P. W. R. 1914 Cr. :
A. I. R. 1914 Lah. 159.

———Appreciation of.

Although it is an elementary principle that false evidence should not be believed, a Court is not precluded from exercising its power of discrimination by eliminating exaggerations from evidence which is otherwise found to be true. A Court which disbelieves the prosecution evidence with reference to particular offence, may still act upon it in respect of another offence. *In re : Chaganti Chinna Venkatasami.*

28 Cr. L. J. 238 :
99 I. C. 1038 : 25 L. W. 325 :
A. I. R. 1927 Mad. 410.

———Appreciation of—Discrepancies of truth and discrepancies of falsehood—Minute attention to immaterial discrepancies is improper.

In weighing evidence, it must be borne in mind that there are discrepancies of truth as well as discrepancies of falsehood, and that a too minute attention to immaterial discrepancies may lead to much failure of justice alike in the direction of conviction and of acquittal. *Emperor v. Harnama.*

11 Cr. L. J. 66 :
4 I. C. 864 : 15 P. R. 1909 Cr. :
37 P. W. R. 1909 Cr.

———Appreciation of—Distrusted in part, whether should necessarily be rejected altogether.

Where the Court distrusts the evidence produced in a case in one particular, or as regards one accused, it does not necessarily follow that it should reject the evidence altogether. *Lakha Singh v. Emperor.*

15 Cr. L. J. 148 :
22 I. C. 724 : 89 P. L. R. 1914 :
30 P. W. R. 1914 Cr. : A. I. R. 1914 Lah. 93.

———Appreciation of—Evidence pointing to manslaughter—Case, if can be transformed into one of murder.

It can never be maintained that where the

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word of the tracker, the Court will not be justified in placing reliance upon his testimony as that of an expert, unless and until it is shown to be clear, credible and consistent beyond all doubt and to be wholly incompatible upon any reasonable hypothesis with the innocence of the accused. *Gurdil Singh v. Emperor*.

11 Cr. L. J. 82 :
4 I. C. 941 : 136 P. L. R. 1909 :
36 P. W. R. 1909 Cr.

—————*Appreciation of.*

Where an accused is able to produce whole of his defence evidence, and does not desire to call any more, his conviction cannot be quashed simply on the ground that the trial was concluded within a short time. *Swami Dayal v. Emperor*.

7 Cr. L. J. 353 :
3 P. W. R. Cr. 20 : 8 P. R. Cr. 1908 :
9 P. L. R. 448.

—————*Appreciation of.*

Where admissions or incriminating actions by more than one accused person are deposed to, it is of the first importance that the witness should be made to describe as nearly as possible the exact words or conduct of each. *Kha Hlaw v. Emperor*.

7 Cr. L. J. 82 :
4 L. B. R. 116.

—————*Appreciation of.*

Where in a case of breach of trust the trying Magistrate came to the conclusion that the case became one of civil nature from a receipt and an affidavit filed in the case : *Held*, that the Magistrate ought not to have confined himself to the affidavit and the receipt. He must form his opinion on the whole evidence produced by the prosecution. *Chinnappa Bulhen v. Ruthna Gramany*.

7 Cr. L. J. 397 :
3 M. L. T. 324.

—————*Appreciation of.*

Where the evidence of the prosecution witnesses has been disbelieved as against most of the accused, their evidence must be extremely convincing before the rest of the accused can be convicted and sentenced to death on such evidence. *Mahla Singh v. Emperor*.

32 Cr. L. J. 522 :
130 I. C. 410 : 32 P. L. R. 259 :
I. R. 1931 Lah. 282 : A. I. R. 1931 Lah. 38.

—————*Appreciation of.*

Where witness deposes to many facts occurring at different places and times, his truthfulness may be suspected, but circumstances under which he could have acquired knowledge of such facts should also be taken into consideration. *Emperor v. Dina Bandhu Moitra*.

1 Cr. L. J. 62 :
8 C. W. N. 218.

—————*Appreciation of—Witness held unreliable as to one accused whether can be believed as to others—Witness reporting to Police very late—Delay not explained—Evidence, value of.*

In the absence of special reasons, a witness who is held to be unreliable in respect to one accused should not be held reliable to the other accused. The evidence of a witness who

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reports a matter to the Police at a very late date and who is not able to give any explanation for the delay, should be treated with suspicion. *Kheri v. Emperor*.

28 Cr. L. J. 185 :
99 I. C. 857 : 3 L. L. J. 146.

—————*Benefit of doubt.*

Courts very rightly examine the evidence in cases of murder, with scrupulous care and caution and though they may sometimes feel morally convinced that particular person has committed a crime, yet, on the evidence, having doubts in their minds as to the guilt of the accused, give the accused the benefit of the doubt and acquit him. *Mahla Singh v. Emperor*.

32 Cr. L. J. 522 :
130 I. C. 410 : 32 P. L. R. 259 :
I. R. 1931 Lah. 282 : A. I. R. 1931 Lah. 38.

—————*Benefit of doubt—Way of weighing—Onus probandi.*

Although there may be ample evidence against an accused person, but it should not be acted upon without carefully considering and testing it with all the surrounding circumstances raising a doubt as to his being guilty, the benefit of which he is entitled to get. For instance, due regard is to be paid to : (1) what is stated against him in the initial report made to the Police : (2) the state of feelings of the persons against him living in the locality where the offence is committed; (3) the facility with which he could be falsely implicated and (4) to the motive for implicating him. *Lachman Singh v. Emperor*.

11 Cr. L. J. 130 :
4 I. C. 992 : 90 P. L. R. 1909 :
19 P. W. R. 1909 Cr.

—————*Child, evidence of—Murder of mother—Child's cries attracting passers-by.*

The evidence of the child is not admissible as evidence of the truth of what it says but as explaining the conduct of other witnesses; even what it said is admissible in evidence. Where, therefore, the mother of a child is murdered and the cries of the child attract the passers-by, the witnesses can speak not only of the nature of the child's cries, but even as to what the child said so far as it explains their conduct. *Raban Lalu Shaikh v. Emperor*.

39 Cr. L. J. 618 :
175 I. C. 324 : 10 R. S. 296 :
32 S. L. R. 709 : A. I. R. 1938 Sind 97.

—————*Child witness—Duty of Court.*

Before examining a child witness, the Court should satisfy itself that the child was sufficiently intellectually developed to understand the questions put to it and convey the relevant information to the Court. If the Court is of opinion that by reason of tender years and consequent immaturity of judgment, the child is unable to do this, it ought not to examine it at all. *Ghulan Hussain v. Emperor*.

32 Cr. L. J. 63 :
127 I. C. 862 : 31 P. L. R. 612 :
I. R. 1930 Lah. 894 :
A. I. R. 1930 Lah. 337.

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house of her husband. Finally she went to reside with her paternal uncle; and while there, she contracted criminal intimacy with B, an unmarried youth of 20. In a short time, the fact of this intimacy became known, so her uncle sent her back to the house of her husband. On the day of her return, there was a feast in the house, and she put into the food cooked by her a white substance given to her by B. Her story was that she was assured by her paramour that if she administered the drug to her husband and mother-in-law, they would become submissive to her, would love her and no longer ill-treat her. She served the food mixed with the substance not merely to her husband and his mother, but to some other persons also to whom she was affectionately disposed. As soon as the guests had taken the food, several of them were taken ill and one subsequently died. A and B, were charged with murder. B denied complicity in the transaction: Held, that, though the case against both the accused was one of grave suspicion, yet the circumstances were not inconsistent with their innocence, that the self-exculpatory statement made by A could not be used as evidence against B under S. 30, Evidence Act, as the inherent quality of the statement was not a confession, and that the statement of A could not be used against B as it had been established that there was a conspiracy between the two persons to poison the husband and the mother-in-law, of the girl. *Kusir Bap v. Emperor*.

14 Cr. L. J. 586 :

21 I. C. 378 : 18 C. L. J. 590.

—Circumstantial evidence, conviction based on—Revision by High Court.

Where a conviction is based upon circumstantial evidence, the question always remains whether the evidence which has been believed by the Court, which heard it, is of such a nature that it ought to have been accepted as establishing the guilt of the accused person beyond reasonable possibility of doubt and this is a question which may be dealt with by a High Court upon an application for revision. *Aman Ali v. Emperor*.

11 Cr. L. J. 631 :

8 I. C. 379 : 13 O. C. 309.

—Circumstantial evidence — Conviction for abetment on circumstantial evidence, when proper.

Though there are circumstances which throw a good deal of suspicion on the accused, he cannot be convicted on circumstantial evidence alone where the circumstances do not converge in such a manner as to outweigh the possibility of innocence of the accused. To support a conviction of murder on circumstantial evidence, the circumstances must be entirely inconsistent and incompatible with the innocence of the accused. Where an accused is convicted not of murder but of abetment of murder, a greater amount of circumstance would be required to show that though the accused was not the real murderer yet he had planned and abetted the murder. *Dinamani Udaipal Ram Tewary v. Emperor*.

27 Cr. L. J. 1297 :

98 I. C. 241.

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—Circumstantial evidence.

In the case of circumstantial evidence, it is incumbent on the prosecution to show that it is impossible to explain the circumstances otherwise than upon the hypothesis of the accused being the guilty person. A conviction based upon circumstantial evidence alone cannot be sustained unless it can be shown beyond reasonable doubt that the guilt of the accused is the only hypothesis possible. *Lalla Prasad v. Emperor*.

11 Cr. L. J. 114 :

5 I. C. 355 : 13 O. C. 1.

—Circumstantial evidence—Inference of guilt, when justifiable.

Circumstantial evidence to justify an inference of guilt must be incompatible with the innocence of the accused and incapable of explanation upon any other reasonable hypothesis than that of his guilt. *Ghauns v. Emperor*.

27 Cr. L. J. 1004 :

96 I. C. 860 : 27 P. L. R. 611 :

7 Lah. 561 : 9 L. L. J. 39 :

A. I. R. 1926 Lah. 691.

—Circumstantial evidence, meaning of.

In the definition of 'proof' no distinction is drawn between circumstantial and other evidence. Court should consider whole matter before it. *Miran Bakhsh v. Emperor*.

32 Cr. L. J. 1032 :

133 I. C. 446 : 32 P. L. R. 461 :

I. R. 1931 Lah. 782 :

A. I. R. 1931 Lah. 529.

—Circumstantial evidence — Presumption — Person found in possession of stolen property shortly after theft.

The fact that a person is found in possession of stolen property shortly after the theft, raises the presumption that he took part in the theft. *Khatir Jama Khan v. Emperor*.

31 Cr. L. J. 492 :

123 I. C. 393 : A. I. R. 1930 Pat. 385.

—Circumstantial evidence—Sufficiency of.

In cases depending entirely on circumstantial evidence, in order to justify an inference of guilt, the incriminating facts found against the accused must be incompatible with his innocence and incapable of explanation upon any other reasonable hypothesis than that of his guilt. Where the only evidence against an accused person is that he produced certain property which is identified as having been stolen from a person proved to have been murdered, and there is no admissible evidence against him to connect him more directly with the murder, it is unsafe to convict him of the offence of murder. *Raghunath v. Emperor*.

26 Cr. L. J. 1380 :

89 I. C. 516 : A. I. R. 1926 Nag. 119.

—Circumstantial evidence, value of.

In cases based only on circumstantial evidence, the circumstantial evidence should be so strong as to point very clearly to the guilt of the accused. *In re : Sankaralinga Thevan*.

31 Cr. L. J. 712 :

124 I. C. 506 : 31 L. W. 451 :

58 M. L. J. 397 : 1930 M. W. N. 496 :

53 Mad. 590 : A. I. R. 1930 Mad. 632.

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were fulfilled, it was not evidence in the case and that having regard to the course of the trial, the trial Judge was not wrong and was probably wise in not again reminding the Jury of matters which Counsels in their concluding speeches had thought it right to ignore. *Halford Stewart v. George Alfred Francis Hancock*. 41 Cr. L. J. 730 :

189 I. C. 321 : 6 B. R. 345 :
1940 O. L. R. 483 : 13 R. P. C. 31 P. C. :
A. I. R. 1940 P. C. 128.

—Admissibility.

Inasmuch as an accused cannot give evidence while on his trial, secondary evidence of an identification of a co-accused by him is clearly inadmissible. Evidence by an official witness of identification is only admissible, if the identifying witness is called to support his identification on oath. The fact that a witness makes mistakes in identification is no reason for discrediting his evidence in other matters. *Khalat v. Emperor*.

24 Cr. L. J. 526 :
73 I. C. 62 : 21 A. L. J. 143 :
45 All. 300 : A. I. R. 1923 All. 352.

—Admissibility—Notes of statements of witnesses by Police.

If written notes of statements made by witnesses to the Police are to be used in order to discredit them, the Police Officer who recorded them should be called as a witness to prove them. *Achar v. Pirnashah*. 14 Cr. L. J. 437 :
20 I. C. 597 : 7 S. L. R. 10.

—Admissibility, report made by accused.

A first report is generally very valuable corroborative evidence of the testimony of the accused who makes it, but where it is made by an accused, it is not admissible in evidence at all and constitutes no corroboration either of the case against himself or of that against any other co-accused. Where, therefore, the whole of the evidence was disbelieved by the Sessions Judge but the accused were convicted on the strength of a report made by one of themselves : *Held*, that inasmuch as the conviction was based on material which was inadmissible in evidence, it could not stand. *Harji v. Emperor*. 19 Cr. L. J. 513 :
45 I. C. 273 : 4 P. R. 1918 Cr.
A. I. R. 1918 Lah. 69.

—Admissibility—Reports on secret enquiries.

Reports made by a Tahsildar on secret enquiries under the orders of a Sub-Divisional Officer are quite inadmissible in evidence in a criminal trial. *Ram Chand v. Emperor*.

28 Cr. L. J. 91 :
99 I. C. 123 : A. I. R. 1927 All. 147.

—Admissibility—Several persons tried on same indictment—Witness called by one of them, may be cross-examined by others if he gives testimony tending to incriminate them—Admissibility of such evidence.

When two or more persons are tried on the same indictment and are separately defended, any witness called by one of them may be cross-examined on behalf of the others, if he

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gives any testimony tending to criminate them. His testimony, therefore, is admissible. *Chaman Lal v. Emperor*. 41 Cr. L. J. 639 :
188 I. C. 440 : I. L. R. 1940 Lah. 521 :
13 R. L. 41 : A. I. R. 1940 Lah. 210.

—Admissibility—Statements.

A statement by a Police Officer to the effect that certain persons made certain statements to him is not admissible in evidence unless it is evidence of general repute. *Chainsukh v. Emperor*. 16 Cr. L. J. 221 :
27 I. C. 845 : A. I. R. 1915 All. 125.

—Admissibility—Statements made to Police during investigation.

Evidence of incriminating statements made by an accused person while in the custody of the Police, and of his having pointed out the places where he had taken the abducted woman during the course of the night in which the offence of abduction is alleged to have been committed, are not admissible in evidence. *Keramat Mandal v. Emperor*.

27 Cr. L. J. 263 :
92 I. C. 439 : 42 C. L. J. 524 :
A. I. R. 1926 Cal. 320.

—Admissibility—Statement of Counsel about relevant facts cannot be accepted unless he is examined.

No statement of Counsel concerning relevant facts in the case can be accepted otherwise than in the witness-box. *Local Government v. Mst. Gaji*. 17 N. L. J. 189 :
A. I. R. 1935 Nag. 69.

—Admissibility—Statements of persons not examined as witnesses as to whereabouts of accused at time of occurrence.

A statement made by a person who is not examined as a witness that the accused was not in his house on the night on which the offence is alleged to have been committed, is not admissible in evidence. *Keramat Mandal v. Emperor*.

27 Cr. L. J. 263 :
92 I. C. 439 : 42 C. L. J. 524 :
A. I. R. 1926 Cal. 320.

—Admissibility.

Statements of the accused in consequence of which nothing was discovered should not be admitted in evidence. *Emperor v. Ranchhod Gokal*. 12 Cr. L. J. 429 :
11 I. C. 613 : 13 Bom. L. R. 499.

—Admissibility of.

The accused stated before the Committing Magistrate that the child had fallen down from a terrace and his respiration stopped. Again, on being taken to the place of occurrence, he pointed out to the Sub-Deputy Magistrate a place on the roof of his house from which he said the boy had fallen, and a place near it where he had at the time been sitting to ease himself, and also a place in his *bari* where he admitted he had buried the body of the boy : *Held*, that the statements made by the accused to the Sub-Deputy Magis-

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in material particulars directly connecting the accused with the commission of the crime. So, where material discrepancies occur between the statements of the corroborating witnesses before the Police and their depositions in the Court of inquiry or trial, there is no corroboration and consequently the prosecution must fail. *Amar Das v. Emperor* 11 Cr. L. J. 580 : 8 I. C. 193 : 36 P. W. R. 1910 Cr.

—————Corroboration—Necessity of—Person not charged but whose evidence appears to be that of accomplice—Corroboration, necessity of.

Where the evidence of a person though not charged with an offence looks as that of an accomplice in the commission of the crime, it has to be reviewed with grave caution and needs strong and independent corroboration in material particulars before the Court can be justified in acting upon it and passing a conviction on it. *Mohamad Anis v. Emperor*.

37 Cr. L. J. 955 :
164 I. C. 482 : 1936 O. W. N. 691 :
1936 O. L. R. 459 : 9 R. O. 81 :
A. I. R. 1936 Oudh 405.

—————Corroboration—Perjury cases—Practice.

According to the Criminal Law of England, the assignment of perjury must be proved by two witnesses or by one witness and the proof of the other material and relevant facts confirming his testimony. This is not a mere technical rule but a rule founded on substantial justice. The Indian Evidence Act, however, does not provide that there must be corroboration to support a conviction. But in ordinary cases and where the provisions peculiar to Indian Law do not apply, a rule which is founded on substantial justice, may well serve as a safe guide to those who have to administer the Criminal Law in India. The rule that there must be something in a case to make the oath of the prosecution witness preferable to the oath of the accused must be satisfied. *Emperor v. Bal Gangadhar Tilak*.

1 Cr. L. J. 305 :
6 Bom. L. R. 324 : I. L. R. 28 Bom. 479.

—————Corroboration.

Where the evidence of an approver is entirely uncorroborated by any evidence to show that it was the accused who committed the offence with which he is charged, the accused cannot be convicted. The approver's evidence must be corroborated by material facts tending to point to the accused as the guilty person. Where the evidence against an accused person charged with murder consisted of only the testimony of the accomplice or approver, and the Sessions Judge convicted the accused on the ground that the Medical Certificate was consistent with the approver's statements and that marks of blood were found at the spot which the approver pointed out as the place where the deceased fell : *Held*, that the conviction was bad and should be set aside. *In re : Muthan Papayya*.

10 Cr. L. J. 567 :
4 I. C. 391.

—————Court witness—Apprehension that witness will be hostile—Party, whether entitled to compel Court to cite him.

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A Court cannot be forced to call a witness as a Court witness merely because the party who wishes to examine him apprehends that the witness will be hostile. *Gulai Jha v. Emperor*.

29 Cr. L. J. 299 :
107 I. C. 827 : 9 P. L. T. 344 :
A. I. R. 1928 Pat. 277.

—————Court witness—Duty of Court to examine person likely to throw light on occurrence.

It is the duty of the trial Court to examine any witness that might throw light on the occurrences. Where some of the prosecution witnesses depose that a certain person was at the scene of the offence, there is no irregularity in the Magistrate's procedure in examining him as a Court witness though it is unlikely that his evidence would be of no value. *Bhagwantrao v. Emperor*.

37 Cr. L. J. 858 :
163 I. C. 702 : 18 N. L. J. 289 : 9 R. N. 14.

—————Credibility.

A witness who is shown to be capable of changing sides and who has made statements in favour of both the prosecution and the accused, is an unreliable witness, and no guarantee of truth remains in respect of either of his statements. *Sarju Singh v. Emperor*.

26 Cr. L. J. 1236 :
88 I. C. 852 : A. I. R. 1925 Oudh 726.

—————Credibility—Duty of Court.

In dealing with cases under Chapter VIII, Cr. P. C., Magistrates ought, especially where no previous conviction is proved, to take great care to test the evidence for the prosecution. *Chintaman Singh v. Emperor*.

7 Cr. L. J. 146 :
7 C. L. J. 177 : 12 C. W. N. 299 :
35 Cal. 243.

—————Credibility—Evidence must be scrutinised on merits.

It is an elementary principle in the administration of criminal justice that want of interest in the prosecution does not by itself stamp the evidence of a witness with truth. The weight which is to be attached to the testimony of a witness depends, in a large measure, upon various considerations, some of which are that on the face of it his evidence should be so much in consonance with probabilities and consistent with other evidence, and should generally so fit in with the material details of the case for the prosecution as to carry conviction of truth to a prudent mind. If these elements are wanting in the testimony of a witness, however independent he may appear to be, his evidence should not be relied on in the decision of criminal cases where persuasion of guilt must amount to a moral certainty. *Parwali v. Emperor*.

37 Cr. L. J. 821 :
163 I. C. 319 : 8 R. N. 307 :
A. I. R. 1936 Nag. 88.

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evidence for the prosecution points affirmatively no further than manslaughter, the law would enlarge the proof and transform the case into one presumptively of murder. *Mahadeo v. The King*.

37 Cr. L. J. 914 P. C. :

163 I. C. 681 : 44 L. W. 253 :

1936 A. L. J. 869 : 40 C. W. N. 1164 :

1936 M. W. N. 889 : 9 R. P. C. 51 :

38 Bom. L. R. 1101 : 1936 A. W. R. 741 :

A. I. R. 1936 P. C. 242.

-----*Appreciation—Tests.*

It is an elementary principle in the administration of criminal justice that want of interest in the prosecution does not by itself stamp the evidence of a witness with truth. The weight which is to be attached to the testimony of a witness depends in a large measure upon various considerations, e. g., if on the face of it his evidence is so much in consonance with probabilities and consistent with other evidence, and generally so fits in with the material details of the case for the prosecution as to carry conviction of truth to a prudent mind. If these elements are wanting in the testimony of a witness, however independent he may be, his evidence is worthless and should not be relied on in the decision of criminal cases where persuasion of guilt must amount to a moral certainty. *Bageshwar v. Emperor*.

31 Cr. L. J. 417 :

122 I. C. 434 : A. I. R. 1930 Nag. 108.

-----*Appreciation of.*

Observations on the duty of Sessions Judges to sift facts in Sessions trials when this is not sufficiently done by pleaders for prosecution and defence. *In re : Muthan Papayya*.

10 Cr. L. J. 567 :

4 I. C. 391.

-----*Appreciation of—Police testimony.*

A Policeman's testimony, like that of every other witness, must be judged on its merits, and should be accepted or rejected according to the circumstances disclosed in each particular case. It cannot be presumed to be suspicious. *Ram Saran Das v. Emperor*.

32 Cr. L. J. 444 :

129 I. C. 700 : 31 P. L. R. 688 :

I. R. 1931 Lah. 220 : A. I. R. 1930 Lah. 892.

-----*Appreciation of—Probabilities.*

Inference drawn from probabilities must give way to sworn testimony unless the inferences are irresistible and show that the sworn testimony must be false. *Emperor v. Ghulam Nabi*.

29 Cr. L. J. 301 :

107 I. C. 835 : 6 Pat. 768 :

A. I. R. 1928 Pat. 146.

-----*Appreciation of—Prosecution witness perjury—His evidence how far to be accepted—Doubtful evidence, whether same as perjured evidence.*

According to the Evidence Act, Courts have to apply the standard of a prudent man. It is also true that cases not infrequently occur in which the evidence of a witness who has made an untrue statement in some respects is accepted as regards the rest of what he states. It is not, however, in pursuance of

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the supposed rule that, even where a witness has been shown to have deliberately perjured himself in one part of his evidence, he may yet be considered without demur to be a truthful witness as regards the rest of his evidence which has not been proved to be false. Such a rule is as dangerous as the unrestricted application of the maxim is impracticable. The correct rule to apply in such cases is that part of the evidence of a witness, who has been guilty of untruth in some material particulars, may be accepted if such part is corroborated by probabilities and other reliable evidence which though insufficient by themselves to establish the guilt of a particular accused, nevertheless point to the truth of the statement of the witness directly implicating him. *Ashiq Ali v. Emperor*.

37 Cr. L. J. 1104 :

165 I. C. 193 : 1936 A. L. J. 565 :

9 R. A. 244 : 1936 A. W. R. 733 :

A. I. R. 1936 All. 747.

-----*Appreciation of—Testimony of witness rejected with regard to one accused, whether acceptable with regard to others.*

The uncorroborated testimony of a witness, if held unreliable as to one accused, should be rejected with respect to the others also in the absence of special circumstances. *Yeshodi v. Emperor*.

28 Cr. L. J. 136 :

99 I. C. 858 : 9 N. L. J. 194 :

A. I. R. 1927 Nag. 43.

-----*Appreciation of.*

The evidence of men who happen to be relations or friends of the murdered person cannot be discarded simply on account of their relationship or friendship. *Mahla Singh v. Emperor*.

32 Cr. L. J. 522 :

130 I. C. 410 : 32 P. L. R. 259 :

I. R. 1931 Lah. 282 : A. I. R. 1931 Lah. 38.

-----*Appreciation of.*

Though the maxim *falsus in uno falsus in omnibus* does not apply with full force in the Punjab, nevertheless prosecution witnesses who deliberately set about implicating innocent persons run a grave risk of finding that their evidence may be disbelieved in toto. *Mahla Singh v. Emperor*.

32 Cr. L. J. 522 :

130 I. C. 410 : 32 P. L. R. 259 :

I. R. 1931 Lah. 282 : A. I. R. 1931 Lah. 38.

-----*Appreciation of—Approver—Weight of approver's evidence.*

The evidence of an approver has to be most carefully analysed and considered. It must be so far above suspicion that a Court has no alternative but to accept and act upon it. Where the Court believes in the approver's evidence in part, and disbelieves it in part, it has no alternative but to reject the evidence altogether. *Balkaran v. Emperor*.

11 Cr. L. J. 441 :

7 I. C. 185.

-----*Appreciation of.*

When the whole question of the appellant's guilt in regard to a serious crime, such as murder, depends practically upon the bare

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while jumping, having in possession some of the ornaments robbed while more valuable things were taken away by his companion: *Held*, the guilt of the accused is perfectly made out. The offence was committed in the morning and the offenders were in the compartment for some time taking off ornaments from the person of the victims and causing them injuries, and there is nothing unlikely in their having been able to identify him. *Saudagar v. Emperor*.

A. I. R. 1923 Lah. 169.

———*Cross-examination — Evidence-in-chief not given—Pleader is not bound to give out names of witnesses whose statements he intends to use in cross-examination.*

It is not till the evidence-in-chief of a witness is given that a Pleader or Advocate can decide what material he will use for cross-examination, and it follows that he is by no means bound to declare his witnesses beforehand, but that on the other hand, he exercises an undoubted right when he makes his application in respect of each separate witness as the need arises. *Brahmaya v. The King*.

40 Cr. L. J. 265 :

179 I. C. 783 : 11 R. Rang. 347 :

A. I. R. 1938 Rang. 442.

———*Cross-examination with regard to evidence—Notice—Necessity of.*

If the questions which a Pleader puts to a witness in cross-examination have to be answered with reference to entries in books and correspondence, the Court may direct that the entries should be specified and may ask the witness to search for them, staying the proceedings in the meanwhile. *Harnam Singh v. Emperor*.

32 Cr. L. J. 666 :

131 I. C. 138 : A. I. R. 1931 Sind 38.

———*Cross-examination, with regard to books—Notice—Necessity of.*

The Court has no power to order a Pleader who is cross-examining a witness to give previous notice of all questions to be answered from books or correspondence. *Harnam Singh v. Emperor*.

32 Cr. L. J. 666 :

131 I. C. 138 : A. I. R. 1931 Sind 38.

———*Documentary—Duty of Court—Exclusion of.*

As the value of a document cannot be judged before it is produced and inspected, the Court is bound to accept a document produced by the accused and to look at it before it is excluded. *Brindaban Chander Das v. Ishuquddin*.

10 Cr. L. J. 492 :

4 I. C. 67 : 13 C. W. N. 550.

———*Duty of Court.*

Accused refusing to take part in trial—Subsequent application to re-call prosecution witnesses—Magistrate should re-call witnesses. *Chint Ram v. Emperor*.

32 Cr. L. J. 1202 :

134 I. C. 580 : 32 P. L. R. 13 :

I. R. 1931 Lah. 964 : A. I. R. 1931 Lah. 186.

———*Duty of Judge—Conviction, whether ought to be set aside.*

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If the Judge has discarded almost in their entirety the accounts of the occurrence given by the witnesses for the prosecution and has substituted a narrative of his own founded for the most part on surmise and conjecture and wholly inconsistent with the story told by the witnesses, it cannot be said that his account of the matter is proved by testimony regarded as credible. He ought not to convict the accused under the circumstances. *Kalu Khalashi v. Emperor*.

14 Cr. L. J. 314 :

19 I. C. 1002 : 17 C. W. N. 538.

———*Dying declaration, value of.*

A dying declaration, if properly recorded, is a valuable piece of evidence but where it is shown that it was prompted by a person present when it was being recorded, its value is considerably discounted. *Bhishen Singh v. Emperor*.

27 Cr. L. J. 903 :

96 I. C. 215 : 8 L. L. J. 296 :

27 P. L. R. 484 : A. I. R. 1926 Lah. 496.

———*Dying declaration—Value of—Motive for crime—Insufficiency of evidence—Dying declaration of the deceased.*

It is unsafe to convict an accused of murder on the dying declaration of the deceased person when no motive has been shown for the crime, and there is no reliable evidence to implicate the accused. *In re : Madappa Kone*.

11 Cr. L. J. 193 :

4 I. C. 1127 : 5 M. L. T. 217.

———*Dying declaration—Value of—Statement of victim how far and when credible.*

Where a victim in agony makes a statement as to what had happened with him shortly after the occurrence, the concoction of a false story is highly improbable. *Ahmad Yar Khan v. Emperor*.

11 Cr. L. J. 171 :

5 I. C. 602 : 1 P. W. R. 1910 Cr.

———*Exclusion of.*

A theory propounded by the defence which could easily have been supported by evidence which the defence deliberately failed to produce, cannot be accepted. *Sheo Dina v. Emperor*.

35 Cr. L. J. 464 :

147 I. C. 676 (2) : 6 R. A. 352 (2) :

A. I. R. 1933 All. 939.

———*Exclusion of—Accused a Brahmin whether sufficient to reject evidence otherwise reliable.*

The mere fact that an accused person is a Brahmin is not a sufficient reason for rejecting the evidence of witnesses who testify against him and who are *prima facie* reliable. *Sheo Ram v. Emperor*.

25 Cr. L. J. 45 :

75 I. C. 733 : 6 L. L. J. 486 :

A. I. R. 1923 Lah. 436.

———*Exclusion of.*

Courts should exclude from the record *panchnama* which contains statements by an accused person which are either clearly inadmissible or which are of doubtful admissibility. *Emperor v. Ranchhod Gokal*.

12 Cr. L. J. 429 :

11 I. C. 13 : 13 Bom. L. R. 499.

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-----Child witnesses—Value of—Evidence of.

Children are a most untrustworthy class of witnesses as they often mistake dreams for reality, repeat glibly as of their own knowledge what they have heard from others and are greatly influenced by fear of punishment, by hope of reward, and by desire of notoriety. *Abbas Ali Shah v. Emperor*.

34 Cr. L. J. 606 :
143 I. C. 479 : 34 P. L. R. 536 :
I. R. 1933 Lah. 355 : A. I. R. 1933 Lah. 667.

-----Circumstantial, when sufficient to justify conviction.

Circumstantial evidence, in order to justify conviction, must be exhaustive and exclude the possibility of guilt of any other person or must point conclusively to the complicity of the accused. *Thakar Das v. Emperor*.

18 Cr. L. J. 375 :
38 I. C. 759 : 32 P. R. 1916 Cr. :
A. I. R. 1917 Lah. 366.

-----Circumstantial, nature of.

Circumstantial evidence in order to bring a charge home to an accused person must be such as to show that within all human probability the act alleged must have been done by the accused. *Arajali v. Emperor*.

27 Cr. L. J. 1254 :
98 I. C. 102 : 30 C. W. N. 376.

-----Circumstantial, value of—Murder case—Jury, duty of.

In a murder case where there is no direct evidence against the prisoner but only the kind of evidence that is called circumstantial, the Jury has a two-fold task. They must first decide what portions of the circumstantial evidence have been established and then see whether they constitute sufficient proof, i.e. whether the facts proved exclude the possibility that the deed was done by some other person, and if they have doubts they must let the prisoner have the benefit. *Emperor v. Browning*.

18 Cr. L. J. 482 :
39 I. C. 322 : 7 P. R. 1917 Cr. :
A. I. R. 1917 Lah. 3.

-----Circumstantial, value of.

It is a fundamental principle and one of universal application in cases dependent on circumstantial evidence, that in order to justify any inference of guilt, the incriminating facts must be incompatible with the innocence of the accused and incapable of explanation upon any other reasonable hypothesis than that of his guilt. If the circumstances are found to be as consistent with the innocence as with the guilt of the accused, no inference of guilt should be drawn from them. *Satch v. Emperor*.

18 Cr. L. J. 897 :
42 I. C. 129 : 65 P. L. R. 1917 :
40 P. W. R. 1917 Cr. :
A. I. R. 1917 Lah. 87.

-----Circumstantial evidence, basis for conviction—Deceased last seen alive with accused—Guilt, whether established—Penal Code (Act XLV of 1860), S. 302.

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In order to justify the inference of guilt, the circumstantial evidence, where there is no direct evidence, must be incompatible with the innocence of the accused and incapable of explanation upon any other reasonable hypothesis than that of his guilt. The circumstances that the deceased was last seen alive in the company of the accused, though it raises a strong suspicion against the accused is not sufficient to establish his guilt beyond doubt. *Ghulam Rasul v. Emperor*.

29 Cr. L. J. 289 :
107 I. C. 774.

-----Circumstantial evidence—Charge of murder—Accused found in possession of deceased's jewels—Evidentiary value—Proof that jewels were on deceased's person at date of murder.

In a murder case the fact that the deceased's jewels were in the accused possession at the time of the latter's arrest is no evidence, unless it is shown that the deceased had them on his person at the time of murder and the accused cannot explain his possession. The fact that the person charged with murder is found in possession of the deceased's jewels two or three days after the latter's death and that he gives no explanation as to how he came by them is evidence against the accused. *Moyila Kurmiah v. Emperor*.

14 Cr. L. J. 49 :
18 I. C. 337 : 1913 M. W. N. 145.

-----Circumstantial evidence.

Circumstantial evidence only, if it is so strong that it leaves no doubt which a prudent man should suffer to prevail, may be sufficient to support a conviction. *Emperor v. Bhura*.

35 Cr. L. J. 1142 :
150 I. C. 726 : 7 R. S. 21 :
A. I. R. 1934 Sind 184.

-----Circumstantial evidence—Circumstantial evidence tending to incriminate accused—Duty of Magistrate and Judge to record—Written statement filed on behalf of accused persons—Value to be attached.

Every piece of circumstantial evidence tending to incriminate the accused should be pointedly brought to his notice either by the Committing Magistrate or in the last resort by the trial Judge in the Court of Session, and the answers of the accused to these questions recorded as far as possible, in his own words by the Court. Magistrates and Sessions Judges should discountenance the practice of filing written statements on behalf of the accused persons. *Mohammad Anis v. Emperor*.

37 Cr. L. J. 955 :
164 I. C. 482 : 1936 O. W. N. 691 :
1936 O. L. R. 459 : 9 R. O. 81 :
A. I. R. 1936 Oudh 405.

-----Circumstantial evidence—Conspiracy—Poisoning.

A, a young girl of 10 and of rather weak intellect, was married, but as she and her husband could not agree, she was not well treated by him and his mother. The result was that she frequently ran away from the

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———*Expert evidence—Value of.*

Evidence of handwriting expert is of unsatisfactory character—To base conviction on such evidence is unsafe. *Indar Datt v. Emperor.*

32 Cr. L. J. 818 :
132 I. C. 185 : I. R. 1931 Lah. 537 :
A. I. R. 1931 Lah. 408.

———*Expert evidence—Value of.*

In a criminal case, the Court ought not to accept blindly the evidence of a handwriting expert and should usually require substantial corroboration before making such evidence the basis of a conviction. *Girdhari Lal v. Emperor.*

26 Cr. L. J. 929 :
86 I. C. 993 : 2 O. W. N. 174 :
12 O. L. J. 194 : 29 O. C. 1 :
A. I. R. 1925 Oudh 413.

———*Expert evidence—Value of.*

It is going too far to say that the Court must insist upon corroboration of the evidence of a finger-print expert. On the other hand, the Court must be careful not to delegate its authority to a third party. The Court has to be satisfied that the accused is guilty, and the Court cannot hold him guilty merely because an expert comes forward and says that in his opinion the accused must be guilty. The Court must satisfy itself as to the value of the evidence of the expert in the same way as it must satisfy itself of the value of other evidence. *Fakir Mahomed Ramzan v. Emperor.*

37 Cr. L. J. 539 :
162 I. C. 231 : 38 Bom. L. R. 160 :
60 Bom. 187 : 8 R. B. 400 :
A. I. R. 1936 Bom. 151.

———*Expert evidence—Value of.*

To base a conviction upon the opinion of an expert in handwriting is, as a general rule, very unsafe. *Lalla Prasad v. Emperor.*

11 Cr. L. J. 114 :
5 I. C. 355 : 13 O. C. 1.

———*Expert evidence—Value of.*

Where, according to the opinion of the expert, a few similarities are discovered between the genuine handwriting of the accused and the forged signatures, but there is no marked peculiarity in the handwriting of the accused or the complainant, nor is the style rare, it is unsafe to conclude that the accused was the author of the forged signatures. *Lalla Prasad v. Emperor.*

11 Cr. L. J. 114 :
5 I. C. 355 : 13 O. C. 1.

———*Hostile witness—When can be called—Merely giving conflicting evidence, whether ground for treating witness as hostile.*

The fact that the answer of a prosecution witness is in direct conflict with the evidence of other prosecution witnesses, cannot be a reason for allowing that witness to be treated

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as hostile and cross-examined. *Rathanasabapathy Goundan v. Public Prosecutor.*

37 Cr. L. J. 909 :
164 I. C. 243 : 44 L. W. 155 :
1936 M. W. N. 459 :
71 M. L. J. 231 : 59 Mad. 904 :
9 R. M. 99 : A. I. R. 1936 Mad. 516.

———*Hostile witness.*

The prosecution is not entitled to declare a witness hostile merely because he is a neighbour of the accused and does not support the prosecution story unless there is something in his deposition which conflicts with earlier statement made by him, and which would afford ground for thinking that he has been gained over by the defence. *Parmeshwar Dayal v. Emperor.*

27 Cr. L. J. 657 :
94 I. C. 705 : 1926 Pat. 139 :
7 P. L. T. 567 : A. I. R. 1926 Pat. 316.

———*Identification—Handwriting, similarity of, how far evidence of forgery—Several offences, whether forming same transaction, substantial test to determine—Conviction, whether can be based on suspicion.*

Similarity of handwriting affords some assistance in determining whether the evidence adduced to connect a certain person with the forgery can be believed but the test is by no means safe or certain, the prosecution should show that the accused was the only person who could have written the forged document. *Abbas Quli Khan v. Emperor.*

15 Cr. L. J. 643 :
25 I. C. 843 : 17 O. C. 76 :
A. I. R. 1914 Oudh 275.

———*Identification—Matters to be deposed to—Close scrutiny, necessity of.*

The evidence as to identification ought, in each case, to be subjected to a close and careful scrutiny. It is an important factor whether all the persons identified were previously known to the witnesses or were perfect strangers to them. The time of the occurrence, the state of the light and the opportunities which the witnesses had of identifying are material circumstances to be deposed to in each and every case. *Man Singh v. Emperor.*

31 Cr. L. J. 206 :
121 I. C. 103 : A. I. R. 1929 All. 928.

———*Identification—Omission of identifying witness to mention accused's name during investigation—Reliability of evidence.*

Where the accused was identified by three witnesses, of whom two did not mention the accused's name to the Sub-Inspector, and there was no explanation why they did not do so, and the evidence of the other was not of such a nature as to be relied on without corroboration: Held, that there was no sufficient evidence of identification and the accused could not be convicted on such evidence under the circumstances of the case. *Gobind Gope v. Emperor.*

31 Cr. L. J. 421 :
122 I. C. 541 : A. I. R. 1929 Pat. 517.

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-----Competency of approver to depose—*Assurance given by Government to offender that he will not be prosecuted whether proper—Person assured, whether competent witness—Evidence, value of.*

Government may or may not prosecute every offender, and is entitled to give an assurance to a person who has committed an offence that he will not be prosecuted. If such assurance is given to a person before he makes any statement as a witness in a case in which another person who was concerned in the commission of the crime is being tried, the assurance does not affect the competence of the person to whom it is given to make a statement as witness in the case. How far such an assurance affects the credibility of the witness is for the Court trying the case to determine. *Anant Wasudeo Chandekar v. Emperor.*

26 Cr. L. J. 1467 :
89 I. C. 1035 : 8 N. L. J. 138 :
A. I. R. 1925 Nag. 313.

-----Competency of witnesses.

A witness who is so deaf and dumb that it is impossible to make him understand the questions put in cross-examination, is not a competent witness, and his evidence, if taken, ought to be struck out, and a conviction based solely on his evidence must be quashed. *Yan Kattan v. Emperor.*

13 Cr. L. J. 271 :
14 I. C. 655 : 1912 M. W. N. 100.

-----Confession made to other person in presence of Police—*Admissibility.*

An accused's confession to some person, although made in the presence of a Police Officer, is nevertheless admissible in evidence. Where it is satisfactorily proved that immediately after the commission of an offence the accused made a statement incriminating himself, the reasonable inference from such a statement, in the absence of any rebutting evidence, is that the statement is a true representation of the actual facts. *Dal v. Emperor.*

16 Cr. L. J. 62 :
26 I. C. 654 : 1 O. L. J. 687 :
A. I. R. 1914 Oudh 414.

-----Contradiction of.

It cannot be held down as a general proposition that omissions are contradictions. It is for the Court to decide in each case whether a particular omission amounts to a contradiction or not. *Hazara Singh v. Emperor.*

29 Cr. L. J. 348 :
108 I. C. 167 : 9 Lah. 389 :
A. I. R. 1928 Lah. 257.

-----Contradiction of—*Mode of.*

In order to contradict a witness by a writing or a former statement, it is essential that that writing or statement should be put to him. *Makhan Singh v. Emperor.*

30 Cr. L. J. 1032 :
119 I. C. 333 : I. R. 1929 Lah. 877.

-----Corroboration—*Accomplice.*

The corroboration necessary to give effect to the testimony of an accomplice against an accused person must be with regard to circumstances showing that the particular

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accused was connected with the crime. *Emperor v. Maqbul Ahmad Khan.*

33 Cr. L. J. 920 :
139 I. C. 751 : 9 O. W. N. 3 :
7 Luck. 511 : I. R. 1932 Oudh 383 :
A. I. R. 1932 Oudh 317.

-----Corroboration—*Accomplice—Evidence of accomplices, whether corroborative of each other.*

The evidence of accomplices cannot be accepted as corroborative of each other. *Shahrah v. Emperor.*

20 Cr. L. J. 191 :
49 I. C. 607 : 20 P. R. 1919 Cr. :
14 P. W. R. 1919 Cr. :
A. I. R. 1919 Lah. 168.

-----Corroboration—*Approver's evidence.*

Except under special circumstances, it would be dangerous in this country to convict an accused person on the approver's evidence supported only by a retracted confession of a co-accused who made the confession behind the back of the accused and whom the accused had no opportunity to cross-examine. Such retracted confessions do not constitute corroboration of a high value, although they may be taken into consideration against the co-accused. *Debi Dayal v. Emperor.*

14 Cr. L. J. 112 :
18 I. C. 672 : 11 A. L. J. 73.

-----Corroboration—*Approver's testimony.*

It is not sufficient that an approver's testimony is confirmed as to the circumstances of the felony which would only show that the accused was present at the commission of the offence, but the testimony must be corroborated in some material circumstances connecting and identifying the prisoner with the offence. *Kattu v. Emperor.*

27 Cr. L. J. 1294 :
98 I. C. 190 : 2 Lah. Cas. 318 :
27 P. L. R. 615 : 8 L. L. J. 616 :
A. I. R. 1927 Lah. 10.

-----Corroboration—*Evidence of accomplice.*

It is not illegal to convict on the uncorroborated testimony of an accomplice, but it is highly unsafe to do so unless it is corroborated in material particulars by impartial and reliable evidence. Evidence in corroboration must be dependent testimony which affects the accused by connecting or tending to connect them with the offence. But it is not necessary that an approver should be corroborated as regards every single statement which he makes. *Suresh Chandra Bannerjee v. Emperor.*

29 Cr. L. J. 705 :
110 I. C. 449 : 47 C. L. J. 471 :
A. I. R. 1928 Cal. 309.

-----Corroboration.

It is settled law that a person cannot corroborate himself. *The King v. Nga Myo. (F. B.)*

39 Cr. L. J. 581 :
175 I. C. 465 : 1938 Rang. 190 :
10 R. Rang. 494 : A. I. R. 1938 Rang. 177.

-----Corroboration—*Necessity of.*

It is an established principle of law and practice that no accused can be convicted on the bare testimony of an accomplice unless it has been corroborated by independent reliable evidence

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———Personal knowledge—Common facts, when may be used.

With regard to notorious facts of the social life of any class in the community, it is not necessary for the Court to have actual positive evidence, and Judges are entitled to make use of the knowledge which they, in conjunction with all others, possess of such facts. *Public Prosecutor v. Kannammal*.

14 Cr. L. J. 33 :
18 I. C. 257 : 13 M. L. T. 131 :
24 M. L. J. 211 : 1913 M. W. N. 207.

———Personal knowledge—Use of.

The proceedings under S. 110, Cr. P. C., are judicial and not executive, and a Magistrate is not entitled to base his order in such proceedings on his local and personal knowledge of the accused and witnesses. If it be important to utilize the personal knowledge of a Magistrate, the proper procedure is for the case to be tried by another Magistrate, and the Magistrate with personal knowledge to give evidence as a witness. A Magistrate cannot himself be a witness in a case in which he is the sole judge of law and fact. *Nur Din alias Kada v. Emperor*.

1 Cr. L. J. 99 :
5 P. L. R. 76 : 27 P. R. Cr. of 1903.

———Presumption—Possession of full bottles of wine.

The mere finding of full bottles of wine in the house of a Chinaman, when the number of bottles is less than that allowed by law, does not raise the presumption that the bottles were for sale. *Ah Tal v. Emperor*.

13 Cr. L. J. 424 :
14 I. C. 968 : U. B. R. 1911 196.

———Presumption—Testimony of witness.

Testimony given in a Court of Justice is presumed to be true until the contrary appears. *Ambar Ali v. Emperor*.

30 Cr. L. J. 825 :
117 I. C. 684 : 48 C. L. J. 473 :
33 C. W. N. 55 : I. P. 1929 Cal. 572 :
A. I. R. 1928 Cal. 769.

———Presumption.

There is a fair presumption that a document filed by a Pleader in Court is the document given to him by his client. *Piagu Mattayya v. Emperor*.

31 Cr. L. J. 986 :
126 I. C. 112 : 31 L. W. 384 :
1930 M. W. N. 76 : A. I. R. 1930 Mad. 192.

———Presumption.

Where the facts of a case taken together are perfectly consistent either with the innocence or guilt of the accused, the presumption of innocence should prevail. *Emperor v. Ramchandra Dhondoo*.

1 Cr. L. J. 610 :
6 Bom. L. R. 551.

———Presumption—Official Act—When can be upheld—Presumption in favour of official acts—Investigation Officer not acting in straightforward manner—Presumption, if destroyed.

The presumption in favour of official acts being properly done is destroyed when it has

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been established that the Investigating Officers have not acted in a straightforward manner and have clearly made false statements in Court. *Indar Pal v. Emperor*.

37 Cr. L. J. 732 :
162 I. C. 969 : 38 P. L. R. 1128 :
8 R. L. 978 : A. I. R. 1936 Lah. 409.

———Reading over of—Irregularity, whether fatal.

Where evidence is not read over in accordance with S. 369, Cr. P. C., it cannot be held to be an irregularity to support the proposition that the Magistrate had decided the case on no evidence at all. *Sondi Singh v. Gobiud Singh*.

25 Cr. L. J. 89 :
76 I. C. 25 : 5 P. L. T. 237 :
A. I. R. 1924 Pat. 786.

———Record of—Vernacular record not in agreement with English record—Procedure—Doubt, benefit of.

Ordinarily, where evidence is given by a witness in his own language, the vernacular record of the case is more reliable and entitled to greater weight. But where the Magistrate recording the evidence in English is an Indian gentleman of considerable experience as a Magistrate, his record should be preferred. Where, however, the English record of a Magistrate and the vernacular record are at variance, the accused is entitled to the benefit of any omission from the latter and the doubts created thereby. *Sadhu Singh v. Emperor*.

24 Cr. L. J. 625 :
73 I. C. 513 : A. I. R. 1923 Lah. 167.

———Registrable document.

The admission in evidence of an unregistered document which is compulsorily registrable, is both illegal and irregular, and a decision founded upon such a document cannot be sustained. *Bhim Bahadur Singh v. Emperor*.

21 Cr. L. J. 374 :
55 I. C. 854 : 1 P. L. T. 121 :
2 U. P. L. R. Pat. 53 : A. I. R. 1922 Pat. 265.

———Relevancy.

A Magistrate does not exercise his discretion wisely in allowing question conveying an imputation, thirty years' remote in time, against a witness. *Emperor v. Ghulam Mustafa*.

1 Cr. L. J. 190 :
24 A. W. N. 52 : I. L. R. 26 All. 371.

———Relevancy.

Articles which are not the subject of the proceedings before the Court are inadmissible to show the general policy of the paper. Articles evidencing the general policy of a paper can be received in evidence and the right of adducing such evidence can be exercised by the Crown and the applicant, but there must be some connection between the subject-matter of the articles tendered and of the articles which are objected to. *Annie Besant v. Government of Madras*.

18 Cr. L. J. 157 :
37 I. C. 525 : 1916 M. W. N. 385 :
5 L. W. 1 : 39 Mad. 1085 :
A. I. R. 1918 Mad. 1210.

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-----Credibility.

It is unsafe to place complete reliance on the evidence of trackers as to the correspondence of tracks. *Saleh v. Emperor*.

18 Cr. L. J. 897 :
42 I. C. 129 : 65 P. L. R. 1917 :
40 P. W. R. 1917 Cr. :
A. I. R. 1917 Lah. 87.

-----Credibility.

The question of credibility of a witness is eminently one for the Court of Trial before whom the witness appears. An Appellate Court is not in an equally good position to pronounce on the matter. *Bhulan v. Emperor*.

27 Cr. L. J. 57 :
91 I. C. 233 : A. I. R. 1926 Oudh 245.

-----Credibility—Trial Court's decision, value of.

The trial Court is the proper and in general the final Judge of the credibility of witnesses. *M. Kannappan v. Kuttaumal*.

31 Cr. L. J. 1089 :
126 I. C. 613 : A. I. R. 1930 Mad. 194.

-----Credibility.

Where the witnesses in a criminal case were not examined by the Police till a month and a half had elapsed from the date of the occurrence, and it appeared that they lived somewhere in the neighbourhood, that circumstance is sufficient to discredit them. *Dila Ram v. Emperor*.

33 Cr. L. J. 501 :
137 I. C. 681 : 33 P. L. R. 86 :
I. R. 1932 Lah. 349 : A. I. R. 1932 Lah. 195.

-----Credibility—Witness not mentioned in Police challan whether ground for disbelieving him.

The evidence of an independent witness cannot be discredited on the sole ground that the Police did not mention him in the *challan* though he was examined at the spot when he has not been contradicted in any particular by establishing that he made a different statement to the Police or otherwise. *Saraj v. Emperor*.

30 Cr. L. J. 1126 :
120 I. C. 6 : 11 L. L. J. 299 :
I. R. 1929 Lah. 950 : A. I. R. 1929 Lah. 788.

-----Credibility—Court should not accept improbable stories as true.

It requires a great deal of courage to put forward intrinsically improbable stories before a Court of Justice but it demands a greater degree of credulity on the part of a Judge to accept them as true. *Parwati v. Emperor*.

37 Cr. L. J. 821 :
163 I. C. 319 : 8 R. N. 307 :
A. I. R. 1936 Nag. 88.

-----Credibility.

Where there is oath against oath, the credibility of the witnesses has to be judged in the light of the circumstances. *Emperor v. Har Mohan Das*.

28 Cr. L. J. 903 :
105 I. C. 231 : 54 Cal. 708 :
A. I. R. 1927 Cal. 848.

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-----Credibility—Witness not cross-examined—His deposition, whether legal evidence.

The testimony of a witness is not legal evidence unless it is subjected to cross-examination; and where no opportunity has been given to the appellant's Counsel to test the veracity of the principal prosecution witness or where owing to the refractory attitude of the witness, the Court is constrained to terminate all of a sudden and prematurely the cross-examination of the witness, the evidence of such a witness is not legal testimony and cannot be the basis of a judicial pronouncement. *Ram Kumar v. Emperor*.

37 Cr. L. J. 1144 :
165 I. C. 486 : 1936 O. W. N. 1094 :
1936 O. L. R. 655 : 9 R. O. 220 :
A. I. R. 1937 Oudh 168.

-----Credibility—Witness related to party—Value of evidence.

The fact that a witness is related to a party is not a sound reason for discrediting his evidence but is a good ground for scrutiny. *Emperor v. Bindeshwari Singh*.

31 Cr. L. J. 630 :
124 I. C. 45 : A. I. R. 1930 All. 277.

-----Credibility—Witness resiling from statement made in Committing Magistrate's Court—Notice to show cause if can be issued when case is pending—Criminal Procedure Code (Act V of 1898), S. 288—Effect of.

However exasperating it may be, when a witness resiles from a true statement made in the Committing Magistrate's Court, the Court should not issue notice to show cause while the proceedings are pending. The witness cannot then be considered a free witness; he is giving evidence under fear and duress, and it may not only influence and invalidate his testimony, but it may affect the testimony of witnesses who come later. S. 288, Cr. P. C., enables a Magistrate to bring on the record as substantive evidence, the evidence of a witness who falsely resiles in the Court of Session from his former statement, and the question of the witness's prosecution for perjury can be considered afterwards. *Samero v. Emperor*.

37 Cr. L. J. 1045 :
164 I. C. 1036 : 9 R. S. 63 :
A. I. R. 1936 Sind 140.

-----Criminal trial—Facts inconclusive by themselves—Cumulative value.

Facts which are inconclusive taken by themselves separately when taken together may have such a cumulative value as to establish the guilt of the accused and exclude all other possibilities. *Abdullah v. Emperor*.

27 Cr. L. J. 775 :
95 I. C. 311.

-----Criminal trial—Identification and circumstantial evidence may establish guilt.

Accused robbed three passengers in the female compartment causing them injuries, one of whom received a grievous hurt, and then jumped out of the train, and was found lying by the railside as he broke his leg

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———*Sufficiency of—Circumstantial evidence.*

In order to sustain a conviction on purely circumstantial evidence, such evidence must not be compatible with any hypothesis other than that of the guilt of the accused. The mere fact that the accused had a motive for doing away with the deceased would not make the case any stronger against him where it is shown that there were other persons who had an equal motive to kill the deceased. An attempt to fabricate false evidence of *alibi* may be a strong piece of evidence against an accused person if his connection with such attempt is established. *Majhi v. Emperor*.

26 Cr. L. J. 760 :
86 I. C. 344 : 7 L. L. J. 48 :
A. I. R. 1925 Lah. 323.

———*Sufficiency—Mere absconding—Whether can be basis of conviction.*

Mere absconding of an accused person should not form the basis of a conviction. It comes in as a very useful piece of corroborative evidence if there is other evidence to connect the accused with the crime, but *per se* absconding is not enough to bring home the charge to the person who has absconded. *Jan Khan v. Emperor*.

37 Cr. L. J. 988 :
164 I. C. 630 : 9 R. Pesh. 21 :
A. I. R. 1936 Pesh. 169.

———*Sufficiency—that a breach of the peace was, nor is, likely to be committed—Propriety of requiring security on such evidence.*

The evidence which goes to show that certain persons at the utmost were likely to cause a breach of the peace at a past annually recurring festival, does not justify the presumption that they are likely to do the same thing at the next recurrence of the festival. And an order to furnish security to keep the peace ought not to be based on such evidence. *In the matter of the petition of : Basdeo*.

1 Cr. L. J. 360 :
1 L. R. 26 All. 190.

———*Sufficiency.*

To convict on circumstantial evidence alone, not only must the Court be satisfied that each of the facts on which the presumption of guilt is founded is proved beyond reasonable doubt, but there must be a chain of evidence so far complete as to leave no reasonable ground for a conclusion therefrom consistent with the innocence of the accused. *Gurdit Singh v. Emperor*.

11 Cr. L. J. 82 :
4 I. C. 941 : 136 P. L. R. 1909 :
36 P. W. R. 1909 Cr.

———*Sufficiency—True version not supported by evidence—Conviction on conjecture, legality of.*

A conviction based on a conjecture which is not supported by the evidence in the case and which is neither the prosecution nor the defence version, is illegal, even though the view based on the conjecture may probably be the real truth. *Ram Surat v. Emperor*.

27 Cr. L. J. 1346 :
98 I. C. 466.

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———*Sufficiency—Unnatural offence—Uncorroborated testimony of complainant, whether sufficient.*

In the case of unnatural offence under S. 377, Penal Code, conviction can safely be based on the uncorroborated testimony of the victim, if it is not otherwise doubtful. The prosecution is not bound to produce witnesses who are not expected to speak the truth. *Sardar Ahmad v. Emperor*. 16 Cr. L. J. 266 :
28 I. C. 154 : 185 P. L. R. 1915 :
42 P. W. R. 1914 Cr. :
A. I. R. 1914 Lah. 565.

———*Sufficiency.*

Where a prosecution witness, who identified the accused for the first time six weeks after the occurrence of a dacoity, said that he did not identify any of them at an earlier identification parade, but there was no other evidence whether the accused were or were not present at that earlier parade, and the Sessions Judge wrongly told the Jury that the accused were not present at it; *Held*, that the statement amounted to a misdirection, and there being absolutely no other evidence against the accused, except that of this one witness who identified them six weeks after the dacoity, it was not safe to convict them. *Venkattan v. Emperor*. 13 Cr. L. J. 271 :
14 I. C. 655 : 1912 M. W. N. 100.

———*Sufficiency.*

Where the evidence as to a murder was untrustworthy and the whole story of the prosecution was incredible, the accused were acquitted. *Emperor v. Giga Luna*.

1 Cr. L. J. 224.

———*Sufficiency.*

Where the only evidence against the accused, who were charged with the murder of a little girl, 10 years old was, that the accused were in possession of the jewels of the murdered child and were not able to explain their possession of them, the evidence was sufficient to sustain a conviction. *In re : Batcha Ramudu*.

11 Cr. L. J. 157 :
4 I. C. 1051 : 6 M. L. T. 123.

———*Trial by Jury—Duty of Judge.*

In introducing evidence in a trial by Jury, the Judge must be very careful in order to avoid misdirection of justice. *Keramat Mandat v. Emperor*.

27 Cr. L. J. 277 :
92 I. C. 453 : 42 C. L. J. 528 :
A. I. R. 1926 Cal. 147.

———*Value of.*

An admission by the accused's brother in another case that a house of the accused was a common gaming house cannot be used as evidence against the accused. *Gour Mohan Gossain v. Emperor*. 28 Cr. L. J. 871 :
104 I. C. 711 : 46 C. L. J. 186 :
A. I. R. 1927 Cal. 801.

———*Value of.*

Evidence obtained by torturing the deponent has no value. *Gokul Singh v. Emperor*.

17 Cr. L. J. 351 :
35 I. C. 527 : A. I. R. 1916 All. 360.

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obvious reasons most undesirable that Magistrates and Judges should be in the position of witnesses in so far as it can be avoided. Sometimes it cannot be avoided as under S. 533, but where matter can be made of record and, therefore, admissible as such, there are the strongest reasons of policy for supposing that the legislature designed that it should be made available in that form and no other. It would be particularly unfortunate if Magistrates were asked at all generally to act rather as Police Officers than as judicial persons; to be by reason of their position freed from the disability that attaches to Police Officers under S. 162 of the Code; and to be at the same time freed, notwithstanding their position as Magistrates, from any obligation to make records under S. 164. In the result, they would indeed be relegated to the position of ordinary citizens as witnesses and then would be required to depose to matters transacted by them in their official capacity unregulated by any statutory rules of procedure or conduct whatever. *Nazir Ahmad v. Emperor*.

37 Cr. L. J. 897 P. C. :
163 I. C. 881 : 38 Bom. L. R. 987 :
1936 O. W. N. 505 : 1936 M. W. N. 745 :
1936 A. L. J. 895 : 40 C. W. N. 1221 :
17 P. L. T. 594 : 1936 O. L. R. 437 (2) :
9 R. P. C. 57 : 71 M. L. J. 476 :
44 L. W. 583 : 19 N. L. J. 214 :
17 Lah. 629 : 64 C. L. J. 445 :
39 P. L. R. 43 : 38 P. L. R. 802 P. C. :
1936 A. W. R. 620 : A. I. R. 1936 P. C. 253 (2).

—————*Search witnesses not coming from vicinity—Value of.*

The mere fact that the witnesses present at the time of the search of the accused's house and deposing that the opium was found therein, did not come from the immediate vicinity, could not justify the Court in rejecting the evidence that the opium was found in the accused's house at the time of the search. *Nga Shue Toe v. Emperor*.

39 Cr. L. J. 278 (b) :
173 I. C. 27 : 10 R. Rang. 314 :
A. I. R. 1937 Rang. 434.

—————*Statements extorted by Police under threat of implication, value of.*

Statements of witnesses extorted by the Police under threats of implication in the crime, cannot fail to detract from the value of their evidence, especially where they had no reason for refraining from deposing against the culprits. *Sunder Singh v. Emperor*.

21 Cr. L. J. 507 :
56 I. C. 667 : 105 P. L. R. 1920 :
A. I. R. 1921 Lah. 267.

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—————*Corroboration—Accomplice's evidence.*

Confirmation of an accomplice's evidence does not mean that there should be independent evidence of that which the accomplice relates or his testimony would be unnecessary. Evidence in corroboration must be evidence which implicates him, that is, which confirms, in some material particular, not only the evidence that the crime has been committed but also

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that the prisoner committed it. The corroboration need not be direct evidence that the accused committed the crime; it is sufficient if it is merely circumstantial evidence of his connection with the crime. *Kisan Raghuj v. Emperor*.

23 Cr. L. J. 391 :
67 I. C. 343 : A. I. R. 1922 Nag. 172.

—————*Dying declaration.*

It would not be safe and prudent to base a conviction of the accused merely on the dying declaration. *Bhikhari v. Emperor*.

35 Cr. L. J. 1113 :
150 I. C. 819 : 1934 O. L. R. 627 :
11 O. W. N. 851 : 7 R. O. 44 :
A. I. R. 1934 Oudh 405.

—————*Nature of — Evidence Act is complete code of Law of Evidence and not modification of Law of Evidence in England.*

In questions relating to matters expressly provided for the Evidence Act, it must not be dealt with as a mere modification of the Law of Evidence prevailing in England. The Evidence Act is a complete Code of the Law of Evidence in British Burma. *The King v. Nga Myo*. (F. B.)

39 Cr. L. J. 581 :
175 I. C. 465 : 1938 Rang. 190 :
10 R. Rang. 494 : A. I. R. 1938 Rang. 177.

—————*S. 2—Records of German Courts—When admissible.*

The Evidence Act does not contain the whole Law of Evidence governing this country. S. 2 of the Act saves rules of evidence contained in any Statute, Act or Regulation in force. Therefore, where the records of a German Court have been authenticated in the manner prescribed by Ss. 14 and 15, English Extradition Act, which are applicable in this country, the records are admissible. *In re : Rudolph Stallman*.

12 Cr. L. J. 505 :
12 I. C. 273 : 15 C. W. N. 1053 :
14 C. L. J. 375 : 39 Cal. 164.

—————*S. 3.*

See also (i) Cr. P. C., 1898, S. 359.
(ii) Criminal trial.
(iii) Evidence Act, 1872, Ss. 3, 133.

—————*S. 3—Degree of proof.*

The two appellants were convicted of being in possession of four bundles of cocaine, each bundle containing 8 bottles of $\frac{3}{4}$ th of an ounce each. One of the grounds of appeal was that there was no evidence that the contents of the bottles or packages were an intoxicating drug or cocaine and that the mere labels were not sufficient evidence that the contents were an intoxicating drug for the purpose of a criminal conviction. From the record it appeared that the bottles were never sent to the Chemical Examiner to be analysed. The question was whether, under such circumstances, it might be taken as proved that the bottles contained cocaine. The evidence, which was accepted by the lower and this Court, was that the appellants were found in possession of the bundles,

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———Identification.

The evidence which goes to prove that a person has identified another person as having taken part in a particular offence either in jail or elsewhere is admissible though the value of such evidence is weakened perceptibly as a general rule by failure to identify subsequently in Court. *Parbhu v. Emperor*.

28 Cr. L. J. 850 :
104 I. C. 626 : 4 O. W. N. 803 :
A. I. R. 1927 Oudh 598.

———Identification evidence, value of.

It cannot be laid down as a proposition of law that where witnesses come forward to identify persons whom they could not possibly have seen for many years, their identification should not be accepted. *Khilawan v. Emperor*.

29 Cr. L. J. 1009 :
112 I. C. 337 : 5 O. W. N. 760 :
A. I. R. 1928 Oudh 430.

———Illiterate witnesses.

The simplicity of an ordinary villager can never be a sure and effective shield against the ingenuity of a trained lawyer of the case. *Nga Kan v. Emperor*.

37 Cr. L. J. 463 :
161 I. C. 574 : 8 R. Rang. 484 :
A. I. R. 1936 Rang. 71.

———Illiterate witness.

When illiterate villagers come forward to depose as to events which were crowded into a few moments, Courts should look at the broad outlines of the case and try to visualize what in probability took place and how far the witnesses support the main story put forward by the prosecution. *Mahla Singh v. Emperor*.

32 Cr. L. J. 522 :
130 I. C. 410 : 32 P. L. R. 259 :
I. R. 1931 Lah. 282 : A. I. R. 1931 Lah. 38.

———Interested evidence.

Interested evidence is not necessarily false. *Jado Rahim v. Emperor*.

40 Cr. L. J. 93 :
178 I. C. 520 : 11 R. S. 93 :
1939 Kar. 75 : A. I. R. 1938 Sind 202.

———Medical evidence, mode of recording.

While examining a medical witness, the Magistrate should record the statement describing the injuries of the injured person and it is not enough for him to record a brief statement to the effect that the witness had examined the injured person and that injuries found on the person of the injured and their nature were given in detail in a particular exhibit. *Bhag Singh v. Emperor*.

28 Cr. L. J. 969 :
105 I. C. 681 : 26 P. L. R. 343 :
A. I. R. 1928 Lah. 69.

———Medical evidence—Presence of semen on the woman's loin cloth is not a sure test that she consented to an intercourse.

The mere presence of semen on the loin cloth of the woman is not sufficient to prove that she was a consenting party, especially in the absence of any spermatozoa in the vagina. *Ghulam Hussain v. Emperor*.

6 L. L. J. 474 : A. I. R. 1925 Lah. 94.

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———Medical witness, report of—Admissibility.

A medical witness can use the entries made by him in his register for the purpose of refreshing his memory but a copy of those entries cannot be treated as substantive evidence in the case. *Muhammad Sadiq v. Emperor*.

26 Cr. L. J. 1370 :
89 I. C. 458 : 2 L. C. 56 :
A. I. R. 1926 Lah. 51.

———Miscellaneous—Threatening by Judge of witness with imprisonment—Justification.

A Judge is not justified in practically threatening a witness with imprisonment, even although it does appear to him that such witness is withholding information. *Shwe Hla U. v. Emperor*.

1 Cr. L. J. 184 :
10 Bur. L. R. 29 : 2 L. B. R. 125.

———Miscellaneous—Weight of evidence not question of law.

Where both parties have tendered evidence, the question of weight is not a question of law. *Alayar Khan v. Emperor*.

31 Cr. L. J. 1 :
120 I. C. 193 : 1930 A. L. J. 254 :
A. I. R. 1930 All. 23.

———Opinion—Value of—Age—Proof of—Statement of doctor as to age based upon certain physical peculiarities—Whether legal proof.

It is true that a doctor is in a better position to form an opinion about the age of a person than a layman, but the statement of a doctor is no more than an opinion. When from his statement it does not appear that he brought any scientific knowledge to bear upon his opinion, where the doctor has relied entirely on certain physical peculiarities, such as teeth, etc., his statement is not a legal proof but a mere opinion. *Emperor v. Qudrat*.

41 Cr. L. J. 142 :
185 I. C. 271 : 1939 A. L. J. 980 :
I. L. R. 1939 All. 871 : 12 R. A. 310 :
1939 A. W. R. 693 : A. I. R. 1939 All. 708.

———Oral—Credibility.

As regards the credibility of oral evidence, a Court of Appeal is mainly guided by the Court that heard that evidence. *Shco Narain Singh v. Emperor*.

26 Cr. L. J. 1317 :
89 I. C. 261 : 12 O. L. J. 429 :
A. I. R. 1925 Oudh 715.

———Oral evidence—Exclusion of.

The Courts must be careful not to discard oral evidence merely because it is oral, nor unless the impeaching or discrediting circumstances are clearly found to exist. It would be very dangerous to exercise the judicial function, as if no credit could necessarily be given to witnesses deposing *viva voce* how necessary it may be always to sift such evidence with great minuteness and care. These observations apply with even greater force where the witnesses thus dealt with are called on behalf of the accused and where, in the result, action is taken against him. *Emperor v. Bal Gangadhar Tilak*.

1 Cr. L. J. 305 :
6 Bom. L. R. 324 : I. L. R. 28 Bom. 479.

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general exception—Facts specially within the knowledge of a person—Pleadings.

Where an accused person has raised pleas inconsistent with a defence, which would bring his case within one of the general exceptions in the Penal Code, he cannot, in appeal, set up a case upon the evidence, taken at his trial, that his act came within such general exceptions. The circumstances which would bring the case of an accused person within any of the general exceptions in Penal Code, can and may be proved from the evidence given for the prosecution or to be found elsewhere in the record. S. 105, Evidence Act, in using the words "shall presume the absence of such circumstance" requires the Court to regard such absence as proved unless and until it is disproved. In the case of most general exceptions, the circumstances which bring the case within a general exception are circumstances within the special knowledge of the accused person and lie within the rule that when any fact is specially within the knowledge of any person, the burden of proving that fact is upon him. *Emperor v. Wajid Hussain*. 11 Cr. L. J. 374 : 6 I. C. 589 : 7 A. L. J. 438.

—S. 5.

See also (i) Bombay Prevention of Gambling Act, 1887, S. 4.
(ii) Cr. P. C., 1898, S. 138.

—Ss. 5, 54—*Relevancy—Evidence of character—Statement of accused's bad character elicited by defence, admissibility of, in evidence—Evidence restricted to relevant facts.*

A statement, elicited in cross-examination by the defence, to the effect that the accused had been reputed as a thief, cannot be legally admitted in evidence. The law is not that evidence of bad character is inadmissible as against the accused, but that the fact that the accused has a bad character is irrelevant. Under S. 5, Evidence Act, evidence may be given of such facts as are declared to be relevant, and of no others. The cross-examination, as well as the examination-in-chief, must relate to relevant facts. *Mi Myin v. Emperor*. 9 Cr. L. J. 576 : 2 I. C. 349 : 5 L. B. R. 4.

—S. 6—*Admissibility—Witness proceeding to scene of offence immediately after commission of offence—Statement made by by-standers, whether admissible.*

Shortly after a murder one C went to a person and admitted that he had killed the deceased and was prepared to confess. The latter went to the spot immediately and there heard the by-standers talking that four persons including C had committed the murder : *Held*, that the transaction in which the murder took place having already come to an end, what the witness heard the by-standers say at the time of his arrival on the spot was not admissible in evidence under S. 6, Evidence Act. *Pakhar Singh v. Emperor*. 27 Cr. L. J. 140 : 91 I. C. 812 : 7 L. L. J. 436 : A. I. R. 1925 Lah. 578.

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—S. 6—*Admissibility—Statement—Rape case—Mother's statement that girl raped had made certain statements to her, admissibility of—Penal Code (Act XLV of 1860), S. 375.*

Where in a rape case the mother of the girl raped said that the girl had told her after the occurrence that she had been bitten by a leech : *Held*, that the mother's statement was not substantive evidence of the fact that the girl had been bitten by a leech, though it could possibly be used to corroborate or contradict the statement made by the girl. *Sreehari Swarnakar v. Emperor*. 31 Cr. L. J. 656 : 124 I. C. 175 : 50 C. L. J. 524 : A. I. R. 1930 Cal. 132.

—S. 6—*Hearsay evidence—Statement by by-stander.*

A statement by a person alleged to be the eye-witness of a murder made to persons who came to the scene of occurrence after the murderers had left the place, cannot be proved against the accused for the purpose of showing that their names were mentioned as murderers. In order to make the statement of a by-stander admissible, it must have been made, as contemplated by S. 6, Evidence Act, and illustration (a) to it, at the time the transaction was taking place, or so shortly before or after it as to form part of the transaction. If the transaction has terminated and then the statement is made, the statement is irrelevant. The admissibility is dependent on continuity. *Jowala Sahai v. Emperor*. 16 Cr. L. J. 184 : 27 I. C. 664 : 34 P. R. 1914 Cr. : 226 P. L. R. 1915 : A. I. R. 1914 Lah. 569.

—S. 6—*Illustration (a)—Hearsay Evidence—Murder—Res gestae—Statement of eye-witnesses shortly after occurrence, if relevant—Admissibility—Same transaction—Interval of time—Physical and mental condition of person making statement.*

Hearsay evidence of the statement of a by-stander as to an occurrence would be admissible in evidence as a part of the *res gestae* only if it was made at the time the transaction was taking place or so shortly before or after it as to form part of the transaction. If the transaction had terminated when the statement was made, it would be irrelevant. In this case a *chowkidar* deposed that one G. ran up to him and stated that he had seen the accused person murder his mistress whom he had met by assignation and that he had run away from the place of occurrence to save his life. What interval of time passed between the murder and the alleged statement did not appear. G. seemed to be quite sensible when he made the statement and the condition of his mind did not appear to be such as to exclude the supposition of his fabricating evidence or being tutored : *Held*, that the statement was inadmissible in evidence. *Chain Mahto v. Emperor*. 5 Cr. L. J. 71 : 11 C. W. N. 266.

—S. 6—*Res gestae—Penal Code (Act XLV of 1860), S. 376—Rape case—Statement made by girl to father, admissibility of.*

Where a statement is alleged to have been

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———*Relevancy—Disallowance of relevant question put to the Magistrate—Effect of.*

In the course of the examination of the Deputy Magistrate, a question was put to him as to circumstances which led to the examination of the accused on the 6th February. The Sessions Judge disallowed the question without recording his reasons: *Held*, that the question did not seem to be an irrelevant one and should have been allowed. *Emperor v. Rajani Kanto Koer.* 1 Cr. L. J. 10 : 8 C. W. N. 22.

———*Relevancy—Duty of prosecution to call all witnesses.*

It is clearly the duty of the prosecution to put in the box all persons having special knowledge of relevant facts. *Muzammal v. Emperor.* 10 Cr. L. J. 321 : 3 I. C. 622 : 8 P. W. R. 1909 Cr.

———*Relevancy—Previous act of dishonesty of accused, when relevant.*

Evidence of a previous act of dishonesty can only be allowed to prevent the accused person from pleading that the act of which he is subsequently charged was committed without a dishonest intention but in error. *Emperor v. Bakhtawar Lal.* 28 Cr. L. J. 556 : 102 I. C. 492 : 28 P. L. R. 313 : A. I. R. 1927 Lah. 549.

———*Relevancy—Prosecution not bound to produce witnesses with reference to defence theories.*

Where the prosecution did not produce a witness who had signed for a benamidar at a public auction and the defence accordingly remarked that it was incumbent on the prosecution to produce all the witnesses who would support or rebut any defence theory: *Held*, that these remarks must be received with qualified assent that it was not the duty of the prosecution, as had been authoritatively laid down, to follow the defence through all its ramifications; and that they, the prosecution, had to make out their case, and could not be expected to call witnesses with reference to defence theories, which were sufficiently disproved otherwise by the positive evidence produced. *Emperor v. Dayashankar Jesukhrum.* 1 Cr. L. J. 718.

———*Roznamcha reports, whether evidence of facts mentioned.*

Roznamcha reports are not evidence of the facts mentioned in the report which must be proved like other facts. *Emperor v. Raghu Nath.* 29 Cr. L. J. 312 : 107 I. C. 937 : A. I. R. 1928 Nag. 235.

———*Statement to police—Evidentiary value.*

It is generally unsafe to accept statements recorded by the Police as verbally accurate or as containing a full and correct account of a statement made by a witness in matters which are not clearly and obviously essential. *Nga Yon v. Emperor.* 19 Cr. L. J. 726 : 46 I. C. 406 : 3 U. B. R. 1918, 84 : A. I. R. 1919 U. Bur. 38.

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———*Sufficiency.*

A statement made to the Police by an accused person to the effect that if certain other persons were sent for, he would see that some other property was traced out and restored is not legal evidence to prove that the accused has been guilty of abetment of theft. *Bishan Datt v. Emperor.* 2 Cr. L. J. 22. 2 A. L. J. 5

———*Sufficiency.*

Before an accused person can be convicted of an offence, every conceivable hypothesis of innocence must be at least reasonably excluded. *Lachaman Singh v. Emperor.* 12 Cr. L. J. 69 : 9 I. C. 400 : 7 P. L. R. 1911 : 11 P. W. R. 1911 Cr.

———*Sufficiency.*

Before the accused can be convicted of an offence, the Criminal Court must be satisfied that the incriminating facts brought out in the evidence for the prosecution are incompatible with the innocence of the accused and are incapable of explanation upon any other hypothesis than that of his guilt. *Gurdil Singh v. Emperor.* 11 Cr. L. J. 82 : 4 I. C. 941 : 136 P. L. R. 1909 : 36 P. W. R. 1909 Cr.

———*Sufficiency—Cross-examination, right of—Witness examined against accused—Witness withdrawn and made accused—Right to cross-examine, prevented from—Conviction, legality of.*

The witness who gave evidence against the appellants were withdrawn from the witness-box and again made an accused, so that the appellants were thereby prevented from cross-examining him: *Held*, that S. 256, Cr. P. C., and S. 136, Evidence Act, gives the accused a right to cross-examine the witnesses who have given evidence against them. But the appellants here were deprived of a fundamental right given them by law and the convictions could not, on that ground alone, be upheld. *Harihar Sinha v. Emperor.* (F. B.) 37 Cr. L. J. 758 : 163 I. C. 9 : 40 C. W. N. 876 : 63 C. L. J. 307 : 8 R. C. 698 : A. I. R. 1936 Cal. 356.

———*Sufficiency.*

In a criminal case the evidence must be clear to justify a conviction. *Emperor v. Mira Gajbar.* 1 Cr. L. J. 1 : 6 Bom. L. R. 32.

———*Sufficiency—In appeal from [acquittal—Whether discovery subsequent to acquittal of fresh evidence against accused is sufficient reason for setting aside acquittal or ordering new trial.*

In an appeal from an acquittal, the fact that fresh evidence against the accused has been discovered subsequent to the acquittal, is not a sufficient reason for setting aside the acquittal or ordering a new trial. *Emperor v. Nga Po Gyi.* 3 Cr. L. J. 234 : 12 Bur. L. R. 21.

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———S. 8—Conduct, evidence of.

The fact that a person accused of murder pointed out the place, where the weapon with which the murder was committed is found, as being the place at which it was concealed and the fact that shortly after the crime, he was in a very agitated state and made a statement which led to his being asked to show the spot where the weapon used in the commission of the murder was concealed, are evidence of conduct under S. 8, Evidence Act, which, coupled with the other evidence in the case, may indicate that the accused was the murderer. *In re : Semalai Goundan.* 26 Cr. L. J. 840 :

86 I. C. 664 : 21 L. W. 199 :
A. I. R. 1925 Mad. 574.

———S. 8—Conduct—Trial for conspiracy to murder—Written complaint by deceased to Sub-Divisional Officer regarding apprehension to his life—Admissibility.

A written complaint by the deceased to the S. D. O. stating that he apprehended danger to his life, liberty and reputation, would be admissible in a trial for conspiracy to murder the deceased under S. 8, Evidence Act, of conduct of the deceased, an offence against whom was the subject of the trial, such conduct being influenced by his fear of injury. *Goloke Behari Takal v. Emperor.*

39 Cr. L. J. 161 :

173 I. C. 65 : 66 C. L. J. 25 :

42 C. W. N. 129 : 10 R. C. 441 :

I. L. R. 1938 1 Cal. 290 : A. I. R. 1938 Cal. 51.

———S. 8—Conduct of accused—Murder of child and ornaments stolen—Spot of hiding ornaments shown and ornaments dug out.

Where the accused gives information which leads to discovery and the exact spot where the ornaments are buried is shown and they are dug out from there, the question is not so much whether the accused was in physical possession of the ornaments, but the important point is rather that the circumstances and the conduct of the accused point clearly to his knowledge of the exact spot where the ornaments were, and in the absence of any explanation, the reasonable inference is that he put them there himself, such conduct is admissible under S. 8, Evidence Act, and this fact taken along with other evidence of his being seen with the deceased is sufficient to warrant a presumption of complicity in murder. *Jamunia v. Emperor.*

37 Cr. L. J. 1047 :

164 I. C. 964 : I. L. R. 1936 Nag. 78 :

9 R. N. 48 : A. I. R. 1936 Nag. 200.

———S. 8—Conduct, proof of.

Where an accused person accompanies a Police Officer and points out the spot where the stolen property is hidden, it amounts to conduct, proof of which is admissible under S. 8, Evidence Act. *Emperor v. Nga Aung Ba.* 17 Cr. L. J. 402 (b) :

35 I. C. 962 : U. B. R. 1916 II, 114 :

A. I. R. 1916 U. Bur. 1.

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———S. 8—Conduct, relevancy of person having no part in crime and not called as witness.

The conduct of a man, who has had no part in the evidence in the crime and has not been called as a witness cannot be brought within the ambit of S. 8, Evidence Act, as being a relevant fact constituting motive or preparation. *Bala v. Emperor.*

17 N. L. J. 274 :

A. I. R. 1935 Nag. 81.

———S. 8—Hearsay.

If a raped girl goes to her relatives straight after the occurrence and complains to them on her own initiative, her conduct has a direct bearing upon and connection with the occurrence itself, but if she only answers questions, her statement is a mere hearsay and, therefore, not relevant under S. 8, Evidence Act. *Emperor v. Phagunia Bhuian.* 26 Cr. L. J. 1475 :

89 I. C. 1043 : A. I. R. 1926 Pat. 58.

———S. 8—Hearsay evidence—If admissible.

Hearsay evidence is not admissible even to prove intention or motive. *Emperor v. Eddula Venkata Subba Reddi.* 33 Cr. L. J. 51 (2) : 134 I. C. 1143 : 34 L. W. 128 : 61 M. L. J. 608 : 1931 M. W. N. 1177 : 54 Mad. 931 :

I. R. 1932 Mad. 7 : A. I. R. 1931 Mad. 689.

———S. 8—Miscellaneous.

Where joint acts of several persons are sought to be proved in order to ask Court to draw inference from such conduct, evidence should be led with some degree of particularity. This principle applies to evidence relevant under S. 27 also. *Rafique-ud-Din Ahmad v. Emperor.* 36 Cr. L. J. 808 : 155 I. C. 687 : 39 C. W. N. 368 : 62 Cal. 572 : 7 R. C. 606 : A. I. R. 1935 Cal. 184.

———S. 8—Motive, evidence

Where the direct evidence as to the commission of a crime breaks down, it is unnecessary for the Court to discuss the evidence of the motive for the crime. *Ghirrao v. Emperor.*

34 Cr. L. J. 1009 :

145 I. C. 470 : 10 O. W. N. 1108 :

6 R. O. 53 : A. I. R. 1933 Oudh 265.

———S. 8—Motive, evidence regarding.

The prosecution is not bound to furnish any evidence as to the motive with which the accused committed an offence. *Emperor v. Ram Dal.* 34 Cr. L. J. 538 :

143 I. C. 129 : 10 O. W. N. 585 :

I. R. 1933 Oudh 161 :

A. I. R. 1933 Oudh 340.

———S. 8—Motive, what is.

A motive is that which moves a man to do a particular act. It is that which is in his mind which moves him to act, and whether the belief which produces that state of mind is true or false, the motive remains the same and the truth or falsity of the belief is not really in question. *Gangaram v. Emperor.*

22 Cr. L. J. 529 :

62 I. C. 545 : 22 Bom. L. R. 1274.

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—————*Value of—Eye-witness of murder, remaining silent—Police diaries, admissibility of.*

When a person sees a murder committed and gives no information thereof, his evidence is little better than that of an accomplice. Police diaries are not evidence and cannot be used as such. *Nawab v. Emperor.*

25 Cr. L. J. 264 :
76 I. C. 824 : 5 L. L. J. 322 :
A. I. R. 1923 Lah. 391.

—————*Criminal breach of trust with reference to certain items—Civil liability determined by Civil Court—Judgment of Civil Court, whether relevant—Complaint, whether to be proceeded with during pendency of appeal in civil case.*

Where the accused is charged with criminal breach of trust with reference to certain items, and the question of civil liability with respect to those items has been determined by a competent Court, the judgment of that Court would be the best evidence of the civil rights of the parties, and hence a relevant fact and admissible in evidence. The complaint under the circumstances ought not to be proceeded with during the pendency of the civil proceedings by way of appeal. *In re : N. F. Marker.*

17 Cr. L. J. 153 :
33 I. C. 633 : 18 Bom. L. R. 185 :
A. I. R. 1916 Bom. 163.

—————*Evidence of accomplice—Appreciation of.*

Although the discredit involved in the character of an accomplice is a point which should always be borne in mind by a Court in appraising the evidence of such a person, yet the degree of discredit will vary enormously according to the nature of the offence, and of witness's complicity. Where a Court, after giving full weight to the factor of discredit and other considerations, decides that the evidence is true, it is not only open to it to convict on that evidence but it is its duty to do so. *In re : Talari Narainaswami.*

12 Cr. L. J. 170 :
9 I. C. 978 : 9 M. L. T. 503.

—————*Evidence of injuries—Appreciation of—Wound inflicted on throat—Test to see if wounded person is capable of speech.*

In the case of a wound of the larynx, speech is possible if the wound is above the vocal cords even if it is gaping. But in wounds of the larynx below the vocal cords, and in those of the trachea, no speech is possible. *Mohamad Anis v. Emperor.*

37 Cr. L. J. 955 :
164 I. C. 482 : 1936 O. W. N. 691 :
1936 O. L. R. 459 : 9 R. O. 81 :
A. I. R. 1936 Oudh 405.

—————*Evidence of insanity.*

Where an accused pleads insanity, the evidence relating to it must refer to the time when he committed the offence and not to the state of his mind long afterwards. *Golla Chinna Venkadu v. Emperor.*

15 Cr. L. J. 161 :
22 I. C. 737 : A. I. R. 1914 Mad. 293.

—————*Evidence of 'waj takkar', value of.*

The evidence of a *waj takkar* or adventitious

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witness has to be received with considerable caution. *Feroze v. Emperor.*

31 Cr. L. J. 871 :
125 I. C. 381 : A. I. R. 1930 Lah. 659.

—————*Evidence in other case—Admissibility of, ad upon certain issues in one case—Use of the evidence in another case—Practice and procedure.*

When evidence has been given in one case upon the issues raised in that case, examination-in-chief and cross-examination alike having been directed to those issues, nothing can be more dangerous than to take that evidence and apply it in another case in which other issues arise. Inferences drawn from that evidence bearing upon these latter issues cannot but be regarded with much misgiving. *In re : Henry Lewis Lubeck.*

2 Cr. L. J. 775 :
7 Bom. L. R. 894 : 2 C. L. J. 421 :
10 C. W. N. 57 : 2 A. L. J. 800 :
15 M. L. J. 432 : 33 Cal. 151.

—————*Evidence in other case—Admissibility.*

Where no application is made for a *de novo* trial, the Magistrate can convict upon evidence partly recorded by his predecessor in office, but it is desirable in defamation case that the examination and cross-examination of the complainant should be held in the presence of the Magistrate trying the case. *Brindaban Chander Das v. Ishaquddin.*

10 Cr. L. J. 492 :
4 I. C. 67 : 13 C. W. N. 550.

—————*Evidence of general repute—Admissibility.*

Evidence of general repute, though hearsay, is admissible for the purposes of proceedings under Chapter VIII, Cr. P. C. *Emperor v. Raoji Fulchand.*

1 Cr. L. J. 3 :
6 Bom. L. R. 34.

—————*Exception to principle of evidence.*

Per *Fforde, J.*—S. 164 is one of the exceptions to the main principle of evidence that a document recording a confession may not be given in evidence when the witness to the statement can be produced and can prove by oral testimony. *Kheman v. Emperor.*

26 Cr. L. J. 1074 :
88 I. C. 18 : 6 Lah. 58 :
A. I. R. 1925 Lah. 315.

—————*Evidence of confession.*

Evidence may be given of a confession provided that it be not excluded by an express provision of law, whether made to a private person, or to a Magistrate otherwise than in the course of an enquiry or other judicial proceedings; it may then be proved, and must be proved, if at all like any other fact. *In re : Tangedypalle Pedda Obigadu.*

23 Cr. L. J. 680 :
69 I. C. 264 : 14 L. W. 542 :
1921 M. W. N. 779 : 20 M. L. T. 107 :
42 M. L. J. 37 : 45 Mad. 239 :
A. I. R. 1922 Mad. 40.

—————*Evidence of Magistrate under S. 533, Cr. P. C.—Magistrate, position of—Magistrates not to act as Police Officers but as judicial persons.*

With regard to the Magistracy, it is for

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verbal communications which the accused made to the Police at the time of the search. *Kalijiban Bhattacharjee v. Emperor.*

37 Cr. L. J. 775 :
163 I. C. 41 : 63 C. L. J. 232 :
8 R. C. 714 : 63 Cal. 1053 :
A. I. R. 1936 Cal. 316.

———Ss. 8, 32 (1) — Dying declaration, admissibility of — *Dying declaration made immediately after robbery*—*Res gestae*.

A dying declaration is admissible in evidence under S. 32 (1), Evidence Act, even where the charge is not one of homicide. A dying declaration made by a person who has been robbed and killed, immediately after the robbery regarding the robbery and also regarding the assault committed in the course of the robbery, is admissible in evidence in the trial of the assailant for robbery, under S. 8 of the Evidence Act, as part of the *res gestae*. Ss. 8 and 32, Evidence Act, may overlap in some cases but they provide for different and distinct conditions. *Lalji Dusadh v. Emperor.*

29 Cr. L. J. 106 :
106 I. C. 698 : 6 Pat. 717 :
A. I. R. 1928 Pat. 162.

———Ss. 8, 157—Statement, admissibility of —*Rape, offence of*—*Ravished woman, evidence of, value of.*

A statement by a girl, alleging that she was raped, made immediately after the rape, to witnesses who saw her crying and asked her the reason thereof, is admissible, as an explanation of her act of crying, under S. 8, Evidence Act, as also under S. 157, by way of corroboration. In the case of rape of an innocent girl of tender age, the evidence of the ravished girl is of great value and where she makes a statement by way of disclosure immediately after the occasion, it is a strong piece of evidence corroborating her credibility and proving the consistency of her conduct and also as negating consent on her part. *Soosallal v. Emperor.*

25 Cr. L. J. 1214 :
82 I. C. 142 ; A. I. R. 1925 Nag. 74.

———S. 9.

See also Penal Code, 1860, S. 411.

———S. 9—Identification—Identification of accused in jail, evidence of—*Person identified not specified*—*Magistrate conducting identification, evidence of, whether admissible.*

In order to enable the Court to rely on the evidence of a person who identified the accused in jail, but failed to do so in Court, the fact of the jail identification must be stated in the witness's evidence. An identification in jail is in essence a statement by the witness. "I saw this man who is now before me taking part in the offence." That statement can be used to corroborate his evidence given in Court. If the witness says in his evidence, "a number of persons were shown to me at the jail and from among them I pointed out those persons whom I had seen committing the offence," it is permissible under S. 9, Evidence Act, to call independent evidence, such as that of the Magistrate who conducted the identification, to prove the identity

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of the persons whom he picked out at the jail, even though the witness himself may not correctly remember who they were. *Chhutkau v. Emperor.*

26 Cr. L. J. 1564 :
90 I. C. 444 : 28 O. C. 258 :
A. I. R. 1926 Oudh 36.

———S. 9—Relevancy.

If after the commission of a crime, a person, whose name is mentioned as a participator in the crime absconds, his conduct shows that he is indeed concerned in the crime. Therefore, anything which tends to explain his conduct and furnishes a motive other than a guilty conscience, is relevant under S. 9, Evidence Act. *Gangaram v. Emperor.*

22 Cr. L. J. 529 :
62 I. C. 545 : 22 Bom. L. R. 1274.

———S. 9—Relevancy.

The fact that the accused absconded immediately after the occurrence, and his absence from home was not satisfactorily accounted for, was a relevant circumstance as shown by Illustration (c) to S. 9, Evidence Act. *Baharud-Din Mandal v. Emperor.*

15 Cr. L. J. 43 (b) :
22 I. C. 187 : 18 C. L. J. 578 :
A. I. R. 1914 Cal. 589.

———Ss. 9, 11, 14, 15—Admissibility—*Evidence of design and motive, identity and illegal association*—*Offences similar.*

At a trial for offences under Ss. 302, 120-B and 380, Penal Code, the Judge admitted evidence of a theft committed some two years subsequently in somewhat similar circumstances, as showing identity, design and motive, and illegal association, and that a system had been pursued by the accused. Objection was taken to the admission of this evidence and the question was reserved for consideration upon a reference under clauses 25 and 26, Letters Patent. On the question being referred: *Held*, (1) that, having regard to the dates of the incidents alleged in the subsequent case, the evidence was not admissible either under S. 9 or S. 11 or S. 14 or S. 15, Evidence Act; (2) that it was not open to the Court hearing the reference to direct a new trial, but after rejecting the evidence improperly admitted, the Court should dispose of the case finally. *Emperor v. Panchu Das.*

21 Cr. L. J. 849 :
58 I. C. 929 : 24 C. W. N. 501 :
31 C. L. J. 402 : 47 Cal. 671 :
A. I. R. 1920 Cal. 500.

———Ss. 9, 11, 14, 54—Relevancy—*Penal Code (Act XLV of 1860), Ss. 120-B, 295—Charge for dacoity.*

Where the accused were charged with committing or conspiring a particular dacoity and the prosecution sought to prove not only that some of the accused were intimately associated with the approver but that the object of the association during a period of several months prior to the dacoity in question had been the commission of thefts and other discreditable acts: *Held*, (1) that though the mere fact that the evidence adduced would

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but they denied possession: *Held*, that as cases have been known in this country, where men have endeavoured to pass off as opium, what was really cutch, or something else, and as the accused's denial might come from the guilty knowledge that they were going to pass off as cocaine what was not so, and as the condition, in which the bundles and bottles were found, negated any supposition that the appellants had been opening the packets, and tampering with the bottles, if they did originally come from a European cocaine manufacturer, and as there was a possibility that the bottles and their contents did not come from a European manufacturer at all, and that they may not have contained cocaine, though they were falsely labelled and done up as such by the appellants, with a view to their disposing of them as cocaine, considering the degree of proof required in criminal cases, it was not conclusively proved that the bottles really did contain cocaine; that there was a doubt, and that the appellants were entitled to the benefit of it. *Ah Lok v. Emperor*. 4 Cr. L. J. 382 : 12 Bur. L. R. 229 : 3 L. B. R. 216.

———S. 3—'Fact,' scope of.

The definition of 'fact' in S. 3 does not restrict a fact to something which can be exhibited as a material object. *Emperor v. Ramnaja Ayyangar*. 36 Cr. L. J. 1442 (2) : 158 I. C. 764 : 1934 M. W. N. 1479 : 58 Mad. 642 : 42 L. W. 124 : 68 M. L. J. 73 : 8 R. M. 331 : A. I. R. 1935 Mad. 528.

———S. 3—Fact, when said to be proved.

A much stronger degree of proof is required in criminal proceedings than in civil ones, and in criminal proceedings, the persuasion of guilt must amount to "such a moral certainty as convinces the minds of the Tribunal, as reasonable men beyond all reasonable doubt." It is the business of the prosecution to bring home guilt to the accused to the satisfaction of the minds of the Jury, but the doubt, to the benefit of which the accused is entitled, must be such as rational, thinking, sensible men may fairly and reasonably entertain, not the doubts of a vacillating mind that has not the moral courage to decide, but shelters itself in a vain idle scepticism. *Ah Lok v. Emperor*. 4 Cr. L. J. 382 : 12 Bur. L. R. 229 : 3 L. B. R. 216.

———S. 3—Misrepresentation of facts, what is.

A misrepresentation as to the intention of a person (in stating the purpose for which the consent is asked) is a misrepresentation of "fact" within the meaning of S. 3, Evidence Act. *Emperor v. Soma*. 18 Cr. L. J. 18 : 36 I. C. 850 : 17 P. R. 1916 Cr. : A. I. R. 1916 Lah. 414.

———S. 3—Scope of—Definition of 'Court' does not apply to Debt Settlement Board under Bengal Agricultural Debtors Act (VII of 1936.)

The definition of the word "Court" in the

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Evidence Act, has been framed only for the purposes of that Act which, under S. 45, Bengal Agricultural Debtors Act, has no application to Debt Settlement Boards in the absence of express provision to that effect. *Hari Charan Kundu v. Kanshi Charan Dey*. 41 Cr. L. J. 662 : 188 I. C. 686 : 44 C. W. N. 530 : I. L. R. 1940, 2 Cal. 14 : 13 R. C. 44 : A. I. R. 1940 Cal. 286.

———Ss. 3, 5—'Evidence'—What is.

What the Judge has to take down is the "evidence" of each witness, not any statement he may choose to make. "Evidence" is defined in S. 3, Evidence Act, as all statements which the Court permits or requires to be made before it by witnesses, in relation to matters of fact under enquiry, and S. 5, Evidence Act, further limits the facts in respect of which evidence may be given. It is for the Judge to decide what statements made by a witness come within the definition of evidence, and to record those statements and no others. *Nga Saw v. Emperor*. 2 Cr. L. J. 133 : 11 Bur. L. R. 8.

———Ss. 3, 30—Joint trial—Confession.

Where one of the accused persons pleaded guilty in the Court of Session and did not, as a fact, cross-examine any of the witnesses, but was examined at the end of the prosecution case, and was asked whether he wished to call any witnesses and declined to do so: *Held*, that the trial was a joint trial within the meaning of S. 30, Evidence Act, so that his confession could be taken into consideration against the other accused. *Emperor v. Nga Po Tha*. 14 Cr. L. J. 566 : 21 I. C. 166 : U. B. R. 1913 I, 170.

———S. 4.

See also Evidence Act, 1872, S. 133.

———S. 4—Accomplice, uncorroborated testimony of—Where evidence of accomplice is tendered, Court should not call for proof of presumption that he is unworthy of credit unless corroborated in material particulars.

It is not desirable that in cases where the evidence of an accomplice is tendered, the Court shall call for proof of the presumption that he is unworthy of credit unless corroborated in material particulars. Experience has shown that in the generality of cases, it is unsafe to convict upon the uncorroborated testimony of an accomplice alone, although it is not illegal to do so. The Court should, therefore, regard an accomplice as *prima facie* unworthy of credit, but this presumption which it is open to the Court to draw, is not a hard and fast presumption but one which may be displaced in the circumstances of a particular case. *The King v. Nga Myo*. (F. B.) 39 Cr. L. J. 581 : 175 I. C. 465 : 1938 Rang. 190 : 10 R. Rang. 494 : A. I. R. 1938 Rang. 177.

———Ss. 4, 105, 106, 114—Proof of circumstances—May presume—Shall presume—Onus—Proof of circumstances bringing a case within a

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dence of the common intention, once reasonable ground has been shown to believe in its existence. But it would be a very different matter to hold that any narrative or statement or confession made to a third party after the common intention or conspiracy was no longer operating and had ceased to exist is admissible against the other party. There is then no common intention of the conspirators to which the statement can have reference. S. 10 embodied this principle. A distinction must be drawn between communications between conspirators while the conspiracy was going on with reference to the carrying out of the conspiracy and statements made, after arrest or after the conspiracy has ended, by way of description of event then past. *Akbar v. King-Emperor*.

41 Cr. L. J. 871 :

190 I. C. 233 : 1940 A. W. R. 175 :

1940 M. W. N. 1112 : 52 L. W. 662 :

7 B. R. 118 : 1940 O. L. R. 619 :

1940 A. L. J. 778 : 13 R. P. C. 88 P. C. :

A. I. R. 1940 P. C. 176.

———S. 10—Confession—Admissibility.

Where the object of the conspiracy had been carried out, and the conspiracy had come to an end, and the confession made thereafter has no reference to the common intention of the conspirators, the confession is not admissible under S. 10, Evidence Act. *Bcliram Singh v. Emperor*.

40 Cr. L. J. 937 :

184 I. C. 274 : 12 R. N. 106 :

1939 N. L. J. 442 : A. I. R. 1939 Nag. 295.

———S. 10—Confession by accused who is dead, admissibility of—If admissible under S. 10.

Confession made by one of the accused who is dead and never brought to the trial is not admissible under S. 30, Evidence Act, as the confession of the co-accused. Nor, if it is admitted, can it be admitted under S. 10, because S. 10 applies to acts done in furtherance of a conspiracy or which bear some relation to the conspiracy. The words of S. 10 cannot be extended to cover the case of the confession of a person who was co-accused or who might have been a co-accused on the charge of conspiracy and the offences which were its purpose or committed in pursuance of it. *Dengo Kadero v. Emperor*.

39 Cr. L. J. 545 :

175 I. C. 99 : 10 R. S. 282 :

A. I. R. 1938 Sind 94.

———S. 10—Document—Document found in possession of accused charged with conspiracy—Inference—S. 10, scope of.

S. 10, Evidence Act, lays down not only the rule applicable in this country, so far as leading evidence in cases of conspiracy is concerned, but has to be treated as a part of Statute Law in the matter of proof of existence of a conspiracy and of the furtherance of its objects. So far as documents found in possession of a party are concerned, possession and conduct create an inference that he was aware of its contents; what sort of conduct would properly give rise to such inference must necessarily depend on the facts of each case. Documents found in possession on search or

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otherwise are admissible in evidence if they satisfy any of these conditions, namely (i) they are in the handwriting of the party concerned, and (ii) they fall within the scope and operation of S. 10, Evidence Act. *Jitendra Nath Gupta v. Emperor*. (S. B.) 38 Cr. L. J. 818 : 169 I. C. 977 : 10 R. C. 69 : A. I. R. 1937 Cal. 99.

———S. 10—Document.

Document, of which the writer is not known, found in the possession of a conspirator, would not by itself be admissible for the purpose of proving the truth of its contents as against the other accused. The fact of possession would be evidence to show that the conspirator, in whose possession it is found, had received and preserved it. *Jhabwala v. Emperor*.

34 Cr. L. J. 967 :

145 I. C. 481 : 1933 A. L. J. 799 :

6 R. A. 65 : A. I. R. 1933 All. 690.

———S. 10—Document, of which writer is not known, found in possession of accused—Admissibility.

A document of which the writer is not known, if found in the possession of a conspirator, would not by itself be admissible for the purpose of proving the truth of its contents as against other accused. The fact of possession would be evidence to show that the conspirator in whose possession it was found, had received and preserved it. The execution and authorship of a document is a question of fact. *Jitendra Nath Gupta v. Emperor*. (S. B.)

38 Cr. L. J. 818 :

169 I. C. 977 : 10 R. C. 69 :

A. I. R. 1937 Cal. 99.

———S. 10—Document.

Document written by a person describing conversation with stranger who refers to accused as a conspirator is admissible. *Surjya Kumar Sen v. Emperor*. (F. B.)

35 Cr. L. J. 334 :

147 I. C. 32 : 6 R. C. 304 :

A. I. R. 1934 Cal. 221.

———S. 10—Intention..

"Intention" implies that act intended is in future—The principle on which S. 10 is based is that of agency. *G. V. Vaishampayan v. Emperor*.

33 Cr. L. J. 76 :

134 I. C. 1238 : 33 Bom. L. R. 1159 :

55 Bom. 839 : I. R. 1932 Bom. 22 :

A. I. R. 1932 Bom. 56.

———S. 10—Letter written by accused—Admissibility of, against co-accused.

Whether a letter written by an accused person after arrest is admissible as evidence against a co-accused, depends on whether or not the provisions of S. 10, Evidence Act, have been complied with, that is, whether there is reasonable ground to believe that the writer of the letter and the other accused conspired together to commit an offence. *Abdul Aziz v. Emperor*.

33 Cr. L. J. 456 :

137 I. C. 317 (1) : I. R. 1932 Cal. 292 :

A. I. R. 1932 Cal. 557.

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made to her father by a girl upon whom an offence under S. 376, Penal Code, was committed, in the absence of any definite and reliable evidence that the outrage and the statement constituted together *res gestae*, much value cannot be attached to this statement even if it is held to be admissible. *Ghulam Hussain v. Emperor*. 32 Cr. L. J. 63 :

127 I. C. 862 : 31 P. L. R. 612 :

I. R. 1930 Lah. 894 : A. I. R. 1930 Lah. 337.

———S. 6—*Res gestae*—*Rioting*—*Statements made by members of unlawful assembly prior to occurrence, whether admissible*.

Where a procession attempts to pass through certain streets of a town in defiance of an order of the Superintendent of Police prohibiting it from passing through such streets, and a collision takes place between the members of the procession and the Police force resulting in a riot, evidence led on behalf of the prosecution in the riot case to prove statements made by the members of the procession showing their determination to force their way into the streets into which their entry was prohibited in spite of the resistance of the Police is admissible as forming part of the *res gestae* and indicating that the intention of the members of the procession was to ignore the order of the Superintendent of Police. *Maung Tok v. Emperor*. 26 Cr. L. J. 1622 :

90 I. C. 918 : 3 Rang. 352 :

A. I. R. 1925 Rang. 354.

———S. 6—*Res gestae, what is*.

What a person states at the time of an occurrence in respect of the occurrence itself is *res gestae* under S. 6, Evidence Act. A statement, however, made at the time of an occurrence relating to a previous occurrence which took place a year earlier is not part of the *res gestae* and it is not admissible in evidence. *Khijiruddin v. Emperor*.

27 Cr. L. J. 266 :

92 I. C. 442 : 42 C. L. J. 504 :

53 Cal. 372 : A. I. R. 1926 Cal. 139.

———Statement—*Rape*.

Statement by woman immediately after she is raped is not admissible under S. 6. *Kappinaiiah v. Emperor*. 32 Cr. L. J. 751 :

131 I. C. 456 : 1930 M. W. N. 702 :

I. R. 1931 Mad. 520 :

A. I. R. 1931 Mad. 233 (2).

———S. 6—*Statement to Police—Admissibility of—Statement made to Police by one accused, whether admissible against co-accused—Res gestae—Confession*.

One P came to a Police Station and handed in a written report in which there were allegations that certain persons had committed the offence of riot, one of them being a *zemindar* named M. The report was read out to P and as soon as he heard it, he informed the Police that M was not present at the riot and that he had made no charge against him. He stated that the report was written by one J. Subsequently M prosecuted J and P for an offence under S. 211, Penal Code : *Held*, that the statement made by P

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to the Police was not admissible against J either as part of a confession or as a part of the transaction under investigation under S. 6, Evidence Act. *Jalpa Prasad v. Emperor*.

20 Cr. L. J. 311 :

50 I. C. 487 : 17 A. L. J. 760 :

A. I. R. 1919 All. 110.

———Ss. 6, 8, 9—*Applicability of—Abduction case—Evidence of search prior to alleged abduction, whether admissible*.

The accused, who were alleged to have abducted a woman at midnight, produced a witness who gave evidence that he had seen certain other women of the abducted woman's household searching for something at dusk the same evening, the suggestion being that the woman was actually missing in the evening and could not have been abducted at midnight. The women were not examined as witnesses : *Held*, that the evidence of the witness was inadmissible and neither S. 6, nor S. 8, nor S. 9, Evidence Act, was applicable. *Fazaruddin v. Emperor*. 26 Cr. L. J. 1553 :

90 I. C. 433 : 42 C. L. J. 111 :

A. I. R. 1926 Cal. 105.

———S. 8.

See also Evidence Act, 1872, S. 32.

———S. 8—*Admissibility—Statement influencing conduct of witness, admissibility of*.

A statement made by a person, who is not examined as a witness, is not admissible under S. 8, Evidence Act, as having affected the conduct of a witness assuming that such conduct is relevant. *Khijiruddin v. Emperor*.

27 Cr. L. J. 266 :

91 I. C. 442 : 42 C. L. J. 504 :

53 Cal. 372 : A. I. R. 1926 Cal. 139.

———S. 8 — *Admissibility — Statement—Child witness refusing to make statement—Statement of mother regarding answers to queries put to child, admissibility of*.

In a rape case, the raped child when placed before the Court refused to make any statement and the Counsel for the Crown asked the Court to admit the statement of the mother of the child as regards the answers given by the child in reply to questions put to her and relied on S. 8, Evidence Act : *Held*, that the answers given by the child in reply to her mothers's queries could not be admitted in the evidence by letting in the mother's statement under the provisions of S. 8, Evidence Act. *Emperor v. Soopi*. 31 Cr. L. J. 141 :

120 I. C. 539 : 31 P. L. R. 391 :

A. I. R. 1930 Lah. 84.

———S. 8—*Conduct*.

The fact of the production of the share of the property of one particular accused involved in a dacoity case is admissible as conduct under S. 8 of the Evidence Act, and the circumstances in which the production took place are also relevant under S. 9. *Canu Chandra Kashid v. Emperor*.

33 Cr. L. J. 396 :

137 I. C. 174 : 34 Bom. L. R. 303 :

56 Bom. 172 : I. R. 1932 Bom. 232 :

A. I. R. 1932 Bom. 286.

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———S. 10—*Scope of.*

S. 10, Evidence Act, does not apply to incriminating statements made by accused to the Police in the course of the investigation, whether they incriminate themselves or others unless the special provisions of S. 27 let in part of a confession to a Police Officer. A confession by one conspirator made to a Magistrate in Court implicating other conspirators is admissible in evidence under S. 30 but statements made by a conspirator to the Police are not admissible in evidence if they are incriminating. *Pritam Hariomal v. Emperor.*

40 Cr. L. J. 882 :

184 I. C. 145 : 1939 Kar. 449 : 12 R. S. 90 :

A. I. R. 1939 Sind 185.

———S. 10—*Scope of.*

S. 10, Evidence Act, renders admissible in cases of conspiracy much evidence which is not ordinarily admissible. Under the section anything said or written by any conspirator in reference to the common intention of the conspiracy after the time when such intention was first entertained by any conspirator is a relevant fact as against each of the persons believed to be so conspiring as well for the purposes of proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it. *Ram Prasad v. Emperor.*

29 Cr. L. J. 129 :

106 I. C. 721 : 1 Luck. Cas. 339 :

2 Luck. 631 : A. I. R. 1927 Oudh 369.

———S. 10—*Statement of Doctor, admissibility of.*

In charge under Ss. 420 and 120-B, Penal Code, for having committed fraud by inducing an Insurance Company to accept proposal by securing false medical report, statement of doctor though not admissible under S. 32 (3) can be admitted under S. 10. *Kunjatal Ghose v. Emperor.*

36 Cr. L. J. 678 :

155 I. C. 261 : 38 C. W. N. 1015 :

7 R. C. 572 : A. I. R. 1935 Cal. 26.

———Ss. 10, 11, 14, 15—*Relevancy—Criminal trial Evidence of similar acts, admissibility of—Evidence of previous conduct, when relevant.*

In a prosecution for having conspired to bring false evidence against a person, the fact that the accused had previously instituted unfounded prosecutions against the same person is admissible in evidence under S. 11, Evidence Act. The admissibility under S. 11, Evidence Act, in each case must depend on how near is the connection of the facts sought to be proved with facts in issue, to what degree do they render facts in issue probable or improbable when taken with other facts in the case and to what extent would the admission of the evidence be inconsistent with principles enunciated elsewhere in the Act. *Hlin Gyaw v. Emperor.*

29 Cr. L. J. 555 :

109 I. C. 491 : 6 Rang. 6 :

40 Rang. 41 :

A. I. R. 1928 Rang. 118.

———Ss. 10, 30—*Confession of co-accused Conspiracy—Evidence.*

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S. 10, Evidence Act, is intended to make evidence communications between different conspirators while the conspiracy is going on with reference to the carrying out of the conspiracy. It is not intended to make evidence the confession of a co-accused and put it on the same footing as a communication passing between conspirators, or between conspirators and other persons, with reference to the conspiracy. No higher value can be put upon it than upon the statement of an accomplice, and the Court should not be influenced by the statements except where they are corroborated by independent testimony implicating the accused persons in the design with which they are charged. *Emperor v. Abani Bhusan.*

11 Cr. L. J. 710 :

8 I. C. 770 : 15 C. W. N. 25.

———Ss. 10, 30—*Confession of co-accused, admissibility of.*

A confession of a co-accused in a case of conspiracy is admissible in evidence against all the accused under the provisions of S. 10, Evidence Act. It can also be taken into consideration against his co-accused under S. 30 of the Act. *Ram Prasad v. Emperor.*

29 Cr. L. J. 129 :

106 I. C. 721 : 1 Luck. Cas. 339 : 2 Luck. 631 :

A. I. R. 1927 Oudh 369.

———Ss. 10, 30—*Corroboration—Nature of.*

Although it is not illegal to convict on the uncorroborated evidence of an accomplice, there is a consensus of opinion that a conviction on the uncorroborated evidence of an accomplice is rarely justifiable. Evidence in corroboration must be evidence which implicates him, that is, which confirms in some material particulars not only the evidence that the crime has been committed, but also that the prisoner committed it, although it is not necessary that there should be confirmation of all the circumstances of the crime. It is sufficient if it is merely circumstantial evidence of accused's connection with the crime. *Ram Prasad v. Emperor.*

29 Cr. L. J. 129 :

106 I. C. 721 : 1 Luck. Cas. 339 : 2 Luck. 631 :

A. I. R. 1927 Oudh 369.

———Ss. 10, 30—*Statement—Statement of accused before trial, whether admissible against his co-accused—Penal Code (Act XLV of 1860), Ss. 120-B, 420.*

A statement made before trial, but after arrest, by a co-accused, though admissible against the person making it, is not admissible against his co-accused. *Sital Singh v. Emperor.*

21 Cr. L. J. 5 :

54 I. C. 53 : 46 Cal. 700 : 30 C. L. J. 255 :

A. I. R. 1920 Cal. 300.

———Ss. 10, 30, 54—*Witness—When can be competent witness.*

Several persons were placed on trial together on charges of offences under S. 420, read with S. 120-B, Penal Code. After the case had been opened, the Pleader for the Crown, with the consent of the Court, withdrew from the prosecution of one of the accused R, who was thereupon dis-

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—S. 8—Presumption.

Although official acts may be presumed to have been regularly performed, such presumption cannot supply deficiency in the proof. *Hoogly Chinsura Municipality v. Keshab Chandra Pal.* 34 Cr. L. J. 549 :

143 I. C. 285 : 56 C. L. J. 583 :
I. R. 1933 Cal. 395 : A. I. R. 1933 Cal. 347.

—S. 8—Relevancy—Rape.

Complaint by woman ravished—Terms in which complaint is made though relevant as conduct, are not relevant as direct proof of the act. *Kappinaiah v. Emperor.*

32 Cr. L. J. 751 :
131 I. C. 456 : 1930 M. W. N. 702 :
I. R. 1931 Mad. 520 :
A. I. R. 1931 Mad. 233 (2).

—S. 8—Relevancy.

What is relevant is the particular act upon the statement, and the statement and the act must be so blended together as to form a part of a thing observed by the witnesses and sought to be proved. *Mrs. M. F. Reoo v. Emperor.* 34 Cr. L. J. 505 :

143 I. C. 17 : 29 N. L. R. 251 :
I. R. 1933 Nag. 153 : A. I. R. 1933 Nag. 136.

—S. 8—Subsequent conduct—Penal Code, S. 147—Evidence doubtful—Conduct, subsequent, of accused, whether can be considered as evidence against him.

Where the evidence against a person charged with an offence under S. 147, Penal Code, is open to doubt, his conduct sometime after the occurrence cannot be taken to be such evidence of conduct under S. 8, Evidence Act, as can be used against him in the case. *Enayat Karim v. Emperor.* 21 Cr. L. J. 167 :

54 I. C. 775 : A. I. R. 1920 Pat. 255.

—S. 8—Expl. 2—Informer's statement—Admissibility.

An informer's statement to the Police that he had purchased opium from the accused is inadmissible unless it was made in the presence of the accused. The finding of marked coins on the accused and of opium on the informer are circumstances from which it may fairly be inferred that the accused sold the opium. *Ah Sein v. Emperor.* 12 Cr. L. J. 479 :
12 I. C. 87 : 4 Bur. L. T. 222.

—S. 8, Illus. (j) and (f)—Silence of accused, whether relevant.

A woman made a complaint against the accused that he tried to ravish her. The Court took into consideration the fact that immediately after the alleged attempt, the woman made statements to the witnesses that the accused tried to ravish her. The Court was also impressed with the fact that even though the woman made accusations against the accused, he kept silent all the time. There was no evidence that the accusations were made to the accused or in his presence. The accused was convicted under S. 366 (1), Penal Code : *Held*, that as the woman made no complaint but only made statements, they were

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not relevant as under S. 8, Illus. (j), Evidence Act, she ought to have made a complaint. The statements were not complaint : *Held*, further, that as there was no evidence that the accusations were made in the presence of or to the accused, the mere silence of the accused did not fall under Illus. (f) to S. 8, Evidence Act, and was not, therefore, relevant. The accused could not, therefore, be convicted. *Nga Aye Maung v. The King.* 39 Cr. L. J. 531 (b) :

175 I. C. 222 : 10 R. Rang. 469 :
A. I. R. 1938 Rang. 27.

—Ss. 8, 9, 15, 54—Admissibility—Trial for murder of particular person—Evidence to show that accused had committed two previous murders, whether relevant and admissible.

In a trial for the murder of a particular person—(1) It is not open to the prosecution to adduce evidence to show that on two previous occasions the accused, under trial, had committed murders themselves but had falsely charged and got convicted some other persons as murderers. Such evidence is irrelevant, because the fact that the previous murders had been committed by the accused does not constitute, under S. 8, Evidence Act, a motive or preparation for the subsequent murder. *Gangaram v. Emperor.*

22 Cr. L. J. 529 :
62 I. C. 545 : 22 Bom. L. R. 1274.

—Ss. 8, 25, 26—Admissibility—Statement made by accused to Police Officer, admissibility of—Conduct, evidence of—Statement made by Police Officer to complainant in presence of accused, admissibility of.

Statements made to a Police Officer or to a complainant in the presence of a Police Officer are inadmissible in evidence under Ss. 25 and 26, Evidence Act. Similarly, evidence which is substantially evidence of the confession of an accused person in the presence of a Police Officer is inadmissible as evidence of conduct apart from the accompanying statements under S. 8 of the Act. The second explanation to S. 8, Evidence Act, does not apply to a statement made by a Police Officer to a complainant in the presence of an accused person. *Hira Gobar v. Emperor.* 20 Cr. L. J. 681 :

52 I. C. 601 : 21 Bom. L. R. 724 :
A. I. R. 1919 Bom. 162.

—Ss. 8, 27, 24—Conversation, admissibility of—Conversation between accused and Police.

Where on information contained in the confession of an accused, a visit was made by that accused himself together with certain witnesses and Police Officers, to a spot where arms were concealed, and during the time that the arms were dug on the information of the accused person in custody, various conversations took place between the accused and the Police which amounted to conversation to the detriment of the accused person and actually adding to the confession he had already made, then the conversation is admissible in evidence as proof of conduct and the whole of this evidence cannot be excluded because presumably, the whole incident is tainted by the

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person was admissible under S. 11 and 14, Evidence Act, to corroborate the story of the prosecution and to prove the intention of the accused. An accused person should not be prejudiced at his trial by proof of the fact that he has committed similar offences to that with which he is charged. *Emperor v. Yakub Ali*. 18 Cr. L. J. 529 :

39 I. C. 673 : 15 A. L. J. 241 : 39 All. 273 :

A. I. R. 1917 All. 251.

—Ss. 11, 21—Relevancy—Crime committed between A and C—Relevancy of the facts that it has not been committed by C—Inference of guilt of A.

M gave birth to an illegitimate child. It was not bed time, it was attended during the night by M, its mother and B, midwife, and was found lifeless next morning. The medical evidence proved that its death was due to strangulation. There was no other evidence except the statements of B and J, a *Chaukidar*, to the effect that M admitted before each of them, that she (M) killed the child and begged them to keep the secret. These statements, however, were not considered conclusive : *Held*, that M was guilty of causing death of the child mainly on the principle that where the guilt lies between A and C and there is no reason for believing that C has any concern with the commission of the crime, while the motive and other surrounding circumstances are too incriminating against A, the irresistible inference is that A has committed the crime. *Mst. Mehro v. Emperor*. 5 Cr. L. J. 182 :

2 P. W. R. 17 Cr.

—Ss. 11, 32—Statement, admissibility of.

Ownership of alleged stolen property—Witness stating what the deceased person had said to him—Admissibility of such statement. *In re : Dorasami Aiyar*.

16 Cr. L. J. 640 (a) :

30 I. C. 464.

—S. 13.

See also Bombay Prevention of Gambling Act, 1887, S. 4.

—S. 13—Relevancy—Subsequent judgment.

S. 13 does not make judgments subsequent to the matter under investigation relevant in any case. *Jhingur Raut v. Emperor*.

32 Cr. L. J. 1224 :

134 I. C. 625 : 12 P. L. T. 647 :

I. R. 1931 Pat. 481 :

A. I. R. 1931 Pat. 386.

—Ss. 13, 35—Recitals in judgments.

A recital in the order of a President of a Union Board is not admissible in evidence under S. 35 or S. 13, Evidence Act, unless such President has been examined with regard to that recitation. *Doraisami Naidu v. Kaniappa Chetty*.

32 Cr. L. J. 767 :

131 I. C. 654 : 1931 M. W. N. 366 :

I. R. 1931 Mad. 558 :

A. I. R. 1931 Mad. 487.

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—Ss. 13, 42—Relevancy—Judgment not inter partes declaring right, relevancy of.

A judgment declaring the exclusive right of fishing of a party at particular seasons of a year is relevant evidence under Ss. 13 and 42, Evidence Act, though not conclusive, in proceedings in which the right is subsequently denied by a third party. *In re : Anya Shidya Patil*.

28 Cr. L. J. 578 :

102 I. C. 546 : 29 Bom. L. R. 715 :

A. I. R. 1927 Bom. 654.

—S. 14.

See also (i) Bombay Prevention of Gambling Act, 1887, S. 4.

(ii) Evidence Act, 1872, Ss. 9, 124-A.

—S. 14—Bad characters, evidence of—Accused charged with belonging to gang of dacoits—Evidence of offence other than dacoity, admissibility of.

When several persons are charged with belonging to a gang of persons habitually committing dacoity under S. 400, Penal Code, evidence of the commission by them of offences other than dacoity, being evidence of bad character, is inadmissible under S. 14, Evidence Act. *Emperor v. Sher Mahomed*.

24 Cr. L. J. 867 :

75 I. C. 67 : 46 Bom. 958 :

25 Bom. L. R. 214 :

A. I. R. 1923 Bom. 71.

—S. 14—Corroboration—Previous conduct, admissibility of—Accomplice, evidence of.

Before the evidence of an accomplice can be accepted, it is necessary to be satisfied that the accomplice himself took part in the crime to the extent that he says and that he is in a position to give true evidence as to what occurred. It is also necessary that the accomplice's evidence should be corroborated to prove that it was the accused person and no one else who committed the crime. *Kashiram v. Emperor*.

24 Cr. L. J. 566 :

73 I. C. 262 : 6 N. L. J. 144 :

A. I. R. 1923 Nag. 248.

—S. 14—Evidence of intention, etc.

It is not irrelevant to adduce in evidence articles in a newspaper which are not the subject of forfeiture in aid of the proof of the nature or tendency of the alleged offending articles, but it is most unsafe to judge of the intention of the writer in publishing the latter by reference to other articles previously published at long intervals of time, and mostly in other connections. *Annie Besant v. Government of Madras*.

18 Cr. L. J. 157 :

37 I. C. 525 : 1916 M. W. N. 385 :

5 L. W. 1 : 39 Mad. 1085 :

A. I. R. 1918 Mad. 1210.

—S. 14—Evidence of motive.

The accused was convicted of an attempt to abduct a girl on October 10, 1911. Sub-

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tend to show the commission of crimes other than that charged, did not, render it inadmissible, if it was in fact otherwise relevant to any issue properly before the Court; (2) that in so far as such evidence may be tendered with a view to showing the character of the accused concerned, it would be irrelevant under S. 54, Evidence Act, their bad character not being in itself a fact in issue; (3) that as far as the evidence of close association with the approver was concerned, there could be no objection to the admission of such evidence for what it was worth, in support of the approver's statement that a conspiracy in fact existed; but as far as regards the nature and character of the association, there was no substantial difference between evidence tending to show the character of the accused himself and evidence tending to show the character of the persons with whom he is alleged to have associated and the nature of the association, and the evidence was inadmissible. *Wahid-ud-Din Hamid-ud-Din v. Emperor*.

31 Cr. L. J. 1168 :

122 I. C. 189 : 32 Bom. L. R. 324 :

54 Bom. 524 : A. I. R. 1930 Bom. 157.

-----Ss. 9, 11, 21—*Relevancy—Statements by accused before trial, admissibility of.*

Ss. 9 and 11, read with S. 21, Evidence Act, amply justify a Court in admitting into evidence all previous statements made by an accused which have a bearing upon the question of his guilt and whether the previous statement is made to a Police Officer, to a Judicial Officer, or to a third party is immaterial, if the statement is relevant to the fact in issue, namely, the accused's guilt. *Madan Guru v. Emperor*.

24 Cr. L. J. 723 :

73 I. C. 963 : 4 P. L. T. 381.

-----Ss. 9, 14, 65—*Primary evidence—Copy of letter found in accused's possession—Evidence of intention—Admission before proof of signature.*

In a trial for sedition, the prosecution sought to adduce in evidence a copy of a letter sent by the accused to the Editor of a newspaper, which was found in the accused's possession, and which contained the following lines: 'I hope you will think the present one sufficiently tactful on the subject of violence and is more nearly a logical unit than the others': *Held*, (1) that the copy was relevant under Ss. 9 and 14, Evidence Act, to prove the accused's intention; (2) that it was original and not secondary evidence so far as it was relied on as a piece of evidence found in the accused's possession; (3) that it was not necessary, before admitting the document in evidence, to decide that such a letter was actually sent. *Emperor v. Phillip Spratt*.

29 Cr. L. J. 322 :

108 I. C. 32 : 30 Bom. L. R. 314 :

A. I. R. 1928 Bom. 77.

-----S. 10.

See also (i) Cr. P. C., 1898, Ss. 524, 533.

(ii) Evidence Act, 1872, S. 10.

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-----S. 10—*Admissibility.*

Statements made by an accused person during the trial can hardly be regarded as statements by him as a conspirator in reference to the common intention of the persons who were members of the conspiracy, and are not admissible under S. 10. *Kunwar Sen v. Emperor*.

34 Cr. L. J. 124 :

141 I. C. 192 : 9 O. W. N. 1136 :

I. R. 1933 Oudh 33 :

A. I. R. 1933 Oudh 86.

-----S. 10—*Admissibility—Cipher Code in accused's possession—Penal Code (Act XLV of 1860), S. 120-A—Conspiracy—Corroboration, necessity of.*

The existence of a secret Cipher Code in the possession of a person charged with conspiracy which sets forth the names and addresses of other persons charged with such conspiracy and contains words and names having a revolutionary significance, is in itself good evidence for supposing that the persons named therein have conspired to commit an offence. When persons accused of conspiracy are sought to be made liable on the basis of a Cipher Code, it is safer to require the prosecution to establish the guilt of each by extrinsic and further evidence corroborating the Cipher Code. *Indra Chandra Narang v. Emperor*. (F. B.)

30 Cr. L. J. 646 :

116 I. C. 756 : 11 P. L. T. 45 :

I. R. 1929 Pat. 324 :

A. I. R. 1929 Pat. 145.

-----S. 10—*Applicability.*

S. 10, Evidence Act, applies only to things said or done after the time when the common intention was first entertained by one of the conspirators. *Htin Gyaw v. Emperor*.

29 Cr. L. J. 555 :

109 I. C. 491 : 6 Rang. 6 :

I. L. T. 40 Rang. 41 : A. I. R. 1928 Rang. 118.

-----S. 10—*Applicability of—Conditions.*

For S. 10, Evidence Act to apply, it is not enough to find simply that there must have been a conspiracy without coming to a *prima facie* conclusion as to who were the members of it but reasonable ground must be shown to believe that the persons whose statements or actions are to be used had conspired together. *Muhammad Ismail v. Emperor*.

38 Cr. L. J. 106 :

165 I. C. 913 : I. L. R. 1936 Nag. 152 :

9 R. N. 101 : A. I. R. 1936 Nag. 97.

-----S. 10—*Common intention—Principle embodied in S. 10, explained—Statement made by conspirator against fellow conspirator after his arrest or after conspiracy has ended—Admissibility of, against fellow conspirator.*

Where the evidence of a conspirator is admissible against his fellow conspirator, it is on the principle that the thing done, written or spoken, was something done in carrying out the conspiracy and was receivable as a step in the proof of the conspiracy. This being the principle, the words of S. 10, Evidence Act, must be construed in accordance with it. Things said, done or written while the conspiracy was on foot are relevant as evi-

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—S. 14, Illus. (e) — *Admissibility of speeches other than those forming subject-matter of charge.*

Where there is a series of speeches or lectures on one topic, all delivered within a short period of time, one may be considered for the purpose of throwing light on the real meaning and import of another and on the statement of mind of the speaker with reference to the subject-matter of the other speeches. *In re: Subramania Siva.*

9 Cr. L. J. 103 :
3 I. C. 22 : 5 M. L. T. 1 :
32 Mad. 3.

—Ss. 14, 15—*Admissibility — Documents written and attested by accused doubted in other cases.*

S. 15, Evidence Act, must be read as subject to S. 14 so far as evidence of knowledge and intention is concerned. In the trial of an accused person for giving false evidence in respect of an alleged forged document, evidence of the opinions of other Judges on other documents written or attested by the accused in suits and proceedings to which he was not a party, is not admissible to prove his intention and knowledge. *Gunwant v. Emperor.*

18 Cr. L. J. 339 :
38 I. C. 723 : 13 N. L. R. 35 :
A. I. R. 1917 Bom. 238.

—Ss. 14, 15—*Evidence of other dacoities—Admissibility.*

An accused cannot be charged with more than three dacoities in all. Evidence of other dacoities by accused is inadmissible either under S. 14 or 15. *Mandi Ghasi v. Emperor.*

13 Cr. L. J. 125 :
13 I. C. 781 : 1912 M. W. N. 49.

—Ss. 14, 15—*Evidence of similar acts, relevancy of.*

Neither under S. 14, nor under S. 15, Evidence Act, can the evidence of facts similar to, but not part of the same transaction as the main fact, be received for the purpose of proving the occurrence of the main fact, which must be established by evidence directly bearing on it, though when the existence of that fact has been so established and a question arises as to the state of mind of the person who did it, or whether the act in question was done accidentally or with a particular knowledge or intention, evidence of similar acts may, under certain conditions, be admitted. *Pritchard v. Emperor.*

30 Cr. L. J. 18 :
112 I. C. 850 : I. R. 1929 Lah. 97 :
A. I. R. 1928 Lah. 382.

—Ss. 14, 15—*Facts relating to similar circumstances, admissibility of—Penal Code (Act XLV of 1860), S. 209.*

In a prosecution under S. 209, Penal Code, for having knowingly made a false claim in a suit against certain persons, evidence relating to other suits brought by the accused against other persons may be admissible against the accused under Ss. 14 and 15, Evidence Act, for the purpose of showing ill-will or animus of the accused, and a systematic course of fraud or a

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systematic series of fraudulent claims and for the purpose of rebutting the defence that the particular suit was brought in good faith or any suggestion that it was brought under some mistake or misapprehension. But evidence relating to similar suits instituted by other persons is not admissible against the accused, unless those suits and the suit instituted by the accused are part of the same transaction or the result of a conspiracy between them. *Raghu Nath Lal v. Emperor.*

19 Cr. L. J. 776 :
46 I. C. 696 : 22 C. W. N. 494 :
A. I. R. 1919 Cal. 1084.

—Ss. 14, 15 — *Similar evidence, admissibility—Penal Code (Act XLV of 1860), S. 415—Cheating—Evidence showing that accused had cheated other persons, admissibility of.*

The accused, a license clerk in a Municipal Office, was charged with having cheated three persons by demanding from each two annas in excess of what was the legitimate license-fee. On behalf of the prosecution, evidence was produced to prove that he had also cheated other persons: *Held*, that the evidence was admissible. *Emperor v. Abdul Wahid Khan.*

12 Cr. L. J. 611 :
14 I. C. 987 : 8 A. L. J. 1269 : 34 All. 93.

—Ss. 14 and 15—*Systematic course of conduct, evidence of—Penal Code (Act XLV of 1860), S. 420—Cheating—Admissibility.*

The charge against the accused was that he obtained money from the complainant by falsely representing himself as the manager of an estate, and offering to secure an appointment for the complainant under himself. Evidence was tendered to show that the accused practised similar frauds upon various other persons: *Held*, that the evidence was admissible under S. 14, Evidence Act, as showing systematic course of conduct on the part of the accused and as negating the existence of any honest motive. S. 15, Evidence Act, is an application of the general rule laid down in S. 14, and the words of the section as well as of illustration (a) show that it is not necessary that all the facts should form part of one transaction but that such acts should form part of a series of similar occurrences. *Emperor v. Debendra Pershad.*

10 Cr. L. J. 9 :
2 I. C. 601 : 9 C. L. J. 610 : 36 Cal. 573.

—Ss. 14, 60—*Statement—Statement made by accused immediately after occurrence—Proof—Murder—Grave and sudden provocation—Burden of proof.*

A statement made by an accused person immediately after the occurrence of the offence is relevant as showing his state of mind, but where that statement is a repetition of what somebody else said to the accused, the latter statement must be proved by direct oral evidence of a person who heard it under S. 60, Evidence Act. *Kakar Singh v. Emperor.*

25 Cr. L. J. 1005 :
81 I. C. 717 : 6 L. L. J. 575 :
A. I. R. 1924 Lah. 733.

—S. 15.

See also (i) Bombay Prevention of Gambling Act, 1887, S. 4.
(ii) Penal Code, 1860, S. 399.

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-----S. 10—Proof of abetment by conspiracy.

The accused, a loading officer of a Railway Company, fraudulently endorsed shorter weights on the back of consignment notes, whereby the Railway Company were defrauded and the cognizances were benefited. It was proved that the firm of the consignees was in negotiation with the accused about something and that the firm had, through its dealings with some loading officer of the Railway Company, been able to defraud the company of considerable sums and the name of the accused signed by himself appeared in one of the note-books of the firm and there was positive evidence that it was the duty of the accused to make out the weights on the consignment notes; *Held*, that under S. 10, Evidence Act, the note-books and *jama kharach* of the firm could be used as evidence of abetment by conspiracy against the accused. *Superintendent and Remembrancer of Legal Affairs, Bengal v. Man Mohan Roy*. 17 Cr. L. J. 439 :

35 I. C. 999 : 20 C. W. N. 292 :
A. I. R. 1916 Cal. 912.

-----S. 10—Proof of conspiracy.

The possession of seditious literature and essays by one member of an association is evidence against the other members for the purpose of ascertaining the object of the association, even where such possession had been obtained or such essays had been written by the said member before the association was formed or before the other members joined the association. *Monindra Mohan Sanyal v. Emperor*. 19 Cr. L. J. 696 :

46 I. C. 152 : 21 C. L. J. 25 :
23 C. W. N. 123 : A. I. R. 1919 Cal. 702.

-----S. 10—Scope.

S. 10, Evidence Act, is quite comprehensive ; this section renders admissible in cases of conspiracy such evidence which is not ordinarily admissible under the English Law, or under the Indian Law. Direct evidence is not essential to prove a conspiracy. From the very nature of cases of this description, it can be seen that it is not possible for the prosecution to produce a written agreement to show that certain persons entered into a conspiracy. The question as to whether or not there was a conspiracy has to be decided in reference to the circumstances which might be proved in the case. No fixed rules can be laid down for proving a conspiracy ; in some cases it may be possible to prove the existence of a conspiracy by producing letters or time writings of the conspirators. In other cases, the existence of a conspiracy may be proved by oral evidence. Then there may be cases in which the fact may be proved by evidence of surrounding circumstances and by the antecedent and subsequent conduct of the accused persons. The existence of the assent of minds which is involved in a conspiracy may be, and from the secrecy of the crime, usually must be, inferred from the proof of facts and circumstances which, taken together, apparently indicate that they are merely part of some complete whole. The first thing for the pro-

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secution in a case of this type is to give satisfactory evidence to show a common purpose.

40 Cr. L. J. 856 :
184 I. C. 191 : 1939 A. L. J. 785 :
12 R. A. 189 : I. L. R. 1939 All. 736 :
1939 A. W. R. 464 : A. I. R. 1939 All. 567.

-----S. 10—Scope—S. 10 refers to common intention in future and not to one in past.

Where S. 10, Evidence Act, refers to the common intention of the conspirators, it refers to the common intention in the future, not to the common intention in the past. *Prilam Hariomal v. Emperor*, 40 Cr. L. J. 882 :

184 I. C. 145 : 1939 Kar. 449 :
12 R. S. 90 : A. I. R. 1939 Sind 185.

-----S. 10—Scope.

Where the prosecution produces the approver, and proves a large number of letters which would connect various members of the conspiracy, these letters and the statements of the approver would be admissible under S. 10 against members of the conspiracy. *Bhola Nath v. Emperor*. 40 Cr. L. J. 856 :

184 I. C. 191 : 1939 A. L. J. 785 :
12 R. A. 189 : I. L. R. 1939 All. 736 :
1939 A. W. R. 464 : A. I. R. 1939 All. 567.

-----S. 10—Scope.

Before the provisions of S. 10 can be invoked, it has to be established from independent evidence that there is reasonable ground to believe that two or more persons have conspired together to commit an offence. *Jhabwala v. Emperor*. 34 Cr. L. J. 967 :

145 I. C. 481 : 1933 A. L. J. 799 :
6 R. A. 65 : A. I. R. 1933 All. 690.

-----S. 10—Scope of—Illustration to S. 10—Interpretation of Statute.

S. 10, Evidence Act, is wider than the English Law and words : "reasonable ground to believe" in the section are not equivalent to proof and where the prosecution have produced *prima facie* proof of a conspiracy to commit murder and where the accused were one and all members of that conspiracy, anything said, done or written by any one of the conspirators, whether accused or not, in reference to the said common intention, after that intention was first entertained by any of them, is a relevant fact under the said section against each and all of the accused, as well for the purpose of proving the existence of the conspiracy as for the purpose of showing that "any such person" was a party to it. *Balmokand v. Emperor*. 16 Cr. L. J. 354 :

28 I. C. 738 : 11 P. W. R. 1915 Cr. :
17 P. R. 1915 Cr. : 246 P. L. R. 1915 :
A. I. R. 1915 Lah. 16.

-----S. 10—Scope of.

Question as to whether maker of statement is dead or not, is immaterial under S. 10. *Saldeo v. Emperor*. 37 Cr. L. J. 182 :

159 I. C. 919 : 1936 O. L. R. 18 :
1936 O. W. N. 28 : 8 R. O. 225 :
A. I. R. 1936 Oudh 164.

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mentioned in any of the sections following
 S. 17. *Nitai Chandra Jana v. Emperor*. (S. B.)
 38 Cr. L. J. 852 :
 170 I. C. 201 : 10 R. C. 98 :
 A. I. R. 1937 Cal. 433.

-----S. 18—Scope of.

The proceeding mentioned in S. 18 refers to the proceeding in which the matter stated by the party is an issue or is relevant to the issue and not to the proceeding, if any, in which the statement has been made. *P. D. Patil v. Emperor*.
 35 Cr. L. J. 131 :
 146 I. C. 653 : 6 R. Rang. 113 :
 A. I. R. 1933 Rang. 292.

-----S. 18—Statement, admissibility of.

Statement by accused admitting his presence at scene of crime—Statement otherwise self-exculpatory—Statement is admissible against himself but not against co-accused. *Nga Ba Kyaing v. Emperor*.
 37 Cr. L. J. 531 :
 162 I. C. 6 : 8 R. Rang. 543 :
 A. I. R. 1936 Rang. 131.

-----Ss. 18, 25, 26—Admission—Offender giving information voluntarily to Police after First Information—Admissibility of statements made—Cr. P. C. S. 162.

Information was laid before the Police, that A, B and C had a fight with another and after killing him, had concealed his body. Subsequently, A went to the Police Station and gave information that there was a quarrel between A, B and C and another and that the latter was lying injured in a field. In a trial of A, B and C for murder : *Held*, (1) that the statement of A was not inadmissible in evidence under Ss. 25 and 26, Evidence Act, as A had not in fact been charged with any offence and was not in Police custody when he made the statement, it was also admissible as an admission under S. 18 of the Evidence Act ; (2) that the statement was not inadmissible under S. 162, Cr. P. C. *Raj Kumar Singh v. Emperor*.
 29 Cr. L. J. 913 :
 111 I. C. 721 : 9 P. L. T. 449 :
 A. I. R. 1928 Pat. 473.

-----S. 21.

- See also (i) Confession.
 (ii) Cr. P. C., 1898, S. 164.
 (iii) Evidence Act, 1872, S. 11.
 (iv) Presidency Towns Insolventy Act, 1909.

-----S. 21—Admission—False report—Report, held, not confession but made by witness and hence admissible.

The appellant reported to the Police that two persons had caused the death of his child. The report was found to be false and malicious, and he was convicted under S. 211, Penal Code. It was contended that the report by the accused was a confession and as S. 164, Cr. P. C., was not complied with, it was inadmissible in evidence : *Held*, that at the time of reporting he was not an accused person but only a witness and the statement recorded was not a confession. It was, however, an admission, and as such, relevant and admissible in evi-

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dence under S. 21, Evidence Act, subject to being properly proved. *Nanhkoo Mahton v. Emperor*.
 37 Cr. L. J. 862 :
 163 I. C. 805 : 17 P. L. T. 472 :
 9 R. P. 40 : 2 B. R. 64 3 (2) :
 A. I. R. 1936 Pat. 358.

-----S. 21—Admission—Statement made by accused as witness in another case, whether admissible against him.

The statement of an accused person as witness in a previous case is admissible against him under S. 21, Evidence Act, to prove admissions of relevant facts made by him in that statement. *Emperor v. Banarsi*.
 25 Cr. L. J. 477 :
 77 I. C. 829 : 22 A. L. J. 144 ;
 46 All. 254 : A. I. R. 1924 All. 381.

-----S. 21—Admission by accused—Application of sections—Non-denial of a fact by accused not to be taken as admission—No pleadings in Criminal cases.

S. 21, Evidence Act, refers to an admission made before the start of proceedings in which it is sought to be given in evidence. It does not refer to pleadings in the case or to an admission contained in such pleadings. An admission made by an accused before the start of proceedings against him may be proved just as much as an admission by the defendant in a civil suit under S. 21, Evidence Act. But as there are no pleadings in a criminal case similar to those in civil proceedings, the mere fact that the accused did not, in his written statement, deny a certain fact (e. g., the publication by him of a libel) does not justify the inference that he admitted that fact. *Jeremiah v. Vas*.
 12 Cr. L. J. 585 :
 12 I. C. 961 : 10 M. L. T. 506 :
 (1911) 2 M. W. N. 576 : 22 M. L. J. 73.

-----S. 21—Confession.

Under S. 21 a confession, being a species of admission, would be relevant and can be proved as against the accused unless it can be shown that there is some provision of law which excludes the proof of such a confession. *Sideshwar Nath v. Emperor*.
 36 Cr. L. J. 45 :
 152 I. C. 174 : 1934 A. L. J. 178 :
 58 All. 730 : 3 A. W. R. 459 :
 7 R. A. 280 : A. I. R. 1934 All. 351.

-----S. 21—Confession not duly made under S. 164, Cr. P. C.

If the confession was read out to the accused and was admitted by him to be correct and was also signed by him, it can perhaps be regarded as a confession in writing and can be proved by the prosecution under S. 21. *Rakhshan v. Emperor*.
 37 Cr. L. J. 432 :
 161 I. C. 339 : 16 Lah. 912 :
 37 P. L. R. 869 : 8 R. L. 721 :
 A. I. R. 1936 Lah. 247.

-----S. 21—Extra-judicial confession to doctor.

Extra-judicial confession to a doctor is ad-

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charged and afterwards examined as a witness in the case: *Held*, that the Magistrate by discharging *R*, separated his case from that of his co-accused and that he ceased to be on trial with his accomplices and, therefore, became a competent witness against them. *Sital Singh v. Emperor*.

21 Cr. L. J. 5 :

54 I. C. 53 : 46 Cal. 700 : 30 C. L. J. 255 :

A. I. R. 1920 Cal. 300.

———Ss. 10, 47—Scope of, *S. 10 Statement relating to conspiracy, admissibility of, against persons who are parties to conspiracy—Corroboration, necessity of—Proof of intention.*

The terms of S. 10, Evidence Act, are very wide and statements relating to a conspiracy are admissible against persons who are parties to the conspiracy. Existence of conspiracy need not be proved before admitting such statements. The provisions of S. 10 framed for the purpose of preventing purely technical objections, would appear to bar out the objection that the evidence could not be admitted until the conspiracy had been proved, because the section provides that the statements may be used to prove the existence of the conspiracy. With these very wide provision of S. 10, applying to acts done in connection with the conspiracy, an act done by the third person may possibly, in certain circumstances, be actually treated as evidence of the existence of the conspiracy. These mere statements of third parties made in the absence of the person implicated form a class by themselves of no probative value whatever standing alone. The terms of S. 10 do not permit of the attaching of weight as real evidence to mere statements of this kind made in the absence of the accused; and the independent evidence required as corroboration of such a statement must be something very much more than the evidence which may ordinarily be regarded as corroborating the evidence of an accomplice. The evidence must be proof of intention, and not merely proof of a possible motive for the intention. *Jagdish Das v. Emperor*.

40 Cr. L. J. 27 :

178 I. C. 324 : 11 R. P. 240 : 5 B. R. 82 :

A. I. R. 1938 Pat. 497.

———S. 11—Entry in hospital register, *whether admissible.*

An entry made in a register of in-door patients in a hospital is admissible in evidence to prove that the person mentioned in the entry was in the hospital on a certain date. *Amolak Ram v. Emperor*.

19 Cr. L. J. 141 :

43 I. C. 429 : 13 P. W. R. 1918 Cr. :

56 P. L. R. 1918 : A. I. R. 1918 Lah. 192.

———S. 11—Facts in issue and collateral facts, *connection between.*

The connection between the facts in issue and the collateral facts sought to be proved must be immediate as to render the co-existence of the two highly probable. *Jhabwala v. Emperor*.

34 Cr. L. J. 967 :

145 I. C. 481 : 1933 A. L. J. 799 : 6 R. A. 65 :

A. I. R. 1933 All. 690.

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———S. 11—Publication, *evidence of fact.*

Copies of printed newspapers containing an account of some proceedings, found in possession of one accused, are evidence of the fact of the publication of such an account in that paper. *Jhabwala v. Emperor*.

34 Cr. L. J. 967 :

145 I. C. 481 : 1933 A. L. J. 799 : 6 R. A. 65 :

A. I. R. 1933 All. 690.

———S. 11—Relevancy.

A cablegram, purporting to be from one C in Calcutta, was sent to P in London. On the receipt of the cablegram and expressly referring to it, P posted a reply to B in Calcutta: *Held*, that P's reply to B would be a relevant fact under S. 11, Evidence Act, and cogent evidence to show that B was the sender of the cablegram. *Booth C. H. v. Emperor*.

15 Cr. L. J. 35 :

22 I. C. 179 : 18 C. L. J. 567 : 18 C. W. N. 386 :

41 Cal. 545 : A. I. R. 1914 Cal. 649.

———S. 11—Relevancy.

Charge under Arms Act—Accused showing revolver to companion—Evidence is relevant. *Saroj Kumar Chakravarty v. Emperor*.

33 Cr. L. J. 854 :

139 I. C. 873 : 55 C. L. J. 439 : 59 Cal. 1361 :

I. R. 1932 Cal. 667 : A. I. R. 1932 Cal. 474.

———S. 11—Statement—*Admissibility of—Statement by wounded person made shortly after attack—Different statement made subsequently—Former statement, whether admissible—Jury—Misdirection—Criminal Procedure Code (Act V of 1898), S. 297.*

A woman mortally wounded and believed to be at the point of death made a statement to a Magistrate naming a particular person as her assailant; she subsequently recovered and was produced as a witness for the prosecution at the trial of the person previously named by her and stated that she did not recognise the person who had attacked her; the statement previously made was admitted in evidence and placed before the Jury: *Held*, that under S. 11, Evidence Act, the admission of the contents of the statement was not justified, the mere fact that the witness had made such a statement had no bearing on the main fact in issue, and that the placing of that statement before the Jury was a misdirection of a very serious nature. *Emperor v. Abdul Sheikh*.

21 Cr. L. J. 183 :

54 I. C. 887 : 23 C. W. N. 933 :

A. I. R. 1920 Cal. 90.

———Ss. 11, 14, 15—Facts disclosing similar transaction, *admissibility of.*

Accused were charged with having obtained money from complainants by falsely representing that they were servants of one Akbari Begam, a wealthy lady of Rampur, who was anxious to lend money on easy terms: *Held*, that evidence that at or about the very same time when the accused were alleged to have made such a representation to the complainants, they had been making precisely the same representation to a third

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———S. 24—*Acceptance in part.*

The question to consider in the first place is, whether the confession is relevant or not. If it is not relevant, it does not matter how many true facts were mentioned in it, it cannot be used against the other persons accused in the case. *Sarju v. Emperor.*

36 Cr. L. J. 925 :
156 I. C. 357 : 1935 A. L. J. 960 :
1935 A. W. N. 937 : 7 R. A. 1066 :
A. I. R. 1935 All. 882.

———S. 24—*Acceptance in part.*

Where there is no other evidence to show affirmatively that any portion of the exculpatory element in a confession is false, the Court must accept or reject the confession as a whole. *Sanlaydo v. Emperor.*

35 Cr. L. J. 262 :
147 I. C. 49 : 6 R. Rang. 142 :
A. I. R. 1933 Rang. 204.

———S. 24—*Admissibility.*

A statement made by a person who at the time was not an accused but subsequently became one, is exactly on the same footing as if he had been an accused at the time he made it. If such a statement does not, in any way, connect the accused with the crime charged, it is admissible in evidence. *Abdul Ghani v. Emperor.*

32 Cr. L. J. 985 :
133 I. C. 55 : I. R. 1931 Lah. 727 :
A. I. R. 1931 Lah. 763.

———S. 24 — *Admission — Prosecution for forgery—Admission in previous suit that document is genuine, admissibility of—Attesting forged document—Nature of offence—Prosecution of attester—Complaint, necessity of.*

In a prosecution for forgery, a statement made by the accused in a previous civil case that the document is a genuine one, may be proved in evidence on the footing that it is not a confession but an admission. S. 195 (1) (c), Cr. P. C., applies only to forgery when committed or alleged to have been committed by a party to the proceedings before him. If a person falsely puts his name down as an attesting witness to the signature of somebody who he knows, has never signed at all, he is guilty of forgery just as well as the scribe. Where a person who executed a forged document and the attesting witnesses were charged under S. 467, Penal Code, and S. 467 read with S. 109 of the Code and the Judge in the charge to the Jury said that if the Jury had reasons to believe that the accused were conspiring, evidence given by one of the accused would be evidence against the others: *Held*, that there was no misdirection in spite of the fact that the accused were not charged under S. 120-B. *Ambar Ali v. Emperor.*

31 Cr. L. J. 564 :
123 I. C. 739 : A. I. R. 1929 Cal. 539.

———S. 24 — *Admission and confession, difference between.*

In the Evidence Act the term "admission" is usually applied to a civil transaction and to those matters in criminal cases which do not involve a criminal intent, while the term

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"confession" is usually used in a Criminal Court as denoting an acknowledgment of guilt, and the criminal law as regards evidence does make a difference between an admission and a confession. *Ambar Ali v. Emperor.*

31 Cr. L. J. 564 :
123 I. C. 739 : A. I. R. 1929 Cal. 539.

———S. 24—*Admission of guilt to villagers evidentiary value of.*

The evidence of an admission of guilt by an accused person to the villagers may be as strong an evidence as a confession before a Magistrate. It does not require corroboration. But the Court has to decide in each case whether the person before whom the admissions are said to have been made are trustworthy witnesses. *Emperor v. Badal.*

30 Cr. L. J. 33 :
112 I. C. 897 : 5 O. W. N. 698 :
I. R. 1929 Oudh 53 :
A. I. R. 1928 Oudh 393.

———S. 24—*Applicability of—Approver in police custody but not threatened—Statement of, admissibility.*

The principle that it is only when an approver's disclosure is extorted as the result of undue duress, such as threats or violence, that S. 24 is applicable and the statement must be ruled out of evidence, does not apply where the Court is not satisfied that in spite of being in police custody which was subsequently held to be illegal, the approver was either subjected or threatened to be subjected to any such ill-treatment as would make the statement inadmissible under S. 24. *Inder Pal v. Emperor.*

37 Cr. L. J. 732 :
162 I. C. 969 : 8 R. L. 978 :
38 P. L. R. 1128 :
A. I. R. 1936 Lah. 409.

———S. 24—*Confession.*

The voluntary or involuntary nature of a confession involves a mixed question of both fact and law. *Bhakta Bhusan Pramanik v. Emperor.*

37 Cr. L. J. 676 :
162 I. C. 636 : 40 C. W. N. 668 :
63 C. L. J. 142 : 63 Cal. 1089 :
8 R. C. 618 : A. I. R. 1935 Cal. 227.

———S. 24—*Confession, record of—Duty of Magistrate recording confession—Admissibility of.*

A confession duly recorded by a Magistrate under S. 164, Cr. P. C., with the proper certificate appended to it, will be admitted in evidence subject to the provisions and restrictions contained in S. 24, Evidence Act. Under the latter section, a well-grounded conjecture reasonably based upon circumstances disclosed in the confession, is sufficient to exclude the confession because it is idle to expect the accused to prove the inducement, threat, or promise, for in most cases, such proof cannot be available. S. 164, Cr. P. C., is, however, inapplicable to the Police in the town of Calcutta, and a confession recorded by a Presidency Magistrate in the town of Calcutta

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sequently, he was tried for and convicted of offences under Ss. 148, 365 and 366, Penal Code, in connection with a later incident of December 10, 1911, when the girl was actually carried away: *Held*, that in so far as the charge under S. 366 was concerned, evidence of the previous incident was not admissible, but, that in so far as the charge under S. 365 was concerned, the fact that a complaint had been preferred against the accused in respect of the first incident would be relevant as furnishing evidence of a motive for confining the girl. *Baharuddin Mandal v. Emperor*.
15 Cr. L. J. 43 (b):
22 I. C. 187 : 18 C. L. J. 578 :
A. I. R. 1914 Cal. 589.

—S. 14—Evidence of state of mind.

Evidence of similar acts is admissible when such acts evidence a system, and to rebut, in anticipation, the probable plea of mistake or innocent condition of mind which the accused may take. *Ram Kishen v. Emperor*.

29 Cr. L. J. 835 :
111 I. C. 387 : A. I. R. 1928 Lah. 880.

—S. 14—Intention — Admissibility of offensive speeches.

Proceedings under S. 108, Cr. P. C., for speeches offending against S. 153-A, I. P. C.—Previous speeches made by speaker are admissible under S. 14, in determining the speaker's intention. *Jagannath Prasad v. Emperor*.

41 Cr. L. J. 713 :
189 I. C. 74 : 1940 N. L. J. 31 :
13 R. N. 39 : A. I. R. 1940 Nag. 134.

—S. 14—Intention—Sedition — Document adduced as evidence of intention—Definite connection, whether necessary—Subsequent writings and writings not printed and published, admissibility of.

Where a document is sought to be adduced in evidence to show the intention of the accused, it is not necessary to show that there is a definite connection between the document and the particular writing which is the subject-matter of the charge. The main question in such cases is whether the writing that is sought to be put in as evidence of intention does, in fact, contain matter which supports the contention that such intention is thereby shown. Where the actual writer of a pamphlet is being tried for sedition, a document written by him can be admitted in evidence to show his intention even though it was never printed and published. Primarily anything which he has written is, if it comes within the general words of S. 14, Evidence Act, relevant and admissible, provided it is within a reasonable time of the particular document in respect of which he is being charged. *Emperor v. Phillip Spratt*.

29 Cr. L. J. 320 :
108 I. C. 30 : 30 Bom. L. R. 315 :
A. I. R. 1928 Bom. 78.

—S. 14—Relevancy — Evidence as to history of dealings between accused and officers in charge under S. 409, Penal Code.

In a prosecution under S. 409, Penal Code, the evidence as to the history and the dealings between accused and his officers is

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relevant under S. 14, Evidence Act, for the purpose of showing the accused's state of mind, and it is from this evidence, that the Court has to deduce whether the intention of the accused was dishonest within the meaning of the statute, always remembering that if there is room for reasonable doubt, the accused, is to get the benefit of it. *Emperor v. Chaturbhuj Narain Chondhury*.

37 Cr. L. J. 877 :
164 I. C. 74 : 15 Pat. 108 :
17 P. L. T. 302 : 2 B. R. 696 : 9 R. P. 77 :
A. I. R. 1936 Pat. 350.

—S. 14—Relevancy.

Unless there is anything which indicates an intention to commit a particular crime which is the subject of investigation, statements made by the accused prior to the crime, brought in as facts showing the state of mind of the accused, are not relevant. *Mrs. M. F. Rego v. Emperor*.

34 Cr. L. J. 505 :
143 I. C. 17 : 29 N. L. R. 251 :
I. R. 1933 Nag. 153 :
A. I. R. 1933 Nag. 136.

—S. 14—Scope, evidence of intention, etc.—Evidence of previous crime—Proof of intention of motive.

An accused cannot be convicted of an offence with which he is charged, simply because he has been guilty of another offence. Therefore, when such evidence is offered to prove his commission of the offence on trial, evidence of his participation, either in act or design, in commission or preparation, in an independent crime, cannot be received as substantive evidence of the offence on trial. Evidence, however, may be given to prove the elements mentioned in S. 14, Evidence Act, intention and like matters. *Baharuddin Mandal v. Emperor*.

15 Cr. L. J. 43 (b) :
22 I. C. 187 : 18 C. L. J. 578 :
A. I. R. 1914 Cal. 589.

—S. 14—Statement of approver—Material corroboration.

The statement of an approver without material corroboration is insufficient for a conviction. *Suleman v. Emperor*.

25 Cr. L. J. 252 :
76 I. C. 716 : A. I. R. 1923 Lah. 385.

—S. 14, Illus. (a), (b)—Admissibility—Penal Code (Act XLV of 1860), Ss. 235, 243—Counterfeit coins and instruments for their manufacture found in house of accused in two districts—Trial in one district.

Where a person is on his trial for offences under Ss. 235 and 243, Penal Code, of being in possession of counterfeit coins and instruments and material for counterfeiting coins is found in his house in the district in which he was being tried, evidence of his being in possession of counterfeit coins and instruments for their manufacture at his house in another district is admissible at the trial under S. 14, illustrations (a) and (b), Evidence Act. *Misiri Gosain v. Emperor*.

22 Cr. L. J. 407 :
61 I. C. 647 : 3 U. P. L. R. Pat. 50.

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show that the accused was in charge of a Police constable and that under the continued questioning to which he was subjected by the Investigating Officer, he finally broke down, cannot be regarded as a voluntary confession, and is one within the words of S. 24, Evidence Act. Where in spite of the directions of the High Court that confessions should be recorded in open Court, a Magistrate records a confession at 11 o'clock at night, this circumstance shows that the confession was not voluntary and that the Magistrate failed to exercise a proper discretion in the matter. *Emperor v. Pramatha Nath Bagehi*.

21 Cr. L. J. 266 :
55 I. C. 282 : 30 C. L. J. 503 :
A. I. R. 1920 Cal. 78.

———S. 24—*Confession with hope of advantage—Confession made under belief that accused would thereby gain some advantage, admissibility of.*

A confession made by an accused person is not invalid merely because it was made under the belief that he would gain some benefit by making it. *Public Prosecutor v. Chandaya Shetty*.

31 Cr. L. J. 983 :
126 I. C. 109 : A. I. R. 1929 Mad. 92.

———S. 24—*Confession with hope of pardon.*

Confession made on hope of pardon should not be rejected solely on that ground. *Emperor v. Sher Singh*.

34 Cr. L. J. 598 :
143 I. C. 499 : 34 P. L. R. 704 :
I. R. 1933 Lah. 361 :
A. I. R. 1933 Lah. 388.

———S. 24—*Confession with hope of reward—No inducement by person in authority—Admissibility of confession.*

In order that a confession may be inadmissible under S. 24, Evidence Act, it is necessary that there must be something from which it can be inferred that the inducement or promise was given to the accused by some person who had authority to give it. It is not enough for the accused to entertain a hope which may turn out to be an idle hope that, in consequence of his giving certain information, he would be rewarded by the Government. *Samiuddin v. Emperor*.

29 Cr. L. J. 497 :
109 I. C. 225 : 32 C. W. N. 616 :
A. I. R. 1928 Cal. 500.

———S. 24—*Confession wrongly excluded—Admissibility of, in revision.*

A confession of an accused even if wrongly excluded by the trial Magistrate under S. 24, Evidence Act, cannot be taken into consideration in revision. *Billu v. Emperor*.

31 Cr. L. J. 947 :
126 I. C. 53 : 24 S. L. R. 338 :
A. I. R. 1930 Sind 168.

———S. 24—*Corroborative evidence, meaning and nature of.*

The fact that an accused was absent when the Police went to his house on the night on which the offence took place, is a mere suspicious circumstance not inconsistent with the inno-

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cence of the accused and is not sufficient corroboration of a retracted confession for purposes of conviction. Corroboration by circumstantial evidence is not sufficient unless the circumstances constituting corroboration would, if believed to exist, by themselves support a conviction. *Devendra Bhattacharya v. Emperor*.

28 Cr. L. J. 497 :
101 I. C. 881 : 8 P. L. T. 566 :
A. I. R. 1927 Pat. 257.

———S. 24—*Duty of Court—Confession—Inducement, threat or promise cannot be inferred from mere conjecture—Duty of Court to examine evidence.*

It is not possible for a Court to hold that the making of a confession appears to have been caused by any inducement, threat or promise except upon evidence before it. The inference may be suggested by the confession itself or by the evidence of the prosecution or by the evidence adduced by the accused person or by the surrounding circumstances which the Court is always bound to take into consideration, but the conclusion cannot be reached on surmise or conjecture. Whether or not a confession is admissible in evidence is a matter which is to be decided after a full consideration of the evidence and the particular circumstances of each case. *Budhoo v. Emperor*.

29 Cr. L. J. 385 :
108 I. C. 387 : A. I. R. 1928 Lah. 676.

———S. 24—*Duty of Court.*

Trial by Jury—Judge has to decide if confession is admissible—Jury can consider voluntariness or otherwise of confession in considering if it is true—Judge directing Jury as to whether it is admissible, commits error of law—No failure of justice—Trial is not vitiated. *Bhakla Bhusan Pramanik v. Emperor*.

37 Cr. L. J. 676 :
162 I. C. 636 : 63 C. L. J. 142 :
40 C. W. N. 668 :
63 Cal. 1089 : 8 R. Cr. 618 :
A. I. R. 1936 Cal. 227.

———S. 24—*Evidentiary value of.*

S. 24 leaves it entirely to the Court to form its opinion as to whether the inducement, threat or promise held out was sufficient to lead the accused to suppose that he would derive some benefit of a temporal nature. *Emperor v. Attursing*.

33 Cr. L. J. 650 :
138 I. C. 618 : 26 S. L. R. 191 :
I. R. 1933 Sind 87 (2) :
A. I. R. 1932 Sind 64.

———S. 24—*Evidentiary value of.*

When the only real evidence in the case is that of an approver and his description differs from that given on another occasion, such testimony cannot be held to be reliable. *Amrit Lal v. Emperor*.

35 Cr. L. J. 654 :
148 I. C. 400 : 6 R. L. 550 :
A. I. R. 1933 Lah. 987.

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—S. 15—Admissibility.

Accused charged under S. 409, I. P. C.—Plea of *bona fide* payment to wrong persons under misapprehension—Evidence of other transactions of conversion of money to personal use is not admissible. *C. G. Lloyd v. Emperor*.

34 Cr. L. J. 294 :
142 I. C. 274 (2) : I. R. 1933 Cal. 250 :
A. I. R. 1933 Cal. 136.

—S. 15—Applicability of.

S. 15 applies to all cases where the question is whether an untruthful statement is "accidental or intentional or (made) with particular knowledge or intention." The test to be applied must include every possible defence and not be confined merely to the actual defence raised by the accused. *Emperor v. Yakub Ali*.

18 Cr. L. J. 529 :
39 I. C. 273 : 15 A. L. J. 241 :
39 All. 273 : A. I. R. 1917 All. 251.

—S. 15—Conduct.

Conduct alleged and proved against accused susceptible of more than one interpretation—Evidence of similar acts is admissible to show systematic conduct. *C. G. Lloyd v. Emperor*.

34 Cr. L. J. 294 :
142 I. C. 274 (2) : I. R. 1933 Cal. 250 :
A. I. R. 1933 Cal. 136.

—S. 15—Evidence of similar instances, admissibility of.

In a trial for non-payment of octroi duty, evidence that the accused had been connected with similar cases of non-payment of octroi is admissible to prove knowledge or intention of the accused. Whenever it is necessary to rebut, even by anticipation, the defence of accident, mistake or other innocent condition of mind, evidence that the accused has been concerned in a systematic course of conduct of same specific kind as that in question may be given. *Emperor v. Harjivan Valji*.

27 Cr. L. J. 1335 :
98 I. C. 407 : 28 Bom. L. R. 115 :
50 Bom. 174 : A. I. R. 1926 Bom. 231.

—S. 15—Scope of—Whether makes admissible hearsay evidence or evidence of facts discovered by investigating officer and not properly proved.

The words of S. 15, Evidence Act, are wide, for the material word used is "concerned" but they are not so wide as to admit hearsay evidence or the evidence of facts alleged to have been discovered by the Investigating Police Officer in the course of his investigation and not properly proved. There is also a difference between the admissibility of evidence and its cogency or weight, and facts in favour of an accused as well as facts against him should be pointed out by the Judge to the Jury in a Sessions trial. *Shewaram Jethanand Shivadasani v. Emperor*.

41 Cr. L. J. 28 :
184 I. C. 474 : 1940 Kar. 249 :
12 R. S. 107 : A. I. R. 1939 Sind 209.

—S. 15—Similar facts, evidence of.

The evidence of similar, but unconnected

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facts, is not admissible to prove a fact in issue. *Kedar Nath v. Emperor*.

36 Cr. L. J. 1199 :
157 I. C. 557 : 1935 A. L. J. 493 :
1935 A. W. R. 628 :
8 R. A. 214 : A. I. R. 1935 All. 521.

—S. 15, illus. (a)—Three successive fires to insured shops whether accident or design—Accused getting insurance money in each case—Fire held not accidental but part of design in which accused had his share.

Where three successive shops of the accused, each of which had been insured, have been burnt down on three successive occasions, on each of which the accused had claimed and got the insurance amount, the successive fires indicate according to Illus. (a) to S. 15, Evidence Act, that the fires were not accidental but part of a design in which the accused had a share. *Nural Amin v. Emperor*.

40 Cr. L. J. 667 :
182 I. C. 386 : I. L. R. 1939, 1 Cal. 511 :
12 R. C. 51 : A. I. R. 1939 Cal. 335.

—Ss. 15, 30—Confession in warrant case—Admissibility of confession against co-accused.

Where in a warrant case an accused pleads guilty to the charge and makes a confession on which his conviction could be based, his confessional statement is admissible in evidence against his co-accused under S. 30, Evidence Act. *Ram Kishen v. Emperor*.

29 Cr. L. J. 835 :
111 I. C. 387 : A. I. R. 1928 Lah. 880.

—Ss. 15, 111 (b) — Defalcations, evidence of—Admissibility—Evidence of defalcations other than those forming basis of the charge, when admissible.

Generally evidence adduced to prove that an accused person has committed acts which are not the subject of charges in a trial is irrelevant, and must be excluded unless it is otherwise relevant, and greatest care ought to be taken to reject evidence unless it is plainly necessary to prove something which is really in issue. Evidence of defalcations both prior or subsequent to those for which an accused is being tried, whether such defalcations formed the basis of another charge on which the accused may have been acquitted or not, are admissible in evidence to prove guilty intent as also to anticipate the defence of the non-existence of such intent. *Emperor v. Stewart*.

27 Cr. L. J. 1217 :
97 I. C. 1041 : A. I. R. 1927 Sind 28.

—S. 17—Confession—Confession, if should be admission within S. 17.

What S. 21, Evidence Act, makes relevant is an admission, and while an admission includes a confession, the confession must still be an admission within the meaning of S. 17, Evidence Act, before it can be held to be relevant under S. 21. It is necessary, therefore, that the statement of an accused person to be relevant as a confession under S. 21 must be shown to have been made by a person and under circumstances

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———S. 24—*Inducement.*

The mere fact that the accused hoped for a pardon will not render the confession inadmissible. Nor will the fact that it was not recorded with the precautions required by S. 164, Cr. P. C., compel its exclusion. *Amrit Lal v. Emperor.*

35 Cr. L. J. 654 :
148 I. C. 400 : 6 R. L. 550 :
A. I. R. 1933 Lah. 987.

———S. 24—*Inducement, effect of.*

If it is found that a confession recorded by a Magistrate under S. 164, Cr. P. C., was procured by a Police Officer by the offer of an inducement, the confession becomes inadmissible under S. 24, Evidence Act. *Emperor v. Chnuva.*

22 Cr. L. J. 68 :
59 I. C. 324 : 22 Bom. L. R. 1247.

———S. 24—*Inducement, effect of—Confession obtained by inducement—Magistrate, duty of.*

As soon as an accused person, whose confession is being recorded, informs the Magistrate that he is making the confession under inducement, it becomes useless to record the confession, and such a confession, if recorded, is inadmissible in evidence and ought not to be allowed to go to the Jury. It makes no difference whether there actually was any inducement or not. *Dinanath Sundraji Ravle v. Emperor.*

22 Cr. L. J. 318 :
60 I. C. 1006 : 23 Bom. L. R. 338 :
45 Bom. 1086 : A. I. R. 1921 Bom. 70.

———S. 24—*Inducement by person in authority—Confession to village headman, admissibility of—Village headman, whether 'person in authority'—Confession not made owing to inducement, admissibility of—Value of such confession.*

The headman of a village is a person in authority within the meaning of S. 24, Evidence Act, but before a confession made to him could be ruled out, it must be found that the making of the confession was caused by an inducement, threat or promise, and further, that such inducement, threat or promise was sufficient to give the accused grounds which would appear to the accused reasonable for supposing that he would gain any advantage or avoid any evil of a temporal nature. Where there was evidence to show that the headman told the accused who had made a confession to him that if she would tell the truth he would speak to the *Thanedar* to let her off but there was nothing to show that the confession was made on account of this inducement: *Held*, that the confession was not inadmissible. It is always a wise rule, when evidence can be questioned and the evidence is not necessary for decision, to attach as little importance as possible to such evidence. *Umari v. Emperor.*

31 Cr. L. J. 680 :
124 I. C. 427 : 6 O. W. N. 947.

———S. 24—*Inducement of a pleader's clerk—Confession made to Pleader's clerk—Confession, validity of.*

An inducement offered by a Pleader's clerk to an accused person to obtain a confession does not invalidate the confession inasmuch as

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the clerk is not a person in authority with reference to the charge. *Emperor v. Rom Avadh.*

26 Cr. L. J. 1154 :
88 I. C. 514 : 2 O. W. N. 398 :
12 O. L. J. 495 : A. I. R. 1925 Oudh 597.

———S. 24—*Interpretation.*

The expression 'person in authority' includes not only the prosecutor, but also the wife of the prosecutor, or one of the prosecutors and even, in some circumstances, relations of the same. The test is, has the person authority to interfere in the matter, and any concern or interest in it, is sufficient to give him that authority. *Smith v. Emperor.*

19 Cr. L. J. 189 :
43 I. C. 605 : A. I. R. 1918 Mad. 111.

———S. 24—*Miscellaneous—Cr. P. C., S. 298—Jury trial—Question whether confession is voluntary, whether to be determined by Judge or Jury—Leaving question to Jury—Grave misdirection—Burden of proof of voluntary nature of confession—'If it appears,' meaning of.*

The question whether a confession made by the accused was made voluntarily or not, is a question to be decided by the Judge and not by the Jury, and it is a serious error of law to leave this question to the Jury. Even assuming that the onus is on the accused, it would be a grave misdirection to tell the Jury that an accused person can never prove that a confession is not voluntary. The expression 'if it appears' used in S. 24, Evidence Act, is not as strong an expression as 'proved' and it is, therefore, open to an accused person to show that the circumstances under which a confession was made, were such as to justify the inference that it was obtained by threat or inducement, even if he is not able to give definite proof of his allegation. *Khuro Mandal v. Emperor.*

31 Cr. L. J. 909 :
125 I. C. 730 : 33 C. W. N. 1112 :
57 Cal. 649 : A. I. R. 1929 Cal. 726.

———S. 24—*Miscellaneous—Retracted confession, whether sufficient for conviction—Impression of Magistrate recording confession, value of—Impression of Judge about accused's demeanour, value of.*

A retracted confession is sufficient for the conviction of a person making the confession even though certain parts of the confession are not found to be true. A Sessions Judge should not question the Magistrate before whom a confession has been made as to his impressions about the accused's demeanour while he was making the confession and the Magistrate's opinion that the accused was at the time of making the confession suffering from a guilty conscience, is not admissible in evidence. A Judge should not state in his judgment that in his opinion the accused looked like a murderer. *Nawab v. Emperor.*

30 Cr. L. J. 967 :
118 I. C. 757 : 6 O. W. N. 545 :
I. R. 1929 Oudh 453 :
A. I. R. 1929 Oudh 381.

———S. 24—*Person in authority.*

A confession made to a *zemindar* of a village who was also an Honorary Magistrate with

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missible under S. 21, Evidence Act. *Emperor v. Kannoujee Brahman*. 41 Cr. L. J. 533 :

188 I. C. 57 : 19 Pat. 301 :

6 B. R. 577 : 12 R. P. 674 :

A. I. R. 1940 Pat. 163.

———S. 21—Extradition proceedings in London—*English Criminal Evidence Act, 1898*, (61 & 62, Vic. C. 36), S. 1—*Examination of accused person on oath—Admissibility of evidence at trial held in British India*.

Evidence given on oath by an accused person in London during extradition proceedings containing an admission by the said accused person is admissible in evidence against the said accused person, at his trial in British India, under S. 21, Evidence Act. *Emperor v. E. C. D. Wheller*. 29 Cr. L. J. 962 :

112 I. C. 50 : 22 S. L. R. 458 :

A. I. R. 1929 Sind 15.

———S. 21—Oral confession.

Oral confession to a Magistrate is *prima facie* relevant under Ss. 21 and 26, Evidence Act, though it has to be proved by oral testimony. *Emperor v. Maruti Santa More*.

21 Cr. L. J. 65 :

54 I. C. 465 : 21 Bom. L. R. 1065 :

A. I. R. 1920 Bom. 322.

———S. 21—Scope.

S. 21, Evidence Act, refers to "all cases in which any matter is required by law to be reduced to the form of a document." *Nga Thein Maung v. Emperor*. 37 Cr. L. J. 920 :

164 I. C. 162 : 9 R. Rang. 64 :

A. I. R. 1936 Rang. 350.

———Ss. 21, 24, 25, 26—*Confession—Oral confession made to a Magistrate, whether admissible—Proof*.

In order to make a confession admissible in evidence, it is not necessary that it must be recorded. An oral confession by an accused person not being open to exception under Ss. 24, 25 or 26, Evidence Act, is as an admission by an accused person, a relevant fact and may be proved at his trial under S. 21. Such a confession made to a Magistrate is relevant and may be proved by the evidence of the Magistrate. Where, therefore, the accused made a verbal confession of his guilt before an Honorary Magistrate: *Held*, that the confession was admissible in evidence and could be proved by the evidence of the Magistrate. *Feroz v. Emperor*.

19 Cr. L. J. 651 :

45 I. C. 843 : 11 P. R. 1918 Cr. :

A. I. R. 1918 Lah. 92.

———Ss. 21, 27—*Oral confession of accused to Magistrate—Accused pointing out spot—No discovery—Conduct of accused, whether admissible*.

An oral confession made by an accused person to a Magistrate is, as an admission by him, a relevant fact and may be proved by the testimony of the Magistrate given at the trial. Apart from any of the accompanying statements which the accused might have made to the Magistrate, the mere fact of the accused pointing out various spots is no evidence against

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him where no recovery is stated to have been made in consequence of the said pointing out of spots. *Baghel Singh v. Emperor*.

31 Cr. L. J. 269 :

121 I. C. 497 : A. I. R. 1929 Lah. 794.

———Ss. 21, 155, 157—*Admission of guilt—Admission in application dictated to petitioner in Court and then presented to Magistrate—Admissibility under S. 21*.

The admission of a guilt in an application dictated to a petitioner in a Magistrate's Court and afterwards presented to the Magistrate, is admissible under S. 21, Evidence Act. It does not become irrelevant under S. 24 or S. 25 of that Act. The application need not be verified in accordance with the provisions of S. 364, Cr. P. C. It is the statement in the confession and not the verification of the statement which affords the evidence that the accused is guilty. *Ram Nares v. Emperor*. 40 Cr. L. J. 559 :

181 I. C. 646 : 1939 A. L. J. 107 :

11 R. A. 597 : 1939 A. W. R. 190 :

I. L. R. 1939 All. 377 :

A. I. R. 1939 All. 242.

———S. 23.

Cr. P. C. Ss. 256, 257.

———S. 24.

———Acceptance in part.

———Admissibility.

———Admission.

———Applicability of.

———Confession.

———Corroborative evidence.

———Duty of Court.

———Evidentiary value of.

———Extra-judicial confession.

———Illegal custody.

———Inducement.

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———Miscellaneous.

———Person in authority.

———Proof of.

———Relevancy.

———Retracted confession.

———Scope of.

———Statement.

———Value of confession.

———Voluntary confession.

———What is confession.

———S. 24.

See also (i) Approver.

(ii) Confession.

(iii) Cr. P. C., 1898, Ss. 164, 164 (3), 167, 298 (1), 337.

(iv) Evidence Act, 1872, S. 8.

———S. 24—Acceptance in part.

Confession must be taken as a whole. Inculpatory part alone must not be accepted while rejecting exculpatory element as inherently incredible. *Balmokund v. Emperor*.

32 Cr. L. J. 362 :

129 I. C. 258 : 1930 A. L. J. 1481 :

I. R. 1931 All. 130 : 52 All. 1011 :

A. I. R. 1931 All. 1.

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—S. 24—*Person in authority—Murder—Confession to Thugyi on inducement to confess, whether admissible—Questions and answers based on such confession, admissibility of.*

The *thugyi* or headman of a village is a person in authority within the meaning of S. 24, Evidence Act. Therefore, the confession made by accused to the *thugyi* on being sent for by him after he was told that he would not be punished if he had not taken part in the offence, is irrelevant and inadmissible in evidence, as what the *thugyi* told the accused was an inducement to make a statement. Other questions and answers in the examination of the accused based on this inadmissible statement are also inadmissible. *Nga Kya Thin v. Emperor.*

15 Cr. L. J. 681 :

26 I. C. 129 : 8 L. B. R. 94 : 8 Bur. L. T. 39 :

A. I. R. 1914 L. Bur. 175.

—S. 24—*Person in authority, President of Panchayat, if, Confession—Jury—Misdirection to Jury.*

Where it transpired that the accused, with a view to poison a certain person, had given a powder to a girl to be administered to that person and a *salish* (assembly) consisting of the President of a *panchayat* and others was summoned to consider the case which was being made against the accused, and on their telling her that if she confessed, the matter would be compromised, she made a confession, and on her trial, the Sessions Judge in his charge to the Jury said: "A confession made under these circumstances is not inadmissible because (1) the members of the *salish* were not persons in authority; (2) the accused was not then charged with any offence." *Held*, that the Judge possibly misdirected the Jury, inasmuch as it was clearly erroneous on his part to tell the Jury that the President of a *panchayat* was not a person in authority within the purview of S. 24, Evidence Act, and that the accused was not then charged with any offence, for she was before the *salish* on a charge of having attempted to commit murder. *Emperor v. Aushi Bibi.*

17 Cr. L. J. 188 :

33 I. C. 828 : 20 C. W. N. 512 : 23 C. L. J. 477 :

A. I. R. 1916 Cal. 352.

—S. 24—*Person in authority—President of Village Vigilance Committee, whether person in authority—Statement elicited by him from accused by promise to try to save him—Relevancy.*

The President of the Village Vigilance Committee is a person in authority within the meaning of S. 24, and a statement elicited by him from the accused by a promise that if accused would tell the truth, he would try to save him, is irrelevant under S. 24. *In re : Botlu Sathalavadan.*

40 Cr. L. J. 809 :

183 I. C. 561 : 1939 M. W. N. 341 :

49 L. W. 522 : 12 R. M. 314 :

A. I. R. 1939 Mad. 515.

—S. 24—*Person in authority—Test—Village Police Patel, whether a person in authority*

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—*Charge to Jury—Omission to state important points in accused's favour—Interference by High Court—Statement of confessional character before Magistrate, if governed by S. 24.*

In order to determine whether a certain individual is a "person in authority" within the meaning of S. 24, Evidence Act, the test is whether the person had authority to interfere with the matter, and any concern or interest in it is sufficient to give him that authority. Where, therefore, a Police *Patel* took part in the investigation and actually arrested one of the accused: *Held*, that he was a person in authority within the meaning of S. 24. Where it appears that the Sessions Judge has prejudiced the accused by omitting from his charge to the Jury points of capital importance telling in the accused's favour, the High Court will interfere and set aside the conviction. *Fakira Appaya v. Emperor.*

17 Cr. L. J. 133 :

33 I. C. 309 : 17 Bom. L. R. 1059 :

40 Bom. 220 : A. I. R. 1915 Bom. 249.

—S. 24—*Person in authority.*

The belief of an accused that the persons to whom he made a confession were "persons in authority," is not sufficient to bring them within the term. By a person in authority is meant some one who has the right or power to fulfil the promise or carry out the threat. *Bhojo v. Emperor.*

36 Cr. L. J. 223 :

152 I. C. 1032 : 7 R. S. 106 :

A. I. R. 1934 Sind 172.

—S. 24—*Person in authority.*

The words "person in authority" in S. 24 have reference to a person who has authority to interfere in the matter under enquiry. *Santokhi Beldar v. Emperor.*

34 Cr. L. J. 349 :

142 I. C. 474 : 14 P. L. T. 82 :

12 Pat. 241 : I. R. 1933 Pat. 139 :

A. I. R. 1933 Pat. 149.

—S. 24—*Person in authority.*

The words "person in authority" in S. 24, Evidence Act, include the prosecution. *Asholosh Dutt v. Emperor.*

23 Cr. L. J. 573 :

68 I. C. 413 : 26 C. W. N. 54 :

A. I. R. 1921 Cal. 458.

—S. 24—*Person in authority.*

Where zamindars are directly connected with the investigation by the direction of the Police, they are persons in authority. *Nawal Kewal v. Emperor.*

33 Cr. L. J. 641 :

138 I. C. 614 : I. R. 1932 Sind 81 :

A. I. R. 1932 Sind 55.

—S. 24—*Person in authority—Zemindar in the U. P.—Whether a person in authority—Confession to zemindar—Relevancy in absence of evidence of inducement or promise.*

A person in authority within the meaning of S. 24, Evidence Act, is one who has authority to interfere in the matter of the charge against the appellant. In the United Provinces a *zemindar* holds no official position and a *lambardar* who is only appointed to collect revenue from co-sharers in a *mohal*, has no authority whatsoever to interfere with criminal

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need not conform to the provisions of that section. *Emperor v. Panchakari Dutt.*

26 Cr. L. J. 782 :
86 I. C. 414 : 29 C. W. N. 300 :
52 Cal. 67 : A. I. R. 1925 Cal. 587.

———S. 24—Confession, rejection of.

In order to justify the rejection of a confession, a lesser degree of probability would be necessary. *Nayeb Shahana v. Emperor.*

35 Cr. L. J. 1479 :
152 I. C. 44 : 38 C. W. N. 659 :
61 Cal. 399 : 7 R. C. 225 (2) :
A. I. R. 1934 Cal. 636.

———S. 24—Confession, relevancy of.

On the question whether the confessions of the accused were not irrelevant under S. 24, Evidence Act : *Held*, that it is not sufficient to render a confession irrelevant under S. 24 that there may have been added to it a statement which has been improperly induced by threat or promise. In order to make a confession irrelevant, it must be shown that the confession itself was improperly induced. Had it been open to us to decide whether the confessions ought to have been admitted, it was doubtful whether S. 24 might not have shut them out. *Emperor v. Narayen.*

6 Cr. L. J. 164 :
9 Bom. L. R. 789 : 2 M. L. T. 414 :
32 Bom. 111.

———S. 24—Confession, what is.

Any statement made by a person which would suggest an inference as to his guilt, may be a confession within the meaning of S. 24, Indian Evidence Act. *Emperor v. Cunna.*

22 Cr. L. J. 68 :
59 I. C. 324 : 22 Bom. L. R. 1247.

———S. 24—Confession and admission—Distinction.

A confession is something more than a mere admission. In order to make a statement a confession, it is necessary that the inference as to the criminality of the person making it should be gathered from the statement itself. If the statement itself is not inculminating, it is doubtful whether the fact that it does become inculminating owing to subsequent events, would make it a confession. *Smith v. Emperor.*

19 Cr. L. J. 189 :
43 I. C. 605 : A. I. R. 1918 Mad. 111.

———S. 24—Confession in custody.

Accused in police custody only for short period and never in illegal custody—Confession is not tainted. *Bhabananda Banerjee v. Emperor.* (S. B.)

34 Cr. L. J. 1222 :
146 I. C. 186 : 57 C. L. J. 213 :
6 R. C. 183 : A. I. R. 1933 Cal. 747.

———S. 24—Confession made to Superintendent of Excise, admissibility of.

A confession made by an accused person on his trial for illicit possession of opium to a Superintendent of Excise is admissible in evidence, provided no inducement, threat or promise was held out or made to the accused

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in order to procure the confession. *Rokun Ali v. Emperor.*

19 Cr. L. J. 524 :
45 I. C. 284 : 22 C. W. N. 451 :
A. I. R. 1918 Cal. 138.

———S. 24—Confession to reliable and respectable witness—Accused not in Police custody—No duress or undue influence—Confession, value of.

Where a confession is made by an accused person while he is not in Police custody, to a respectable and reliable person and the confession is not obtained as a result of duress or undue influence, it is very reliable and valuable evidence against him, and upon this confession alone, he can be found guilty. *Sheo Balak v. Emperor.*

28 Cr. L. J. 104 :
99 I. C. 232 : 3 O. W. N. 301 Sup.

———S. 24—Confession under hope of pardon, whether admissible.

During an investigation into certain dacoities, the Police came into touch with one K who admitted his participation in the dacoities and intimated to the Police that he was willing to tell them what he knew for consideration. He was told that if he made a true and voluntary statement, the question of his pardon would be considered. He then made an elaborate statement which was recorded under S. 164, Cr. P. C., and which amounted to a confession. He was eventually put upon his trial and was convicted and his confession was used both as against himself and as against his co-accused : *Held*, that the confession having been obtained from K by holding out to him the hope that he would be pardoned if he made a confession, was rendered inadmissible in evidence by the provisions of S. 24, Evidence Act, and its use at the trial was, therefore, illegal. *Tara v. Emperor.*

24 Cr. L. J. 785 :
74 I. C. 529 : 21 A. L. J. 585 :
45 All. 633 : A. I. R. 1924 All. 72.

———S. 24—Confession under inducement—Circumstances under which confession is made must be seen—Confession held not admissible.

The circumstances under which a confession is made, must always be scrutinized with great care and caution, and in all cases, the period of the detention of the accused in Police custody before a confession is made is always an important fact to be carefully considered. Though illegal detention does not necessarily vitiate a confession, it is a fact to be carefully considered in every case. Where the accused in his statement says that he was induced to confess by a promise to become a Court witness in ordinary circumstances, little weight might attach to such a statement : *Held*, however, that in this circumstance, coupled with other facts of the case, the confession of the accused should be rejected under S. 24, Evidence Act. *Dhama Hiranand v. Emperor.*

39 Cr. L. J. 10 :
171 I. C. 737 : 31 S. L. R. 494 :
10 R. S. 124 : A. I. R. 1937 Sind 251.

———S. 24—Confession under Police pressure, whether voluntary.

A confession recorded in circumstances which

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————S. 24—*Retracted confession—Evidentiary value of—Principles applicable.*

It is unsafe for a Court to rely and act on a confession which has been retracted unless, after a consideration of the whole of the evidence in the case, the Court is in a position to come to the unhesitating conclusion that the confession is true, that is to say, usually, unless the confession is corroborated by credible independent evidence. *Emperor v. Biscwar De.*

24 Cr. L. J. 145 :
71 I. C. 497 : 26 C. W. N. 1010 :
A. I. R. 1923 Cal. 217.

————S. 24—*Retracted confession—Statement made under promise of pardon retracted—Want of corroborative evidence—Conviction, whether legal.*

In the absence of corroboration in material particulars, it is not safe to convict on a retracted confession, unless, from the peculiar circumstances in which it was made and judging from the reasons, alleged or apparent of the retraction, there remains a high degree of certainty that the confession, notwithstanding its having been resiled from, is genuine. Where, therefore, an accused retracted a statement made by him under promise of pardon, which, so far from being corroborated by any other evidence whatsoever, was contradicted in important particulars by other prosecution evidence, and where the accused was convicted on such a statement: *Held*, that the conviction was bad. *Khushi v. Emperor.*

16 Cr. L. J. 815 :
31 I. C. 831 : 6 P. W. R. 1916 Cr.
A. I. R. 1915 Lah. 307.

————S. 24—*Retracted confession.*

The credibility of retracted confession is a matter to be decided by the Court according to the circumstances of each particular case. *Nanhey v. Emperor.*

33 Cr. L. J. 16 :
134 I. C. 876 : 8 O. W. N. 1033 :
I. R. 1931 Oudh 412 :
A. I. R. 1931 Oudh 412.

————S. 24—*Retracted confession.*

Though a confession retracted subsequently is evidence against the person making it, yet it cannot be used as against a co-accused without substantial corroboration. As a matter of practice Courts decline to convict accused persons on retracted confessions unless those confessions receive material corroboration; but this is a rule of prudence and not a rule of law, and where a Court is satisfied that the confessions are true, an accused can be properly convicted on the basis of such confessions. *Devendra Bhattacharya v. Emperor.*

28 Cr. L. J. 497 :
101 I. C. 881 : 8 P. L. T. 566 :
A. I. R. 1927 Pat. 257.

————S. 24—*Retracted Confession—Value of.*

As a matter of law, it cannot be laid down that a confession made and subsequently retracted by a prisoner cannot be accepted as evidence of his guilt without independent corroborative evidence; and a prisoner may be convicted, on his own confession, without

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any corroborative evidence, and even when a confession has been retracted, if the Jury believe that the confession contains a true account of the prisoner's connection with the crime. But it is a rule of practice not to rely on a retracted confession unless it is corroborated by some evidence to show that the confession is true. *Emperor v. Kutub Buz.*

126 I. C. 547 : 57 Cal. 488 :
I. R. 1930 Cal. 739 : A. I. R. 1930 Cal. 633.

————S. 24—*Retracted confession.*

Where a Magistrate before recording the confession of an accused takes every precaution to protect his interests, the confession, though subsequently retracted, is admissible in evidence and is sufficient for conviction. *Durga v. Emperor.*

32 Cr. L. J. 830 :
132 I. C. 70 : 8 O. W. N. 247 :
I. R. 1931 Oudh 230.

————S. 24—*Retracted confession—Value of.*

As against a co-accused, a confession which has been retracted at the first opportunity, should not be relied upon, unless corroborated by independent testimony. The mere fact that a blood-stained garment is found in a house is not sufficient proof that any particular member of the family residing in that house is guilty of a murder which has recently been committed in the village. *Karm Singh v. Emperor.*

17 Cr. L. J. 226 :
34 I. C. 642 : 32 P. W. R. 1916 Cr. :
26 P. R. 1916 Cr. : 153 P. L. R. 1916 :
A. I. R. 1916 Lah. 216.

————S. 24—*Retracted confession.*

Where the accused has retracted his confession, but the reason given is so absurd as to deserve no consideration, the confession may be acted upon. *In re : Arunachala Reddi.*

33 Cr. L. J. 586 :
138 I. C. 240 : 55 Mad. 717 :
35 L. W. 607 : 62 M. L. J. 680 :
1932 M. W. N. 644 : I. R. 1932 Mad. 552 :
A. I. R. 1932 Mad. 500.

————S. 24—*Retracted confession—Value of—Conviction on retracted confession; validity of.*

Though utmost caution must be used in dealing with retracted confessions, there is no rule and they are not by themselves legal evidence sufficient to justify a conviction. *Sanwaldas v. Emperor.*

31 Cr. L. J. 753 :
125 I. C. 44 : A. I. R. 1929 Sind 253.

————S. 24—*Retracted confession, value of—Corroboration, whether necessary.*

A confession by an accused person made after he has been for a considerable time in Police custody, and subsequently retracted, ought not to be accepted without corroboration. *Rusna Teli v. Emperor.*

21 Cr. L. J. 177 :
54 I. C. 881 : A. I. R. 1920 Pat. 451.

————S. 24—*Retracted confession, value of—Independent corroboration, necessity of—Benefit of doubt.*

A retracted confession must be supported by independent reliable evidence corroborating it

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————S. 24—Extra-judicial confession, *value of*.

An extra-judicial confession is of a great importance, but it must be a true extra-judicial confession and not one fabricated in order to provide additional evidence for what rightly or wrongly the investigating officer considered to be a weak case. *Taule v. Emperor*.

30 Cr. L. J. 829 :
117 I. C. 737 : 6 O. W. N. 309 :
I. R. 1929 Oudh 385 :
A. I. R. 1929 Oudh 272.

————S. 24—Illegal custody, *effect of*.

Illegal or improper detention by the Police vitiates a confession and might lead to a presumption that there was ill-treatment. If a prisoner wishes to make a voluntary statement, the Police must produce him before a Magistrate and let him do it whatever might be its character. Delay in producing prisoners who are willing to have their confessions recorded effects the value of the confession. Once a prisoner has begun to confess, he places himself in a position from which it is difficult for him to extract himself and thereafter the slightest hint from his prosecutor is sufficient to induce him to say anything and everything that may suit the prosecution. *Emperor v. Panchakari Dutt*.

26 Cr. L. J. 782 :
86 I. C. 414 : 29 C. W. N. 300 :
52 Cal. 67 : A. I. R. 1925 Cal. 587.

————S. 24—Inducement—Confession—*Admissibility of confession*.

Certain accused persons were sent before a Magistrate to have their statements or confessions recorded. They were warned by the Magistrate, before they made their statements, "not to expect any advantage or disadvantage therefrom." Held, that the confessions made by the accused after this warning had been given to them, were entirely inadmissible in evidence. *Emperor v. Basora*.

3 Cr. L. J. 324 :
26 A. W. N. 75.

————S. 24—Inducement—Confession to agent of landlord of accused—Confession, if admissible in evidence.

A confession was made by the accused before a retired Subedar, the agent of a big landlord in the village whose tenant the accused was. Before the accused confessed to him, he was told that if he told the truth, it would be to his advantage: Held, that there was an inducement and the confession was made to a person who held a position of considerable authority in the village which is in no way inferior to that of a *Zaildar*, and hence it was not admissible in evidence under S. 24, Evidence Act. *Muhammad v. Emperor*.

37 Cr. L. J. 1026 :
164 I. C. 891 : 9 R. L. 177 :
A. I. R. 1936 Lah. 264.

————S. 24—Inducement—Confession, voluntary, nature of—Determination of question—Judge, duty of.

S. 24, Evidence Act, provides that a con-

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fession of an accused person is irrelevant in a criminal proceeding if the making of the confession appears to the Court to have been caused by any inducement, having reference to the charge against the accused person, proceeding from a person in authority. S. 24 requires the Judge to decide whether it appears to him that there was any inducement. Where the admissibility of a confession depends upon a conclusion as to the truth about conflicting evidence antecedent to the making of the confession and tending to show that it is liable to rejection under S. 21, Evidence Act, the Trial Judge must make up his mind upon this issue and decide the question of admissibility before relying upon the contents of the confession. *Fateh Chand v. Emperor*.

26 Cr. L. J. 937 :
86 I. C. 1001 : A. I. R. 1925 All. 606.

————S. 24—Inducement—Court must satisfy itself that confession is not the result of inducement—Circumstances must be considered.

If the circumstances are such as to raise a strong suspicion in the mind of the Judge that the confession has been induced by threats or promises of the nature described in S. 24, Evidence Act, then the confession is irrelevant. It is not necessary for the defence to establish conclusively that there was such inducement or threat. It is sufficient if the circumstances afford reasonable grounds for believing that there was such an inducement or threat. *Mohsena Khatun v. Emperor*.

40 Cr. L. J. 880 :
184 I. C. 222 : 43 C. W. N. 893 :
12 R. C. 214 : A. I. R. 1939 Cal. 610.

————S. 24—Inducement.

Extra-judicial confession—Whether words used were intended to convey inducement depends on circumstances—Burden of proof that confession was not so induced is on the prosecution. *Mor Phalai v. Emperor*.

35 Cr. L. J. 527 :
147 I. C. 1033 : 28 S. L. R. 5 :
6 R. S. 175 : A. I. R. 1933 Sind 409.

————S. 24—Inducement.

If a Superior Officer holds out some inducement to a subordinate and then any confessional statement is made by that subordinate, it cannot be used against him in subsequent prosecution. *Bhagabati Charan Patra v. Emperor*.

34 Cr. L. J. 1187 :
145 I. C. 962 : 60 Cal. 719 :
6 R. C. 175 : A. I. R. 1933 Cal. 644.

————S. 24—Inducement.

If in the circumstances of a case it appears to the Court that there is reason to suspect that a confession was obtained by inducement so as to bring it under the provisions of S. 24, Evidence Act, the prosecution to make the confession admissible in evidence against the accused must show that it was freely made. *Ashutosh Dutt v. Emperor*.

23 Cr. L. J. 573 :
68 I. C. 413 : 26 C. W. N. 54 :
A. I. R. 1921 Cal. 458.

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———S. 24—Statement under inducement or threat—Incriminating statement made to person in authority under inducement or threat, admissibility of.

Where a person who is suspected of an offence is asked questions by a person in direct authority over him, and it is only in consequence of an inducement by way of benefit (for instance, if you confess you shall go free) or a threat (for instance, if you do not tell the truth—or if you do not own up you will be severely punished) that the person under suspicion made self-incriminating statements, such statements, broadly speaking, are not receivable in evidence because they are not in law regarded as strictly of a voluntary nature but as having been perhaps induced in the one case by a false hope and in the other by fear. On the other hand, a merely moral exhortation to tell the truth is in no way objectionable. *Emperor v. Akhileshwari Prasad*. 26 Cr. L. J. 1441 (b) : 89 I. C. 961 : 4 Pat. 646 : A. I. R. 1925 Pat. 772.

———S. 24—Value of confession.

Confession with hope that he would gain any advantage or avoid any evil in reference to proceedings against him—S. 24 excludes such confession. *Santokhi Beldar v. Emperor*.

34 Cr. L. J. 349 :
142 I. C. 474 : 14 P. L. T. 821 :
12 Pat. 241 : I. R. 1933 Pat. 139 :
A. I. R. 1933 Pat. 149.

———S. 24—Value of confession.

When recorded according to law, there is an initial presumption that it does not offend against S. 24, but it is not admissible if it appears to have been obtained by inducement, etc. No such presumption exists when it is not recorded according to law. *Bakhsan v. Emperor*.

37 Cr. L. J. 432 :
161 I. C. 339 : 16 Lah. 912 :
37 P. L. R. 869 : 8 R. L. 72 :
A. I. R. 1936 Lah. 247.

———S. 24—Voluntary confession.

The circumstances in which a confession is made should not be such as to afford a well-grounded suspicion that it was not voluntary. *In re : Krishna Iyer*.

36 Cr. L. J. 1107 :
157 I. C. 297 : 8 R. M. 137 :
1935 M. W. N. 82 :
A. I. R. 1935 Mad. 479.

———S. 24—Voluntary confession—Confession made after several conversations with Police Officers, admissibility of.

To render a confession admissible, it must be made voluntarily, and not as the result of any inducement or threat. A confession made after a conversation of several days with the Investigating Officer and other Police Officers cannot be said to be a voluntary confession so as to make it admissible against the person who made it. *Mobarak Ali v. Emperor*.

20 Cr. L. J. 833 :
53 I. C. 929 : 23 C. W. N. 886 :
A. I. R. 1919 Cal. 11.

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———S. 24—Voluntary confession—Magistrate taking all possible precautions before recording confession—Accused under no inducement or threat, or promise of pardon—Accused making statement voluntarily and without any idea of getting pardon—Conviction—based on confession alone, legality of.

Where the Magistrate who records a confession takes all possible precautions to satisfy himself that the confession is made voluntarily and that the accused making the confession is under no inducement or threat at the time when he makes the confession and is informed clearly that if he confessed, he would not get a pardon and the accused states that he quite understands all these circumstances, that he wishes to make his statement voluntarily and that he has no idea that he would get a pardon, and then gives a clear detailed account as to how the offence was committed, the accused can be rightly convicted upon this confession alone. *Mahipat Singh v. Emperor*.

28 Cr. L. J. 752 :
103 I. C. 800 : 1 Luck. Cas. 223 :
A. I. R. 1927 Oudh 597.

———S. 24—Voluntary confession—Duty of Court.

A direction by the Magistrate to the accused to make the statement voluntarily is quite a different thing from questioning him to find out whether he is making the statement voluntarily. The questions put to the accused must be directed to eliciting facts which will enable the Magistrate to judge of the character of the confession that the accused is about to make, and not merely repeat some set formulae which the accused can scarcely appreciate and merely ask him whether his confession is voluntary, a question which he will answer in the affirmative, the more readily the greater the influence, if any, that he may be labouring under. *Emperor v. Panchakari Dutt*.

26 Cr. L. J. 782 :
86 I. C. 414 : 52 Cal. 67 :
29 C. W. N. 300 :
A. I. R. 1925 Cal. 587.

———S. 24—Voluntary confession—Presumption.

In the case of confessions duly certified, it may fairly be assumed that the Magistrate did his best to assure himself that the statements were voluntary. *Public Prosecutor v. Polasanpalle Nagaraju*.

32 Cr. L. J. 262 :
129 I. C. 229 : 59 M. L. J. 114 :
32 L. W. 285 : 1930 M. W. N. 250 :
I. R. 1931 Mad. 229 :
A. I. R. 1931 Mad. 42.

———S. 24—What is confession.

A true confession made by the person who takes part in a murder invariably adds something to the knowledge already possessed by the investigating officer and that is the greatest test of its truth. *Mata Din v. Emperor*.

32 Cr. L. J. 854 :
132 I. C. 228 : 8 O. W. N. 228 :
I. R. 1931 Oudh 244 :
A. I. R. 1931 Oudh 166.

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third class powers and who was called by the Police in the case as a prominent landlord in the locality to assist them in the investigation and who gave them valuable assistance, is a confession made to "a person in authority" within the meaning of that term as used in S. 24, Evidence Act. A confession is irrelevant where it has been caused by an inducement proceeding from a person in authority and sufficient to give the accused grounds which would appear to them reasonable for supposing that by making the confession they would gain an advantage of a temporal nature in reference to the proceedings against them. *Devendra Bhattacharya v. Emperor*.

28 Cr. L. J. 497 :
101 I. C. 881 : 8 P. L. T. 566 :
A. I. R. 1927 Pat. 257.

———S. 24—Person in authority.

An Honorary Magistrate who is also a *zaildar* is a person in authority. *Hasmat Khan v. Emperor*.

36 Cr. L. J. 211 :
152 I. C. 998 : 37 P. L. R. 25 :
15 Lah. 856 : 7 R. L. 348 :
A. I. R. 1934 Lah. 417.

———S. 24—Person in authority—Collecting and assistant Panchayat—Confession to panchayat upon inducement, admissibility of—Subsequent statement to Magistrate—Confession retracted afterwards, effect of.

Where a collecting *panchayat* and an assistant *panchayat* take a prominent part in holding an inquiry into the circumstances of the commission of a murder, they must be taken to be "persons in authority" within the meaning of S. 24, Evidence Act, and if the accused is assured by the assistant *panchayat* that he would be let off if he disclosed everything, and in consequence of that assurance, he makes a statement, that statement is inadmissible under S. 24. *Emperor v. Ganesh Chandra Goldar*.

24 Cr. L. J. 760 :
74 I. C. 264 : 50 Cal. 127 :
A. I. R. 1923 Cal. 458.

———S. 24—Person in authority—Confession.

The mere fact that the accused thought that the person to whom he was making a confession was a person in authority is not sufficient to render the confession inadmissible in evidence. Though a too restricted meaning should not be given to the expression 'person in authority' in S. 24, the test to be applied is whether the person had authority to interfere in the matter and any concern or interest in it would be sufficient to give him that authority. Where a villager who was neither a *panchayat*, nor *lambardar* nor a person who exercised any influence or authority over the villagers, caught a culprit and the latter made a confession to him requesting him to save him : *Held*, that the confession was not one made to a person in authority and was admissible in evidence. *Emperor v. Kutub Bux*.

126 I. C. 547 : 57 Cal. 488 :
I. R. 1930 Cal. 739 : A. I. R. 1930 Cal. 633.

———S. 24—Person in authority—Con-

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Jession before panchayat—Panchayat, if Police officer or a person in authority.

A *panchayat* is not a Police officer but he is a person in authority within the meaning of S. 24, Evidence Act. A confession made by an accused before the *panchayat* who only told the accused to speak the truth, is admissible in evidence. *Emperor v. Jasha Bewa*.

6 Cr. L. J. 154 :
11 C. W. N. 904.

———S. 24—Persons in authority—Confessions to panchayatdars, admissibility of.

Panchayatdars considering the nature of their functions are practically private detectives, helping the Police in finding out criminals and are not "persons in authority" over the accused within the meaning of S. 24, Evidence Act, and confessions of accused made to them are strictly admissible in evidence. *Mulimayandi Thevan v. Emperor*.

25 Cr. L. J. 269 :
76 I. C. 829 : 18 L. W. 886 :
45 M. L. J. 845 : A. I. R. 1924 Mad. 230.

———S. 24—Person in authority—Confession to lambardar, admissibility of.

A *lambardar* is a person in authority and a confession made to him under threats is inadmissible in evidence under S. 24. *Muhammad Yar v. Emperor*.

25 Cr. L. J. 939 :
81 I. C. 555 : 4 L. L. J. 235 :
A. I. R. 1922 Lah. 263.

———S. 24—Person in authority—Confession to *ziladar*, admissibility of—'Ziladar.'

Evidence of admission of guilt to villagers may be sufficient to justify the conviction of a person accused of murder, but the evidence that such a confession has been made must be as closely scrutinised as all other evidence which is used to prove a case of murder. A *ziladar*, serving under a big estate is a person of great importance in the villages which belong to that estate and is a 'person in authority' within the meaning of S. 24, Evidence Act, so far as the villagers are concerned, and a confession made to him under inducement is inadmissible in evidence. *Taule v. Emperor*.

30 Cr. L. J. 829 :
117 I. C. 737 : 6 O. W. N. 309 :
I. R. 1929 Oudh 385 : A. I. R. 1929 Oudh 272.

———S. 24—Person in authority—Inamkhor.

An *inamkhor* is not a person in authority within the meaning of S. 24, Evidence Act. *Ghulam Muhammad v. Emperor*.

30 Cr. L. J. 375 :
114 I. C. 719 : I. R. 1929 Lah. 319 :
30 P. L. R. 269 : A. I. R. 1929 Lah. 558.

———S. 24—Person in authority.

It is doubtful whether a person who is merely the landlord of the village and a member of the Union Board, is a person in authority within the meaning of S. 24. *Brakta Bhusan Pramanik v. Emperor*.

37 Cr. L. J. 676 :
162 I. C. 636 : 40 C. W. N. 668 :
63 C. L. J. 142 : 63 Cal. 1089 : 8 R. C. 618 :
A. I. R. 1936 Cal. 227.

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Subsequently, while in Police custody, accused pointed out the place where the body was buried and himself dug it up: *Held*, (1) that the confession to the *zemindars* was inadmissible in evidence under S. 24, Evidence Act, because they were investigating the offence just as if they were police men and must be considered as persons in authority, who procured the confession by their inducement and promise; (2) That the confession to the Magistrate was equally inadmissible as there was nothing whatever to show that the impression caused by the promise had been fully removed so as to render the confession admissible under S. 28; (3) That the statement made to the Police relating to the finding of the body was admissible, although the accused himself dug up the body. *Imperator v. Dabud*.

12 Cr. L. J. 119 :
9 I. C. 718 ; 4 S. L. R. 209.

———Ss. 24, 25, 26, 27, 39—Confession by accused to Police or while in Police custody—*Discovery in consequence of confession—Confession, extent of, admissibility of—Limitations on admissibility of such confession—Test of admissibility.*

The prisoner was tried for the murder of a boy who was wearing certain ornaments at the time of his disappearance, but the ornaments were not found on his corpse when it was recovered from a well. At the trial the Sub-Inspector of Police deposed to the fact that in consequence of information received from the prisoner, he had recovered from one Allah Din silver *karas* which the boy was wearing when he was last seen alive. The witness was then asked to disclose the information communicated to him by the prisoner which caused the discovery of the fact deposed to by him. He stated that the prisoner had, during the investigation, made the following statement: "I had removed the *karas*; and pushed the boy into the well and had pledged the *karas* with Allah Din"; *Held*, by the Full Bench that the statement that the accused had pledged with Allah Din the *karas* subsequently recovered from the latter was admissible under S. 27, Evidence Act, and that the rest of the incriminating statement could not be received in evidence. The confessional statement that the accused had pushed the boy into the well was wholly inadmissible as it related to a separate matter and had no connection with the possession of ornaments by Allah Din which was the only fact discovered. Nor could the statement that the prisoner had removed the *karas* from the boy be regarded as the immediate cause of the discovery. *Per Shadi Lal, C. J.*—The language of S. 27, Evidence Act, shows that the Legislature has prescribed two limitations in order to define the scope of the information provable against the accused: (1) The information must be such as has caused the discovery of the fact. In other words, the fact must be the consequence, and the information the cause of its discovery. The information and the fact should be connected with each other as cause and effect; (2). The information must "relate distinctly" to the

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fact discovered, that is to say, the information must be clearly connected with the fact. These conditions, when combined, lead to the conclusion that only that portion of the information is provable which is the immediate or proximate cause of the discovery of the fact. Anything, which is not connected with the fact as its cause, or is connected with it, not as its immediate or direct cause but as its remote cause, does not come within the ambit of the section and should be excluded. The admissibility or otherwise of the information must depend upon its intrinsic character and not upon the manner in which the sentence conveying the information is framed by the Police Officer or the prisoner. In determining the extent of the statement which should be provable on the ground of its being the proximate cause of the discovery, the Courts must have regard not to the composition of the sentences in which the statement is couched but to its substance. S. 39, Evidence Act, cannot be invoked for the purpose of letting in a confession in respect of which the bar created by Ss. 24, 25 and 26, Evidence Act, has not been removed by S. 27, Evidence Act. It was never intended that a matter which has been expressly ruled out should be allowed to come in, in the garb of an explanatory statement. It is an established rule of Indian Law that every confession must be rejected which has been improperly obtained or has been made by an accused person to a Police Officer or whilst he is in custody of a Police Officer. If circumstances, however, appear which rebut the presumption of its being false and demonstrate its truth, the confession should be allowed. When, in consequence of information furnished by the accused, a fact is discovered then the discovery of that fact supplies a guarantee of the truth of the information which may amount to a confession and the confession in so far as it is confirmed by the discovery should be deemed to be true. *Sukhan v. Emperor*.

30 Cr. L. J. 414 :
115 I. C. 6 : 30 P. L. R. 197 :
11 L. L. J. 159 : 10 Lah. 283 :
I. R. 1929 Lah. 342 :
A. I. R. 1929 Lah. 344.

———Ss. 24, 25, 28—'Person in authority', meaning of—*Zamindar, whether is person in authority.*

S. 24, Evidence Act, refers not to a person whom the accused may regard as being in authority but to a person who actually is in authority. The main test as to when a person is deemed to be a 'person in authority' within the meaning of the section is, whether he stands in such relations to the accused as imply some power of control or interference in regard to his prosecution. *Zemindars* *quazemindars* are not necessarily 'persons in authority.' The question must be decided in each case upon its particular circumstances but whenever *zemindars* are directly concerned in an investigation by the direction of the Police, then they clearly are 'persons in authority' within the meaning S. 24, Evidence Act. *Co-villagers* of an accused person cannot be regarded as 'persons in authority' from the

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matters and no villager, however ignorant, would ascribe any such power to persons of this kind. A confession alleged to have been made to the *zemindars* is not irrelevant under S. 24, Evidence Act, when there is nothing to suggest that any inducement or promise was offered or made because the persons to whom the confession was made could not possibly be described as persons in authority within the meaning of the section. *Jivan v. Emperor*.

37 Cr. L. J. 852 (b) :
163 I. C. 661 : 1936 A. L. J. 376 ;
1936 A. W. R. 409 : 9 R. A. 56 :
A. I. R. 1936 All. 470.

———S. 24—Proof.

Where the main foundation for a conviction is a confession, the prosecution must establish : (1) that a confession was made; (2) that evidence of it can be given; and (3) that it is true. *Bhojo v. Emperor*. 36 Cr. L. J. 223 :

152 I. C. 1032 : 7 R. S. 106 :
A. I. R. 1934 Sind 172.

———S. 24—Relevancy—Confession admitted in evidence—Such admission is sufficient to make it evidence.

S. 24, Evidence Act, is a rule of exclusion because it declares that a confession made by an accused person in certain circumstances is irrelevant in a criminal proceeding. In every case in which a confession is admitted in evidence in a criminal proceeding, the fact that evidence of the confession is admitted is sufficient to make the confession evidence. *In re : Navanithammal*. 40 Cr. L. J. 170 :

179 I. C. 143 : 1938 M. W. N. 1120 :
48 L. W. 777 : (1938) 2 M. L. J. 1065 :
11 R. M. 531 : A. I. R. 1939 Mad. 3.

———S. 24—Retracted confession.

An accused's confession subsequently retracted and not tallying with the other evidence in the case, cannot be pressed as strong evidence against him. *Emperor v. Tilak*.

17 Cr. L. J. 33 :
32 I. C. 321 : 2 O. L. J. 468 :
A. I. R. 1916 Oudh 86.

———S. 24—Retracted confession—Confession—Conflict regarding manner of making it—Benefit of doubt.

When the case against an accused person rests entirely on his own confession and there is conflict as to the manner in which the confession was obtained by the prosecuting agency from the accused, the latter is justified in asking the Court to give him the benefit of doubt. A confession made voluntarily and without any kind of pressure having been brought to bear on the accused is sufficient to sustain a conviction even if it is retracted by the accused subsequently. *Rahman v. Emperor*.

30 Cr. L. J. 1080 :
119 I. C. 420 : I. R. 1929 Lah. 884 :
A. I. R. 1930 Lah. 88.

———S. 24—Retracted confession.

Confession of co-accused—Confession retracted—Absence of corroboration—Conviction

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on the confession alone is not justifiable. *Nga Lu Min v. Emperor*. 34 Cr. L. J. 558 :
143 I. C. 142 : I. R. 1933 Rang. 57 (1) :
A. I. R. 1933 Rang. 73.

———S. 24—Retracted confession—Confession, retracted, how far can support conviction—Involuntary nature of confession, proof of—Confession, false, whether proof of its being not voluntary.

It is unsafe to rely on a retracted confession unless it is corroborated in material particulars by credible independent evidence, or unless the character of the confession and the circumstances under which it was taken indicate its truth. S. 24 does not require positive proof of improper inducement to justify the rejection of a confession. If *prima facie* a confession is false, inconsistent or absurd, that may suggest that it is not voluntary. *Sheikh Shafi v. Emperor*. 31 Cr. L. J. 661 :
124 I. C. 459 : A. I. R. 1930 Nag. 259.

———S. 24—Retracted confession—Confession uncorroborated but true, whether sufficient for conviction—Admissibility of such confession against co-accused.

Where a confession though retracted subsequently is a true confession, it is sufficient without any corroborative evidence for the conviction of the accused who made it. Though such a confession is not, by itself, sufficient evidence for conviction of a co-accused, it is admissible in evidence against the co-accused also. *Shco Ratan v. Emperor*.

30 Cr. L. J. 360 :
114 I. C. 771 : 6 O. W. N. 159 :
I. R. 1929 Oudh 179 :
A. I. R. 1929 Oudh 167.

———S. 24—Retracted confession—Conviction, legality of.

It is most unsafe to convict an accused person upon a retracted confession unless there is corroboration of the confession by other evidence. *Har Prasad v. Emperor*.

17 Cr. L. J. 453 (a) :
36 I. C. 133 : A. I. R. 1917 All. 421.

———S. 24—Retracted confession—Conviction, legality of.

There is no absolute rule that a confession, having been retracted, cannot be acted upon without material corroboration. If the reasons given by an accused person for having made a confession, which he subsequently withdraws are, on the face of them false, there is no reason why that confession should not be acted on, as it stands and without any further corroboration. *Kesava Pillai v. Emperor*.

31 Cr. L. J. 768 :
125 I. C. 77 : 30 L. W. 642 :
57 M. L. J. 681 : 1929 M. W. N. 901 :
53 Mad. 160 : A. I. R. 1929 Mad. 837.

———S. 24—Retracted confession.

Even when a part of the confession is found to be false, the entire confession should not be rejected simply for that reason. *Durga v. Emperor*.

32 Cr. L. J. 830 :
132 I. C. 70 : 8 O. W. N. 247 :
I. R. 1931 Oudh 230.

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ed Officer of their Regiment, who stated to the accused that he had already obtained information from another person and promised secrecy if they told the truth: *Held*, that the Company Officer was not shown to be a person in authority in relation to any proceedings that were to be taken against him; and that the alleged deception and inducement were covered by the provisions of S. 29, Evidence Act, 1872. *Emperor v. Mahamadbuksh*. 4 Cr. L. J. 49 : 8 Bom. L. R. 507.

———Ss. 24, 30—Confession to village Punch—Admissibility of.

A village *Punch* who is actively assisting the Police in the investigation of a crime is a person in authority within the meaning of S. 24, Evidence Act, and confession made to him under inducement or threat is irrelevant. Where the accused was called after midnight by a village *Punch* who was assisting the Police and was told that one of his associates had disclosed the truth and that he had better say what he knew, and the accused then wept and made a confession: *Held*, that the confession was wholly inadmissible. *Kunja Subudhi v. Emperor*.

30 Cr. L. J. 675 :
116 I. C. 770 : 8 Pat. 289 :
I. R. 1929 Pat. 338 : 10 P. L. T. 549 :
A. I. R. 1929 Pat. 275.

———Ss. 24, 30—Retracted confessions.

Where a confession made to a person in authority is followed by a confession to a Magistrate, and there is reason to suppose that the confession to the person in authority was made under inducement or threat, the confession to the Magistrate cannot be safely acted upon, unless it is shown that the impression made upon the mind of the accused had been entirely removed therefrom before he made the subsequent confession. *Kunja Subudhi v. Emperor*.

30 Cr. L. J. 675 :
116 I. C. 770 : 8 Pat. 289 :
I. R. 1929 Pat. 338 : 10 P. L. T. 549 :
A. I. R. 1929 Pat. 275.

———Ss. 24, 30—Retracted confession, use of, against maker and co-accused.

The Rule is now firmly established that ordinarily it is improper to use the retracted confession of an accused against his co-accused and that, generally speaking, it is not safe to convict the maker of such a confession without corroboration in material particulars. *Sher Muhammad v. Emperor*.

28 Cr. L. J. 854 :
104 I. C. 630 : 28 P. L. R. 583 :
A. I. R. 1927 Lah. 765.

———Ss. 24, 30—Retracted confession, value of.

A retracted confession must be regarded with the utmost suspicion. It must be regarded with stronger suspicion than that which attaches to the confession of an approver who gives evidence in Court. But nevertheless, such evidence is admissible and criticisms upon it can only be directed to its cogency. A retracted statement is admissible but should have no weight attached to it unless either corroborated in a material particular or unless

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the Tribunal comes to the conclusion that the statement as a whole is a truthful statement. In either of these cases, the retracted statement may be given full weight and may be used even against the co-accused. *Shero Narain Singh v. Emperor*.

30 Cr. L. J. 716 :
117 I. C. 43 : 10 P. L. T. 228 :
8 Pat. 262 : I. R. 1929 Pat. 363 :
A. I. R. 1929 Pat. 212.

———Ss. 24, 30—Retracted confession, value of.

When a man of sound mind and full age makes a confessional statement in ordinary simple language after he has been warned, he must be bound by the language of the statement and by its ordinary plain meaning. Admissions of guilt made by an accused in full possession of his faculties in his confession to a Magistrate do not, where the accused is utterly unable to show how he made the admissions if they were not true, become ineffective, because they are subsequently retracted. The retracted confession alone of an accused is not sufficient to justify the conviction of a co-accused, but where such confession stands un rebutted, and there is nothing to show that the accused had any reason for naming other men falsely, and his story fits in exactly with the facts known or proved and is corroborated sufficiently by material evidence against the co-accused, the confession is admissible, and may be a strong piece of evidence against the co-accused. *Hazari v. Emperor*.

31 Cr. L. J. 1210 :
127 I. C. 247 : 7 O. W. N. 527 :
A. I. R. 1930 Oudh 353.

———Ss. 24, 30—Retracted confession—Value of, against accused and co-accused.

A retracted confession is sufficient evidence if the Court believes it to be true, for convicting the person who made it. Though a retracted confession alone of an accused is not sufficient to justify a conviction of a co-accused, yet where such confession stands un rebutted and there is nothing to show that the accused had any reasons for naming other men falsely, and his story fits in exactly with the facts known and is corroborated sufficiently by material evidence against the co-accused, the evidence is admissible and is a strong piece of evidence against the co-accused. *Wajid v. Emperor*.

32 Cr. L. J. 42 :
127 I. C. 871 : 7 O. W. N. 805 :
I. R. 1930 Oudh 487 :
A. I. R. 1930 Oudh 412.

———Ss. 24, 30, 80, 114, 111 (b)—Retracted confession—Approver—Corroboration—Retracted confession—Confession, admissibility of—Inducement, proof of.

A retracted confession may be used as evidence not only against the person making it but also as against persons tried jointly with him for the same offence. A retracted confession can, therefore, be used as corroboration of the statement of an approver both as against the person making it and also against his co-accused.

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in material particulars, but it cannot be laid down as an absolute rule of law that a confession made and subsequently retracted cannot be accepted as evidence of guilt without independent corroborative evidence. Their Lordships held on the facts that the corroboration of the retracted confession in the case was not sufficient to fasten the guilt on the accused beyond reasonable doubt and acquitted him. *Bhagwan Das v. Emperor*. 31 Cr. L. J. 1128 : 126 I. C. 902 : A. I. R. 1930 Pat. 289.

S. 24—Retracted confession.

Value of, must be decided on circumstances of each particular case and not upon the amount of credibility which was attached in other cases to confessions made. *Emperor v. Sher Singh*. 34 Cr. L. J. 598 :

143 I. C. 499 : 34 P. L. R. 704 : I. R. 1933 Lah. 361 : A. I. R. 1933 Lah. 388.

S. 24—Retracted confession.

There is nothing to prevent a confession although retracted from being given effect to as against the maker. But where the confession has been retracted, the general rule is that independent corroboration of the confession should be required in order that the Court may be satisfied that the confession is true. *Emperor v. Balai Ghose*.

31 Cr. L. J. 667 : 124 I. C. 486 : 50 C. L. J. 518 : A. I. R. 1930 Cal. 141.

S. 24—Scope of.

S. 24, Evidence Act, would apply even if the person who is said to have made the confession was not an accused person at the time that he made the confession. It is sufficient if the person ultimately comes to be an accused person with reference to the charge in respect of which he is said to have made the confession. Though the statements made by an approver may be given in evidence against him under Sub-section (2) of S. 339, Cr. P. C., it cannot be said that the operation of S. 24, Evidence Act, is altogether excluded. Ordinarily, the inducement that would appear on the surface would be the inducement of the pardon legally tendered and accepted under the provisions of Cr. P. C. But if it is shown in any case that there was some other influence simultaneously proceeding from any other authority which would invite the application of S. 24, then the confessional part of the statement would become inadmissible by virtue of the provisions of that section. A statement falling within clause (2) of S. 339, Cr. P. C., is removed from the operation of S. 24. *Emperor vi Cunna*. 22 Cr. L. J. 68 : 59 I. C. 324 : 22 Bom. L. R. 1247.

S. 24—Scope of—Use of word "appears" in S. 24, object of, stated.

The Legislature used the word "appears" in S. 24, Evidence Act, to provide a safe-guard in the interests of accused persons. It connotes less positive proof. If it appears to the Court from the circumstances of a particular case that the confession has not been made voluntarily, it must be rejected as irrelevant. Such

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circumstances should be presumed to exist in cases where an accused person in Police custody makes a confession. *The King v. Saw Min*. 40 Cr. L. J. 691 :

182 I. C. 705 : 1939 Rang. 97 : 12 R. Rang. 25 : A. I. R. 1939 Rang. 219.

S. 24—Statement by witness—Making of coin.

A statement made by a witness that the accused made a counterfeit coin in his presence is not inadmissible in evidence under Ss. 24, 25 or 26 as making of a coin is not a statement. *Brij Nandan v. Emperor*. 32 Cr. L. J. 1006 : 133 I. C. 154 : I. R. 1931 All. 602 : A. I. R. 1931 All. 9.

S. 24—Statement in custody.

Statement of approver while in Police custody which was subsequently discovered to be illegal—No threatening—Statement is admissible. *Inder Pal v. Emperor*. 37 Cr. L. J. 732 : 162 I. C. 969 : 38 P. L. R. 1128 : 8 R. L. 978 : A. I. R. 1936 Lah. 409.

S. 24—Statement in police custody.

A statement by an accused person, while he is in the custody of the Police, that the weapon with which the crime was committed is concealed in a particular place is admissible under S. 27, Evidence Act, but where it appears that at the time of making the statement the accused was under the influence of the promise of a person in authority to save him from punishment, the statement must be excluded under S. 24, Evidence Act. *In re : Semalai Goundan*. 26 Cr. L. J. 840 : 86 I. C. 664 : 21 L. W. 199 : A. I. R. 1925 Mad. 574.

S. 24—Statements made by accused are confessions within meaning of S. 24.

The statements made by the accused were 'confessions' within the meaning of S. 24, Evidence Act. That the statements were made to a person in authority, as Captain Phillips, who represented the Army Clothing Department, spoke to the accused as one in authority and was the potential prosecutor in the case, and that the statements were made by an accused person, though not formally arrested, and that the statements were, therefore, inadmissible. To constitute a 'confession' under the Evidence Act, it is not necessary that the person confessing should make a full and explicit admission of his guilt, so clear as to leave no other hypothesis tenable. *Smith v. Emperor*.

19 Cr. L. J. 189 : 43 I. C. 605 : A. I. R. 1918 Mad. 111.

Statement signed by accused—Statement containing allegation that it is not voluntary, whether admissible in evidence.

A statement of the accused though signed by him cannot be taken to be a voluntary statement when the same document contains an allegation (whether true or not) that the statement is not voluntary. *Emperor v. Tara Nath*. 11 Cr. L. J. 694 :

8 I. C. 653 : 37 Cal. 735.

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subsistence or being unable to give a satisfactory account of himself is not "accused of an offence" for the purposes of Chap. XIV of that Code or S. 25, Evidence Act. Such a person's statements about himself are not inadmissible in evidence merely because they were made to the Police. Even an admission made to the Police by a person accused of an offence may be proved, provided it does not amount to a confession. *Emperor v. Buddhu*.

5 Cr. L. J. 434 :
3 N. L. R. 51.

-----S. 25—Admissibility.

Evidence of Police Officer and of complainant as to pointing out of various places by accused is inadmissible. *Turah v. Emperor*.

36 Cr. L. J. 166 :
152 I. C. 473 : 1934 O. L. R. 875 :
11 O. W. N. 1383 : 7 R. O. 235 :
A. I. R. 1935 Oudh 1.

-----S. 25—Admission before Police, admissibility of.

An alleged admission made by the accused to the Police is inadmissible against the former under S. 25. *Nga Tha Kua v. Emperor*.

17 Cr. L. J. 512 :
36 I. C. 480 : A. I. R. 1917 L. Bur. 112.

-----S. 25—Admission by one of the accused not to be admitted against others—Evidence, improper admission of, in Jury trial.

Where one of the accused laid a counter-information before the Police, containing an admission that all the accused were present at the occurrence, and the counter-information was admitted as evidence against the other accused persons : *Held*, that the evidence was properly admitted as against the accused who laid the information, for though it contained a statement made by him to a Police officer; it could not be regarded as a confession under S. 25, Evidence Act; but that there was an improper admission of evidence as far as the other accused were concerned. *Hazir Ali v. Emperor*.

11 Cr. L. J. 96 :
5 I. C. 315.

-----S. 25—Admission to Excise Sub-Inspector.

The admission of the accused to the Sub-Inspector (Excise Sub-Inspector) is inadmissible under S. 25, Evidence Act. *Rajmal Oswal v. Emperor*.

35 Cr. L. J. 1233 :
150 I. C. 1144 : 7 R. N. 51 (1) :
A. I. R. 1934 Nag. 136.

-----S. 25—Circumstantial evidence.

In order to justify the inference of guilt, the prosecution must show that the inculpatory facts are incompatible with the innocence of the accused and incapable of explanation upon any reasonable hypothesis than that of his guilt. *Emperor v. Kangal Mali*.

15 Cr. L. J. 713 :
26 I. C. 161 : 41 Cal. 601 :
A. I. R. 1915 Cal. 256.

-----S. 25—Confession before choukidar.

Confession to private individual in the pre-

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sence of *chaukidar*—*Chaukidar* not taking part in bringing about confession—Confession is admissible. *Emperor v. Shankar*.

35 Cr. L. J. 894 :
149 I. C. 69 : 11 O. W. N. 636 :
6 R. O. 514 : A. I. R. 1934 Oudh 222.

-----S. 25—Confession before village crowd.

When confession is made to a large crowd of villagers, presence of a Policeman in the crowd will not make confession inadmissible. *Ghunnai v. Emperor*.

35 Cr. L. J. 448 :
147 I. C. 630 : 1934 A. L. J. 143 :
6 R. A. 530 : 3 A. W. R. 419 :
A. I. R. 1934 All. 132.

-----S. 25—Confession in presence of Police.

A confession made by an accused to a private person in the presence of the Police is inadmissible in evidence against him. *Chanan v. Emperor*.

14 Cr. L. J. 596 :
21 I. C. 468 : 37 P. W. R. 1913 Cr :
320 P. L. R. 1913.

-----S. 25—Confession made to Police Officer—Conversation repeated before Magistrate—Confession, whether admissible in evidence.

An incriminating statement made by an accused person to a Police Officer cannot be proved against the accused even where such statement is on the face of it exculpatory. The medium by which it is sought to prove such a statement does not alter the matter. The question is "to whom was the statement made?" If the statement was made to a Police Officer, it is inadmissible in evidence, and the mere fact that the accused subsequently says before a Magistrate, "I told the Police Officer so and so" (giving the conversation that took place), without also adding, "and that is true," it does not render the statement admissible. *Emperor v. Anand Rao Gangaram Phansc*.

26 Cr. L. J. 1478 :
89 I. C. 1046 : 27 Bom. L. R. 1034 :
49 Bom. 642 : A. I. R. 1925 Bom. 529.

-----S. 25—Confession to chaukidar.

A confession to a *chaukidar* is not a confession to a Policeman within the meaning of S. 25. *Ghunnai v. Emperor*.

35 Cr. L. J. 448 :
147 I. C. 630 : 1934 A. L. J. 143 :
6 R. A. 530 : 3 A. W. R. 419 :
A. I. R. 1934 All. 132.

-----S. 25—Confession to Excise Sub-Inspector—Excise Officer under the Bihar and Orissa Excise Act (II of 1915), whether Police Officer—Confession made to Excise Inspector with power to search and investigate—Admissibility of.

An Excise Officer under the Bihar and Orissa Excise Act, is not a 'Police Officer' within the meaning of S. 25. *Radha Kishen Marwari v. Emperor*. (S. B.)

34 Cr. L. J. 1 :
140 I. C. 283 : 13 P. L. T. 627 :
12 Pat. 46 : I. R. 1932 Pat. 299 :
A. I. R. 1932 Pat. 293.

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———Ss. 24, 25—Confession in Police custody—Magistrate on leave and outside jurisdiction—Accused ignorant of Magistrate's evidence—Value of evidence.

Evidence is inadmissible to prove a confession made while an accused person is in Police custody, except in so far as any fact is discovered in consequence of the information so received from him. Very little value can be attached to such a confession when the fact that a Magistrate was present at the time the confession was made was not known to the accused, who was under the impression that he made the statement in the presence only of the Police and their friends. *Faiz Ullah v. Emperor*.

15 Cr. L. J. 6 :
22 I. C. 150 : 38 P. L. R. 1914 :
8 P. W. R. 1914 Cr. :
A. I. R. 1914 Lah. 32.

———Ss. 24, 25—Confession to Police—Confession made under pressure of Police, admissibility of.

Where the pressure exercised by a Police Officer on an accused person is sufficient to furnish the latter with grounds which would appear to him reasonable for supposing that by making a confession he would gain an advantage or avoid an evil of a temporal nature, the confession would not only be weak in value, but would be wholly inadmissible under S. 24, Evidence Act. A confession made to the Police is totally inadmissible in evidence and cannot be referred to in order to explain away a discrepancy in a confession subsequently made to the Magistrate. *Dip Singh Emperor*.

27 Cr. L. J. 158 :
91 I. C. 894 : A. I. R. 1926 All. 246.

———Ss. 24, 25—Confession under inducement—Confession to *zaildar* in consequence of inducement, whether admissible.

Where a person suspected of having committed a murder made a confession to the *zaildar*, in consequence of the latter dropping a remark to the effect that his own brother had committed a murder but had got off on making a clean breast of the matter: *Held*, that the *zaildar*, although not in charge of the investigation, was a leading man holding a responsible post, and that this remark of his was a distinct inducement to the accused to make a confession which rendered the confession inadmissible in evidence. *Karm Singh v. Emperor*.

17 Cr. L. J. 226 :
34 I. C. 642 : 32 P. W. R. 1916 Cr. :
26 P. R. 1916 Cr. : 153 P. L. R. 1916 :
A. I. R. 1916 Lah. 216.

———Ss. 24, 25, 26, 27—Confession—Relevancy of—S. 27, whether controls S. 24.

S. 27, Evidence Act, qualifies not only Ss. 26 and 25 but also S. 24. Therefore when a confession as a whole is excluded, whether by reason of the provisions of S. 26 or S. 25 or S. 24, so much of the information given by the person making the confession when he was an accused and in custody as distinctly relates to a relevant fact thereby discovered becomes

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admissible. Under S. 27, Evidence Act, so much of the information as set the Police in motion and led to the "discovery" is admissible. *Amiruddin v. Emperor*.

19 Cr. L. J. 305 :
44 I. C. 321 : 22 C. W. N. 213 :
27 C. L. J. 148 : 45 Cal. 557 :
A. I. R. 1918 Cal. 88.

———Ss. 24, 25, 26, 27—Confession in custody—Incriminating statements to Police Officers and Headman, admissibility of—Statement of one accused against another.

Incriminating statements made to a Police Officer while in custody are inadmissible in evidence. Ss. 25 and 26, Evidence Act, preclude admission of a statement by one accused against another and also of a confirming statement by another accused in reply to questions put by Police Constables in the Headman's presence. An incriminating statement by an accused to a Headman, in consequence of the latter telling him it was better he spoke the truth because if the other side called witnesses, the truth against him would come out, is inadmissible under S. 24. *Zeta v. Emperor*.

18 Cr. L. J. 106 (b) :
37 I. C. 314 : A. I. R. 1917 L. Bur. 87.

———Ss. 24, 25, 26, 27—Confession to Sub-Inspector of Police—Confession—Information received from accused, how far relevant.

Where the statement made by an accused to the Sub-Inspector of Police was to the effect that he would point out the spot where he had committed the murder, and thereafter he conducted the Police to a spot where earth was found saturated with blood: *Held*, that so much of the Sub-Inspector's evidence as related to the alleged confession by the accused that he committed the murder was not admissible in evidence. It was not the intention of the Legislature to allow the Police by an ingenious perversion of the provisions of S. 27, Evidence Act, to get rid of the safe-guards thrown round prisoners by Ss. 24, 25 and 26 of the Act and the exception to the general rule must be very strictly confined within its legitimate limits. *Tara Singh v. Emperor*.

16 Cr. L. J. 545 :
29 I. C. 817 : 11 P. R. 1915 Cr. :
A. I. R. 1915 Lah. 365.

———Ss. 24, 25, 26, 27, 28—Inducement, effect of—Confession—Admissibility—Confession to persons in authority induced by promise—Subsequent confession to Magistrate.

During the course of an investigation into a charge of murder, a Police Sub-Inspector told certain *zemindars* to go and make the accused confess. In consequence of an inducement held out by the *zemindars* that they would save him from the consequence of his crime, the accused made a confession to them. Very soon afterwards the confession was repeated before a Second Class Magistrate; but it was retracted before the Committing Magistrate and in the Court of Session. When confessing his guilt to the *zemindars*, the accused produced certain ornaments which, he said, he had removed from the person of the deceased.

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the powers of an Additional District Magistrate, is a Police Officer for the purposes of S. 25, Evidence Act, and a confession made to him is inadmissible in evidence. A confession made to a Police Officer is inadmissible in evidence under S. 25, even if the Police Officer is invested with the powers of a Magistrate. *Jas Bahadur v. Emperor*.

31 Cr. L. J. 823 :
125 I. C. 337 : 8 Rang. 52 :
A. I. R. 1930 Rang. 227.

———S. 25—Confession to Police—One accused can prove on his own behalf a co-accused's confession to a Police Officer.

S. 25, Evidence Act, only provides that a confession made to a Police Officer shall not be proved as against an accused person. It does not preclude one accused person from proving, on his own behalf, a confession made to a Police Officer by another accused person tried jointly with him. *Ebrahim v. Emperor*.

12 Cr. L. J. 79 :
9 I. C. 449 : 4 Bur. L. T. 9.

———S. 25—Confession to Police—Test of admissibility.

The test for deciding whether a report by the accused at the Police Station that he had killed the deceased is or is not admissible is whether it supports any inference as to the guilt of the accused and is relied upon as such. Where the prosecution relies on it as an admission of the very criminal act and for no other purpose, it is inadmissible. *Godha Waryam v. Emperor*.

35 Cr. L. J. 143 :
146 I. C. 648 : 34 P. L. R. 1000 :
6 R. L. 260 : A. I. R. 1933 Lah. 899.

———S. 25—Confession to Police Patel—Berar Patels and Patwaris Law, 1900, S. 21, rules framed under, rr. 19, 21—Police Patel, whether Police Officer.

A Police Patel in Berar is a Police Officer within the meaning of S. 25, Evidence Act, and a confession made by an accused person to a Police Patel is, therefore, inadmissible in evidence by virtue of the provisions of that section. *Mechi v. Emperor*.

26 Cr. L. J. 1088 :
88 I. C. 32 : A. I. R. 1925 Nag. 340.

———S. 25—Confession to Sub-Divisional Officer, admissibility of.

A confession made to the Sub-Divisional Officer is not inadmissible in evidence. *Srikant Das v. Emperor*.

35 Cr. L. J. 1217 :
150 I. C. 991 : 7 R. P. 49 :
A. I. R. 1934 Pat. 256.

———S. 25—Confession to Village Headman—Village Headman, whether Police Officer—Admissibility of.

In Burma, a Village Headman is not a Police Officer, and confessions made to him are not excluded from proof by the provisions of S. 25, Evidence Act, but the weight to be attached to such confessions will depend on the circumstances of each case and the part the Headman has taken in the elucidation of the crime. *Nga Myin v. Emperor*.

25 Cr. L. J. 924 :
81 I. C. 540 : 3 Bur. L. J. 11 :
2 Rang. 31 : A. I. R. 1924 Rang. 245.

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———S. 25—Confession under inducement—Inducement of exemption from punishment, admissibility of.

A confession by an accused person under an exhortation to speak truth implying an inducement that he will escape the penalties of law is inadmissible in evidence under S. 25, Evidence Act. *Yeshodi v. Emperor*.

28 Cr. L. J. 186 :
99 I. C. 858 : 9 N. L. J. 194.
A. I. R. 1927 Nag. 43.

———S. 25—Confession, what amounts to.

Where first information is given by the accused to a Police Officer and that information admits his guilt, the information amounts to a confession within the meaning of S. 25, and it cannot be proved against the accused. *Harnam Kisha v. Emperor*.

36 Cr. L. J. 539 :
154 I. C. 621 : 36 Bom. L. R. 1117 :
59 Bom. 120 : 7 R. B. 353 :
A. I. R. 1935 Bom. 26.

———S. 25—Confession, what is.

In order that a statement made by a person to a Police Officer may amount to a confession within the meaning of S. 25, Evidence Act, it is not necessary that it should embody a direct or unequivocal admission of guilt; it is sufficient if taken with other circumstances, it suggests or warrants an inference as to his having committed an offence. *Rangappa v. The Government of Mysore*.

9 Cr. L. J. 315 :
12 M. C. C. R. 59.

———S. 25—Confession, what is.

The word 'confession' in S. 25, Evidence Act, is not confined to actual admissions of guilt, but includes inculpatory statements from which inferences of guilt can reasonably be drawn or which suggest the guilt of a person making the statement. *Pan Gang v. Emperor*.

19 Cr. L. J. 42 :
42 I. C. 1002 : A. I. R. 1917 L. Bur. 5.

———S. 25—Confession, what is—Confession to Police—Admission as to ownership of property.

Not only statements which amount to a direct acknowledgment of guilt are confessions but also inculpatory statements which although they fall short of being actual admissions of guilt, yet suggest an inference of guilt and from which an inference of guilt follows. The factor determining whether a statement amounts to a confession or not is not the motive of the party making it but the fact that it leads to inference of guilt. A confession made to a Police Officer is inadmissible in evidence. *Mi Ein Tha v. Emperor*.

11 Cr. L. J. 153 (b) :
4 I. C. 1028 : 5 L. B. R. 131.

———S. 25—Effect of.

Excise Superintendent is a Police Officer; hence proof of an incriminating statement made to him by an accused person is absolutely barred by S. 25, Evidence Act. *Venkatarama Chetty v. Emperor*.

11 Cr. L. J. 77 :
4 I. C. 898 : U. B. R. 1907—09, III,
Excise P. 1.

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mere fact of their being the principal residents of the village. *Loung v. Emperor*.

18 Cr. L. J. 58 :
37 I. C. 42 : 10 S. L. R. 140 :
A. I. R. 1917 Sind 65.

———Ss. 24 to 26—Accused person—*What is*.

The words 'accused person' in Ss. 24 to 26 of the Evidence Act, should not be limited to a person against whom a formal complaint, charge or information has been laid. The expression includes any person who subsequently becomes accused; provided that, at the time of making the statement, criminal proceedings were in prospect. *Smith v. Emperor*.

19 Cr. L. J. 189 :
43 I. C. 605 : A. I. R. 1918 Mad. 111.

———Ss. 24, 26—'Person in authority'—*Confession before a Panchayat—Panchayat "a person in authority."*

Quære.—A Panchayat assuming an authority and leading the accused to believe that he has authority is "a person in authority" within the meaning of S. 24, Evidence Act. Too restricted a meaning should not be placed on the words "a person in authority." Where a case depends upon circumstantial evidence, very little, if any, importance should be attached to an extra-judicial confession put forward to bolster up that circumstantial evidence. *Nazir Jharudar v. Emperor*.

2 Cr. L. J. 255 :
9 C. W. N. 474.

———Ss. 24, 27—Confession of accused, *relevancy of*.

Statements made by an accused person, which are inadmissible under S. 24, Evidence Act, cannot be made admissible by S. 27, unless the person giving the information was accused of an offence and was in the custody of a Police Officer. *Emperor v. Nga Aung Ba*.

17 Cr. L. J. 402 (b) :
35 I. C. 962 : U. B. R. 1916 II. 114 :
A. I. R. 1916 U. Bur. 1.

———Ss. 24, 27—'Inducement by person in authority.'—*Confession under inducement leading to discovery of facts, admissibility of—Inducement by third person sent by Police Officer, effect of*.

S. 27, Evidence Act, qualifies S. 24, as well as Ss. 25 and 26 of the Act and a confession which leads to the discovery of facts in consequence of the information given is admissible in evidence even though it was made under inducement or to a Police Officer. A confession made under inducement by a person sent by a Sub-Inspector, is a confession made under an inducement proceeding from a person in authority and is, therefore, irrelevant. *Bulagi v. Emperor*.

29 Cr. L. J. 1019 :
112 I. C. 347 : 9 Lah. 671 :
A. I. R. 1928 Lah. 476.

———Ss. 24, 27—Information under police threat—*Admissibility of*.

The fact that a Police officer got by means of a threat an information from a prisoner as to a circumstance incriminating the latter,

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does not render that information inadmissible in evidence. *Emperor v. Tilak*.

17 Cr. L. J. 33 :
32 I. C. 321 : 2 O. L. J. 468 :
A. I. R. 1916 Oudh 86.

———Ss. 24, 27, 114—Confession, *nature of—Burden of proving that confession was voluntary—Duty of Court to consider all circumstances—Evidence of relations of co-accused, value of—Confession leading to discovery of articles, admissibility of*.

Before the Court can take a confession into consideration, it must be satisfied that the confession was not caused by any inducement, threat or promise proceeding from any person in authority, and though strictly speaking it is for the accused to show some ground for the belief, or at any rate suspicion that pressure had been employed or inducement given, in practice, it is impossible for an accused person to produce evidence of this nature and Courts are bound to form their view from a consideration of all the surrounding circumstances. A confession, leading to discovery of articles is, however, admissible under S. 27, Evidence Act. Where several persons are suspected of a crime and the relatives of some of them try to implicate the other, who is a stranger to them, they must naturally be suspected of bias and it is unsafe to rely on their uncorroborated testimony. *Emperor v. Panjal*.

31 Cr. L. J. 775 :
125 I. C. 202 : A. I. R. 1929 Sind 245.

———Ss. 24 and 28—Confession to Police—*Confession under influence of promise—Admissibility—Influence worn off by time—Admissibility*.

Where the confession is made while the accused is strongly influenced by the promise made to him by the Police Officer that if he spoke the truth he would escape punishment, under S. 24, Evidence Act, the confession is inadmissible in evidence. (But where, however, the effect of the promise had worn off by the time that the confession was made, then under S. 28, Evidence Act, the confession is admissible. *Sit Ro Saw v. Emperor*).

37 Cr. L. J. 1137 :
165 I. C. 319 : 9 R. Rang. 204 :
A. I. R. 1936 Rang. 455.

———Ss. 24, 29—Person in authority—*Confession—Offer, inducement or deception*.

The accused made a confession of his guilt to the Medical Officer of his Regiment, who told the accused, when he was under his treatment in the hospital, that it would be better for him to tell the truth as to how he came about certain wounds: *Held*, that the Medical Officer was not a person in authority in respect of any proceedings which might be contemplated or taken against the accused who made the confession to him; and that all that he represented to the accused was that on medical grounds it would be for the accused's benefit if he told the truth as to how he came by the wound. The accused made their confession of guilt to the Commission-

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usual and more comprehensive meaning, and the expression as used in S. 25 includes the Police Officers of Native States as well as those of British India. A confession made to a Police Officer in H. H. Nizam's Dominions is not, therefore, admissible in evidence under S. 25. S. 25 is enacted to guard prisoners, accused of offences, against unfair practices on the part of the Police. *Salam v. Emperor*.

19 Cr. L. J. 79 ;
43 I. C. 111 : 14 N. R. 192 :
A. I. R. 1917 Nag. 81.

—S. 25—Police Officer.

Village *Chaukidar* in U. P. is a Police Officer. *Emperor v. Pancham*.
34 Cr. L. J. 653 :
143 I. C. 846 : 10 O. W. N. 348 :
8 Luck. 410 : I. R. 1933 Oudh 208.
A. I. R. 1933 Oudh 192.

—S. 25—"Police Officer," definition of—
Police Patel in Berar, whether Police Officer.

The term "Police Officer" in S. 25 and the connected sections of the Evidence Act should be understood not in any strict technical sense but according to its more comprehensive and popular sense. But the term can be extended beyond the definition in S. 1, Police Act, to cover only those persons who, like Police Officers coming within that definition, are not much more interested in obtaining convictions than any member of the community is, that they might possibly resort to improper means for doing so. A Police Patel in Berar is not a Police Officer within the meaning of S. 25. *Emperor v. Akia*.

28 Cr. L. J. 471 :
101 I. C. 599 : 23 N. L. R. 23 :
A. I. R. 1927 Nag. 222.

—S. 25—Police Officer—Scope of—Abkari Officer exercising powers of Police Officer, whether Police Officer—Confession to such officer, admissibility of.

An Abkari Officer, who, in the conduct of investigation of an offence punishable under the Bombay Abkari Act, exercises the powers conferred by the Cr. P. C., upon an officer in charge of a Police Station for the investigation of a cognizable offence is a Police Officer within the meaning of S. 25, Evidence Act. The term "Police Officer" in S. 25, Evidence Act, should not be read in any strict technical sense but includes an officer vested with the powers of the Police by law. *Nanoo Sheikh Ahmad v. Emperor*.

28 Cr. L. J. 122 :
99 I. C. 330 : 28 Bom. L. R. 1196 :
51 Bom. 78 : A. I. R. 1927 Bom. 4.

—S. 25—Police Officer—Village Mukhia.

A village *mukhia* is not a Police Officer for the purpose of S. 25. *Ram Charan v. Emperor*.

36 Cr. L. J. 636 :
155 I. C. 119 : 1935 A. L. J. 478 :
1935 A. W. R. 388 : 7 R. A. 894 :
A. I. R. 1935 All. 549.

—S. 25—Political Muharrir of Oghi, if Police Officer.

The Political Muharrir of Oghi occupies the

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position of a Police Officer. *Abdul Hamid v. Emperor*.

34 Cr. L. J. 804 :
144 I. C. 160 : I. R. 1933 Pesh. 34 :
A. I. R. 1933 Pesh. 38.

—S. 25—Scope of—Bombay Abkari Act (II of 1923), Ss. 2, 37—Opium Act (I of 1878), S. 15—Excise peon, powers of—Confession to Excise peon, admissibility of.

The prohibition of S. 25, Evidence Act, extends to incriminating statements made by persons accused of an offence under the Abkari or Opium Act to Excise peons who are engaged at the time in the investigation of the offence under the orders of an Abkari Inspector. *Emperor v. Dinshaw Cursctji*.

30 Cr. L. J. 783 :
11 I. C. 331 : 31 Bom. L. R. 49 :
I. R. 1929 Bom. 379 : A. I. R. 1929 Bom. 70.

—S. 25—Scope of—Evidence Act (I of 1872), S. 25—Accused's statement recorded by Police can be proved by oral evidence if not amounting to confession.

S. 25, Evidence Act, excludes only "confession" made by persons accused of an offence. Therefore, an admission made by an accused person to a Police Officer may be proved if it does not amount to a confession; that is, if it is not a statement amounting in 'any sense' to an admission of guilt, though it may tell against the accused otherwise. *Ganpati v. Emperor*.

12 Cr. L. J. 60 :
8 I. C. 1181 : 6 N. L. R. 180.

—S. 25—Scope of—Murder—Accused indicating spot where body buried, effect of.

S. 25 lays down that a confession to a Police Officer shall not be used as against the person making it, it does not say that such a confession shall be inadmissible for all purposes. Such a confession may be used for the purpose of arriving at a conclusion whether a subsequent judicial confession should be believed or not. Where in the case of a murder a person gives information which leads to the recovery of the dead body, that fact alone would not be sufficient to connect him with the murder. *Gulab v. Emperor*.

25 Cr. L. J. 5 :
75 I. C. 693 : 6 L. L. J. 54 :
A. I. R. 1923 Lah. 315.

—S. 25—Scope of—Provisions of section should not be applied to Excise Officers—Confession by accused to Excise Officer, if admissible against him.

As S. 25, Evidence Act, refers only to a Police Officer, a Court should not extend it to other classes of officers merely on grounds of similarity of function especially in view of the fact that the Evidence Act was introduced at a time when the methods of the Police were much more open to attack than they are now. The restrictive provisions of S. 25 should not, therefore, be applied to Excise Officers. A confession made by an accused to an Excise Officer is, therefore, admissible in evidence

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There is no rule of law which compels a Court to raise an inference of improper inducement from the mere fact that a confession is retracted. *Partap Singh v. Emperor*.

27 Cr. L. J. 514 :
93 I. C. 978 : 2 Lah. Cas. 72 :
6 Lah. 415 : 7 L. L. J. 482 :
A. I. R. 1925 Lah. 605 (2).

—Ss. 24, 30, 114 (b)—Confession—Conviction on retracted confession, legality of.

There is nothing in law to prevent a Court from convicting a person upon a confession which has been subsequently retracted provided that the Court is convinced that the statement is voluntary and true. Where the confession is made by a person who is *sui juris* before a Magistrate, in an atmosphere untainted by the influence of the Police or by any other influence and there are no suspicious features about it, there is no reason why the statement should not be accepted. Where two such confessions are made by two different persons and both of them are self-incriminatory and each of them affects the other co-accused, this is an important circumstance which may be and ought to be taken into consideration at the trial. *Khuban v. Emperor*.

31 Cr. L. J. 26 :
120 I. C. 257 : A. I. R. 1930 All. 29.

—Ss. 24, 30, 133—Relevancy—Confession not relevant against the maker, whether relevant against a co-accused—Statement—Confession—Accomplice.

A house was broken into at night and certain property stolen. During the police investigation, one K stated that he and U had committed the burglary. On search, some stolen property was recovered from U's possession, U alone was sent up for trial and K appeared as a witness for the prosecution. K in his evidence gave the same story implicating himself and U, on this, the Magistrate transferred K from the witness-box to the dock and trying them jointly convicted both of them. It was found on appeal that K's statement, which amounted to a confession, had been induced in one of the manners specified in S. 24, Evidence Act: *Held*, that as K's confession could not be used against himself, as being irrelevant under S. 24, Evidence Act, it could not be taken into consideration against U, a co-accused. *Emperor v. Umda*.

12 Cr. L. J. 267 :
10 I. C. 340 : 9 P. R. 1911 Cr. :
166 P. L. R. 1911 :
22 P. W. R. 1911 Cr.

—Ss. 24, 114—Confession with hope of pardon—Retraction of confession—Admissibility of such confession—Retracted confession as corroboration of approver's statement.

When a confession has not been caused by an inducement or promise held out by one in authority, it does not become inadmissible evidence simply because there was a race for pardon in the case and the confession was made with a hope to get pardon. A retracted confession of the accused may be

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ample corroboration of an approver's statement against him: *Rahmat v. Emperor*.

30 Cr. L. J. 49 :
113 I. C. 65 : 11 L. L. J. 5 :
I. R. 1929 Lah. 134.

—S. 25.

—Abkari Officer, if Police Officer.

—Acceptance in part.

—Accused, meaning of.

—Admissibility.

—Admission.

—Circumstantial evidence.

—Confession.

—Effect of.

—Exercise Officer.

—Exercise Sub-Inspector.

—Incriminating confession.

—Incriminating statements.

—Police Officer.

—Political Muharrir of Oghi, if Police Officer.

—Scope of.

—Statement.

—Ten house-gaung.

—Village Chaukidar.

—S. 25.

See also (i) Confession.
(ii) Cr. P. C., 1898, S. 537.
(iii) Criminal trial.
(iv) Evidence Act, 1872, S. 10.
(v) Penal Code, 1860, S. 99.

—S. 25—Abkari Officer, if Police Officer—Abkari Officer investigating offence against Bombay Abkari Act (V of 1898), whether a Police Officer within S. 25.

An Abkari Officer investigating an offence against the Bombay Abkari Act in exercise of the powers conferred upon him in Chap. IX of the Act, is a Police Officer within the scope of S. 25, Evidence Act. *Bachoo Kadero v. Emperor*. (F. B.)

39 Cr. L. J. 239 :
172 I. C. 968 : 10 R. S. 188 :
32 S. L. R. 185 : A. I. R. 1938 Sind 1.

—S. 25—Acceptance in part.

Statement containing admission to be considered as a whole. *Emperor v. Nga San Win*.

35 Cr. L. J. 248 :
147 I. C. 60 : 6 R. Rang. 140 :
A. I. R. 1933 Rang. 326.

—S. 25—Acceptance in part.

There is no infallible rule of practice that the Court cannot accept only the inculpatory element, while rejecting the exculpatory element as inherently incredible. *Abdul Hamid v. Emperor*.

34 Cr. L. J. 804 :
144 I. C. 160 : I. R. 1933 Pesh. 34 :
A. I. R. 1933 Pesh. 38.

—S. 25—'Accused,' meaning of—Admission to Police by a person not accused of an offence, admissibility of—Criminal Procedure Code, S. 109 and Chap. XIV—A person against whom proceedings are taken under S. 109 is not "accused of an offence."

A person proceeded against under S. 109, Cr. P. C., for being without ostensible means of

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Act, a Police Officer, and an admission made to him, and not in the presence of a Magistrate, by an accused person cannot be proved against the latter. *Khawaja Hassan v. Emperor*.
24 Cr. L. J. 136 :
71 I. C. 360.

—Ss. 25, 26—Statement under Police custody—Statement by accused in presence of Excise Officers, admissibility of—Police present in same house, effect of.

A statement made by an accused person, arrested on a charge of unlawful possession of opium, to Excise Officers in a room of a house in a different part of which two Police servants, who had accompanied the Excise Officers and assisted in the arrest, were present, should, for the purposes of S. 26, Evidence Act, be regarded as made while in Police custody and is, therefore, inadmissible in evidence. *Muhammad Ibrahim v. Emperor*.
18 Cr. L. J. 609 :
39 I. C. 977 : 21 C. W. N. 694 :
A. I. R. 1918 Cal. 588.

—Ss. 25, 27—First information admitting guilt, admissibility of—Portions giving narrative of events prior to occurrence, if admissible.

A first information of murder was lodged at the Police Station by the accused himself on the morning following the murder and in it, after stating the narrative of events prior to the night of occurrence, he confessed that he had committed the offence: *Held*, that although by reason of the provisions of S. 25, Evidence Act, the first information was not admissible in its entirety, yet, in so far as it spoke of events prior to the night of occurrence, it was admissible in evidence if and when proved. If and when certain facts are deposed to as discovered in consequence of information received from the accused when in custody of Police, so much of the information as relates distinctly to the fact or facts, thereby discovered will become admissible. *Superintendent and Remembrancer of Legal Affairs, Bengal v. Lalit Mohan Singha Roy*.
22 Cr. L. J. 562 :
62 I. C. 578 : 25 C. W. N. 788 :
A. I. R. 1921 Cal. 111.

—Ss. 25, 27, 28—Statement to Police leading to discovery of fact deposed—Defence, right of, to insist upon production and proof of record—Confession, admissibility of—Part of confession disbelieved, effect of.

Accused went to a Police Station and made the report: "I have killed my wife and her corpse is lying in my house," in consequence of which the Police, proceeding to his house discovered the corpse of his wife in an inner room of the house: *Held*, that under S. 24, Evidence Act, the officer who had taken down the statement of the accused was entitled to depose that the accused came to him at the time and place stated and said: "I have killed my wife and her corpse is lying in my house," and that in consequence of that statement, the woman's corpse was discovered as indicated by the accused; but that when this had been deposed by the prosecution, the

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defence were entitled to require the production of the record made at the Police Station and to insist upon proof of the whole of that record. Where there is no evidence of offence except a confession, the confession must be taken as a whole. The Court cannot select, from the only evidence which it is proceeding to act upon, in order to find the crime established as a fact at all, portions which it rejects as untrue and treat the balance which remains as truthful evidence. *Surendra Nath Mukerji v. Emperor*.
19 Cr. L. J. 935 :
47 I. C. 659 : 16 A. L. J. 478 :
A. I. R. 1918 All. 160.

—Ss. 25, 27, 30—Statement to Police, value of conviction.

In a case of dacoity, a statement made by an accused to a Police Officer, at the time of the search of his house, that property would be found in the possession of his co-accused, is not admissible in evidence against the accused making the statement nor is it admissible against his co-accused as proving their participation in the dacoity. A statement made by an accused to a Police Officer if it does not amount to a confession may, nevertheless, be used against him and more particularly if the statement turns out to be false in the light of the other evidence in the case. *Ramhit v. Emperor*.
23 Cr. L. J. 193 :
65 I. C. 849 : 20 A. L. J. 118 :
A. I. R. 1922 All. 24.

—Ss. 25, 30—Confession against co-accused—Statement made by accused exculpating himself, whether confession.

A confession made before a case comes up for trial but withdrawn at the time of the trial, would still be admissible against the other accused under S. 30. For the purpose of seeing whether statements made by an accused are confessions or not, it is essential, first of all, to consider the nature of the offence with which the accused has been charged or is likely to be charged, and secondly, the whole of the statements must be read for the purpose of seeing whether in the opinion of the Court they are confessions or not. Statements made by an accused which are consistent with an attempt on his part to exculpate himself from the charge which has been or which is likely to be made against him cannot be regarded as confessions. *Ah Foong Chinaman v. Emperor*.
20 Cr. L. J. 24 :
48 I. C. 504 : 22 C. W. N. 834 :
28 C. L. J. 105 : 46 Cal. 411 :
A. I. R. 1919 Cal. 696.

—Ss. 25, 33—Confession to Police Officer—Statements made by accused in order to exculpate himself—Test of admissibility.

S. 25, Evidence Act, does not say, that all statements made to the Police are inadmissible but it excludes only confessions made to them; there being a distinction between mere admissions and confessions which are statements either directly admitting the guilt of the accused or statements which suggest the inference that he committed the crime with which he is charged. Further, the general rule is subject to that

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———S. 25—Confession to Honorary Magistrate—Confession made to officer taking part in investigation.

A confession not reduced to writing, made to an Honorary Magistrate, who was also a *zaildar*, while he was taking part in an investigation, in the absence of the Police and subsequently repeated before him and a Police Officer, is admissible in evidence. *Wadhwa Singh v. Emperor*. 25 Cr. L. J. 259 : 76 I. C. 819 : A. I. R. 1923 Lah. 389.

———S. 25—Confession to Kotwar—Kotwar in Central Provinces, whether Police Officer—Admissibility of.

Kotwar or village watchman in the Central Provinces is not a Police Officer within the meaning of S. 25, Evidence Act. A confession of guilt made to him by an accused person is, therefore, admissible in evidence. *Bhagwatdin v. Emperor*. 21 Cr. L. J. 568 : 57 I. C. 88 : A. I. R. 1920 Nag. 167.

———S. 25—Confession to Kotwar—Kotwar whether Police Officer—Confession made to Kotwar, admissibility of.

A Kotwar in the Central Provinces is not a Police Officer. Therefore, a confession made to him by an accused is not excluded from evidence under S. 25, Evidence Act. *Sukhwaria Chamarin v. Emperor*. 25 Cr. L. J. 147 : 76 I. C. 291 : A. I. R. 1924 Nag. 29.

———S. 25—Confession to Police—Admissibility of.

If after committing a murder the murderer proceeds straight to the Police Station and there makes a confessional statement, which is recorded as the First Information Report, the statement is inadmissible in evidence as being a confession made to the Police. *Nur Muhammad v. Emperor*. 26 Cr. L. J. 1492 : 90 I. C. 148.

———S. 25—Confession to Police—Admissibility of.

In a trial in respect of an offence under S. 395, Penal Code, the Investigating Police Officer was allowed to depose that one of the accused pointed out to him the route taken by him and his comrades in going to the place where the alleged dacoity was committed and also the place where they divided the booty and where they had first met : *Held*, that these were confessional statements and having been made to a Police Officer were inadmissible in evidence. *Sheikh Abdul v. Emperor*. 26 Cr. L. J. 606 : 85 I. C. 830 : A. I. R. 1925 Cal. 887.

———S. 25—Confession to Police, admissibility of, to prove ownership of property.

A confession made to the Police by an accused person is admissible to prove the ownership of property in respect of which he is accused. *Ganpat v. Bani*. 21 Cr. L. J. 414 : 56 I. C. 62 : A. I. R. 1920 Nag. 219.

———S. 25—Confession to Police—Explanatory statement not amounting to admission of guilt, admissibility of.

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After a fight, in which death was caused, several accused drove certain cattle belonging to the deceased to the pound. Two of them made a statement to a Sub-Inspector of Police that they were in the fight and that the deceased had attempted to interfere with the seizure of the cattle : *Held*, that the statement did not amount to a confession inasmuch as it was only an explanatory statement of the circumstances under which the cattle had been seized and was not an admission of guilt but rather in the nature of a complaint against the deceased and was, therefore, not inadmissible in evidence. *Jalal v. Emperor*. 25 Cr. L. J. 811 : 81 I. C. 347 : A. I. R. 1923 Lah. 232.

———S. 25—Confession to Police—Inadmissible even against co-accused.

Under S. 25, Evidence Act, the confession made to a Police Officer by an accused person is inadmissible against him, and it is *a fortiori* inadmissible against another person who may be implicated by it. *Emperor v. Hari Singh*. 11 Cr. L. J. 690 : 8 I. C. 622 : 12 Bom. L. R. 899.

———S. 25—Confession to Police Officer—Admission amounting to confession—Admissibility.

A was convicted on the evidence of two Excise Sub-Inspectors, who stated that he offered them Rs. 10 per ball of opium as a bribe to let him land unmolested a large quantity of illicit opium from the steamer *Katoria*. These Excise Officers had been also enrolled as Police Officers : *Held*, that the alleged offer by the accused amounted to an admission that he had a large quantity of contraband opium in his possession and, being an admission of an offence under the Opium Act, amounted to a confession and was thus inadmissible under S. 25, Evidence Act. A confession made to a Police Officer by a person when he is not accused of any offence is inadmissible in evidence against him when he is accused of an offence. *San Paw Aung v. Emperor*. 13 Cr. L. J. 465 : 15 I. C. 305 : 5 Bur. L. T. 92.

———S. 25—Confession to Police Officer before commencement of investigation or after it is inadmissible.

S. 25, Evidence Act, enacts that no confession made to a Police Officer shall be proved as against a person accused of any offence. The section itself makes no distinction between a confession made before investigation and a confession made after investigation. It is a confession to a Police Officer made at any time which is inadmissible. *Hussaina v. Emperor*. 37 Cr. L. J. 740 : 163 I. C. 80 : 38 P. L. R. 682 : 8 R. L. 994 : A. I. R. 1936 Lah. 380.

———S. 25—Confession to Police Officer—Confession made to Police Officer who is also Magistrate, admissibility of.

An Assistant Superintendent of Pakokku Hill Tracts who is invested with the duties of a District Superintendent of Police and also with

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from the lock-up to the dispensary. At the dispensary, the Policemen waited outside on the verandah while the accused was inside undergoing examination at the hands of the doctor, and during the few minutes that he was with the latter, he made a confession: *Held*, that the confession was inadmissible in evidence under S. 26, Evidence Act, inasmuch as the accused remained in the custody of the Policemen while he was undergoing the examination. *Emperor v. Mallangowda Parvatgowda*.

18 Cr. L. J. 981 :

42 I. C. 597 : 19 Bom. L. R. 683 :
42 Bom. 1 : A. I. R. 1917 Bom. 130.

————S. 26 — Confession recorded by Magistrate.

The word "Magistrate" in S. 26, Evidence Act, includes Magistrates in Native States and a confession recorded by a Magistrate outside British India in the manner prescribed by Cr. P. C. is admissible in evidence certainly under S. 80, Evidence Act, and probably under S. 74 of the Act. A confession recorded by a Magistrate, according to the provisions of Cr. P. C., does not become inadmissible in evidence merely because it is recorded in contravention of instructions in a Criminal Circular. Such a confession if proved against the person making it may also be taken into consideration under S. 30, Evidence Act, against others who are being tried jointly for the same offence. The confessions of a number of accused must be taken into consideration in deciding whether their story is in the main true. *Govinda v. Emperor*.

23 Cr. L. J. 673 :

69 I. C. 257 : 17 N. L. R. 113 :
A. I. R. 1921 Nag. 39.

————S. 26 — Confession to a Dafadar—
Confession by accused after his arrest that he had agreed to commit theft with another—Admissibility.

A confession by the accused that he had agreed to commit theft, made to a *Dafadar* after his arrest, is inadmissible under S. 26, Evidence Act. *Karu Kandu v. Emperor*.

41 Cr. L. J. 777 :

189 I. C. 641 : 21 P. L. T. 171 :
6 B. R. 842 : 13 R. P. 137 :
A. I. R. 1940 Pat. 410.

————S. 26 — Confession to Magistrate in Police Officer's presence—Admissibility of.

Where an accused person made a confession to a Deputy Magistrate who was on leave, in the presence of a Sub-Inspector and a constable who had the accused under arrest at the time and no record of the statement was made under S. 149, Cr. P. C. : *Held*, that the confession was inadmissible in evidence. *Nathu v. Emperor*.

30 Cr. L. J. 867 :

118 I. C. 46 : I. R. 1929 All. 814 :
A. I. R. 1929 All. 855.

————S. 26—Custody.

The word 'custody' in S. 26, though not defined, implies that there must be some limitation imposed upon the liberty of the confessor and that the limitation must be

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imposed either directly or indirectly by the Police. *Pharho v. Emperor*.

34 Cr. L. J. 147 :

141 I. C. 392 (2) : 26 S. L. R. 302 :

I. R. 1933 Sind 49 :

A. I. R. 1932 Sind 201.

————S. 26—Custody.

To exclude an extra-judicial confession under S. 26, it is not necessary to prove formal arrest and the true criterion is whether the accused is free to depart where he likes or not. If he is not free, he is in custody. *Haroon v. Emperor*.

34 Cr. L. J. 129 :

141 I. C. 215 : 26 S. L. R. 1 :

I. R. 1933 Sind 33 (2) :

A. I. R. 1932 Sind 149.

————S. 26—Custody, what is—Accused in custody of Police Officer, who leaving her in temporary custody of private individual—Confession to private individual in absence of Police Officer—Confession, admissibility.

When once an accused is arrested by a Police Officer and is in his custody, the mere fact that for some purpose or other he happens to be temporarily absent, and during his temporary absence, leaves the accused in charge of a private individual, does not terminate his custody—the accused shall be deemed to be still in Police custody and a confession made by the accused to such a private individual is inadmissible under S. 26, Evidence Act. *Emperor v. Jagia*.

39 Cr. L. J. 428 :

174 I. C. 524 : 19 P. L. T. 268 :

10 R. P. 531 :

4 B. R. 451 : 17 Pat. 369 :

A. I. R. 1938 Pat. 308.

————S. 26—Duty of Magistrate.

Whenever a Magistrate receives a confession from an accused in custody, he must be satisfied of its voluntary character. *In re : Kishna Iyer*.

36 Cr. L. J. 1107 :

157 I. C. 297 : 1935 M. W. N. 82 :

8 R. M. 137 : A. I. R. 1935 Mad. 479.

————S. 26—Extra-judicial confession.

Where the *mashir* witnesses admit that the Police Officer had handed over the accused to their custody with instructions that they should not be allowed to escape and that they should ascertain extra-judicial confessions which made by the accused to the *mashirs* are not admissible in evidence. *Haroon v. Emperor*.

34 Cr. L. J. 129 :

141 I. C. 215 : 26 S. L. R. 1 :

I. R. 1933 Sind 33 (2) :

A. I. R. 1933 Sind 149.

————S. 26—Extra-judicial confession in custody to chaukidar.

Extra-judicial confession while in custody of village *chaukidar* is inadmissible. *Emperor v. Pancham*.

34 Cr. L. J. 653 :

143 I. C. 846 : 10 O. W. N. 348 :

8 Luck. 410 : I. R. 1933 Oudh 208 :

A. I. R. 1933 Oudh 192.

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—S. 25—Excise Officer, if Police officer.

An Excise Officer under the Bengal Excise Act is not a Police Officer within the meaning of S. 25, Evidence Act. *Tura Sardar v. Emperor*. 32 Cr. L. J. 231 : 129 I. C. 101 : 52 C. L. J. 177 : I. R. 1931 Cal. 117 : A. I. R. 1930 Cal. 710.

—S. 25—Excise Officer, if Police Officer.

An Excise Officer, who, in the conduct of investigation of an offence against the Excise, exercises the powers conferred by the Cr. P. C., upon an officer in charge of a Police Station for the investigation of a cognizable offence is a Police Officer within the meaning of S. 25. *Amin Shariff v. Emperor*. (F. B.)

35 Cr. L. J. 1071 : 150 I. C. 561 (2) : 38 C. W. N. 930 : 59 C. L. J. 555 : 61 Cal. 607 : 7 R. C. 9 : A. I. R. 1934 Cal. 580.

—S. 25—Excise Officer, if Police Officer—Confession made to Excise Officer, whether admissible.

An Excise Officer is not a Police Officer within the meaning of S. 25, Evidence Act. An incriminating statement made by an accused person to such an officer is, therefore, not inadmissible in evidence. *Emperor v. Budho*.

28 Cr. L. J. 162 : 99 I. C. 594 : A. I. R. 1927 Sind 112.

—S. 25—Excise Officer, if Police Officer—Confession to Excise Officer, admissibility of.

An Excise Inspector is not a Police Officer, and, therefore, a confession made to him is admissible in evidence against the accused. *Emperor v. Wazir Singh*. 19 Cr. L. J. 364 : 44 I. C. 588 : 3 P. R. 1918 Cr. : A. I. R. 1918 Lah. 372.

—S. 25—Excise Officer, if Police Officer.

Excise Officers cannot be said to be Police Officers, so that a confession made to an Excise Officer is not inadmissible in evidence under S. 25, Evidence Act. *Ah Foong Chinaman v. Emperor*.

20 Cr. L. J. 24 : 48 I. C. 504 : 22 C. W. N. 834 : 28 C. L. J. 105 : 46 Cal. 411 : A. I. R. 1919 Cal. 696.

—S. 25—Excise Officer, if Police Officer.

Excise Officer investigating into offence of smuggling opium is a Police Officer—Statement made by accused's companion to the officer after his arrest can be used to support evidence of the officer. *Keralati v. Emperor*.

35 Cr. L. J. 1178 : 150 I. C. 980 (2) : 38 C. W. N. 1005 : 61 Cal. 967 : 7 R. C. 49 : A. I. R. 1934 Cal. 616.

—S. 25—Excise Officer, whether Police Officer—Confession to Excise Officer, admissibility of.

An Excise Officer is not a Police Officer within the meaning of S. 25 of the Evidence Act, and a confession made to him is not, therefore, inadmissible in evidence. *Harbhajan Sao v. Emperor*.

28 Cr. L. J. 579 : 102 I. C. 547 : 31 C. W. N. 667 : 54 Cal. 601 : A. I. R. 1927 Cal. 527.

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—S. 25—Excise Officers, if Police Officers.

Officers of the Excise Department are Police Officers for the purpose of S. 25. *Ram Karan Singh v. Emperor*. 36 Cr. L. J. 511 : 154 I. C. 341 : 7 R. N. 161 : A. I. R. 1935 Nag. 13.

—S. 25—Excise Officer whether Police Officer.

Excise Officers are not Police Officers within the scope of S. 25 of the Evidence Act. *Littibai v. Emperor*. 25 Cr. L. J. 1223 : 82 I. C. 151 : 18 S. L. R. 75 : A. I. R. 1925 Sind 70.

—S. 25—Excise Sub-Inspector, if Police Officer.

An Excise Sub-Inspector is not a Police Officer within the meaning of S. 25. *Mati Lal v. Emperor*. 34 Cr. L. J. 21 : 140 I. C. 257 : 36 C. W. N. 163 : I. R. 1932 Cal. 706 (1) : A. I. R. 1932 Cal. 122.

—S. 25—Incriminating confession—Recovery list signed by accused, admissibility of, to prove accused's possession of premises.

If the putting of signature to the recovery list by the accused is evidence that the house searched belongs to him, this would be an incriminating statement of the nature of a confession and would not be admissible against him under S. 25, Evidence Act. *Behari Lal v. Emperor*. 28 Cr. L. J. 323 : 100 I. C. 707 : 28 P. L. R. 119 : 8 Lah. 326 : A. I. R. 1927 Lah. 343.

—S. 25—Incriminating statements—Cr. P. C., S. 162—Statement by accused person to Police, admissibility of, in evidence.

The words "statement of any person" in S. 162, Cr. P. C., refer to the statement of any witness in the course of Police investigation and not to the statement of an accused person in respect of whom such investigation is held and, therefore, the statements of accused person can only be excluded under S. 25, Evidence Act, if they are in the nature of incriminating statements and are used by the Crown as such. *Hussainbibi v. Emperor*.

27 Cr. L. J. 456 : 93 I. C. 248 : 20 S. L. R. 74 : A. I. R. 1926 Sind 151.

—S. 25—Incriminating statement before Police—His evidence.

Under S. 25, Evidence Act, an incriminating statement (though not a confession) made by an accused person before the Police and not falling under S. 27, cannot be proved and admitted in evidence against him. *Farid v. Emperor*.

4 Cr. L. J. 177 : 1 P. W. R. Cr. 2 : 7 P. L. R. 361 : 16 P. R. Cr. 1906.

—S. 25—"Police Officer", whether includes Police Officers in Native States—Confession.

The expression "Police Officer" as used in the Evidence Act, should not be understood in any strict sense but according to its

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circumstances of the cases; whether suspicion attached to the accused at the time, whether accused was intelligent or ignorant of the possible result of the confession, what the position of the *Mashirs* was and the like. *Emperor v. Mahomed Bux*.

26 Cr. L. J. 609 :
85 I. C. 833 : 16 S. L. R. 143 :
A. I. R. 1921 Sind 145.

———S. 26—Scope of.

Oral confession made to a Magistrate is *prima facie* relevant under S. 26, Evidence Act. *Emperor v. Maruti Santu More*.

21 Cr. L. J. 65 :
54 I. C. 465 : 21 Bom. L. R. 1065 :
A. I. R. 1920 Bom. 322.

———S. 26—Scope of.

S. 26 is subject to S. 27. *Imperator v. Dabud*.

12 Cr. L. J. 119 :
9 I. C. 718 : 4 S. L. R. 209 :

———S. 26—Scope of.

The confessions made before the Honorary Magistrates in the Punjab where they exercise the powers under the Cr. P. C. come within the scope of S. 26. *Hashmat Khan v. Emperor*.

36 Cr. L. J. 211 :
152 I. C. 998 : 37 P. L. R. 25 : 15 Lah. 856 :
7 R. L. 348 : A. I. R. 1934 Lah. 417.

———S. 26—Statement in custody to Daroga.

Offence of enticing away girl and having sexual intercourse with her—Statement to Daroga showing place of occurrence while in custody are not admissible. *Ramani Mohan De v. Emperor*.

34 Cr. L. J. 638 :
143 I. C. 797 : I. R. 1933 Cal. 482 :
A. I. R. 1933 Cal. 146.

———S. 26—Statement to Magistrate by person in custody.

Magistrate preparing memorandum to help memory—Though not duly recorded, confession is admissible. *Ran Singh v. Emperor*.

34 Cr. L. J. 1164 :
145 I. C. 1029 : 34 P. L. R. 896 :
6 R. L. 155 (2) : A. I. R. 1933 Lah. 513 (2) :

———S. 26—Statement to Police Officer.

Where an accused person makes a statement to a Police Officer who took the Magistrate with him while the Police Officer was conducting his investigation, the evidence of the Magistrate is not admissible. *Mst. Gaj-rani v. Emperor*.

34 Cr. L. J. 754 :
144 I. C. 357 : 1933 A. L. J. 1617 :
I. R. 1933 All. 414 : A. I. R. 1933 All. 394.

———S. 26—Village chaukidar, if Police Officer.

A village *chaukidar* is regarded as a member of the village Police and, therefore, is a village Police Officer. It cannot be disputed that a village Police Officer is a Police Officer and he is so within the meaning of S. 26, Evidence Act, though he may not be a Police Officer within the meaning of the Cr. P. C. which lays down the powers to be

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exercised by a Police Officer for the purposes of that Code. *Emperor v. Jagia*.

39 Cr. L. J. 428 :
174 I. C. 524 : 19 P. L. T. 268 : 10 R. P. 531 :
4 B. R. 451 : 17 Pat. 369 :
A. I. R. 1938 Pat. 308.

———S. 26—Police custody.

As soon as the accused or suspected person comes into the hand of a Police Officer, he is, in the absence of clear and unmistakable evidence to the contrary, no longer at liberty and is, therefore, in custody within the meaning of Ss. 26 and 27, Evidence Act. *Maung Lay v. Emperor*.

25 Cr. L. J. 381 :
77 I. C. 429 : 1 Rang. 609 :
A. I. R. 1924 Rang. 173.

———Ss. 26, 27—Statement in custody, acceptance in part—Statement as to guilt and stolen property being in a certain place.

Where the accused, while in custody of the Police, confessed to have committed theft and also stated that the stolen property would be found in a heap of rubbish close to his house and after making the statement he took out the property from the heap in the presence of two Police constables : *Held*, that the statement as regards the commission of theft was not admissible in evidence, but the statement that stolen property would be found in the heap of rubbish was admissible. *Manjunathaya v. Emperor*.

15 Cr. L. J. 533 :
24 I. C. 845 : 26 M. L. J. 352 :
A. I. R. 1914 Mad. 61.

———S. 27.

- Acceptance in part.
- Admission.
- Applicability.
- Confession.
- Custody.
- Discovered, meaning of.
- Discovery.
- Distinctly, meaning of.
- Duty of Court.
- Fact.
- Incriminating statement.
- Inculpatory statement.
- Inducement from person in authority.
- Information.
- Interpretation.
- Interpretation of statutes.
- Joint discovery in consequence of joint information.
- Mashirnama* containing reference to scene of offence.
- Miscellaneous.
- Object of.
- Police custody.
- Record of police regarding searches, etc.
- Recording evidence.
- Retracted confession.
- Scope.
- Scope and object of.
- Scope of.
- Self-incriminating statement.
- Several accused.
- Statement.

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against him. *Public Prosecutor v. Marimuthu Gounden*. 39 Cr. L. J. 338 :

173 I. C. 448 : 1938 M. W. N. 95 :

47 L. W. 275 : 10 R. M. 584 :

(1938) 1 M. L. J. 238 :

A. I. R. 1938 Mad. 460.

———S. 25—Scope of.

To render a confession inadmissible under S. 25, it is not necessary that it should be a confession of the crime which the Police Officer is at that moment investigating. *In re : Kodangi*. 33 Cr. L. J. 173 :

135 I. C. 590 (a) : 34 L. W. 858 :

1931 M. W. N. 1138 : 61 M. L. J. 860 :

I. R. 1932 Mad. 174 (1) :

A. I. R. 1932 Mad. 24.

———S. 25—Statement to Excise Officer—Admissibility in evidence.

A statement made by an accused to an Excise Officer is not inadmissible in evidence as he is not a Police Officer within the meaning of S. 25, Evidence Act. *Raphael Pereira v. Emperor*. 27 Cr. L. J. 1145 :

97 I. C. 665 : 28 Bom. L. R. 674 :

A. I. R. 1926 Bom. 517.

———S. 25—Statement to Police—Statement by one accused to Police incriminating co-accused—Admissibility.

A statement by one accused to the Police that certain property which he produced had been given to him by two other accused who were charged with him as being members of a gang of dacoits, is inadmissible as being an admission of an incriminating circumstance under S. 25, Evidence Act. *Emperor v. Sher Mahomed*. 24 Cr. L. J. 870 :

75 I. C. 70 : 46 Bom. 961 :

A. I. R. 1923 Bom. 65.

———S. 25—Ten-house-gaung—Police Officer—Lower Burma Village Act.

A ten-house-gaung appointed under the Lower Burma Village Act is a Police Officer within the meaning of S. 25, Evidence Act. *Po Sin v. Emperor*. 5 Cr. L. J. 421 :

3 L. B. R. 283.

———S. 25—Village chaukidars are Police Officers.

Village chaukidars are Police Officers within the meaning of S. 25, Evidence Act. *Dal v. Emperor*. 16 Cr. L. J. 62 :

26 I. C. 654 : 1 O. L. J. 687 :

A. I. R. 1914 Oudh 414.

———S. 25—Village chaukidar if Police Officer—Confession to chaukidar, admissibility of.

In the Punjab, a village chaukidar is not a Police Officer within the meaning of S. 25, Evidence Act. He is a village menial and cannot, in any way, be regarded as a person in authority and confession made to him is admissible in evidence. *Khuda Bakhsh v. Emperor*. 19 Cr. L. J. 52 :

43 I. C. 84 : 42 P. R. 1917 Cr. :

A. I. R. 1917 Lah. 127.

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———Ss. 25, 26—Admission before Police—Information given by 1st accused upon which the second accused was questioned—Stolen property recovered.

Where the only evidence against the 1st accused in a case is that in consequence of information given by him, the 2nd accused was questioned and produced the stolen property and that the 1st accused also admitted that he also committed theft : *Held*, that the evidence was insufficient to convict him and that the confession was irrelevant as it did not lead directly to the recovery of the property. *In re : Ippari Ramalingam*. 7 Cr. L. J. 398 :

3 M. L. J. 333.

———Ss. 25, 26—Confession to foreign Police Officer.

A confession made to a foreign Police Officer is inadmissible in evidence according to Ss. 25, and 26, Evidence Act. *Public Prosecutor v. Veeraraghava Pillai*. 13 Cr. L. J. 528 :

15 I. C. 800 : 11 M. L. T. 407.

———Ss. 25, 26—Confession to Police.

There is no qualification of the expression "Police Officer," in S. 25 or S. 26, Evidence Act, and a confession made to a Police Officer whoever that Police Officer may be, and whether he is a Police Officer in British territory or a Police Officer in Foreign territory, is inadmissible. *Mhabli Rama Sail v. Emperor*. 26 Cr. L. J. 984 :

87 I. C. 520 : 26 Bom. L. R. 706 :

A. I. R. 1924 Bom. 480.

———Ss. 25, 26—Confession under custody—Confession made by accused while in custody of Jailor, whether admissible in evidence.

The accused, while in jail, in the course of a conversation carried on between him and some witnesses, who had gone there to identify him, made a confession in the presence of the Jailor and a Police Officer present there at the time : *Held*, that the confession did not fall under S. 25 or S. 26, Evidence Act, and therefore was admissible in evidence. *Nadir v. Emperor*. 15 Cr. L. J. 480 :

24 I. C. 568 : 8 P. R. 1914 Cr. :

214 P. L. R. 1914 :

A. I. R. 1914 Lah. 374.

———Ss. 25, 26—Exculpatory statement by accused to Police, admissibility of—Penal Code (Act XLV of 1860), S. 203—Giving information.

A statement made by an accused person to a Police officer by way of an explanation in order to exculpate himself is inadmissible in evidence. The expression 'gives information' in S. 203, Penal Code, means 'volunteers information.' *Emperor v. Akhtiar*. 14 Cr. L. J. 252 :

19 I. C. 508 : 6 S. L. R. 143.

———Ss. 25, 26—Police Officer—Member of Frontier Constabulary, whether Police Officer—Admission made to such officer, relevancy of.

A member of the Frontier Constabulary is, for the purposes of Ss. 25 and 26, Evidence

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—S. 27—*Confession leading to discovery of fact.*

An accused person confessed that he had sold a part of his share in a dacoity to a particular person and some of the stolen articles were recovered in pursuance of this information. In the trial it was contended that the description of the property as the accused's share of the dacoity was not such an information as led to the recovery of the property and was not admissible in evidence under S. 27, Evidence Act: *Held*, that the confession so far as it related to description of the property was also admissible in Evidence. In every case of this nature the Court has to consider how much of the information given by the accused does relate distinctly to the fact discovered. The Evidence Act, in express terms, puts the law on the subject on a much wider basis than does the Common Law in England. *Harnam Singh v. Emperor.*

29 Cr. L. J. 881 :
111 I. C. 561 : 9 Lah. 626 :
29 P. L. R. 679 : A. I. R. 1928 Lah. 308.

—S. 27—‘Confession’, meaning of.

The word ‘confession’ in S. 27, does not necessarily mean a complete confession of guilt but obviously means and includes any incriminating statement. The question as to whether a statement is or is not incriminating, depends both on that statement itself as well as on other facts proved *aliunde*. *Karam Din v. Emperor.*

30 Cr. L. J. 385 :
115 I. C. 1 : I. R. 1929 Lah. 337 :
A. I. R. 1929 Lah. 338.

—S. 27—*Confession to Police—Retracted confession, value of—Discovery consequent upon confession—Statement, how far admissible.*

It cannot be laid down as an absolute rule of law that a confession made and subsequently retracted by an accused cannot be accepted as evidence of his guilt without independent corroborative evidence. But the credibility of a confession is in each case a matter to be decided by the Court in the light of the circumstances in which the confession was originally made and in which it was afterwards withdrawn. So much of a confession made to the Police as directly leads to the recovery of certain articles is admissible in evidence but a further statement with regard to them, for instance, that they were stolen property, is no part of the information directly leading to their discovery and is inadmissible under S. 27, Evidence Act. *Manna Lal v. Emperor.*

25 Cr. L. J. 49 :
75 I. C. 753 :
27 O. C. 40 : A. I. R. 1925 Oudh 1.

—S. 27—Custody.

For the purposes of S. 27 the word ‘custody’ does not necessarily mean detention or confinement. Submission to custody by word or action under S. 46 (1), Cr. P. C., may be taken to amount to custody. *Jalla v. Emperor.*

32 Cr. L. J. 650 :
131 I. C. 93 : 32 P. L. R. 347 :
I. R. 1931 Lah. 365 :
A. I. R. 1931 Lah. 278.

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—S. 27—*Custody, meaning of.*

‘Police custody’ does not necessarily mean custody after formal arrest and it also includes ‘some form of Police surveillance and restriction on the movements of the person concerned by the Police’. It is open to an accused person to prove in every case that arises that he was actually in the custody of a Police Officer, although in the Police diaries he was not shown to have been formally arrested. *Hakam Khuda Yar v. Emperor.* (F. B.)

41 Cr. L. J. 591 :
188 I. C. 498 : I. L. R. 1940 Lah. 242 :
13 R. L. 1 : A. I. R. 1940 Lah. 121.

—S. 27—*Custody—Whether there should be formal arrest—Mere suspect not charged nor arrested—Presence of such person with Police—Whether amounts to custody—Statement under such circumstances leading to discovery—Admissibility.*

In order that a statement under S. 27, Evidence Act, be admissible, the maker of the statement should be in the custody of the Police, that custody need not be a formal arrest. In the case of mere suspects who have not been formally charged with any offence or arrested under any section of the Cr. P. C., their presence with the Police under some restraint amounts to ‘custody’ which is contemplated by S. 27, Evidence Act. If a statement made by a person in the above circumstances leads to the discovery of any matter, it is admissible in evidence under S. 27. *Allah Ditta v. Emperor.*

38 Cr. L. J. 1082 :
171 I. C. 377 : I. L. R. 1937 Lah. 106 :
10 R. L. 196 : A. I. R. 1937 Lah. 620.

—S. 27—‘Discovered’, meaning of.

The word ‘discovered’ is used in S. 27 in a peculiar sense and the test is that the fact discovered must be discovered in the sense, that the proof of the existence of that fact no longer rests on the credibility of the accused's statement but rests on the credibility of the witnesses who depose to the existence of that fact. *Karam Din v. Emperor.*

30 Cr. L. J. 385 :
115 I. C. 1 : I. R. 1929 Lah. 337 :
A. I. R. 1929 Lah. 338.

—S. 27—Discovery.

A statement which leads to discovery of hidden articles is admissible under S. 27 even if made in the presence of the Police. *In re: Kallam Narayana.*

34 Cr. L. J. 481 :
143 I. C. 46 : 64 M. L. J. 88 :
1932 M. W. N. 801 : 37 L. W. 220 :
56 Mad. 231 : I. R. 1933 Mad. 261 :
A. I. R. 1933 Mad. 233.

—S. 27—Discovery.

Accused in detention as suspect—Statement and discovery of body in consequence—Statement is admissible. *Nawab Din v. Emperor.*

34 Cr. L. J. 683 :
144 I. C. 12 : 34 P. L. R. 637 :
I. R. 1933 Lah. 412 (1) :
A. I. R. 1933 Lah. 516.

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which admits statements leading to discovery whether such statements amount to a confession or not. Statements put forward by the accused by way of his defence are admissible notwithstanding that they are shown by other evidence to be inconsistent with truth. A useful test as to the admissibility of statements made to the Police is to ascertain the purpose to which they are put by the prosecution. Such statements are admissible if they are relied on, not because of their truth, but because of their falsity. *Emperor v. Kangal Mali*.

15 Cr. L. J. 713 :
26 I. C. 161 : 41 Cal. 601 :
A. I. R. 1915 Cal. 256.

———S. 26.

- . See also (i) Burma Excise Act, 1917.
(ii) Coroner's Act, 1871.
(iii) Cr. P. C., 1898, Ss. 24, 287, 537.
(iv) Evidence Act, 1872, S. 25.
(v) General Clauses Act, S. 3 (31).

———S. 26—Accused making confessions
—Presence of Court constable—Effect of.

The mere fact that the Court constable was present while they were making confessions does not involve the total exclusion of the confessions from evidence. *Barnabas Christian v. Emperor*.

36 Cr. L. J. 12 :
152 I. C. 275 : 15 P. L. T. 711 :
7 R. P. 163 : A. I. R. 1934 Pat. 586.

———S. 26—Admission to Excise Officer,
admissibility.

An Excise Officer appointed under the Burma Excise Act is not a Police Officer and an admission made to him is not inadmissible in evidence. *Maung San Myin v. Emperor*.

31 Cr. L. J. 303 :
121 I. C. 715 : 7 Rang. 771 :
A. I. R. 1930 Rang. 49.

———S. 26—Chaukidar, if Police Officer.

A confession made by a person to a *chaukidar* after his arrest is irrelevant as the *chaukidar* is a Police Officer. *Jangli v. Emperor*.

35 Cr. L. J. 664 :
148 I. C. 475 : 11 O. W. N. 119 :
6 R. O. 384 : A. I. R. 1934 Oudh 19.

———S. 26—Confession before Magistrate, but without precautions required by Ss. 164, 304, Criminal Procedure Code—Admissibility.

S. 26, Evidence Act, is very wide in its terms and there is nothing in that section that limits its operations to Magistrates specially empowered under S. 164, Cr. P. C. The Evidence Act recognizes that a confession other than one formally recorded under Ss. 164 and 304, Cr. P. C., can be admitted in evidence. Where the accused was in the custody of the Police but he made the confessional statement in the immediate presence of the Magistrate and the confession has been taken without the precautions that such a confession made under Ss. 164 and 304 requires, there is nothing which prevents this statement being

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proved against him but it cannot be proved in the same manner as if it were a confession recorded with all the required formalities under Ss. 164 and 304, Cr. P. C. *Noukar Mouldino v. Emperor*.

38 Cr. L. J. 968 :
170 I. C. 827 : 10 R. S. 73 :
31 S. L. R. 460 : A. I. R. 1937 Sind 212.

———S. 26—Confession before Magistrate—
Confession made to Magistrate while accused in custody of Police, admissibility of.

A confession made by an accused person to a Magistrate at a time when he is in the custody of the Police is admissible in evidence under S. 26, Evidence Act. *Nazir Singh v. Emperor*.

27 Cr. L. J. 134 :
91 I. C. 806 : 7 L. L. J. 428 :
A. I. R. 1925 Lah. 557.

———S. 26—Confession in custody.

An admission made at any time by a person charged with a crime stating or suggesting the inference that he committed that crime is a confession, and is inadmissible in evidence when made by the accused while in Police custody. *Hakiman v. Emperor*.

2 Cr. L. J. 230 :
6 P. L. R. 196 : 20 P. R. Cr. 1905.

———S. 26—Confession in custody—Arrest
illegal—Confession, admissibility.

The policy of the Legislature appears to be that any statement in the nature of a confession made by an accused while under the custody and control of a Police Officer should be excluded from evidence. This is no doubt a wholesome policy and this policy would be defeated if the section is not to apply when the arrest by the Police Officer has been illegal. Whether the arrest is legal or illegal, the mischief which S. 26 is intended to avert remains all the same. *Emperor v. Jagia*.

39 Cr. L. J. 428 :
174 I. C. 524 : 19 P. L. T. 268 ,
10 R. B. 531 : 4 B. R. 451 :
17 Pat. 369 : A. I. R. 1938 Pat. 308.

———S. 26—Confession in custody—Confession after arrest by Police during temporary cessation of Police custody, admissibility of.

The accused, a postmaster, who had been in the Police lock-up for three days was brought out temporarily and was taken to the house of the Superintendent of Post Offices. The accused made a confession before that officer and was again brought back to the lock-up : *Held*, that no breach of the Police custody was occasioned by the temporary separation of the accused from the Sub-Inspector of Police and the confession was inadmissible in evidence. *Emperor v. Sheo Ram*.

29 Cr. L. J. 386 :
108 I. C. 398 : 10 L. L. J. 174 :
A. I. R. 1928 Lah. 282.

———S. 26—Confession in custody.

While accused was in the lock-up and under trial, he was sent by the Magistrate to a dispensary in order to be treated for a malady which involved an examination of the patient in private. Two policemen took the accused

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———S. 27—*Discovery—Statement by accused to Police Officer that he killed deceased with spear and then threw spearhead in a certain well and lathi in other place—Accused taking Police Officer to such places where spearhead and lathi are discovered—Admissibility of statement—How far can be relied upon in absence of corroborative evidence.*

Where an accused makes a statement to the Police Officer that he killed the deceased with a spear and then broke the spear and threw the spearhead in the well and the lathi in the talab and after this statement, the Police Officer is taken by the accused to the talab and there he brings out the lathi from under the mud in the talab and then points out the well in which the spearhead is thrown and on search it is found there, the statement made by the accused to the Police Officer is admissible in evidence. It would, however, be very unsafe to rely upon an extra-judicial confession of this kind when there is no other corroborative evidence in support of it. *Udhan Lohar v. Emperor.*

40 Cr. L. J. 954 :
184 I. C. 390 : 12 R. A. 229 :
1939 A. L. J. 732 :
1939 A. W. R. 602 :
A. I. R. 1939 All. 685.

———S. 27—*Discovery—Statements leading to discovery of facts, when and how far admissible.*

In order that a statement may be admissible under S. 27, Evidence Act, it is necessary that the information given must pertain to the offence with which the accused is charged and only so much of the information as relates distinctly to the fact thereby discovered can be proved. *Mohamed Yusif v. Emperor.*

31 Cr. L. J. 1026 :
126 I. C. 449 : A. I. R. 1930 Sind 225.

———S. 27—*Discovery.*

A statement made by an accused person to the Police Officer is not admissible in evidence, if the accused was not in custody at the time although the statement may lead to the discovery of a fact. *Durlav Namasudra v. Emperor.*

33 Cr. L. J. 546 :
138 I. C. 116 : 59 Cal. 1040 :
36 C. W. N. 373 :
I. R. 1932 Cal. 417 :
A. I. R. 1932 Cal. 297.

———S. 27—*Discovery—Statement made in presence of Police, proof of.*

The possession by a person of the jewels of a murdered woman, if unexplained, is presumptive evidence that he was the murderer as well as the thief. A statement by an accused person though made in the presence of the Police, may be proved under S. 27, Evidence Act, so far as it relates to any material facts discovered in consequence. *In re : Nainmalai Konan.*

23 Cr. L. J. 697 :
69 I. C. 377 : 14 L. W. 418.

———S. 27—*Discovery—Statement of accused before Police that he buried certain article—Article discovered—Admissibility of statement.*

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Where an accused person made a statement before the Police that he had buried a *mat* of *lahan* at a particular place and took the Police to the place and produced the *mat* containing the *lahan*, and the trying Magistrate rejected the statement of the accused as inadmissible holding that the fact of production alone was admissible : *Held*, that the statement of the accused that he had buried the *mat* was admissible in evidence. *Emperor v. Mela.*

29 Cr. L. J. 967 :
112 I. C. 55 : 10 L. L. J. 531.

———S. 27—*Discovery.*

The accused was charged with the murder of a woman whose corpse was found wrapped up and sewed in a coir mattress. Certain witnesses made statements alleged to have been made by the prisoner while in the custody of the Police at a shop to the effect that he purchased the mattress from the shop and another witness, a coolie woman carried this mattress. The question was as to the admissibility of these statements : *Held*, (Per Cornish and Burn, JJ., *Lakshmana Rao, J., contra*) that the statements were admissible. *Emperor v. Ramanuja Ayyangar.*

36 Cr. L. J. 1442 (2) :
158 I. C. 764 : 1934 M. W. N. 1479 :
58 Mad. 642 : 42 L. W. 124 :
68 M. L. J. 173 : 8 R. M. 331 :
A. I. R. 1935 Mad. 528.

———S. 27—*Discovery.*

The discovery referred to in S. 27, Evidence Act, is discovery to or by Police Officers, and facts already known to persons other than Police Officers may be said to be discovered in consequence of information received within the meaning of S. 27, Evidence Act. *Superintendent and Remembrancer of Legal Affairs, Bengal v. Lalit Mohan Singha Roy.*

22 Cr. L. J. 562 :
62 I. C. 578 : 25 C. W. N. 788 :
A. I. R. 1921 Cal. 111.

———S. 27—*Discovery.*

Where an accused charged under S. 414, Penal Code, when questioned took the Police to the spot and entering the room retrieved the currency notes himself from underneath a pile of firewood : *Held*, that his statement which led to recovery of the property was admissible under S. 27. *Baliram v. Emperor.*

37 Cr. L. J. 718 :
162 I. C. 779 : 18 N. L. J. 342 :
8 R. N. 285 (2).

———S. 27—*Discovery.*

Where body of murdered person is found in consequence of statement made to Police by the accused, the entire statement is admissible in evidence. *Sanaram Mahton v. Emperor.*

32 Cr. L. J. 792 :
131 I. C. 797 : 12 P. L. T. 481 :
10 Pat. 153 : I. R. 1931 Pat. 237 :
A. I. R. 1931 Pat. 145.

———S. 27—*Distinctly, meaning of.*

The word 'distinctly' in S. 27 does not mean 'directly' but is meant to exclude certain

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———S. 26—Inducement, *what amounts to.*

Expression 'you had better tell the truth' even unqualified amounts to inducement. *Hashmat Khan v. Emperor.* 36 Cr. L. J. 211 :

152 I. C. 998 : 37 P. L. R. 25 :
15 Lah. 856 : 7 R. L. 348 :
A. I. R. 1934 Lah. 417.

———S. 26—Magistrate, *who is.*

A Magistrate, though on leave and not in the District in which he has been exercising jurisdiction, is a "Magistrate" within the meaning of S. 26, Evidence Act. A confession made in the presence of such a person is relevant and admissible. *Faiz Ullah v. Emperor.*

15 Cr. L. J. 6 :
22 I. C. 150 : 8 P. W. R. 1914 Cr. :
38 P. L. R. 1914 : A. I. R. 1914 Lah. 32.

———S. 26—Magistrate, *who is.*

S. 26, Evidence Act, includes a Magistrate in a Native State. A Magistrate in a Native State is an officer who would come within the definition of "Magistrate" in the General Clauses Act, Cl. 31 to S. 3. *Muhammad Bux v. Emperor.*

35 Cr. L. J. 1328 :
151 I. C. 311 (b) : 7 R. S. 50 :
A. I. R. 1934 Sind 103.

———S. 26—Oral Confession to Honorary Magistrate.

An oral confession made to an Honorary Magistrate is admissible under S. 26, even if it is not recorded in accordance with S. 164, Cr. P. C., *Allah Bakhsh v. Emperor.*

35 Cr. L. J. 288 :
146 I. C. 1061 : 35 P. L. R. 115 :
6 R. L. 313 : A. I. R. 1933 Lah. 956.

———S. 26—Oral confession to Magistrate—*Admissibility.*

Even an oral confession made to a Magistrate is admissible in evidence under S. 26, especially when made so soon after arrest that the Police could have had scarcely any opportunity of bringing pressure upon the confessing accused. *Moti Ram v. Emperor.*

35 Cr. L. J. 455 :
147 I. C. 692 : 35 P. L. R. 201 :
6 R. L. 423 : A. I. R. 1933 Lah. 998.

———S. 26—Oral testimony.

A confession or an incriminating statement made in the presence of a Magistrate by an accused person when in Police custody who is not produced before the Magistrate with a view to record his confession can be proved by the oral testimony of the Magistrate when such confession has not been reduced to writing. *Jog Raj v. Emperor.*

32 Cr. L. J. 290 :
129 I. C. 289 : I. R. 1931 Lah. 177.
A. I. R. 1930 Lah. 534.

———S. 26—Police Officer, *meaning of.*

The words "Police Officers" in S. 26, Evidence Act, are used in the same sense in which they occur in S. 25 of the Act, and there is no reason for importing into S. 26 the notion that the Police Officers there described in general terms must be restricted

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to the investigating Police. *Emperor v. Mallan-gowda Parwalgowda.* 18 Cr. L. J. 981 :

42 I. C. 597 : 19 Bom. L. R. 683 :
42 Bom. 1 : A. I. R. 1917 Bom. 130.

———S. 26—Probability of inducement—*Effect of.*

A bare possibility of an inducement having been offered, is not sufficient ground for holding that the confession is irrelevant.

Hashmat Khan v. Emperor. 36 Cr. L. J. 211 :
152 I. C. 998 : 37 P. L. R. 25 :
15 Lah. 856 : 7 R. L. 348 :
A. I. R. 1934 Lah. 417.

———S. 26—Retracted confession—*Confession—Corroboration, necessity of—Suspicion, conviction cannot be based on.*

A retracted confession must be corroborated by independent evidence in material details before a conviction can be made to rest on it whether against the person who has made it or against the co-accused. *Miran v. Emperor.*

30 Cr. L. J. 640 :
116 I. C. 621 : 30 P. L. R. 377 :
I. R. 1929 Lah. 557 :
A. I. R. 1929 Lah. 597.

———S. 26—Scope of.

S. 26, Evidence Act, does not make the admissibility of the confession dependent upon the knowledge of the accused as to the identity of the Magistrate, the main consideration being the presence of the Magistrate and the making of the confession in his presence. *Jog Raj v. Emperor.*

32 Cr. L. J. 290 :
129 I. C. 289 : I. R. 1931 Lah. 177 :
A. I. R. 1930 Lah. 534.

———S. 26—Scope of.

For the purpose of applying the provisions of S. 26, Evidence Act, it is immaterial whether the accused was in Police custody in British territory or in Foreign territory at the time when he made the confession which is sought to be put in evidence against him. *Mhabli Rama Sail v. Emperor.*

26 Cr. L. J. 984 :
87 I. C. 520 : 26 Bom. L. R. 706 :
A. I. R. 1924 Bom. 480.

———S. 26—Scope of—"In custody of Police Officer," *meaning of—Confession made to Mashirs, admissibility of.*

The meaning of the words "in the custody of the Police Officer" in S. 26, Evidence Act, cannot be extended by implication to cases beyond what is absolutely necessary, that is, where the person is really under arrest or in strict supervision and is merely allowed to go for a few moments to converse with the person to whom the confession is made. But where the accused is not arrested or not under supervision, and is merely being invited to explain certain circumstances, it would be going further than the section warrants to exclude the statement that he makes, on the ground that he is to be deemed in Police custody. The weight however, to be given to it depends very much on the

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it may appear to be and though the truth of a large part of it be established beyond all doubt, nevertheless requires corroboration. *Ram Singh v. Emperor*.

17 Cr. L. J. 273 :
34 I. C. 993 : 7 P. R. 1916 Cr. :
35 P. W. R. 1916 Cr.

-----S. 27—Information leading to discovery—Proof.

Once property has been discovered in consequence of an information received from a suspected person, it cannot be re-discovered in consequence of information received from another suspected person. It is only the information that was given by the first person and which led to the actual discovery which may be proved under the terms of S. 27, Evidence Act. *Budha v. Emperor*.

23 Cr. L. J. 22 :
64 I. C. 502 : 9 P. L. R. 1922 :
A. I. R. 1922 Lah. 315.

-----S. 27—Information, meaning of.

The word 'information' in S. 27, Evidence Act, is not synonymous with the word statement but connotes two things: namely, a statement or other means employed for imparting knowledge possessed by one person to another, and the knowledge so derived by the other person; and the fact that the accused's statement was oral would not make the statement inadmissible. *Karam Din v. Emperor*.

30 Cr. L. J. 385 :
115 I. C. 1 : I. R. 1929 Lah. 337 :
A. I. R. 1929 Lah. 338.

-----S. 27—Interpretation.

S. 27 must be strictly construed. *Khitoli v. Emperor*.

35 Cr. L. J. 192 :
146 I. C. 905 : 10 O. W. N. 937 :
6 R. O. 190 : A. I. R. 1933 Oudh 404.

-----S. 27—Interpretation of statutes—General Statutes v. Particular Statutes—Repeal, constructive—Cr. P. C.—Ss. 162, 237—Relative scope of S. 27, Evidence Act, and S. 162, Cr. P. C.

It is a cardinal rule of interpretation that a general Statute is to be construed as not repealing a particular one. A repeal by implication is only effected when the provisions of a later enactment are so inconsistent with or repugnant to the provisions of an earlier one, that the two cannot stand together. The Evidence Act is a separate Statute dealing with an important branch of law and its provisions are independent of the rules of procedure contained in the Cr. P. C., and must have full scope unless it is clearly proved that they have been repealed or altered by another Statute. S. 162, Cr. P. C., applies to the statements of persons examined as witnesses by the Police in the course of investigation and not to the statement of an accused person and does not override or modify the provisions of S. 27, Evidence Act. *Rannun v. Emperor*.

27 Cr. L. J. 709 :
94 I. C. 901 : 7 Lah. 84 : 27 P. L. R. 583 :
A. I. R. 1926 Lah. 88.

-----S. 27—Joint discovery in consequence of joint information, admissibility of.

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Under S. 27, Evidence Act, joint discoveries are not admissible at all against any of the accused unless it can be shown who first made the discovery. A vague statement that all the accused pointed out the place cannot, therefore, be used against any of the accused. *Faqira v. Emperor*.

30 Cr. L. J. 639 :
116 I. C. 619 : 30 P. L. R. 397 :
I. R. 1929 Lah. 555 :
A. I. R. 1929 Lah. 665.

-----S. 27—Mashirnama containing reference to scene of offence, admissibility of.

Where a *mashirnama* contained the following statement alleged to have been made by the accused in the presence of the Police and *mashirs*: "He says that the cot on which the murder took place is to the east of the *hurlo* at the distance of three paces. He says that the head of the cot is to the north and the tail to the south. He shows the same place of murder which has formerly been shown by the accused Dur Mahomed." Held, that this part of the *mashirnama* was not admissible in evidence. *Dur Mahomed v. Emperor*.

32 Cr. L. J. 178 :
128 I. C. 684 : I. R. 1931 Sind 12 :
A. I. R. 1930 Sind 305.

-----S. 27—Miscellaneous—Information given by accused leading to discovery—Statement of co-accused, admissibility of—Police *mashirnamah*, value of.

If two persons give information which leads to the discovery of a fact, so much of the statement of each which relates to the fact discovered is thereby confirmed and is admissible against both. Statements of co-accused subsequent to the discovery are irrelevant. After having made discovery from one accused the other should not be invited to point out the same place. Police *mashirnamahs* are always very important as a contemporaneous record of events occurring in the investigation and, subject to the exclusion of irrelevant matter, should generally be exhibited. *Suleman v. Emperor*.

17 Cr. L. J. 505 :
36 I. C. 474 : 10 S. L. R. 7 :
A. I. R. 1916 Sind 13.

-----S. 27—Object of.

Under S. 27 while only so much of the information can be proved as has led to the discovery of the fact, there is no legal justification for splitting up or cutting down the statement of the prisoner so as to make it a vague and unintelligible statement and thus to defeat the very object with which S. 27 was enacted and, therefore, the information must be proved in the precise terms in which it was given. *Harnam Singh v. Emperor*.

29 Cr. L. J. 881 :
111 I. C. 561 : 9 Lah. 626 :
29 P. L. R. 679 : A. I. R. 1928 Lah. 308.

-----S. 27—Police custody—Arrest of accused before his going to spot from which articles are dug out but not when giving information—Accused, whether can be deemed to be in Police custody.

Even if the accused is not formally arrested at the time when he gave the information, he

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- Test of admissibility.
- Voluntary confession.
- Voluntary information by offender to Police.
- Voluntary statement.
- What can be proved.
- S. 27.

See also (i) Confession.

(ii) Cr. P. C. 1898, Ss. 161, 162, 164, 287.

(iii) Evidence Act, 1872, Ss. 8, 21.

(iv) Penal Code, 1860, Ss. 302, 414.

-----S. 27—Acceptance in part—Confession leading to discovery of weapon used, extent of, admissibility of.

Although the whole of the confession of a prisoner in Police custody cannot be admitted in evidence under S. 27, Evidence Act, yet where a confession includes a statement that a weapon was used for committing the offence charged, that part of the confession can go in if it leads to the discovery of the weapon. *Lalji Dusadh v. Emperor*.

29 Cr. L. J. 106 :

106 I. C. 698 : 6 Pat. 747 :

A. I. R. 1928 Pat. 162.

-----S. 27—Admission by accused of guilt before Sub-Inspector—Information given by accused to Police Officer, how far admissible in evidence—Criminal Procedure Code (Act V of 1898), S. 242—Statement of accused in answer to questions put by Magistrate, admissibility of, in evidence against accused—Confession—Magistrate, power of, to put questions to accused—Questions of inquisitorial nature not to be put.

Where a Police Sub-Inspector, the investigating officer in a murder case, was *inter alia*, informed by the accused of the fact that the latter had committed the murder, and the Sub-Inspector was allowed to depose to regarding this information: *Held*, that such information not being admissible in evidence under S. 27, Evidence Act, the Sub-Inspector should not have been allowed to state in Court that the accused said that he had committed the murder. The provisions of S. 342, Cr. P. C., apply to all sorts of proceedings in Magistrates' Courts, whether the case is one triable by a Court of Session or otherwise. Under S. 342 a Magistrate is empowered at any time and without any previous warning to put questions to the accused for the purpose of enabling him to explain any circumstances appearing in evidence against him, and under Sub-s. (3) of the same section, the answers which the accused gives to questions so put may be used in evidence against him. The admissibility of the accused's statement thus made is not necessarily governed by those sections of the Evidence Act which relate to the admission of confessions, as the statement is not made extra-judicially. But under S. 342, a Magistrate is not justified in putting to the accused questions of an inquisitorial nature. *Malik Husain v. Emperor*.

15 Cr. L. J. 474 :

24 I. C. 562 : 1 O. L. J. 163 :

A. I. R. 1914 Oudh 32.

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-----S. 27—Admission of possession of stolen property—Subsequent possession of property.

The statement of an accused while in Police custody that he had in possession certain stolen property is admissible in evidence even though he himself produces the property, and it makes no difference whether the accused himself digs out the property from the place where it is hidden or whether on information given by him someone else digs up the ground and produces the property. *In re : Sogiamuthu Padayachi*.

27 Cr. P. C. 394 :

93 I. C. 42 : A. I. R. 1926 Mad. 638.

-----S. 27—Applicability—Information leading to discovery of body of deceased coming from brother of deceased—Body excavated by accused—Accused's statement in that matter, admissibility of.

When an information leading to the discovery of the body of the deceased comes from the brother of the deceased, though actual excavation of the body is done by the accused, anything the accused says in the matter is not admissible in evidence and S. 27, Evidence Act, cannot be applied. *In re : Addanki Venkadu*.

40 Cr. L. J. 106 :

181 I. C. 933 : 1938 M. W. N. 1272 :

49 L. W. 175 : 11 R. M. 883 :

A. I. R. 1939 Mad. 266.

-----S. 27—Confession in custody.

A statement made by a person accused of murder, while in the custody of the Police, that he has burned the clothes of the deceased and would show the Police where he had done so, though not a confession of complete guilt so far as the charge for murder is concerned, is a direct admission of constructive guilt inasmuch as the burning of the clothes primarily implies that the accused had taken part in the murder and was evidence for a conviction under S. 201, Penal Code. Such a statement, therefore, amounts to a confession within the meaning of S. 27, Evidence Act, and is inadmissible in evidence. *Shivabhai Beeharbhai v. Emperor*.

27 Cr. L. J. 1140 :

97 I. C. 660 : 28 Bom. L. R. 1013 :

50 Bom. 683 : A. I. R. 1926 Bom. 513.

-----S. 27—Confession in custody.

Incriminating statements by way of confession made by an accused person while in Police custody when producing or pointing out articles connected with the commission of a crime; are inadmissible under S. 27 of Evidence Act I of 1872. *Santa Singh v. Emperor*.

14 Cr. L. J. 190 (b) :

19 I. C. 190 : 15 P. W. R. 1913 Cr. :

171 P. L. R. 1913.

-----S. 27—Confession leading to discovery—admissibility of.

The information that leads to the discovery of property under S. 27 of Evidence Act, to be admissible, must be the direct cause of the discovery and not merely introductory to further investigation. *Ramasami Boyan v. Emperor*.

21 Cr. L. J. 79 :

54 I. C. 479 : 11 L. W. 8 :

A. I. R. 1920 Mad. 109.

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—S. 27—Scope of—Applicability to cases of persons in actual Police custody though ordered by Magistrate.

Although S. 27, Evidence Act, is restricted to persons in custody of the Police, it applies to cases of persons who are in actual Police custody although that custody had been ordered by the Magistrate. There is nothing in such a case to offend against the principle of the section. *Ram Babu Jadav v. Emperor*.

39 Cr. L. J. 302 :
173 I. C. 418 : 18 P. L. T. 964 :
4 B. R. 266 : 10 R. P. 402 :
A. I. R. 1938 Pat. 60.

—S. 27—Scope of—Confession leading to discovery, admissibility of.

The words used by the Legislature in S. 27, Evidence Act, make it absolutely clear that only so much of the information whether it amounts to a confession or not, as relates distinctly to the fact which is deposited to as discovered in consequence of the information received, may be proved. Where the accused said: 'I shall produce the *lathi* with which I killed Ismail' and handed over a *lathi* to the Police and the *lathi* bore no marks of blood whatever: Held, that the words 'with which I killed Ismail' were not admissible in evidence under S. 27, Evidence Act. *Illahibux v. Emperor*.

31 Cr. L. J. 773 :
125 I. C. 201 : A. I. R. 1929 Sind 175.

—S. 27—Scope of.

Confession to the Magistrate not deputed by Police is admissible. *Ata Mohammad v. Emperor*.

33 Cr. L. J. 632 :
138 I. C. 497 : 33 P. L. R. 217 :
I. R. 1932 Lah. 504 : A. I. R. 1932 Lah. 261.

—S. 27—Scope of.

Evidence Act is a special law and under S. 1 (2), Cr. P. C., that Code will not override it in the absence of express provision to that effect. *Emperor v. Faujdar*.

34 Cr. L. J. 875 :
144 I. C. 1021 (2) : 55 All. 463 :
1933 A. L. J. 1518 : 6 R. A. 43 :
A. I. R. 1933 All. 440.

—S. 27—Scope of.

If the recoveries were made in consequence of the information supplied by the accused, the statements made by them are admissible under S. 27, Evidence Act. *Ali Ahmad v. Emperor*.

A. I. R. 1923 Lah. 434.

—S. 27—Scope of—Provisions of, if contradictory—S. 162, if alters S. 27, Evidence Act—Statement of accused to Police that he would point out ornaments of deceased, admissibility.

The provisions of S. 27, Evidence Act, are quite independent of S. 162, Cr. P. C., and the amendment of that section made in 1923 was not intended to abrogate or impair the effect of S. 27, Evidence Act. The statement made by the accused that he would produce deceased's ornaments which distinctly led to the discovery of the ornaments, falls within the ambit of S. 27. S. 27 contemplates the

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discovery of material evidence. The material discovered would have no value unless it is relevant to the fact in issue and connected in some manner with the crime under investigation. Any information given by an accused person 'showing the relevancy of a fact to the crime, must form an integral part of the discovery of the fact itself, namely material evidence, although it may indirectly amount to a confession. Consequently, the statement made by the accused that he would point out the deceased's ornaments would be admissible. That would only show his knowledge of the ornaments belonging to the deceased but would not prove by itself his complicity in the crime of murder. *Moti Lal v. Emperor*.

41 Cr. L. J. 158 :
185 I. C. 310 : 12 R. N. 150 :
1939 N. L. J. 585 :
A. I. R. 1940 Nag. 66.

—S. 27—Scope of.

S. 27 cannot operate to make admissible in evidence a confession which would otherwise be irrelevant under S. 24. *Hashmat Khan v. Emperor*.

36 Cr. L. J. 211 :
152 I. C. 998 : 37 P. L. R. 25 :
15 Lah. 856 : 7 R. L. 348 :
A. I. R. 1934 Lah. 417.

—S. 27—Scope of.

S. 27, Evidence Act, is not a proviso to S. 24. *Nga San Ya v. Emperor*.

11 Cr. L. J. 41 :
4 I. C. 759 : U. B. R. 1909—1 Evidence p. 3.

—S. 27—Scope of—S. 27, Evidence Act (I of 1872), is 'special law'.

S. 27, Evidence Act, contains the "law on a particular subject" and is, therefore, a "special law" as defined in S. 4 (2), Cr. P. C., read with S. 40, I. P. C. *Hakam Khuda Yar v. Emperor*. (F. B.)

41 Cr. L. J. 591 :
188 I. C. 498 : 13 R. L. 1 :
I. L. R. 1940 Lah. 242 :
A. I. R. 1940 Lah. 129.

—S. 27—Scope of.

S. 27, Evidence Act, must be construed, in any particular case, as favourably to the accused as possible, for it is a section which makes an exception against the accused contrary to the general sections, namely, Ss. 25 and 26, Evidence Act, which are in his favour. The fact that information was derived from the accused can be proved even if the exact words used by the accused are not known. Where an accused person stated: "I buried the shirt, which was my share of the stolen property, under the *beri* tree: Held, that inasmuch the fact that the shirt was the accused's share of the stolen property could not be said to be a fact 'discovered', the expression 'which was my share of the stolen property' was not admissible in evidence under S. 27, Evidence Act, though the rest of the statement was admissible. *Karam Din v. Emperor*.

30 Cr. L. J. 385 :
115 I. C. 1 : I. R. 1929 Lah. 337 :
A. I. R. 1929 Lah. 338.

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———S. 27—Discovery—Confession—Material corroboration.

The discovery of the dead body of a person, alleged to have been murdered, at a place indicated in a confession, would be material corroboration of the confession, but where it is difficult to say whether the discovery was made before the confession or afterwards the confession ought not be accepted. *Hinga v. Emperor*.

23 Cr. L. J. 481 :
68 I. C. 17 : 9 O. L. J. 190 :
4 U. P. L. R. Oudh 50 :
A. I. R. 1922 Oudh 202.

———S. 27—Discovery—Fact discovered by information given by more than one accused, effect of.

Where a fact is discovered in consequence of information received from one of several persons charged with an offence and when others give like information, the fact should not be treated as discovered from the information of them all, but from the information of the first. *Adam Khan v. Emperor*.

28 Cr. L. J. 456 :
101 I. C. 488 : 28 P. L. R. 187 :
A. I. R. 1927 Lah. 739.

———S. 27—Discovery—Fact known to Police whether can be discovered.

A fact known to the Police cannot be re-discovered on the statement of an accused person so as to make such statement or such incriminating conduct as the pointing out of a place admissible under S. 27, Evidence Act. *Wahid Bux Bhutto v. Emperor*.

30 Cr. L. J. 1121 :
120 I. C. 81 : I. R. 1929 Sind 225 :
A. I. R. 1929 Sind 250.

———S. 27—Discovery.

If a single statement contains more information than is contemplated by S. 27, the whole of the statement is not admissible but only the particular information which led to the discovery. *Emperor v. H. Z. Salve*.

35 Cr. L. J. 1444 :
151 I. C. 883 : 36 Bom. L. R. 384 :
7 R. B. 93 : A. I. R. 1934 Bom. 233.

———S. 27—Discovery.

If an accused makes a statement which is admissible under S. 27, Evidence Act, the whole of the statement which leads to the discovery of the stolen property is admissible, and sentences should not be cut up so as to reduce the statement only to the actual words which the accused may use to express the fact that he had hidden the property. *In re : Sogiamuthu Padayachi*.

27 Cr. L. J. 394 :
93 I. C. 42 : A. I. R. 1926 Mad. 638.

———S. 27—Discovery.

Information to the Police—Discovery not in consequence of the information—Information held inadmissible. *Har Narain v. Emperor*.

36 Cr. L. J. 189 :
152 I. C. 565 : 35 P. L. R. 203 :
7 R. L. 290 : A. I. R. 1934 Lah. 313.

———S. 27—Discovery.

Offence of being in possession of cocaine—

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Police Officer interviewing accused who takes him to place where cocaine was concealed—Statement held admissible. *Sudam Chandra Bag v. Emperor*.

34 Cr. L. J. 675 :
144 I. C. 74 : I. R. 1933 Cal. 494 :
A. I. R. 1933 Cal. 148.

———S. 27—Discovery.

Only statements which directly bear on the discovery of property are admissible under S. 27. *Bala Hadder v. Emperor*.

35 Cr. L. J. 594 :
148 I. C. 157 : 6 R. N. 167 :
A. I. R. 1933 Nag. 252.

———S. 27—Discovery.

Only that part of the statement of an accused person which leads to the discovery of any fact by the Police is admissible, and no more. *Ghandalal Kalidas v. Emperor*.

36 Cr. L. J. 704 :
154 I. C. 1038 : 28 S. L. R. 41 :
7 R. S. 181 : A. I. R. 1934 Sind 159.

———S. 27—Discovery—Revolver discovered from accused's field as result of information given by accused—Accused's statement, admissibility of—Arms Act (XI of 1878), Ss. 19 (f), 20.

A statement of the accused that he had buried a revolver and bullets in his field is admissible in evidence under S. 27, Evidence Act, if the arms are discovered in consequence of the information supplied by the accused. The discovery of arms as aforesaid fulfils the requirements of Ss. 19 (f) and 20 of the Arms Act. *Isher Singh v. Emperor*.

17 Cr. L. J. 183 :
33 I. C. 823 : 72 P. L. R. 1916 Cr. :
24 P. W. R. 1916 Cr. : A. I. R. 1916 Lah. 228.

———S. 27—Discovery.

S. 27 is both in form and in substance a proviso on the preceding sections. The fact discovered within the meaning of S. 27 must be some concrete fact to which the information directly relates. *Ganu Chandra Kashid v. Emperor*.

33 Cr. L. J. 396 :
137 I. C. 174 : 56 Bom. 172 :
34 Bom. L. R. 303 :
I. R. 1932 Bom. 232 :
A. I. R. 1932 Bom. 286.

———S. 27—Discovery.

S. 27 permits as much information to be admitted in evidence, whether it amounts to a confession or not, "as relates distinctly to the fact thereby discovered." If a fact has been previously discovered by the Police, S. 27 would not apply. *Charagh Din v. Emperor*.

36 Cr. L. J. 313 :
153 I. C. 228 : 7 R. L. 411 :
A. I. R. 1934 Lah. 786.

———S. 27—Discovery.

Statements by A, that he handed property to B and by B to C, by C to D, by D to E—Statements of A, B, C and D are not admissible. *Maganlal Bagdi v. Emperor*.

35 Cr. L. J. 1097 :
150 I. C. 623 : 7 R. N. 10 :
30 N. L. R. 269 :
A. I. R. 1934 Nag. 71.

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that he has hidden the properties. *Jamunia v. Emperor.*

37 Cr. L. J. 1047 :
164 I. C. 964 : I. L. R. 1936 Nag. 78 :
9 R. N. 48 : A. I. R. 1936 Nag. 200.

—S. 27—Self-incriminating statement—Admissibility of—Accused's knowledge of place where dead body is, whether sufficient for conviction—Evidence of eye-witness of murder, value of.

In a prosecution for murder, a witness stated that the accused offered to point out the place where the dead body was, and that on being questioned as to who had buried the body, he said that he had done so: *Held*, that the accused's statement that he had buried the body was not admissible in evidence. The mere fact that a person knows where the body of a murdered man is buried, is not in itself a sufficient evidence to convict him of the murder. A person who witnesses a murder and gives no assistance to the victim and after the murder keeps quiet and gives no information to the authorities, is little better than an accomplice and his evidence should be received with caution. *Emperor v. Turezi.*

21 Cr. L. J. 349 :
55 I. C. 685 : 125 P. L. R. 1920 :
A. I. R. 1920 Lah. 21.

—S. 27—Self-inculpatory statement to police—Accused pointing out stolen property concealed in a pond.

The accused pointed out the place in the pond where the bundle of stolen ornaments was recovered. The prosecution alleged that the accused had said to the police that he had buried the things in the pond: *Held*, that the statement of the accused was inadmissible in evidence. *Kaka Singh v. Emperor.*

8 Cr. L. J. 460 :
9 P. L. R. 490 : 13 P. W. R. Cr. 52.

—S. 27—Self-inculpatory statement to Police—Statement, if admissible.

In a Police investigation of a case under S. 328, Penal Code, the accused said to the *Daroga* "I gave seed of *dhatura*." On being asked from where the seed came, the accused pointed out to the officer a *dhatura* tree: *Held*, that the statement was inadmissible in evidence. *Emperor v. Panchu.*

17 Cr. L. J. 8 :
32 I. C. 136 : 13 A. L. J. 1077 :
A. I. R. 1915 All. 485.

—S. 27—Several accused—Admissibility.

Where several persons are charged of theft and all that the evidence shows is that all the accused went together with the Police Officer and took out the property from the place where it was buried at one and the same time, and there is no evidence to show that before they took out the property they or any one of them said where it was buried, the stolen property cannot be said to have been discovered in consequence of the information given by them within S. 27 and the fact that all the accused went together and took out

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the property has no value against any one of them. *Dito v. Emperor.*

33 Cr. L. J. 106 :
135 I. C. 267 : I. R. 1932 Sind 27 :
A. I. R. 1931 Sind 154.

—S. 27—Statement.

A witness should, as far as possible, depose to the actual words used by the accused person, and if the words are, for instance, "the hatchet with which the murder was committed is in a *nala*", there is no reason why the words "with which the murder was committed," should be left out of the sentence in which the necessary information is given. *Khitoli v. Emperor.*

35 Cr. L. J. 192 :
146 I. C. 905 : 10 O. W. N. 937 :
6 R. O. 190 : A. I. R. 1933 Oudh 404.

—S. 27—Statement—Admission of accused leading to discovery of spot, admissibility of.

A statement made by an accused person is not admissible under S. 27, Evidence Act, unless it has actually led to the discovery of the fact pointed out. If the fact is already known, it cannot be said to have been discovered in consequence of the said admission within the meaning of the said section, and the admission is inadmissible. *Shamlal v. Emperor.*

31 Cr. L. J. 15 :
120 I. C. 210 : A. I. R. 1929 Nag. 350.

—S. 27—Statement—Police Circle Inspector knowing what accused was going to disclose—For corroboration, witnesses called and deposition taken in their presence—*Held* discovery was not in consequence of the statement made by the accused—Statement held inadmissible.

Where the witnesses were sent for by the Circle Inspector to go to the Police Station where the accused was kept in custody, and when they arrived there, the accused was brought out of the lock-up and examined by the Circle Inspector in their presence; this meant that the Circle Inspector knew beforehand precisely what the accused was going to say. It was impossible to say that anything was discovered in consequence of the statement made by the accused to the Inspector. The Circle Inspector ought to expect to be believed when he gives evidence on oath. Consequently the evidence regarding the statements made by the accused and embodied in the *panchayatnama* and spoken to by the witnesses was wholly inadmissible. *Public Prosecutor v. Bhemumpati Subba Reddi.*

40 Cr. L. J. 433 :
180 I. C. 590 : 1938 N. W. N. 1118 :
48 L. W. 780 : 11 R. M. 728 :
A. I. R. 1939 Mad. 15.

—S. 27—Statement—Several accused in Police custody—Confessional statement by one—Similar statements by others—Discovery of evidence—All statements, whether admissible.

S. 27, Evidence Act, must be strictly construed. Where one of several accused in Police custody has agreed to point out a place, where a fact would be discovered in pursuance

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things and to limit and confine the information which may be proved within definite limits and not necessarily to include every thing which may relate to that information. *Karam Din v. Emperor*. 30 Cr. L. J. 385 :

115 I. C. 1 : I. R. 1929 Lah. 337 :

A. I. R. 1929 Lah. 338.

—S. 27—Duty of Court.

Confession induced by threat or promise—Retracted confession challenged by the defence—Judge must make thorough enquiry about voluntary character of confession. *Kali Charan Halder v. Emperor*. (F. B.)

34 Cr. L. J. 1087 :

145 I. C. 863 : 6 R. C. 152 :

A. I. R. 1933 Cal. 835.

—S. 27—Fact already discovered, effect of.

Where a material fact, for instance, the manner in which a theft was committed, has already been discovered by some other means, an accused's subsequent statement relating to the same fact, while in the Police custody, is not admissible against him under S. 27. *Manna v. Emperor*. 12 Cr. L. J. 35 :

9 I. C. 232 : 3 P. W. R. 1911 Cr.

—S. 27—'Fact', meaning of.

Under S. 27, Evidence Act, the whole of the information given by the prisoner including the confessional portion thereof, which relates to the fact can be proved against him, and the word 'fact' in the said section includes not only the concrete thing discovered by the Investigating Officer, but also its description as given by the accused including its connection with the crime which is under investigation. *Harnam Singh v. Emperor*.

29 Cr. L. J. 881 :

111 I. C. 561 : 9 Lah. 626 :

29 P. L. R. 679 :

A. I. R. 1928 Lah. 308.

—S. 27—Fact of discovery—Admissibility in evidence—Inducement by Police—Weighing of evidence.

A Police Officer was investigating a murder case. The accused in the presence of the *Thanedar* said to a villager that if she would be let off, she would tell him where the ornaments worn by the deceased were. The *Thanedar* made this promise to her. She together with the Police and a number of villagers went to a spot and produced from a dung heap the ornaments worn by the deceased : *Held*, that the fact of the discovery was admissible in evidence. In weighing evidence of this kind obtained under an inducement, consideration must always be given to the fact that the evidence was in all probability secured by the promise held out. There may be cases where the circumstances are such that the fact that the discovery was induced by a promise would raise a doubt as to the genuineness of the discovery and render the evidence almost worthless. *Emperor v. Mst. Misri*.

10 Cr. L. J. 212 :

3 I. C. 26.

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—S. 27—Incriminating statement—*Penal Code, S. 201—Discovery of body on information by accused—Statement of accused to Police that he buried the body, admissibility of.*

Where the body of a deceased person is discovered in consequence of information received from the accused, the statement of the accused to the Police that he in company with his father and brother had buried the body cannot be held to be inadmissible. *Saifal v. Emperor*.

27 Cr. L. J. 827 :

95 I. C. 603 : 27 P. L. R. 580 :

8 L. L. J. 519.

—S. 27—Inculpatory statement, admissibility of.

Under S. 27, Evidence Act, it is only when something is discovered in consequence of information received from a person accused of an offence that so much of the information as relates distinctly to the thing discovered may be proved. Where a person accused of murder offered to show to the Police the scene of the murder and the place where the deceased's things were hidden, but both these places had already been disclosed by an accomplice : *Held*, that the conduct of the accused in this respect was inadmissible in evidence against him. *Pau Gang v. Emperor*.

19 Cr. L. J. 42 :

42 I. C. 1002 : A. I. R. 1917 L. Bur. 5.

—S. 27—Inducement from person in authority—*Confession—Magistrate recording confession—Duty of Magistrate trying case—When confession retracted.*

Accused A on the 23rd April made certain disclosures to the Police and pointed out certain articles to them. On the 25th April he told them that he had taken part in the crime of dacoity, and on his statement, one B was arrested next day. A continued to remain in company of the Police but unarrested and went about from place to place with the Inspector for three days. Then he was formally arrested and sent to a Magistrate who took down his confession and to whom the accused candidly expressed his hope that by confessing he might secure a pardon and the Magistrate acquiesced in the idea and even confirmed it : *Held*, that the confession was inadmissible as it was quite impossible to hold that it did not appear to have been caused by some inducement from some person in authority. *Shree Hmon v. Emperor*. 14 Cr. L. J. 417 :

20 I. C. 401 : 6 Bur. L. T. 109.

—S. 27—Information by two persons leading to discovery—*Only that given first admissible—Necessity of proving specifically the information given by each—Approver's story—Corroboration.*

Where two persons are alleged to have given certain information to the Police which led to the arrest of another accused, it is only the information given first which can be admitted under S. 27, Evidence Act. It is only necessary that the information given by each should be precisely and separately stated. The statement of an approver, veracious though

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necessary to know exactly what the statements were; because they are admissible only so far as they lead to the discovery of some fact and no further. Where a fact is discovered in consequence of information given by one accused, and other accused persons also give the same information, it is not legitimate to say that the fact is discovered within the meaning of S. 27, from the information given by all of them. *Emperor v. Shivputraya Baslingaya*.

31 Cr. L. J. 1104 :
126 I. C. 876 : 32 Bom. L. R. 574 :
A. I. R. 1930 Bom. 244.

—S. 27—Statement made after discovery of property—Evidence—Pointing out property—Evidentiary value.

A statement by accused not leading to discovery of property and made after discovery and production of the property, is irrelevant under S. 26, Evidence Act. That section has reference only to statements made prior to the discovery of property and in consequence of which such property was discovered. It is a question of fact whether the pointing out or production of property by a person does or does not raise a presumption of guilt. The production or the pointing out may indicate that the accused was in possession or that he had innocent knowledge that the articles had been left there by some one else. *Emperor v. Photo*.

13 Cr. L. J. 529 :
15 I. C. 801 : 5 S. L. R. 257.

—S. 27—Statement not relating to discovery—Statement pointing out place where corpse was buried—Statement that accused buried the dead body, whether admissible—Murder—Knowledge of place of burial, whether proof of guilt.

Accused, who was charged with an offence under S. 302, Penal Code, made a statement to the Police that he would point out the place where the dead body of the deceased was buried and added that he had buried the body: *Held*, that the statement that the accused had buried the body did not relate to the discovery of the body and was not provable under S. 27, Evidence Act. The mere fact that an accused person appears to have known where the dead body of the deceased was buried does not prove that he was the murderer. *Sulakhan Singh v. Emperor*.

26 Cr. L. J. 1429 :
89 I. C. 901 : 1 L. C. 308 :
A. I. R. 1926 Lah. 138.

—S. 27—Statement of accused.

Statement of accused in the nature of a confession is not admissible if no material fact is discovered. But the conduct of the accused can be taken into account. *Muhammad v. Emperor*.

36 Cr. L. J. 697 :
155 I. C. 260 : 35 P. L. R. 738 :
7 R. L. 674 : A. I. R. 1934 Lah. 695.

—S. 27—Statement of accused pointing out concealed property—Admissibility.

A statement made by the accused to a Police Officer in pointing out the places where stolen

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property had been concealed, is admissible under S. 27, Evidence Act, even if the property and the place had already been found out by the Police. *Janki v. Emperor*.

11 Cr. L. J. 244 (b) :
5 I. C. 769 : 11 C. L. J. 182.

—S. 27—Statement to Police—Fact discovered through such statement not relevant—Statement, whether admissible.

A statement made by an accused to the Police cannot be proved under S. 27, Evidence Act, unless the fact deposed to as discovered in consequence of information received from such statement is a fact relevant to the case in which the evidence is sought to be given. *Gokul Chamar v. Emperor*.

28 Cr. L. J. 971 :
105 I. C. 683 : 6 Pat. 611 :
A. I. R. 1928 Pat. 22.

—S. 27—Statement to Police—Statement of accused before Police that he buried dead body of deceased, admissibility of.

Where a person is suspected or accused of murder, a statement made by him before the Police that he had buried the body of the deceased at a particular place pointed out by him is admissible in evidence. *Mamun v. Emperor*.

31 Cr. L. J. 293 :
124 I. C. 728 : 31 P. L. R. 701 :
A. I. R. 1930 Lah. 530.

—S. 27—Statement to Police by co-accused—Admissibility of—Statement, whether evidence of guilt of co-accused.

A statement made by an approver to the Police at the time of his arrest giving the names of other persons who had joined in the offence can be used against the latter only under S. 27, Evidence Act. The use which can legitimately be made of such information is merely this that when direct evidence is given against this accused at the trial, it is open to the defence to check such evidence by asking whether the name of a particular accused was mentioned or not at the time. It becomes evidence which may be used to test the consistency of the approver's story and it is information which leads to the discovery of the accused, but it is no evidence of the guilt of the accused. *Subedar v. Emperor*.

25 Cr. L. J. 490 :
77 I. C. 890 : A. I. R. 1924 All. 207.

—S. 27—Test of admissibility—Discovery of fact, whether includes discovery of person.

The discovery of a person who is afterwards proved to be a dacoit, is not the discovery of a fact within the meaning of S. 27, Evidence Act. S. 27, Evidence Act, should not be used in a way as to evade the statutory provisions of S. 25. The test of admissibility, under S. 27, Evidence Act, of information received from an accused person in the custody of a Police Officer is (a) whether the fact so discovered is in itself a relevant fact, (b) whether it was discovered as

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is obviously, for all practical purposes, in Police custody, where it is proved that he was arrested before he went to the spot from which the ornaments alleged to have been stolen from the child murdered, have been dug out. *Jamunia v. Emperor*.

37 Cr. L. J. 1047 :
164 I. C. 964 : I. L. R. 1936 Nag. 78 :
9 R. N. 48 : A. I. R. 1936 Nag. 200.

———S. 27—Police custody.

The expression 'Police custody' in S. 27 does not necessarily mean formal arrest, it also includes some form of Police surveillance and restriction on the movements of the person concerned by the Police. *Gurdial Singh v. Emperor*.

33 Cr. L. J. 756 :
139 I. C. 429 : 33 P. L. R. 826 :
I. R. 1932 Lah. 578 :
A. I. R. 1932 Lah. 609.

———S. 27—Record of Police, regarding searches, etc.—Admissibility of.

S. 162, Cr. P. C., is aimed against the admission, at the instance of the prosecution, of Police diaries and other records prepared or copied from the diaries of the Investigating Officers. It is not intended to exclude from evidence records of searches or a record of a statement made by the accused pointing out the place where a weapon is concealed. The section does not, in any way, supersede the provisions of S. 27 of Evidence Act. The provisions of the Evidence Act are quite independent of the sections in the Cr. P. C. and cannot be treated as impliedly repealed in consequence of the amendment of Cr. P. C. *In re : Semalai Goundan*.

26 Cr. L. J. 840 :
86 I. C. 664 : 21 L. W. 199 :
A. I. R. 1925 Mad. 574.

———S. 27—Recording evidence—Duty of Magistrate.

It is quite legitimate for a Magistrate to record as evidence under S. 27, Evidence Act, that an accused person said: "I will point out certain property," if that statement of the accused leads to a discovery, but it is not legitimate to record as evidence that an accused person said: "I will point out certain property which I obtained as my share of the booty in the dacoity." *Gurdil Singh v. Emperor*.

19 Cr. L. J. 439 (b) :
44 I. C. 967 : 9 P. W. R. 1918 Cr. :
52 P. L. R. 1918 : A. I. R. 1918 Lah. 358.

———S. 27—Retracted confession.

A confession that is afterwards retracted should not be made the basis of a conviction, unless it is corroborated in material particulars and by independent testimony. *Ramasami Boyan v. Emperor*.

21 Cr. L. J. 79 :
54 I. C. 479 : 11 L. W. 8 :
A. I. R. 1920 Mad. 109.

———S. 27—Scope.

It is not necessary that the information given by a person in the custody of a Police Officer shall be a confession before it can be proved

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under the provisions of S. 27. *Emperor v. Ramanuja Ayyangar*. 36 Cr. L. J. 1442 (2) :
158 I. C. 764 : 1934 M. W. N. 1479 :
58 Mad. 642 : 42 L. W. 124 :
68 M. L. J. 73 : 8 R. M. 331 :
A. I. R. 1935 Mad. 528.

———S. 27—Scope and object of—Portion of statement of accused relating to fact discovered—Admissibility—Statement that accused buried gun in certain place, made while in Police custody—Gun subsequently discovered at that place—Admissibility.

The intention of the Legislature in enacting S. 27, Evidence Act, was that the minimum portion of a confession made to a Police Officer or of information given to him should be admitted into evidence which might reasonably be held to relate distinctly and positively to the fact discovered and which is necessary to be proved in order adequately to explain such discovery. Consequently, the statement of the accused made while in Police custody, that he had himself buried a gun at a certain place, leading to the discovery of that gun in that place, is admissible in evidence. *Emperor v. Chokhey*.

38 Cr. L. J. 910 (b) :
170 I. C. 453 : 1937 A. L. J. 715 :
10 R. A. 108 : 1937 A. W. R. 616 :
I. L. R. 1937 All. 710 :
A. I. R. 1937 All. 497.

———S. 27—Scope of—Accused pointing out stolen articles—Admissibility of evidence should not be judged by S. 163, Criminal Procedure Code, but by Evidence Act—Conduct.

The admissibility of evidence to the effect that the accused went to a certain place and there produced certain ornaments should be judged by the provisions of the Evidence Act and not by the provisions of S. 135, Cr. P. C. S. 27, Evidence Act, does not qualify only S. 26 but it also qualifies Ss. 24 and 25 of the Act. The object of S. 27 is to provide for the admission of evidence which but for that section cannot be admitted by virtue of the three preceding sections. That section does not profess to and does not deal with evidence as to the conduct or acts of the accused which is admissible under S. 8 or any of the preceding sections of the Evidence Act. *Misri v. Emperor*.

10 Cr. L. J. 439 :
3 I. C. 975 : 6 A. L. J. 839.

———S. 27—Scope of—Admissibility in evidence of statements made to Police.

Where a fact is discovered in consequence of a statement made by an accused person in the custody of the Police, only so much of the statement as led directly to such discovery may be proved under S. 27 of the Evidence Act. The accused had pointed out to the Police the place where certain acts had, according to his statement, been done : *Held*, that this did not render his statements regarding such acts admissible in evidence. *Gaung Gyi v. Emperor*.

8 Cr. L. J. 62 :
4 L. B. R. 244 : 14 Bur. L. R. 233.

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———Ss. 27, 30—Confession of accused—*Testimony of accomplice—Distinction—Conviction based solely on confession of co-accused, legality of.*

The confession of a co-accused under the provisions of S. 30, Evidence Act, stands on a different footing from the testimony of an accomplice. The latter is substantive evidence in the strict sense of the term, a conviction may legally proceed upon it without corroboration. But the confession of a co-accused is not, in itself, substantive evidence and cannot be used as the basis of a conviction. It may be used only in a subsidiary manner in connection with the substantive evidence adduced in the case to which recourse must be had in the first instance. The conviction based solely on the confession of a co-accused is bad in law. *Neeha v. Emperor.* 29 Cr. L. J. 609 : 109 I. C. 801 : 11 N. L. J. 104 : A. I. R. 1929 Nag. 213.

———Ss. 27, 30—Discovery—*Fact discovered must be relevant fact, and object material object—Fact, if can be made relevant by evidence aliunde—Absence of such evidence—Statement connecting fact discovered with offence and making it relevant—Admissibility of statement.*

The fact deposed to and the fact discovered obviously must be relevant and the fact or thing discovered can only be relevant if it is connected with the offence of which the accused is charged; and the confession should be a confession of the offence charged and not of anything else. Before the statement is given in evidence, it must be shown that fact discovered is a relevant fact and that the object is a material object. *Athappa Goundan v. Emperor.* (F. B.) 171 I. C. 245 : 1937 M. W. N. 442 : 46 L. W. 152 : 1937, 2 M. L. J. 60 : I. L. R. 1937 Mad. 695 : 10 R. M. 321 : A. I. R. 1937 Mad. 618.

———Ss. 27, 30—Statement by witness to Police.

A statement made by a witness to a Police Inspector or to an investigating Magistrate is no evidence against an accused, even though the statement before the investigating Magistrate is made in the presence of the accused. *In re : Sankappa Rai.* 7 Cr. L. J. 325 : 18 M. L. J. 66 : 31 Mad. 127. 3 M. L. T. 270.

———S. 28.

See also (i) Cr. P. C., 1898, S. 164.
(ii) Evidence Act, 1872, S. 24.

———S. 28—Power of Court—*Confession, whether must be accepted or rejected in entirety.*

Although a confession must be taken as a whole and considered along with the admitted facts of the case, the accused being judged by his whole conduct, the Court is at liberty to disregard any statement contained in the confession which it disbelieves. *Kamoda v. Emperor.* 19 Cr. L. J. 785 : 46 I. C. 705 : A. I. R. 1918 Nag. 198.

———S. 28—Statement to Police—*Statement to village Headman while being arrested at*

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instance of Police—Whether statement while in Police custody.

A statement by an accused that he has committed the murder made to a Headman when the accused is in the act of being arrested by the Headman at the instance of the Police, is very near to a statement made by a man when in Police custody, and must, therefore, be scrutinized with the greatest care. *Sit Ro Saw v. Emperor.* 37 Cr. L. J. 1137 : 165 I. C. 319 : 9 R. Rang. 204 : A. I. R. 1936 Rang. 455.

———S. 29.

See also Evidence Act, 1872, S. 24.

———S. 29—Evidence of joint discovery—*Evidence by several persons, whether sufficient—Theft—Evidence—Tracks compared several days after occurrence.*

Where more than one accused person in custody of the Police point out this or produce that jointly, it is usually impossible to be sure which of them really does the pointing out or the production and which simply follows the others. Such an evidence of joint discovery cannot sustain a conviction. Track evidence is hardly of any value when the comparison has been made eight or nine days after the affairs. *Pathana v. Emperor.*

15 Cr. L. J. 499 :
24 I. C. 587 : 9 P. W. R. 1914 Cr. :
63 P. L. R. 1914 : A. I. R. 1914 Lah. 431.

———S. 29—Statement by accused to Magistrate—*Remand.*

Statements by accused to a Magistrate when produced by Police for purpose of remand are admissible. *Ngá Po Dwe v. Emperor.*

35 Cr. L. J. 823 :
148 I. C. 1002 : 6 R. Rang. 265 :
A. I. R. 1934 Rang. 78.

———S. 30.

———Abetment.

———Accused, examination of.

———Admissibility against co-accused.

———Admissibility of confession.

———Applicability.

———Approver's confession.

———Confession.

———Construction.

———Conviction on confession of co-accused.

———Corroboration.

———Essentials for admissibility.

———Evidentiary value.

———Interpretation.

———Joint trial.

———Power of Judge under.

———'Proved', meaning of.

———'Proving a confession.'

———Retracted confession.

———'Some offence,' meaning of.

———Scope of.

———Self-exculpatory statement.

———State of co-accused if admissible against others.

———Statement.

———Trial of several accused for major offence.

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—S. 27—Scope of.

S. 27 is an exception to the general rule against the proof of statements made to the Police by the accused persons in the course of an investigation. *In re : Syamo Maha Patro*. (F. B.)

33 Cr. L. J. 418 :
137 I. C. 9 : 1932 M. W. N. 305 :
35 L. W. 705 : 62 M. L. J. 742 :
I. R. 1932 Mad. 338 :
A. I. R. 1932 Mad. 391.

—S. 27—Scope of—S. 27 is *pro tanto* repealed by S. 162, Cr. P. O. (Act V of 1898).

S. 27, Evidence Act, is *pro tanto* repealed by S. 162, Cr. P. C., and evidence of information, whether it amounts to a confession or not, which relates to the fact discovered in consequence of such information must not be considered admissible in evidence. *Hakam Khuda Yar v. Emperor*.

41 Cr. L. J. 591 :
188 I. C. 498 : 13 R. L. 1 :
I. L. R. 1940 Lah. 242 :
A. I. R. 1940 Lah. 129.

—S. 27—Scope of—Statements made by accomplice elsewhere than before the Court, admissibility of.

S. 27, Evidence Act, is a proviso to the preceding sections which deal with what may or may not be proved as against the person making a confession. It has nothing whatever to do with what may or may not be proved as against other persons when the person who made the alleged confession is not himself on his trial but is appearing as a witness in the case. Hearsay evidence of any statement whatsoever made at any time and under any circumstances by an accomplice cannot be produced as against the accused before the Court. Statements made by an accomplice elsewhere than before the Court and not in the presence of the accused can be proved only to corroborate, to contradict or to impeach the credit of the accomplice. In no case can they be put forward as substantive evidence of the truth of the facts therein stated. *Aman Ali v. Emperor*.

11 Cr. L. J. 631 :
8 I. C. 379 : 13 O. C. 309.

—S. 27—Scope of.

The greatest possible precision should also be insisted on in a statement concerning information given by an accused person which is alleged to have led to the discovery of a certain fact, and which is, therefore, admissible in evidence under S. 27, Evidence Act. The discovery of a fact in consequence of information given by an accused person to the Police does not render a subsequent confession to a Police Officer admissible in evidence, nor does S. 27, Evidence Act, apply to information given to the Police by an accused person who was not in custody at the time it was given. *Kha Hlaw v. Emperor*.

7 Cr. L. J. 82 :
4 L. B. R. 116.

—S. 27—Scope of.

The mere pointing out of a house of the complainant by the accused charged with theft, is not information; it is not a statement

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incriminating or otherwise admissible under S. 27, Evidence Act. *Dhaman Hiranand v. Emperor*.

39 Cr. L. J. 10 :
171 I. C. 737 : 31 S. L. R. 494 :
10 R. S. 124 : A. I. R. 1937 Sind 251.

—S. 27—Scope of.

There is no irregularity in the recording of a witness's statement under S. 164, Cr. P. C., without calling the accused, but an accused's statement to the Police corresponding to that statement is ordinarily inadmissible as being a very incriminating circumstance equivalent to a confession, and S. 27, Evidence Act, cannot come into operation where there is not the required guarantee of the truth of his statement in the discovery of the identical property. *In re : Maretha Balu Dolatram*. 7 Cr. L. J. 166.

—S. 27—Scope of.

Under Ss. 27 and 30, Evidence Act, the most that could be taken into consideration in the statement of an accused against another would be so much of the information amounting to a confession as was the immediate cause of the discovery of some relevant fact against the person making the statement. *In re : Sankappa Rai*.

7 Cr. L. J. 325 :
18 M. L. J. 66 : 31 Mad. 127 :
3 M. L. T. 270.

—S. 27—Scope of—Whether in nature of proviso to previous sections.

S. 27, Evidence Act, is in the nature of a proviso relating to the previous sections which lay down the general rules as to the inadmissibility of confessions made in certain circumstances. The general ground for not admitting confessions made either to a Police Officer, or made under any inducement, or made by persons while in custody, is clearly the danger of admitting false confessions, but the necessity for this precaution disappears when the truth of the confession is guaranteed by the discovery of facts in consequence of the information given. The statement, therefore, that the accused had deposited two *karas* belonging to the deceased in a certain place and offered to show the Police the spot, is admissible. *Nahru v. Emperor*.

38 Cr. L. J. 642 :
168 I. C. 962 : 9 R. N. 281 :
I. L. R. 1937 Nag. 268 :
A. I. R. 1937 Nag. 220.

—S. 27—Scope of—Whole of the statement leading to discovery, if admissible.

S. 27, Evidence Act, is an enabling section providing an exception to the previous ones, which exclude confessions made to or in presence of the Police. If the conditions of the section are fulfilled, it allows even a confession to be proved. If an accused makes a statement which is admissible under S. 27, the whole of the statement which leads to the discovery of the stolen property, is admissible and sentences should not be cut up so as to reduce the statements only to the actual words which the accused may use to express the fact

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————S. 30—Confession—Co-accused—Legal evidence—Abetment—Revision—Practice.

Where some of the accused persons make statements in Court denying their participation in the commission of any crime, but inculpating a co-accused, these statements are not confessions and cannot be taken into consideration as against the co-accused under S. 30, Evidence Act. A statement made to the Police by an accused person to the effect that if certain other persons were sent for, he would see that some other property was traced out and restored, is not legal evidence to prove that the accused has been guilty of abetment of theft. Where the record disclosed no legal evidence in support of a conviction, the conviction was set aside on revision. *Bishan Datt v. Emperor*.

2 Cr. L. J. 22 :
2 A. L. J. 53.

————S. 30—Confession, meaning of.

The word "confession" in S. 30, Evidence Act, cannot be construed as including a mere inculpatory admission which falls short of being an admission of guilt. A confession unsupported by other testimony is evidence of the weakest kind against a co-accused. *Shco Ambar v. Emperor*.

25 Cr. L. J. 391 :
77 I. C. 439 : A. I. R. 1925 Oudh 295.

————S. 30—Confession, what is.

Where the accused has been examined under S. 342, and his examination has been duly recorded according to S. 304, any admission made by him during the course of that examination, which inculpates himself as well as the other accused, is a confession proved. *Ganpat v. Emperor*.

32 Cr. L. J. 1222 :
134 I. C. 686 : 27 N. L. R. 163 :
I. R. 1931 Nag. 174 : A. I. R. 1931 Nag. 169.

————S. 33—Confession against co-accused—Cr. P. C., S. 110—Confession in dacoity case, admissibility of, against co-accused in proceedings under S. 110, Cr. P. C.

The confession of an accused person in a dacoity case is inadmissible in evidence against a co-accused in that case in a proceeding against the latter under S. 110, Cr. P. C. *Mafizuddin Khan v. Emperor*.

22 Cr. L. J. 441 :
61 I. C. 793 : 33 C. L. J. 70 : 5 C. W. N. 239 :
A. I. R. 1921 Cal. 557.

————S. 30—Confession against co-accused—Cr. P. C., S. 342—Confession made by accused during examination under S. 342, whether admissible against co-accused.

Where more persons than one are being jointly tried for the same offence, a statement made by one of such persons during his examination under S. 342, Cr. P. C., implicating himself and the other accused can be taken into consideration against the other accused under S. 30, Evidence Act. *William Cooper v. Emperor*.

31 Cr. L. J. 1137 :
127 I. C. 105 : 32 Bom. L. R. 747 :
54 Bom. 531 : A. I. R. 1930 Bom. 354.

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————S. 30—Confession and admission—Distinction between.

The Indian Evidence Act makes a clear distinction between an 'admission' and a 'confession'. It is only under S. 30 that the confession of two or more persons, jointly tried for the same offence, can be taken into consideration as against the rest. It must be a confession to be so admissible, that is, it must affect both the person confessing and other accused. The word 'confession' must not be construed as including a mere inculpatory admission which falls short of being an admission of guilt. *Santa Bandu v. Emperor*.

10 Cr. L. J. 369 :
3 I. C. 742 : 11 Bom. L. R. 633.

————S. 30—Confession by one accused against others.

The confession was made for the first time at the preliminary enquiry, but it was made in the dock in the presence of another accused and there was no question of its having to be proved at that stage. Then at the Sessions trial, two months later, it was proved under S. 287, Cr. P. C., by the Magistrate's *verbatim* record of it: *Held*, that the confession could be taken into consideration against the other accused jointly tried. The other accused was in no way prejudiced since he had as much opportunity of explaining or rebutting it as if it had been made before the preliminary enquiry and proved at that enquiry. *In re: Velu Naicken*.

40 Cr. L. J. 913 :
184 I. C. 302 : 1939 M. W. N. 611 :
1939, 2 M. L. J. 202 : 12 R. M. 431 :
50 L. W. 920 : A. I. R. 1939 Mad. 737.

————S. 30—Confession by accused, use of.

Under S. 30, Evidence Act, the Court may take into consideration a confession by an accused as against a co-accused, but a Court can only treat such a confession as lending assurance to other evidence against a co-accused, and cannot base a conviction on the confession of a co-accused alone. Where there are two sets of evidence neither of which alone can be accepted without corroboration, they cannot each in its turn, be taken to corroborate the other and join together so as to justify any Court in acting on such evidence. A person cannot be convicted of an offence merely because he had absconded, and when arrested, gave a false account of his movements. *Devendra Bhattacharya v. Emperor*.

28 Cr. L. J. 497 :
101 I. C. 881 : 8 P. L. T. 566 :
A. I. R. 1927 Pat. 257.

————S. 30—Confession by co-accused—No conviction can be based on such confessions unless they are corroborated.

A conviction should not be sustained where it rests entirely on statements contained in confession of co-accused persons. *Nga Po Kya v. Emperor*.

12 Cr. L. J. 465 :
11 I. C. 1001 : 4 Bur. L. T. 189.

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of his statement to point out that place, the section does not cover similar statements of the other accused in Police custody. *Kudaon v. Emperor*.

27 Cr. L. J. 60 :
91 I. C. 236 : 21 N. L. R. 86 :
A. I. R. 1925 Nag. 407.

—S. 27—Statement by accused—Mode of recording—Police recording statement—Duty of trial Court.

Statements made by an accused person which contain information provable in evidence under S. 27, Evidence Act, should be clearly and carefully recorded by the Police Officer, and they should be recorded in the first person, that is to say, in the words used by the accused. They should not be paraphrased. Obviously if what a man says is to be used in evidence, his exact words should be used and not what a Policeman or any one else says he said. When the Police have recorded the statement, it will, in each case, be for the trial Court to decide how much of the statement is admissible under S. 27, that is to say, how much of such information as relates distinctly to the fact discoverable may be proved. *Public Prosecutor v. Marati Kunti Venkoba Rao*.

38 Cr. L. J. 1025 :
171 I. C. 225 : 1937 M. W. N. 441 :
(1937) 2 M. L. J. 32 : 10 R. M. 320.

—S. 27—Statement by accused—Relevancy of part—Incriminating statement of accused in Police custody while pointing out or producing instrument with which or spot where offence committed—Blood stains on zemindar's clothes—Police diaries to be used in interest of accused—Cr. P. C. S. 162.

The statement of an accused that he buried the weapon of the offence in a certain place is relevant but not the part of that statement that it was the weapon with which he had committed the crime. So also the statement that he would point out a certain spot and the evidence that at the spot indicated blood stains would be found, would be admissible, but not the part of that statement that it was at this spot that he had committed the crime. Where the accused produces the article himself, though the fact that he actually produced it at a particular place may be proved, yet the accompanying statement to the effect that he buried it there is inadmissible in evidence. Where an accused person has throughout consistently refused to make any confession before a Magistrate and against whom there is practically no evidence at all, his incriminating statement under S. 27 must necessarily be received with the greatest caution and suspicion, although deposed to by respectable Police Officers and the village authorities. The Police diaries, etc., should be referred to under S. 162, Cr. P. C., in the interest of the accused person for checking the evidence of the prosecution witnesses to see how far their statements can be relied upon. Blood stains on a zemindar's clothes are very seldom incriminating. *Santa Singh v. Emperor*.

14 Cr. L. J. 190 (b) :
19 I. C. 190 : 15 P. W. R. 1913 Cr. :
171 P. L. R. 1913.

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—S. 27—Statement by same accused—Property produced in consequence of the information—Penal Code, S. 395.

Where the complainant alleged that he saw 11 men committing dacoity in his house; and the Police brought up 19 accused persons for trial, the evidence against accused Nos. 1 to 15 being that immediately after the dacoity, they were individually found in possession of their share of the booty consisting of gold and silver ornaments which were identified as the complainant's and cash which they could not account for; and that accused Nos. 16 to 19 had stated to the Zemindars while in Police custody that their share of the booty had been dacoited away by three other persons, and in consequence of this information, property had been produced by the three persons so mentioned: *Held*, that the statement made by accused Nos. 16 to 19 was admissible under S. 27, Evidence Act, and in view of the fact that property had been found from all the accused immediately after the dacoity, they had been rightly convicted under S. 395, Penal Code. *Emperor v. Hazuri*.

10 Cr. L. J. 239 :
2 S. L. R. 27.

—S. 27—Statement extorted—Admissibility of in evidence.

A statement, even if extorted or elicited from a prisoner, will not thereby be rendered inadmissible under S. 27, Evidence Act, but its value must be very seriously affected. *Public Prosecutor v. Pakkiriswami*.

31 Cr. L. J. 449 :
122 I. C. 648 : 57 M. L. J. 548 :
1929 M. W. N. 785 : 30 L. W. 791 :
A. I. R. 1929 Mad. 846.

—S. 27—Statement, how to be recorded—Duty of trial Judge.

Statements made by an accused person which are or may be provable under S. 27, Evidence Act, should be clearly and carefully recorded by the Police Officers concerned. They should be recorded in the first person, that is to say, as far as possible in the actual words of the accused. They should not be paraphrased. Obviously, if what a man says is to be used in evidence, his own words should be used and not a rendering into third person of the purport of his statement. With such a record of the statement before him it will then be for the trial Judge to decide how much of it is admissible under the section. *Athappa Goundan v. Emperor*. (F. B.)

38 Cr. L. J. 1027 :
171 I. C. 245 : 1937 M. W. N. 442 :
46 L. W. 152 : 1937, 2 M. L. J. 60 :
I. L. R. 1937 Mad. 695 : 10 R. M. 321 :
A. I. R. 1937 Mad. 618.

—S. 27—Statement leading to discovery of fact—Duty of prosecution to prove exact statement—Statement by several accused, effect of.

In order to apply S. 27, Evidence Act, it is

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judgment. A confession of a co-accused must be regarded with suspicion. *Sapku v. Emperor*.

23 Cr. L. J. 129 :

65 I. C. 561 : A. I. R. 1922 Nag. 146.

———S. 30—*Confession of co-accused—Conviction based on uncorroborated confession, legality of—Identification by co-accused, whether corroboration.*

It is unsafe to base a conviction on the uncorroborated retracted confession of a co-accused. The mere identification of an accused person by a confessing co-accused, who admittedly knew him, is no corroboration of the statement of the confessing accused. *Dungar v. Emperor*.

27 Cr. L. J. 858 :

96 I. C. 983 : A. I. R. 1926 All. 603.

———S. 30—*Confession of co-accused minimising his liability.*

A person who remains on watch outside during the commission of a dacoity, is by no means the least guilty and a confession made by an accused person who says that he remained outside while the other accused committed dacoity inside, cannot be rejected on the ground that he has minimised his share in the dacoity. *Aular v. Emperor*.

31 Cr. L. J. 1017 :

126 I. C. 498 : 7 O. W. N. 456 :

I. R. 1930 Oudh 370 :

A. I. R. 1931 Oudh 74.

———S. 30—*Confession of co-accused—Nature of corroboration required to sustain conviction—Circumstantial evidence, sufficiency of.*

The question of what corroborative evidence is sufficient, with the confession of one co-accused implicating himself and another, to support a conviction must depend on the circumstances of each particular case. It cannot be laid down as a rule of law that an accused person ought not to be convicted on the ground of such confession corroborated by circumstantial evidence unless the circumstances constituting corroboration would, if believed to exist, themselves support a conviction. *Uggappa Pujari v. Emperor*.

30 Cr. L. J. 1071 :

119 I. C. 474 : 1929 M. W. N. 272 :

30 L. W. 403 : I. R. 1929 Mad. 970 :

A. I. R. 1929 Mad. 498.

———S. 30—*Confession of co-accused—Plea of guilty—Co-accused—Removal of co-accused from dock—Admissibility of co-accused's confession against remaining prisoner.*

If one co-accused pleads guilty and is removed from the dock and the other accused alone is tried, the confession of the former cannot be taken into consideration against the latter under S. 30, Indian Evidence Act. *Emperor v. Kiramat Sirdar*.

12 Cr. L. J. 479 :

12 I. C. 87 : 38 Cal. 446 :

16 C. W. N. 49.

———S. 30—*Confession of co-accused—Admissibility.*

S. 30, Evidence Act, contemplates a statement which taken by itself would be sufficient to justify the conviction of the person making it for the offence for which he is being jointly

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tried with the other person or persons against whom it is tendered. An exculpatory statement in which the accused tries to throw the guilt on the shoulders of his co-accused, cannot be used against them. *Raghunath v. Emperor*.

26 Cr. L. J. 1380 :

89 I. C. 516 : A. I. R. 1926 Nag. 119.

———S. 30—*Confession of co-accused—Substantial self-implication—Admission of actual guilt, whether necessary.*

All that is required to make the confession of an accused person admissible against a co-accused under S. 30, Evidence Act, is that the confession shall substantially implicate its maker in regard to the offence with which he and his co-accused are charged. It is not necessary that there should be an admission of actual guilt. The admission may establish constructive guilt only. *Suka Raut v. Emperor*.

25 Cr. L. J. 17 :

75 I. C. 705 : 4 P. L. T. 505 :

A. I. R. 1924 Pat. 347.

———S. 30—*Confession of co-accused—Substantive evidence not sufficient to establish guilt against accused—Confession of co-accused, if can be used as substantive evidence.*

When the substantive evidence is not sufficient to establish a *prima facie* guilt against the accused, it is not permissible to use the confession of a co-accused under S. 30, Evidence Act, as if it were itself substantive evidence, which it is not. If there is relevant evidence bearing on the accused's complicity in a particular crime, the confession of a co-accused may be taken into consideration to lend assurance to it. It can, in no case, be used to fill up the gap in the prosecution evidence. *Maroti v. Emperor*.

41 Cr. L. J. 553 :

188 I. C. 146 : 1940 N. L. J. 210 :

12 R. N. 333 : A. I. R. 1940 Nag. 230.

———S. 30—*Confession of co-accused, when admissible.*

The statement of one accused cannot be taken as evidence against another accused under S. 30, Evidence Act, unless the parties are admittedly *in pari delicto*, that is, when a confessing accused implicates himself to the full or as much as his co-accused whom he is criminating. Statements which inculcate the maker more than, or equally with, others alone can afford any satisfactory guarantee of their truth. Less weight must be attached to statements which implicate the maker in a lesser degree than others. Where the principal blame is laid on others, the statement is self-serving according to the ideas of the person making it and is entirely excluded from consideration. There is absolutely no guarantee whatever as to its truth where the statement entirely exonerates the maker. Such a statement cannot be held admissible as against the co-accused. *Sheocharan v. Emperor*.

26 Cr. L. J. 1537 :

90 I. C. 385 : 21 N. L. R. 88 :

A. I. R. 1926 Nag. 117.

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a direct, natural and necessary consequence of the information so received. *Salam v. Emperor*.
19 Cr. L. J. 79 :

43 I. C. 111 : 14 N. L. R. 192 :
A. I. R. 1917 Nag. 81.

———S. 27—Voluntary confession.

The general rule that a confession should be voluntary, should apply to a confessional statement under S. 27. Where a person had been persistently questioned for hours, throughout being under arrest, this process is such as to taint any result which may arise from it. It is a clear breach of the Police instructions which are not to pester people who are under arrest. The statement thus extracted cannot be considered as voluntary confession and is not receivable in evidence. *Emperor v. Taduturu Poligadu*.

41 Cr. L. J. 242 :
185 I. C. 829 : 1939 M. W. N. 873 :
50 L. W. 435 : 12 R. M. 612 :
A. I. R. 1940 Mad. 12.

———S. 27—Voluntary information by offender to Police—*Discovery of corpse in consequence of information—Admissibility of statement—Confession made before accusation and arrest, admissibility of.*

Where a person who had wounded his wife, went to the Police Station immediately and stated to a Police Officer that he went to a certain room where his wife was sitting and wounded her, and in consequence of this information, the Sub-Inspector of Police was able to discover the corpse of the woman in that room: *Held*, that the statement was not admissible in evidence under S. 27, Evidence Act, at the trial inasmuch as the person who made it was neither an accused person, nor in the custody of a Police Officer when he made the statement. *Deonandan Dusadh v. Emperor*.

29 Cr. L. J. 790 :
111 I. C. 118 : 7 Pat. 411 :
9 P. L. T. 533 : A. I. R. 1928 Pat. 491.

———S. 27—Voluntary statement—*Confession made to Police after long questioning—Admissibility—Statement not voluntary leading to discovery of weapon—Admissibility.*

A confession of murder made by the accused to the Police after six hours' questioning is not a voluntary statement and is not admissible in evidence. But the statement so far as it leads to the discovery of a weapon, would be admissible in evidence under S. 27, Evidence Act, though not voluntary. *In re : Kataru Chinna Papiiah*.

41 Cr. L. J. 323 :
186 I. C. 484 : 1939 M. W. N. 1134 :
50 L. W. 742 : 1940, 2 M. L. J. 35 :
12 R. M. 663 : A. I. R. 1940 Mad. 136.

———S. 27—What can be proved.

Person suspected and treated as accused though not in Police custody—Statements by such person, leading to discovery, can be proved under S. 27. *Aishan Bibi v. Emperor*.

36 Cr. L. J. 14 :
152 I. C. 206 : 15 Lah. 310 :
37 P. L. R. 67 : 7 R. L. 263 :
A. I. R. 1934 Lah. 150 (2).

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———Ss. 27, 114, 133—Accomplice, testimony of—Corroboration—Circumstantial evidence.

The rule of law enacted in S. 133, Evidence Act, must be subjected to the test deduced from the accumulated experience of human conduct in relation to the testimony of an accomplice. The guiding rule in this behalf is furnished by illustration (b) of S. 114 of that Act which lays down "that an accomplice is unworthy of credit unless he is corroborated in material particulars." An accomplice is too immoral a person to be worthy of credit without corroboration in material particulars, and if corroboration is not forthcoming, because it is not possible in the nature of things that it should be forthcoming, it does not make the accomplice less immoral or his uncorroborated testimony less unworthy of credit. It would be wholly unsafe to treat a piece of circumstantial evidence which is widely disassociated, from the *corpus delicti* as a material particular to be of any corroborative value to the testimony of an accomplice. In cases dependent on circumstantial evidence in order to justify the inference of guilt, the incriminating facts must be incompatible with the innocence of the accused and incapable of explanation upon any other reasonable hypothesis than that of his guilt. The favourable impressions on the Judge's mind as to the demeanour of an accomplice in Court cannot take the place of corroboration in material particulars to make the testimony of the accomplice worthy of credit. *Manna Lal v. Emperor*.

25 Cr. L. J. 49 :
75 I. C. 753 : 27 O. C. 40 :
A. I. R. 1925 Oudh 1.

———Ss. 27, 26—Scope of.

Three accused were charged with murder. After their arrest, third accused made a statement, at the conclusion of which, he promised the Police to take them to the place where the first accused had buried the spear with which he had stabbed the victim. The next day, third accused accordingly took the Police to a *gedda* and after he had himself unsuccessfully searched for the spear, the first accused took it out and produced it. This statement was admitted under S. 27, Evidence Act, and accused No. 3 was convicted on this statement alone. According to prosecution case, the first accused had himself hidden the spear in that particular spot: *Held*, that no doubt if one of the Police Officers themselves or any third party acting on the information of the third accused had recovered this spear, S. 27 would have been applicable. But, as this spear was recovered not because of any information given by the appellant, though that might have been the proximate cause of the presence of the party at the *gedda* but by the action of the first accused himself, the statement by third accused did not fall within S. 27 but within S. 26 and was inadmissible in evidence. The accused could not, therefore, be convicted. *In re : Nandivada Ganganna Dhora*.

41 Cr. L. J. 917 :
190 I. C. 396 : 51 L. W. 564 :
1940, 1 M. L. J. 758 : 1940 M. W. N. 542 :
13 R. M. 408 : A. I. R. 1940 Mad. 744.

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———S. 30—Corroboration.

A conviction cannot be passed exclusively on the testimony of a person, who cannot be cross-examined, if he is uncorroborated or corroborated only by an accomplice. The corroboration of a confession must be on material particulars and taken with the confession must justify belief in the substantial truth of the latter. *In re : Manicka Padayachi*.

24 Cr. L. J. 385 :
72 I. C. 497 : 14 L. W. 474 :
A. I. R. 1921 Mad. 490.

———S. 30—Corroboration.

A Judge sitting with Assessors ought never to convict an accused solely on the confession of a co-accused, but where he is sitting with a Jury, he has a discretion, to either withdraw the confession from the Jury, or to put it before them with the direction that they ought to acquit unless it is corroborated in material particulars by independent evidence. *Gangapa Kasdepa v. Emperor*.

14 Cr. L. J. 625 :
21 I. C. 673 : 15 Bom. L. R. 975.

———S. 30—Corroboration.

Approver—Recovery of ordinary clothes with no special marks of identification, is not sufficient corroboration—Ornaments which can be identified recovered—Corroboration is sufficient. *Karlara v. Emperor*.

36 Cr. L. J. 702 :
155 I. C. 305 : 35 P. L. R. 436 :
7 R. L. 687 : A. I. R. 1934 Lah. 525.

———S. 30—Corroboration.

Approver's evidence can be corroborated by confession of co-accused—Approver and co-accused retracting statements—Court should scrutinize very carefully. *Nga Nyein v. Emperor*.

34 Cr. L. J. 286 :
142 I. C. 87 : 11 Rang. 4 :
I. R. 1933 Rang. 29 :
A. I. R. 1933 Rang. 57.

———S. 30—Corroboration.

Confession of co-accused—Corroboration is very essential. *Allah Bakhsh v. Emperor*.

35 Cr. L. J. 288 :
146 I. C. 1061 : 35 P. L. R. 115 :
6 R. L. 313 : A. I. R. 1933 Lah. 956.

———S. 30—Corroboration.

The existence of general enmity and a desire, however strong, or a motive, however effective, to procure the death of another person may be a piece of circumstantial evidence, but is not corroboration of a sworn statement of participation in a particular crime. *Gobarya v. Emperor*. (F. B.)

31 Cr. L. J. 881 :
125 I. C. 673 : 26 N. L. R. 229 :
A. I. R. 1930 Nag. 242.

———S. 30—Corroboration, necessity of—
Accomplice—Confession of accused.

The evidence of an approver cannot by itself be accepted as sufficient proof of the guilt of an accused. It must be corroborated by evidence independent of accomplices. A con-

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fession duly made at any time by one of several accused persons who are under trial jointly for the same offence, can be taken into consideration under S. 30, Evidence Act, but the value of such a confession as evidence is very small and does not constitute legally sufficient corroboration of the testimony of an approver either as to the *corpus delicti* or the identity of the person affected. *Hari Lal v. Emperor*.

11 Cr. L. J. 554 :
7 I. C. 1012 : 13 O. C. 243.

———S. 30—Corroboration, necessity of—
Confession of co-accused, admissibility of—Retraction, effect of.

The statement of a co-accused is admissible in evidence but according to the usual practice and as a rule of prudence, it is unsafe to accept the tainted testimony of an accomplice so long as it is not corroborated in material particulars especially where the said accomplice does not adhere to his statement. *Man Singh v. Emperor*.

31 Cr. L. J. 206 :
121 I. C. 103 : A. I. R. 1929 All. 928.

———S. 30—Corroboration, necessity of—
Confession of co-accused how far evidence against
accused—Whether rule of law or practice.

The view, that though as a matter of law a confession of a co-accused is sufficient for the conviction of an accused, as a rule of prudence, one must seek corroboration of the confession before conviction, places the confessions of a co-accused on the same footing as the evidence of an accomplice, but it is not so. The evidence of an accomplice is, as a matter of law, sufficient for a conviction. He is a competent witness and a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice. If in spite of warning a Jury believes him without corroboration, the High Court cannot interfere. The confession of an accused can only be considered against his co-accused. Even this would not have been permissible but for S. 30, Evidence Act. The Act itself gives it a position inferior to the evidence of an approver. *Emperor v. Sadasibo Majhi*.

39 Cr. L. J. 997 :
178 I. C. 130 : 11 R. P. 215 :
19 P. L. T. 801 : 5 B. R. 53 :
A. I. R. 1939 Pat. 35.

———S. 30—Corroboration, necessity of—
Trial of co-accused for offence other than that
for which he is jointly tried with other accused—
Confession in joint trial by other accused—
Admissibility against him.

There is nothing in S. 30, Evidence Act, which suggests that a confession is not admissible in evidence against a person who is being tried jointly for the same offence with a man who has made the confession, if the confession minimises the guilt of him who makes it and exaggerates the guilt of the other. The section says that the confession must affect them both. It does not say that it must affect them both equally. But the uncorroborated evidence of such a confession against one who

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———Value of co-accused.

———Warrant case.

———S. 30.

• See also (i) Confession.

(ii) Cr. P. C., 1898, Ss. 107, 164, 337, 423, 533.

(iii) Evidence Act, 1872, Ss. 21, 24, 27, 111.

———S. 30—Abetment.

The expression "voluntarily causes a woman to miscarry" would include any act such as delivery of medicine which caused the miscarriage, but if an accused has merely pledged the ornaments of the pregnant woman and raised money intentionally to aid and facilitate the miscarriage, he would properly be charged with abetment. *Emperor v. Mariam Sidi*.

10 Cr. L. J. 19.

———S. 30—Accused, examination of, object of.

The object of examining an accused person is to afford him an opportunity of explaining away evidence against him. Each point appearing in evidence should be put to the accused and he should be invited to offer his explanation or comment on it. Anything in the nature of cross-examination should be avoided. *Nga San Nyein v. Emperor*.

18 Cr. L. J. 774 :

41 I. C. 150 : 3 U. B. R. 1917, 3 :

A. I. R. 1918 U. Bur. 34.

———S. 30—Admissibility against co-accused.

A confession of an accused is not admissible under S. 30, Evidence Act, against a co-accused if the former is convicted on his own plea of guilty. *Emperor v. Shuldham*. (F. B.)

16 Cr. L. J. 257 :

28 I. C. 145 : 14 P. W. R. 1914 Cr. :

222 P. L. R. 1915 :

A. I. R. 1915 Lah. 487.

———S. 30—Admissibility against co-accused.

Statement of the accused at the Police Station, implicating his co-accused is not admissible in evidence. *Kala Singh v. Emperor*.

34 Cr. L. J. 1175 (2) :

146 I. C. 27 : 34 P. L. R. 259 :

6 R. L. 159 : A. I. R. 1933 Lah. 167.

———S. 30—Admissibility of confession.

A confession after the close of the prosecution case when questions are put to him under S. 342, Cr. P. C., cannot be taken into consideration against a co-accused. *In re : Marudamuthu Padayachi*. (F. B.)

32 Cr. L. J. 1099 :

134 I. C. 63 : 34 L. W. 162 :

1931 M. W. N. 886 :

61 M. L. J. 358 : 54 Mad. 788 :

I. R. 1931 Mad. 815 :

A. I. R. 1931 Mad. 820.

———S. 30—Admissibility of confession.

A confessional statement made by an accused person is a confession proved within the meaning of S. 30, Evidence Act, whether made

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before trial or during trial, provided that it is recorded according to law. *Ganpat v. Emperor*.

32 Cr. L. J. 1222 :

134 I. C. 686 : 27 N. L. R. 163 :

I. R. 1931 Nag. 174 :

A. I. R. 1931 Nag. 169.

———S. 30—Admissibility of confession.

A conviction cannot be based on the confession of a co-accused. *Jahangiri Lal v. Emperor*.

35 Cr. L. J. 1180 :

150 I. C. 1056 : 7 R. L. 58.

———S. 30—Admissibility of confession.

Before the confession made by an accused can be taken into consideration, there must be tolerably clear and reliable evidence tending to prove the crime. *Makunda Hira Korku v. Emperor*.

34 Cr. L. J. 1141 :

146 I. C. 17 (2) : 16 N. L. J. 129 :

6 R. N. 60 : A. I. R. 1933 Nag. 249.

———S. 30—Admissibility of confession.

Confession implicating co-accused at close of the prosecution case can be said to be 'proved' and can be used as evidence but it is weak and value to be attached to it is to be determined in each particular case. *Dial Singh v. Emperor*.

37 Cr. L. J. 508 :

161 I. C. 898 : 37 P. L. R. 806 :

16 Lah. 651 : 8 R. L. 814 :

A. I. R. 1936 Lah. 337.

———S. 30—Admissibility of confession.

Where a confession is made by an accused voluntarily, it is admissible in evidence against the accused and may be taken into consideration as against his co-accused. *Nga Pyaung v. Emperor*.

35 Cr. L. J. 863 :

148 I. C. 1064 : 6 R. Rang. 273 :

A. I. R. 1934 Rang. 30.

———S. 30—Applicability.

The meaning of the legislative enactment in S. 30, Evidence Act that a confession may be taken into consideration by the Court is that the Court may treat the confession, in the circumstances provided for by the section, as evidence. *Kchri v. Emperor*.

5 Cr. L. J. 360 :

4 A. L. J. 310 : 29 All. 434 :

27 A. W. N. 140.

———S. 30—Approver's confession.

Approver — Testimony rejected against principal accused—Corroboration against some accused—Evidence can be accepted against them. *Emperor v. Rai Singh Narain Singh*.

35 Cr. L. J. 137 :

146 I. C. 665 : 34 P. L. R. 1010 :

6 R. L. 254 : A. I. R. 1933 Lah. 871.

———S. 30—Confession—Admissibility.

The confession may, however, be taken into consideration against a co-accused under S. 30, Evidence Act. It may not stand on the same level as substantive evidence but it may be used to supplement the substantive evidence. *Baliram Singh v. Emperor*.

40 Cr. L. J. 937 :

184 I. C. 274 : 12 R. N. 106 :

1939 N. L. J. 442 : A. I. R. 1939 Nag. 295.

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to which the confession of a co-accused may be used to supplement the substantive evidence in a case, and it must be left open to the Court, in each case, in the exercise of judicial discretion, to decide for itself under what circumstances and to what extent it should be so used. S. 30, Evidence Act, is not a mandatory one and the Court is not bound to take such a confession into consideration. *Gobarya v. Emperor*. (F. B.) 31 Cr. L. J. 881 :

125 I. C. 673 : 26 N. L. R. 229 :
A. I. R. 1930 Nag. 242.

————S. 30—Proved, meaning of.

“Proved” in S. 30 means proved before the prosecution case comes to an end, either proved in the course of the prosecution case or proved in some proceeding previous to the trial. *Nawab v. Emperor*. 37 Cr. L. J. 75 :

159 I. C. 381 : 8 R. L. 383 :
A. I. R. 1935 Lah. 35.

————S. 30—Proving a confession—Applicability.

The expression “proving a confession” in S. 30, Evidence Act, is inapplicable to the procedure where the Judge asks questions and an accused person gives explanations under a special section provided for that purpose. To prove a confession made by a person, evidence must be tendered at the trial that on some previous occasion he did, in fact, make a confession and that is the only thing which is contemplated by S. 30, Evidence Act. *Mahadeo Prasad v. Emperor*. 25 Cr. L. J. 305 :

76 I. C. 1025 ; 21 A. L. J. 179 :
45 All. 323 : A. I. R. 1923 All. 322.

————S. 30—Retracted confession.

A confession, though it is retracted, is admissible against the parties making it. *Makunda Hira Korku v. Emperor*. 34 Cr. L. J. 1141 :

146 I. C. 17 (2) : 16 N. L. J. 129 :
6 R. N. 60 : A. I. R. 1933 Nag. 249.

————S. 30—Retracted confession.

A retracted confession is evidence and there is no provision in S. 30, Evidence Act, by which a confession is to be received in one way against one person and in another way against another. *Mst. Amina v. Emperor*. 32 Cr. L. J. 579 :

130 I. C. 641 : I. R. 1931 Lah. 321 :
A. I. R. 1931 Lah. 196.

————S. 30—Retracted confession.

A retracted confession ought to be viewed with the greatest suspicion even as against the maker himself, but where the corroborating evidence is clear and convincing, there is no reason to discard it. *Sukha Raut v. Emperor*. 25 Cr. L. J. 17.

75 I. C. 705 : 4 P. L. T. 505 :
A. I. R. 1924 Pat. 347.

————S. 30—Retracted confession.

Confession of co-accused must be corroborated—Confession of co-accused retracted. In summing up to Jury, Judge treating it as evidence

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against all accused, there is serious misdirection. *Kasim-ud-Din v. Emperor*. 36 Cr. L. J. 485 :
154 I. C. 273 : 39 C. W. N. 27 :
62 Cal. 312 : 7 R. C. 440 (2) :
A. I. R. 1934 Cal. 853.

————S. 30—Retracted confession—Corroboration in material particulars.

A retracted confession need not be supported by independent reliable evidence corroborating it in material particulars, and may form the basis of a conviction, if the Magistrate believes that it was voluntarily made. *Mahmud v. Emperor*. 25 Cr. L. J. 574 :

81 I. C. 62 : 16 S. L. R. 67 :
A. I. R. 1921 Sind 129.

————S. 30—Retracted confession—Confession retracted before Committing Magistrate and Court of trial—Confession not directly corroborated—Deceased's brother giving evidence in favour of accused and its effect.

A confession not implicating the confessor cannot be taken into account against his accomplice. Where the confessions of the accused retracted before the Committing Magistrate and the Court of Session were not directly corroborated, while the deceased's brother contradicted the confessions and also the evidence tending to show motive : *Held*, that it would be unsafe to find the confessions substantially true, in face of the contradiction, taking into consideration the fact that they were not directly corroborated. *Emperor v. Jivan Bhagwan*. 1 Cr. L. J. 590.

————S. 30—Retracted confession.

Effect of retraction is not to cancel confession. Amount of corroboration required depends on circumstances of each case. *Krishna Babaji Chavan v. Emperor*. 34 Cr. L. J. 896 :

145 I. C. 133 : 6 R. B. 39 :
35 Bom. L. R. 371 :
A. I. R. 1933 Bom. 230.

————S. 30—Retracted confession.

The Evidence Act does not make any distinction between a retracted or unretracted confession. Both are equally admissible and may be taken into consideration against the accused though it may be that less weight would be attached to a retracted confession. *Gour Chandra Das v. Emperor*. 30 Cr. L. J. 475 :

115 I. C. 359 : 32 C. W. N. 1004 :
I. R. 1929 Cal. 359 :
A. I. R. 1929 Cal. 14.

————S. 30—Retracted confession.

The retracted confession made by a co-accused is not legally sufficient to justify the conviction of other accused jointly tried with him, unless it is sufficiently corroborated by other evidence. *Beni Madho v. Emperor*. 34 Cr. L. J. 595 :

143 I. C. 555 : 10 O. W. N. 405 :
I. R. 1933 Oudh 181 :
A. I. R. 1933 Oudh 263.

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—S. 30—*Confession by co-accused at trial—Whether admissible in evidence—Conviction on uncorroborated confession of co-accused, legality of.*

Where there is nothing against an accused person but the uncorroborated confession by a co-accused from the dock at the trial, a conviction thereon cannot be supported. The confessional statements of a co-accused at the trial itself are not admissible in evidence at all. *In re: Govinda Naidu.*

30 Cr. L. J. 932 :
118 I. C. 512 : I. R. 1929 Mad. 832 :

1929 M. W. N. 391 : A. I. R. 1929 Mad. 285.

—S. 30—*Confession during inquiry, admissible against co-accused—Cr. P. C., S. 476, inquiry under.*

An inquiry was commenced under S. 476, Cr. P. C., with a view to ascertain whether a complaint should be lodged against an accused person with regard to a document produced by him in the course of certain judicial proceedings. In the course of the inquiry the accused made a confession implicating himself and certain other persons in the commission of the offence. As a result of the confession, the accused and the persons named by him were placed on their trial for forgery and cognate offences: *Held*, that the confession made by the accused in the course of the inquiry under S. 476, Cr. P. C., was made by him while he was in the position of an accused person, and was admissible in evidence against him under S. 30, Evidence Act. *Anaji Venkatesh Majumdar v. Emperor.*

26 Cr. L. J. 993 :
87 I. C. 593 : 26 Bom. L. R. 614 :
A. I. R. 1924 Bom. 445.

—S. 30—*Confession of accused—Admissibility of.*

A statement made by an accused person before it can be taken into consideration against a fellow prisoner, as is provided for in S. 30, Evidence Act, must amount to a confession on the part of the maker with respect to the offence with which all are charged. It becomes admissible only if it is an incriminating statement which involves the maker as it does those persons whom it incriminates. *Bhadreswar Sardar v. Emperor.*

29 Cr. L. J. 527 :
109 I. C. 351 : 47 C. L. J. 526 :
32 C. W. N. 731 : A. I. R. 1928 Cal. 416.

—S. 30—*Confession of accused against Co-accused—Confession, whether evidence against co-accused.*

A confession made by an accused can be taken into consideration and used as evidence not only against himself, but also against a co-accused tried jointly with him for the same offence. *Radhi v. Emperor.*

25 Cr. L. J. 13 :
75 I. C. 701 : A. I. R. 1924 Nag. 27.

—S. 30—*Confession of accused against co-accused.*

Statements made by one of several persons against whom a joint enquiry is being made under S. 117, Cr. P. C., which are in the nature

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of confessions and contain incriminating matter against the other accused, are admissible against the latter. *Sarju v. Emperor.*

20 Cr. L. J. 206 :
49 I. C. 654 : 17 A. L. J. 147 :
41 All. 231 : 1 U. P. L. R. All. 89 :
A. I. R. 1919 All. 220.

—S. 30—*Confession of accused against co-accused.*

Though the confession of an accused person can be taken into consideration against a co-accused, it would be unsafe, if not illegal, to rely on it without further corroboration in material particulars. *Karam Din v. Emperor.*

30 Cr. L. J. 385 :
115 I. C. 1 : I. R. 1929 Lah. 337 :
A. I. R. 1929 Lah. 338.

—S. 30—*Confession of accused against co-accused.*

Under S. 30 the confession of an accused cannot take the place of evidence against a co-accused; it cannot add to or supplement evidence otherwise insufficient but where there is evidence against the co-accused sufficient, if believed, to support his conviction, then the kind of confession described in S. 30 may be thrown into the scale as an additional reason for believing that evidence. *In re: Periyaswami Moopan.*

32 Cr. L. J. 448 :
129 I. C. 645 : 54 Mad. 75 :
59 M. L. J. 471 : 1930 M. W. N. 858 :
32 L. W. 527 : I. R. 1931 Mad. 309 :
A. I. R. 1931 Mad. 177.

—S. 30—*Confession of accused, how far evidence against co-accused.*

Confession made by an accused is not evidence against other accused. Under S. 30, Evidence Act, such confession can only be taken into consideration against other accused but that does not mean that the confession can take the place of evidence so far as the other accused are concerned. *In re: Ramaswami Goundan.*

39 Cr. L. J. 894 :
177 I. C. 494 : 1938 M. W. N. 577 :
48 L. W. 139 : 11 R. M. 330 :
A. I. R. 1938 Mad. 675.

—S. 30—*Confession of co-accused, admission of.*

S. 30, Evidence Act, renders admissible an incriminatory statement made by one accused as against the other only when it substantially implicates the former and not when it is an exculpatory statement. *Topandas v. Emperor.*

25 Cr. L. J. 761 :
81 I. C. 249 : A. I. R. 1925 Sind 116.

—S. 30—*Confession of co-accused, admissibility of—Conviction, whether can be based on it alone.*

A confession of an accused not being declared relevant by the Evidence Act against a co-accused, cannot be treated as substantive evidence and a judgment cannot be based upon it so far as the co-accused is concerned. A Court may, under S. 30, Evidence Act, take it into consideration with or supplementarily to relevant facts which may form the basis of a

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evidence is always necessary. *Mcwo Badal v. Emperor.* 38 Cr. L. J. 124 :

166 I. C. 37 : 9 R. S. 118 :

30 S. L. R. 319 : A. I. R. 1936 Sind 236.

----- S. 30—Scope of.

A Court must accept or reject the confession as a whole and cannot accept only the inculpatory element while rejecting the exculpatory element as inherently incredible. *Jumma Fatch Mohammad v. Emperor.* 34 Cr. L. J. 94 :

141 I. C. 40 : 33 P. L. R. 511 :

I. R. 1933 Lah. 55 : A. I. R. 1932 Lah. 438.

-----S. 30—Scope of.—If restricts confession to one recorded before Magistrate—Confession under S. 27, consideration of, against other accused tried jointly for same offence.

There is nothing in S. 30, Evidence Act, which restricts the confession to one recorded before a Magistrate. On the other hand, Illus. A to S. 30 suggests that the section contemplates "the taking into consideration" of a confession to an ordinary witness. It follows, therefore, that all such confessions when the accused are being tried jointly for the same offence when made by one of them affecting himself and another or others of the accused, may be taken into consideration as against the other or others under S. 30, Evidence Act. *Alhappa Goundan v. Emperor.* (F. B.)

38 Cr. L. J. 1027 :

171 I. C. 245 : 1937 M. W. N. 442 :

46 L. W. 152 : (1937) 2 M. L. J. 60 :

I. L. R. 1937 Mad. 695 : 10 R. M. 321 :

A. I. R. 1937 Mad. 618.

-----S. 30—Scope of.

'Offence' includes abetment and attempt—S. 30 applies to proceedings under Cr. P. C., S. 110. *Richpal Singh v. Emperor.*

36 Cr. L. J. 198 :

152 I. C. 881 : 1934 A. L. J. 1170 :

4 A. W. R. 42 : 7 R. A. 408 :

A. I. R. 1934 All. 927.

-----S. 30—Scope of—Principle of—Court can only treat confession as lending assurance to other evidence against a co-accused.

All that S. 30, Evidence Act, provides is that the Court may take the confession of a co-accused into consideration against the other co-accused ; that is to say, that the Court can only treat a confession as lending assurance to other evidence against a co-accused. *Nga Mya v. The King.* 39 Cr. L. J. 481 :

174 I. C. 947 : 1938 Rang. 30 :
10 R. Rang. 449 : A. I. R. 1938 Rang. 92.

-----S. 30—Scope of.

S. 30, Evidence Act, is not confined to statements made by an accused person before trial but covers statements made during the trial. *William Cooper v. Emperor.*

31 Cr. L. J. 1137 :

127 I. C. 105 : 32 Bom. L. R. 747 :

54 Bom. 531 : A. I. R. 1930 Bom. 354.

-----S. 30—Scope of.

Though the ordinary case contemplated by S. 30, Evidence Act, is where the confessing

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accused directly implicates another accused as well as himself, there is no reason for holding that the section is limited to such a case and does not also cover a case where the confession indirectly affects a co-accused. *Shivabhai Becharbhai v. Emperor.* 27 Cr. L. J. 1140 :

97 I. C. 660 : 28 Bom. L. R. 1013 :

50 Bom. 683 : A. I. R. 1926 Bom. 513.

-----S. 30—Self-exculpatory confession.

When an accused person in his statement or confession imputes the commission of the offence to his co-accused, but does not implicate himself as fully and substantially as he does his co-accused, the said statement cannot be used as evidence against the co-accused. *Emperor v. Shambhu.* 33 Cr. L. J. 201 :

135 I. C. 838 : 1932 A. L. J. 162 :

I. R. 1932 All. 102 : A. I. R. 1932 All. 228.

-----S. 30—Self-exculpatory confession.

Under S. 30 the Court may take into consideration the confession of a co-accused. Where, however, the co-accused makes no confession but throws the blame entirely on the accused and tries to exculpate himself, such statement cannot be taken against the accused. *Potram v. Emperor.*

36 Cr. L. J. 740 (2) :

155 I. C. 258 : 31 N. L. R. 246 :

7 R. N. 173 : A. I. R. 1935 Nag. 125 (2).

-----S. 30—Self-exculpatory confession, if admissible against co-accused.

A confession of an accused person cannot be used against the co-accused under S. 30, Evidence Act, if it is self-exculpatory. *Shamlal v. Emperor.* 31 Cr. L. J. 15 :

120 I. C. 210 : A. I. R. 1929 Nag. 350.

-----S. 30—Self-exculpatory confession of co-accused, admissibility of.

The principle underlying S. 30, Evidence Act, is that unless the parties are admittedly *in pari delicto* and unless the confessing prisoner implicates himself to the full as much the co-prisoner, whom he is incriminating, it would be highly unsafe to rely on such confession so far as the co-prisoner is concerned. *Diwan Dhimar v. Emperor.*

27 Cr. L. J. 186 :

91 I. C. 1002 : 9 N. L. J. 80 :

A. I. R. 1926 Nag. 229.

-----S. 30—Self-exculpatory statement, whether confession.

A statement made by an accused person denying his guilt is not a "confession" within the meaning of S. 30, Evidence Act. *Vallabhram Ganpatram v. Emperor.* 27 Cr. L. J. 689 :

94 I. C. 881 : 27 Bom. L. R. 1381 :

A. I. R. 1926 Bom. 122.

-----S. 30—Self-exculpatory statement—Confessional statement of exculpatory nature—Admissibility against co-accused.

A statement to the effect that the person making it and his co-accused struck the deceased in exercise of their right of private defence, is in no sense, a confession and cannot

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———S. 30—*Confession of co-accused not tested by cross-examination—Value of.*

Though S. 30, Evidence Act, lays down that the confession of a co-accused can be taken into consideration, it must always be remembered that where it has never been subjected to the test of cross-examination, at the most it can be only corroborative evidence. *Paqir Singh Sudh Singh v. Emperor*. 40 Cr. L. J. 897 : 184 I. C. 219 : 41 P. L. R. 333 : 12 R. L. 183 : A. I. R. 1939 Lah. 429.

———S. 30—*Confession of co-accused, value of—Conviction based solely on such confession, legality of.*

An accused person can lawfully be convicted on his own confession, even if the confession has been retracted, if the Court is satisfied of its truth. The confession of an accused person, whether retracted or not, can be taken into consideration as against his co-accused. But an accused person cannot be convicted solely on the confession or confessions of his co-accused unsupported by other evidence. Such confessions may be taken into consideration as lending support to the other evidence in the case. But if there is no evidence, it is not proper basis for a conviction. It is not strengthened by the fact that it is supported by other confessions whether these have been made in such circumstances as to preclude the theory that there has been connivance between the persons making the confessions or not. *Nga Po Kank v. Emperor*.

27 Cr. L. J. 743 :
95 I. C. 71 : 4 Rang. 45 :
A. I. R. 1926 Rang. 127.

———S. 30—*Confession of co-accused, value of—Corroboration—Intention—Evidence of previous and subsequent transactions, admissibility of.*

A confession of a co-accused is not made on oath and its evidentiary value is very low. The statement of even an accomplice has a higher and more probative value than the confession of a co-accused. The Court can only treat a confession of a co-accused under S. 30, Evidence Act, as lending assurance to the other evidence against the co-accused, and a conviction based on the confession of a co-accused alone would be bad in law. *Pane M. Vaz v. Emperor*.

26 Cr. L. J. 185 :
83 I. C. 889 : 16 S. L. R. 197 :
A. I. R. 1921 Sind 57.

———S. 30—*Confession of co-accused—Value of.*

The confession of a co-accused cannot be the main evidence in a case. It is the weakest possible kind of evidence, which can only be taken into consideration against the co-accused by reason of the provisions of S. 30, Evidence Act. It is not given upon oath and it is not tested by cross-examination. A statement in such a confession cannot alone be held sufficient to justify a finding of guilty of so grave an offence as that under S. 306, which is punishable with death. *Ah Phut v. The King*.

41 Cr. L. J. 129 :
185 I. C. 205 : 1940 Rang. 104 :
12 R. Rang. 185 : A. I. R. 1939 Rang. 402.

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———S. 30—*Confession of person jointly tried—Penal Code, Ss. 109, 312.*

If one of several accused committed to a Sessions Court, has pleaded guilty, he may be called as a witness, after both conviction and sentence, but, if the Public Prosecutor does not ask the Court to consider the plea as final but asks to record and consider the evidence in his case also, he will be considered as being jointly tried so as to allow the Court to consider the effect of his confession under S. 30, Evidence Act, as against the other accused. *Emperor v. Mariam Sidi*.

10 Cr. L. J. 19.

———S. 30—*Confession of prisoner—Use against co-prisoner.*

A confession of a prisoner will not be admissible in evidence against his co-accused unless he implicates himself to the full extent as much as his co-prisoner whom he is criminalizing. *Sheroo v. Emperor*. 25 Cr. L. J. 1067 : 81 I. C. 891 : A. I. R. 1925 Nag. 78.

———S. 30—*Confession under, nature of—Confession must be of offence for which accused are jointly tried.*

The confession as mentioned in S. 30, Evidence Act, must be a confession of the offence for which the accused persons have been tried and not of some other offence. Where they are tried for murder, but one of the accused confesses only to an offence under S. 201, Penal Code, the confession cannot be taken into consideration against the other accused. Apart from the statement of the accused the case against the accused, held, had been proved beyond all doubt. *Tikaram v. Emperor*.

40 Cr. L. J. 934 :
184 I. C. 258 : 12 R. N. 103 :
1939 N. L. J. 469 : A. I. R. 1939 Nag. 309.

———S. 30—*Construction.*

S. 30 must be construed strictly. Its terms do not countenance the construction of a statement into a confession by a process of inferential reasoning. It is one thing to make statements giving rise to an inference of guilt and another thing to confess a crime. *Santa Bandu v. Emperor*. 10 Cr. L. J. 369 : 3 I. C. 742 : 11 Bom. L. R. 633.

———S. 30—*Conviction on confession of co-accused—Conspiracy, charge of—statement of one conspirator—Admissibility in evidence against others.*

If *prima facie* evidence of the existence of a conspiracy is given and accepted, the evidence of statements made by one of the conspirators in furtherance of the common object is admissible against all. Under S. 30, Evidence Act, the confession of one accused may be taken into consideration as against the other co-accused but a conviction of an accused based solely on the confession of a co-accused cannot stand without independent evidence entirely outside the confession. *In re : Lilaram Ganganmull*.

25 Cr. L. J. 1041 :
81 I. C. 817 : 20 L. W. 202 :
A. I. R. 1924 Mad. 805.

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sworn testimony even of an approver given in Court. *Nanak Chand v. Emperor.*

32 Cr. L. J. 1036 :
133 I. C. 545 : 32 P. L. R. 792 :

I. R. 1931 Lah. 785 : A. I. R. 1932 Lah. 73.

———S. 30—Warrant case—*Accused pleading guilty—His confession, whether can be used against co-accused.*

In warrant cases, it is discretionary with the Magistrate to defer conviction of the accused who pleads guilty and use his confession against the other co-accused under S. 30, Evidence Act. *Amdu Miyan v. Emperor.* (F. B.)

38 Cr. L. J. 237 :
166 I. C. 582 : 9 R. N. 126 :

I. L. R. 1937 Nag. 315 : A. I. R. 1937 Nag. 17.

———Ss. 30, 32, 118, 133—Confession of accused who is dead.

An accomplice is a competent witness against a co-accused tried separately. The confession of an accused person who is dead implicating himself and an accomplice in a crime is admissible under S. 32 (3), Evidence Act, and is not excluded by Illust. (b) to S. 30. *Ngı Pı Yin v. Emperor.*

5 Cr. L. J. 300 :

13 Bur. L. R. 203 :

1 U. B. R. Cr. 1906, Evidence 3.

———Ss. 30, 114—Confession before Magistrate—*Accused in Police custody—Presumption—Cr. P. C., S. 162—Statement made to Police, inadmissibility of—Objection, whether applies to confession.*

The mere fact of an accused being in Police custody is not a good basis for a presumption, that any confession he may make before the Magistrate is caused by an inducement, threat or promise, having reference to the charge against him, proceeding from some Police Officer and sufficient to make him believe that he would be benefited in the trial by making it. No statement made to the Police by any person, whether accused or witness, during an investigation can be even mentioned in evidence except to the extent and under the circumstances stated in S. 162, Cr. P. C., but it would be admissible if it formed part of a confession by the accused before the Magistrate. *Dadi Lodhi v. Emperor.*

27 Cr. L. J. 731 :

95 I. C. 59 : A. I. R. 1926 Nag. 368.

———Ss. 30, 114 (b)—Confession of co-accused—*Whether constitutes sufficient basis for conviction.*

The confession of a co-accused is not the same thing as the testimony of an accomplice and stands on a different footing. It may be taken into consideration as lending support to other evidence in the case. But if there is no other evidence, it is not a proper basis for a conviction. It is not strengthened by the fact that it is supported by the other confessions, whether these have been made in such circumstances as to preclude the theory that there has been connivance between the persons making the

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confessions or not. *Nga San Nyein v. Emperor.*

18 Cr. L. J. 774 :
41 I. C. 150 : 3 U. B. R. 1917 3 :
A. I. R. 1918 U. Bur. 34.

———Ss. 30, 114, III. (b)—Corroboration—*Evidence of approver—Corroboration by confession of co-accused—Corroboration of one tainted piece of evidence by another tainted piece.*

It is improper to seek corroboration for one tainted piece of evidence in another tainted piece of evidence. It is unsafe to base a conviction on the evidence of an approver which is corroborated only by the confession of a co-accused. *Latafat Hossain Biswas v. Emperor.*

30 Cr. L. J. 586 :
116 I. C. 174 : 33 C. W. N. 58 :
I. R. 1929 Cal. 462 : A. I. R. 1928 Cal. 745.

———Ss. 30, 114, III. (b)—Scope of—*Confession by co-accused to be taken into consideration—Basis of conviction without corroboration—Rule of practice—Confession of co-accused and testimony of accomplice.*

The confession referred to in S. 30, Evidence Act, cannot be restricted to an unrettracted confession, as once a confession is proved, it may be taken into consideration. There is nothing in the section to prevent a Court from convicting after taking the confession into consideration, or to fetter the discretion of the Court, but the High Courts in India have laid down rules of practice which deserve all the reverence of law, and ought to be observed by Judges when exercising their discretion under S. 30. A conviction founded solely on the confession of co-accused cannot be sustained. The confession of a co-accused stands on quite a different footing to the testimony of an accomplice. *Gangapa Kardepa v. Emperor.*

14 Cr. L. J. 625 :
21 I. C. 673 : 15 Bom. L. R. 975.

———Ss. 30, 133—Confession by co-accused—*Corroborative evidence.*

A confession by a co-accused can be used against a person jointly tried only when it is shown that it implicates the person making the confession substantially to the same extent as it implicates the person against whom it is used in the commission of the offence for which the accused are jointly tried. Although a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice, the statement refers only to exceptional cases. In ordinary cases, the presumption is that such testimony is insufficient and corroborative evidence is required. *Government of Mysore v. Thirumala.*

9 Cr. L. J. 360 :
12 M. C. C. R. 146.

———S. 31—Scope of.

S. 31, Evidence Act, means that an admission unless it amounts to an estoppel, is not conclusive as against the maker, as it is open to him to prove that it was made under a mistake of law or fact or that it was made

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has not made it, is of very little value. *Zahid Beg v. Emperor*. 39 Cr. L. J. 364 : 173 I. C. 838 : 1937 A. L. J. 1253 : 10 R. A. 508 : 1937 A. W. R. 1099 : A. I. R. 1938 All. 91.

———S. 30—Corroboration.

Rule as to necessity of corroboration for approver's testimony must not be departed from on the ground that he has no enmity with accused and his statement being a detailed one must be true. *Shib Dhan v. Emperor*.

34 Cr. L. J. 1129 : 145 I. C. 752 : 6 R. L. 139 (2) : 34 P. L. R. 660 : A. I. R. 1933 Lah. 838.

———S. 30—Essentials for admissibility.

It must be a confession of guilt affecting himself equally with the others; and it must be proved against these persons who are jointly tried with him. *Nawab v. Emperor*.

37 Cr. L. J. 75 : 159 I. C. 381 : 8 R. L. 383 : A. I. R. 1935 Lah. 35.

———S. 30—Evidentiary value—Confession of accused, how far evidence against co-accused—Retracted confession—Failure of Judge to instruct Jury about the meagre evidentiary value of accused's confession against his co-accused.

The evidentiary value of a confession of an accused person as against his co-accused is on an even lower footing than the uncorroborated evidence of an accomplice who can be subjected to cross-examination and whose evidence is given under the sanctions of an oath. A conviction on such a confession alone is bad in law. Where, in a Sessions trial, the Judge failed to instruct the Jury that the confession of an accused person was no evidence against his co-accused: *Held*, that it amounted to a misdirection. *Kuppan v. Emperor*.

9 Cr. L. J. 308 : 1 I. C. 547 : 5 M. L. T. 335.

———S. 30—Evidentiary value.

Statement of co-accused though can be used as link in a chain, cannot form basis of conviction. *Nizam Din v. Emperor*. 35 Cr. L. J. 719 : 148 I. C. 8 : 6 R. Pesh. 47 : A. I. R. 1934 Pesh. 11.

———S. 30—Interpretation.

'Proved' must mean proved before the case for the prosecution comes to an end. *In re : Marudamuthu Padayachi*. (F. B.)

32 Cr. L. J. 1099 : 134 I. C. 63 : 34 L. W. 162 : 1931 M. W. N. 886 : 61 M. L. J. 358 : 54 Mad. 788 : I. R. 1931 Mad. 815 : A. I. R. 1931 Mad. 820.

———S. 30—Joint trial—Confession—Plea of guilty by one of the accused—Use of confession against the rest.

Where an accused person has pleaded guilty and the Court is prepared to convict on the plea, it is contrary to the spirit of the law to postpone the conviction so that the person who has pleaded guilty may technically be said to be tried jointly for the same offence

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with other co-accused, and any statement in the nature of a confession that he may make be used against them. *Emperor v. Kheoraj*.

8 Cr. L. J. 380 : 1908 A. W. N. 241 : 4 M. L. T. 398 : 30 All. 540 : 5 A. L. J. 505.

———S. 30—Joint trial, effect of—Trial of number of accused before Magistrate—Plea of guilty by some after charge implicating all—Confessional statements of two admissible.

Where in a trial of several persons the Magistrate, on the conclusion of the evidence for the prosecution, framed a charge and called upon the accused to enter on their defence, and two of them pleaded guilty, and in doing so, implicated all the accused and the Magistrate tried all of them together and relied on the confessions of the two in convicting the others: *Held*, that the two accused were persons tried jointly with the other accused within the meaning of S. 30, Evidence Act, and their statements could be taken into consideration against the other accused. *In re : Vempalli Bali Reddy*.

15 Cr. L. J. 13 : 22 I. C. 157 : 14 M. L. T. 453 : A. I. R. 1914 Mad. 45.

———S. 30—Joint trial, necessity of—Statement by one accused—When admissible against co-accused—Essentials for admissibility stated.

S. 30, Evidence Act, contemplates that the statement of one accused admissible against his co-accused must be made in the same trial when both accused are charged with the same offence and it must be a confession which affects himself as well as his co-accused. *Rijhumal Kundanmal v. Emperor*.

38 Cr. L. J. 965 : 170 I. C. 746 : 10 R. S. 72 : A. I. R. 1937 Sind 218.

———S. 30—Joint trial—Warrant case—Trial, meaning of—Joint trial—Confession by one accused, whether admissible against co-accused.

In a warrant case the trial covers the whole of the proceedings. Where in a warrant case a co-accused pleads guilty to the charge and makes a confessional statement which would justify his conviction on the charge, the statement is admissible in evidence against his co-accused under S. 30, Evidence Act. *Fakhr-ud-Din v. Emperor*.

27 Cr. L. J. 735 : 95 I. C. 63 : 6 Lah. 176 : A. I. R. 1925 Lah. 435.

———S. 30—Power of Judge under.

If there is any other relevant matter implicating the co-accused, the Judge is permitted by S. 30, Evidence Act, to consider the confession along with the matter, and as a result of such consideration, to convict the co-accused. Such a confession may, however, be legitimately used to corroborate other evidence and even to supplement the same in those exceptional cases in which without such an aid the other evidence falls short by a very narrow margin of that standard of proof which is requisite for a conviction. It is not possible to lay down any hard and fast rule as to the extent

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ing his injury), or if the deceased's speech was intelligent and distinct, when his statement or dying declaration was taken down, it should be received without caution, and, though falsehood in it must be guarded against, yet, if it is supported by circumstantial evidence, it must be taken as true. The perfunctory conduct of an investigating Police Officer is no reason, if there is otherwise sufficient evidence for a conviction, to acquit the accused. *Emperor v. Khavs Meru Vala*.

3 Cr. L. J. 305.

———S. 32—Dying declaration.

Generally a declaration, relevant under S. 32 but not made by one in immediate expectation of death, and not made in the presence of the accused, ought not to be acted upon unless there is some reliable corroboration. *Emperor v. Akbarali Karimbhai*.

35 Cr. L. J. 109 (2):
146 I. C. 548 : 58 Bom. 31 :
6 R. B. 157 : 35 Bom. L. R. 1021 :
A. I. R. 1933 Bom. 479 (2).

———S. 32—Dying declaration.

If a man gasps out his story soon after the occurrence, it may be said that there was no time for him to fabricate or for his friends to suggest falsehood. But if a statement is made many days before his death, that statement does not carry much weight and it is incumbent on the Court before it accepts the statement to see how far it is corroborated. *In re : Arumuga Thevan*.

32 Cr. L. J. 357 (b) :
129 I. C. 252 : 59 M. L. J. 876 :
32 L. W. 940 : I. R. 1931 Mad. 252 :
A. I. R. 1931 Mad. 180.

———S. 32—Dying declaration.

In a trial for robbery, in which the deceased received the wound, which remotely caused her death, her statement made before death, regarding the circumstances of the robbery, is relevant under S. 32 (1). *Nga Ba Min v. Emperor*.

37 Cr. L. J. 205 :
159 I. C. 1032 : 8 R. Rang. 309 :
A. I. R. 1935 Rang. 418.

———S. 32—Dying declaration.

In the case of a dying declaration, the evidence of the person who recorded it, or in his unavoidable absence, some other person who was present and heard it correctly recorded, should always be taken to make the written record admissible. *Krishnama Naicken v. Emperor*.

33 Cr. L. J. 115 :
135 I. C. 337 : 60 M. L. J. 404 :
33 L. W. 348 : 54 Mad. 678 :
1931 M. W. N. 167 :
I. R. 1932 Mad. 81 :
A. I. R. 1931 Mad. 430.

———S. 32—Dying declaration — Person receiving forty-two gun-shots in chest, liver, stomach, etc.

The receipt of forty-two gun-shot wounds in the liver, heart, stomach and lungs, and the profuse haemorrhage occasioned thereby,

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would cause a great deal of shock to the person receiving it and the probability is that he would become unconscious within a few minutes and could not remain in a condition fit to make a dying declaration for more than few minutes after receiving his injuries. *Anant Ram Maya Ram v. Emperor*.

39 Cr. L. J. 512 :
174 I. C. 989 : 10 R. L. 653 :
A. I. R. 1938 Lah. 262.

———S. 32—Dying declaration—Proof.

Witnesses should not be allowed to prove a dying declaration as if it were a substantial piece of evidence in the case. The relevant fact to be proved is the statement made by a deceased person admissible under S. 32, Evidence Act, and that statement is not the document made by the Magistrate but the verbal statement made by the deceased person. The only way of proving a declaration is by the evidence of some witness who heard it made, the witness being at liberty to refresh his memory by referring to the note made by him or read over by him at or about the time the statement was made. *Kunj Lal v. Emperor*.

23 Cr. L. J. 417 :
67 I. C. 577 : 6 L. L. J. 115 :
4 U. P. L. R. Lah. 83 :
A. I. R. 1924 Lah. 12.

———S. 32—Dying declaration.

Rape—Suicide by woman ravished three days later—Statement made is not admissible under S. 32 (1). *Kappinaiah v. Emperor*.

32 Cr. L. J. 751 :
131 I. C. 456 : 1930 M. W. N. 702 :
I. R. 1931 Mad. 520 :
A. I. R. 1931 Mad. 233 (2).

———S. 32 — Dying declaration — Statement made by deceased to Police.

Though statement by a deceased to Police is not First Information under S. 154, Cr. P. C., it would still be admissible as a dying declaration under S. 32, Evidence Act. *Banta Singh v. Emperor*.

31 Cr. L. J. 444 :
122 I. C. 491 : A. I. R. 1930 Lah. 457.

———S. 32—Dying declaration.

Statement of witness from the time of giving information to his being shot, is admissible subject to exclusion of hearsay evidence. *Lekh Singh v. Emperor*.

34 Cr. L. J. 101 :
140 I. C. 892 : 9 O. W. N. 977 :
I. R. 1933 Oudh 26 :
A. I. R. 1933 Oudh 53.

———S. 32—Dying declaration.

The fact that the declarant has lingered for some days after making the declaration, does not render a dying declaration inadmissible in evidence. *Thakura Singh v. Emperor*.

30 Cr. L. J. 65 :
113 I. C. 177 : 10 L. L. J. 463 :
I. R. 1929 Lah. 138 :
A. I. R. 1929 Lah. 64.

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———S. 30—*Retracted confession.*

The weight to be given to a retracted confession depends on the circumstances under which it is made, and on the intrinsic credibility of the confession. *Nga San Nyein v. Emperor.*

18 Cr. L. J. 774 :
41 I. C. 150 : 3 U. B. R. 1917, 3 :
A. I. R. 1918 U. Bur. 34.

———S. 30—*Retracted confession.*

Under S. 30, Evidence Act, no probative value can be attached to a statement of an accused made before the Committing Magistrate but retracted before the Sessions, in considering the guilt of his co-accused. *Raghunath v. Emperor.*

26 Cr. L. J. 1380 :
89 I. C. 516 : A. I. R. 1926 Nag. 119.

———S. 30—*Retracted confession, value of—Sessions trial—Charge to Jury.*

A retracted confession should carry practically no weight as against persons other than the maker because it is not made on oath, it is not tested by cross-examination, and its truth is denied by the maker himself, who has lied on one or other of the occasions, and the very fullest corroboration of such a confession is necessary, far more than would be demanded for the sworn testimony of an accomplice whose statement is subject to cross-examination. Where in a Sessions trial the Judge fails to point out to the Jury the considerations applying to the weight to be attached to a retracted confession and places the confession before the Jury as the testimony of an accomplice under S. 133, Evidence Act, the charge amounts to a misdirection, and the verdict passed on such a misdirection, cannot stand. *Moyez Sardar v. Emperor.*

26 Cr. L. J. 360 :
84 I. C. 712 : 40 C. L. J. 551 :
A. I. R. 1925 Cal. 406.

———S. 30—*Retracted confession, value of.*

Where a confession has been retracted, the Tribunal will consider whether it is corroborated in material particulars and whether the statement as a whole is a truthful statement, and may, in either of these cases, give full weight to it. *Bhikari Pati v. Emperor.*

32 Cr. L. J. 66 :
128 I. C. 114 : 9 Pat. 592 :
11 P. L. T. 787 : I. R. 1931 Pat. 2 :
A. I. R. 1930 Pat. 545.

———S. 30—*Retracted confession.*

Where a confession which does not contain statements of any value in evidence except an admission of the guilt of the accused has been subsequently retracted, it is not sufficient in itself to justify the conviction of the person making it. *Emperor v. Narain.*

32 Cr. L. J. 630 :
131 I. C. 72 : 8 O. W. N. 31 :
I. R. 1931 Oudh 184 :
A. I. R. 1931 Oudh 83.

———S. 30—*Retracted confession.*

Where the guarantee afforded by self-implication is rendered nugatory by the confessing accused himself retracting his confession and

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denying the truth of the statements made therein, then little or no reliance can be placed upon such a retracted confession so far as the co-accused are concerned. *Baboo Singh v. Emperor.*

37 Cr. L. J. 163 :
159 I. C. 875 : 1936 O. L. R. 5 :
1936 O. W. N. 64 : 8 R. O. 212 :
A. I. R. 1936 Oudh 156.

———S. 30—*Retracted confession, whether admissible against co-accused.*

The confession of an accused person even though subsequently retracted, is admissible in evidence against a co-accused, *Sardara v. Emperor.*

31 Cr. L. J. 877 :
125 I. C. 639 : A. I. R. 1930 Lah. 667.

———S. 30—*Retracted confession of co-accused, value of—Corroboration necessary for conviction.*

A retracted confession of a co-accused is admissible under S. 30, Evidence Act, and may be taken into consideration against him, but a conviction cannot be based on it unless it is corroborated in material particulars by other evidence. *Muhammad v. Emperor.*

16 Cr. L. J. 157 :
27 I. C. 221 : 5 P. L. R. 1915 :
3 P. W. R. 1915 Cr. : A. I. R. 1915 Lah. 116.

———S. 30—*'Same offence,' meaning of.*

The expression 'same offence' in S. 30, Evidence Act, means the identical offence and does not mean an offence of the same kind. The expression does not cover different offences in the same transaction by different persons. *Gour Chandra Das v. Emperor.*

30 Cr. L. J. 475 :
115 I. C. 359 : 32 C. W. N. 1004 :
I. R. 1929 Cal. 359 : A. I. R. 1929 Cal. 14.

———S. 30—*Scope of—Confession—Whether should claim for maker the leading part in crime.*

No doubt S. 30, Evidence Act, requires that the confession should be one affecting its maker, but the law does not go so far as to require that the confession should claim for its maker the leading part in the crime. *Emperor v. Sadasibo Majhi.*

39 Cr. L. J. 997 :
178 I. C. 130 : 11 R. P. 215 :
19 P. L. T. 801 : 5 B. R. 53 :
A. I. R. 1939 Pat. 35.

———S. 30—*Scope of—Conditions of applicability—Accused and co-accused not tried for same offence—Statement of co-accused is not admissible—Corroboration is necessary.*

One of the conditions requisite to the successful application of S. 30, Evidence Act, is that the accused must be tried jointly for the same offence. Then when a confession made by one of the co-accused affecting himself and another co-accused is proved, the Court may take such confession into consideration against the co-accused as well as against the accused who made it. But where the co-accused is not tried for the same offence, his statement should not be taken into account against the accused. As the statement of a co-accused ranks lower than the evidence of an accomplice because it is not made on oath nor is it tested by cross-examination, corroborative

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———S. 32—*Dying declaration of dacoit—Admissibility against other dacoits.*

The statement of a dying dacoit as to the circumstances of the dacoity resulting in his death giving the names of his associates, is not admissible in evidence against the other dacoits under S. 32, Evidence Act. *Dannu Singh v. Emperor.*

26 Cr. L. J. 547 :
85 I. C. 643 : A. I. R. 1925 All. 227.

———S. 32—*Dying declaration, written record of—Statements by deceased regarding motive of accused, in First Information Report and dying declaration, if admissible.*

The statements made by the deceased regarding the motive of the accused in committing the offence, in the First Information Report and in the dying declaration, are statements as to the circumstances of the transaction resulting in the death of the deceased, and as such, are admissible under S. 32. The law is not that the written record cannot be used at all, but that it is not to be used without first examining as a witness the person who heard the statement made. Where a Sub-Inspector who recorded the First Information Report is examined as a witness and the written record of the statement is attested by him, and also the Magistrate who recorded the dying declaration is examined as a witness and proves the statement recorded by him and also proves that the deceased was in his senses and that he read over the statement to the deceased who admitted it to be correct; this is sufficient attestation and proof of the statement to make it admissible under S. 32. *Emperor v. Somra Bhuiyan.*

39 Cr. L. J. 332 :
173 I. C. 499 : 16 Pat. 593 :
19 P. L. T. 86 :
10 R. P. 421 : 4 B. R. 281 (2) :
A. I. R. 1938 Pat. 52.

———S. 32—*Gestures by wounded person, relevancy of—Opinions of witnesses as to gestures, whether admissible in evidence.*

Where a woman, with her throat partially cut and unable to speak, makes gestures in answer to questions put by a Sub-Inspector of Police, and indicates the person who has wounded her, the gestures are admissible in evidence under S. 32. The interpretation of the gestures is for the Court alone and the opinion of witnesses as to such gestures is not evidence. *Chandrika Ram v. Emperor.*

24 Cr. L. J. 129 :
71 I. C. 353 : 1 Pat. 401 :
3 P. L. T. 771 : 1923 Pat. 26 :
1 P. L. R. 77 Cr. :
A. I. R. 1922 Pat. 535.

———S. 32—*Scope of.*

S. 32 provides an exception to the general rule that evidence must be given in Court by witnesses. *Rahman v. Emperor.*

32 Cr. L. J. 1118 :
134 I. C. 117 : 33 P. L. R. 8 :
I. R. 1931 Lah. 885 :
A. I. R. 1932 Lah. 14.

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———S. 32—*Scope of—Dying declarations—Statements made before receiving injuries, if admissible under S. 32.*

A confession of the limited kind allowable by S. 27, may be taken into consideration against a co-accused under S. 30. S. 32 covers not only 'dying declarations' strictly so-called, i. e., statements by a dying person as to the injuries which have brought him to that condition or the circumstances under which those injuries came to be inflicted, but is wide enough to include statements made by a deceased person to another, before receiving the injuries, as to the circumstances under which he was accompanying the accused to the place where the murder was committed. *Shivabhai Becharbhai v. Emperor.*

27 Cr. L. J. 1140 :
97 I. C. 660 : 28 Bom. L. R. 1013 :
50 Bom. 683 : A. I. R. 1926 Bom. 513.

———S. 32—*Scope of.*

Statements made by the deceased some days prior to the event which resulted in death, are excluded by S. 32 (1). So also statements made by the deceased some days prior to the murder, which prove the motive of the offenders to murder him, are inadmissible under S. 32 (1). *Mrs. R. F. Rego v. Emperor.*

34 Cr. L. J. 505 :
143 I. C. 17 : 29 N. L. R. 251 :
I. R. 1933 Nag. 153 : A. I. R. 1933 Nag. 136.

———S. 32—*Statement of deceased as to cause of death.*

Statements by a deceased as to the cause of his death are admissible, also against other persons concerned in the transaction which resulted in the deponent's death. *Nga Hla Din v. Emperor.*

37 Cr. L. J. 621 :
161 I. C. 491 : 8 R. Rang. 569 :
A. I. R. 1936 Rang. 187.

———S. 32—*Statement of deceased as to cause of his death.*

Statements made by a person as to the cause of his death in cases in which the cause of his death comes into question, are relevant even if they were recorded by a Magistrate of the Second Class, who was not empowered under S. 164, Cr. P. C., to record statements of witnesses. *Rahman v. Emperor.*

32 Cr. L. J. 1118 :
134 I. C. 117 : 33 P. L. R. 8 :
I. R. 1931 Lah. 885 : A. I. R. 1932 Lah. 14.

———S. 32—*Value of statement—Answers to questions made by signs, whether verbal statement—Admissibility.*

A reply made by signs by a person unable to speak in answer to a question put to him, taken together with the question, amounts to a verbal statement within the meaning of S. 32, Evidence Act, and is admissible in evidence. *Ranga v. Emperor.*

26 Cr. L. J. 328 :
84 I. C. 552 : 5 Lah. 305 :
1 Lah. Cas. 40 : A. I. R. 1924 Lah. 581.

———S. 32—*Verbal statement—Signs by dying person, admissibility of—Confession by person under influence of opium, value of.*

Where a dying person is unable to speak and can only make signs in answer to questions put

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be taken into consideration against the co-accused. *Maulu v. Emperor*.

26 Cr. L. J. 531 :
85 I. C. 371 : 6 L. L. J. 434 :
A. I. R. 1925 Lah. 532.

———S. 30—Self-exculpatory statement.

Where one of the accused in a case of dacoity said that he went to the scene of the dacoity under pressure, that in fact, he was actually under fear of imminent death, that he took no part in the dacoity but stood outside the house and then went away: *Held*, that the statement was not a confession but a self-exculpatory statement, and was not admissible against the co-accused under S. 30, Evidence Act. *Bhadreswar Sardar v. Emperor*.

29 Cr. L. J. 527 :
109 I. C. 351 : 47 C. L. J. 526 :
32 C. W. N. 731 : A. I. R. 1928 Cal. 416.

———S. 30 — Self-inculpatory statement, value of.

The self-inculpatory confession of an accused person implicating his co-accused is not substantive evidence upon which alone the conviction of his co-accused could legally be based. Such a confession even if it be corroborated by other evidence which is insufficient by itself to sustain the conviction of the non-confessing co-accused, could not form a legal basis for his conviction. *Gobarya v. Emperor*. (F. B.)

31 Cr. L. J. 881 :
125 I. C. 673 : 26 N. L. R. 229 :
A. I. R. 1930 Nag. 242.

———S. 30—Statement of accomplice—Confession of co-accused, value of—Corroboration, necessity of—Motive, whether corroboration.

Evidence of motive is not a corroboration of any of the incidents of the crime. The statement of an accomplice can be taken into consideration under S. 30, Evidence Act, only when he admits his own guilt to the same extent to which he implicates others. *Sheo Ambar v. Emperor*.

25 Cr. L. J. 391 :
77 I. C. 439 : A. I. R. 1925 Oudh 295.

———S. 30—Statement of accomplice—Corroboration.

Before a conviction is based on the statement of an approver, the first and foremost essential condition is that the statement must be a trustworthy statement, and there must be ample corroboration of the evidence of the accomplice in material particulars which must be independent of the accomplice or of a co-confessing prisoner. *Sheroo v. Emperor*.

25 Cr. L. J. 1067 :
81 I. C. 891 : A. I. R. 1925 Nag. 78.

———S. 30—Statement of co-accused—Admissibility.

The appellants who were charged with receiving stolen property under S. 411, I. P. C., were tried along with accused No. 3 who was charged with theft of the property. The Magistrate relying among other things on the statement of the 3rd accused against the appellants, convicted them: *Held*, on appeal, that the appellants could not be said to have been tried for the same offence so as to make the

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statements of one of them admissible against the others. *Yellappa v. Government of Mysore*.

7 Cr. L. J. 170 :
12 M. C. C. R. 41.

———S. 30—Statement of co-accused if admissible against others—Cr. P. C., S. 164—Joint trial.

The only thing that an accused person has to meet in a criminal trial is the case for the prosecution and such additions thereto as he may voluntarily add by his own statement and those of the witnesses whom he calls in his defence. The Legislature has, however, created an exception to this rule in S. 30, Evidence Act, but what is contemplated in that section is formal proof by the prosecution of a confession previously made, and not a statement made in the dock by one accused against the other in a joint trial. *Mahadeo Prasad v. Emperor*.

25 Cr. L. J. 305 :
76 I. C. 1025 : 21 A. L. J. 179 :
45 All. 323 : A. I. R. 1923 All. 322.

———S. 30—Statement of person not implicating himself—Inadmissibility of such a statement.

A statement of an accused to the effect that under threats of death, he was forced to sit outside the door of the house where a murder was being committed to warn the murderers of the approach of anybody, and not to divulge the secret and to remain a passive agent in the crime and that he took no part in committing the crime, does not amount to a confession of either murder or its abetment and consequently is inadmissible in evidence under S. 30 against the co-accused. *Hassan v. Emperor*.

11 Cr. L. J. 604 :
8 I. C. 250 : 38 P. W. R. 1910 Cr. :
24 P. R. 1910 Cr.

———S. 30—Trial of several accused for major offence—Confession by one as to minor offence, whether admissible against others.

Under S. 30, Evidence Act, where two accused are tried jointly for a major offence, a confession by one of them implicating himself in a minor offence is admissible in evidence against the other accused. Persons under trial for a major offence are also being charged with and tried for any minor offence or offences constituted by the particular ingredients of the major offence which may be proved, and it makes no difference that the conviction of one accused of a minor offence, after trial for a major offence takes place only in appeal, when the course of the proceedings has been the same against them both. *In re : Manika Padayachi*.

24 Cr. L. J. 385 :
72 I. C. 497 : 14 L. W. 474 :
A. I. R. 1921 Mad. 490.

———S. 30—Value of co-accused's confession.

Where the confession is voluntary and admissible in evidence, it can be taken into consideration against a co-accused under S. 30, though its value is much less than

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———S. 32 (1)—*Dying declaration, proof of.*

A dying declaration, if certified in Court as having been recorded correctly, is admissible in proof of its own contents, and it is unnecessary that the person recording it should repeat exactly in his own words what the deceased had said. *Partap Singh v. Emperor.*

27 Cr. L. J. 215 :

92 I. C. 167 : 7 Lah. 91 :

28 P. L. R. 222 : A. I. R. 1926 Lah. 310.

———S. 32 (1)—*Dying declaration, proof of.*

To prove a dying declaration, it is not necessary that the witness while giving evidence should repeat in his own words what the deceased had said. It is enough if he proves the record of that statement. *Kapur Singh v. Emperor.*

31 Cr. L. J. 475 :

123 I. C. 120 : 31 P. L. R. 83 :

A. I. R. 1930 Lah. 450.

———S. 32 (1)—*Dying declaration—Statement made by deceased several days before cause of death, admissibility of.*

S. 32 (1) only applies to statements made by a dying person as to the injuries which have brought him or her to that condition, or the circumstances under which those injuries came to be inflicted. Statements made by a deceased person several days before the cause of his or her death, are not admissible in evidence under S. 32 (1). *Autar Singh v. Emperor.*

25 Cr. L. J. 1140 :

81 I. C. 964 : 4 Lah. 451 :

A. I. R. 1924 Lah. 252.

———S. 32 (1)—*Dying declaration, value of.*

A trustworthy dying declaration made by a deceased person in full possession of senses and proved by the clearest and most reliable evidence to be exactly in the words of the person making it and corroborated by the surrounding circumstances, is sufficient to support a conviction for murder under S. 302, I. P. C. *Karim Khan v. Emperor.*

9 Cr. L. J. 156.

1 I. C. 100 : 4 P. W. R. Cr. 1909.

———S. 32 (1)—*Scope of—Section, if conveys limitation—"Circumstances of the transaction," meaning of—Murder case.*

The natural meaning of the words used in S. 32 (1), Evidence Act, does not convey any limitations. The statement may be made before the cause of death has arisen, or before the deceased has any reason to anticipate being killed. The circumstances must be circumstances of the transaction. Circumstances must have some proximate relation to the actual occurrence; though, as for instance, in a case of prolonged poisoning, they may be related to dates at a considerable distance from the date of the actual fatal dose; "the circumstances" are of the transaction which resulted in the death of the declarant. It is not necessary that there should be a known transaction other than that the death of the declarant has ultimately been caused, for the condition of the admissibility of the evidence is that "the cause of [the declarant's] death comes

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into question." Where therefore in a murder case, the body of the deceased was found in a trunk proved to be bought on behalf of the accused, the statement made by the deceased to his wife a day or two previous to the date of murder that he was setting out to the place where the accused lived and to meet a person, the wife of the accused, who lived in the accused's house, is clearly a statement as to some of the circumstances of the transaction which resulted in his death and is, therefore, admissible. *Pakala Narayana Swami v. Emperor.*

40 Cr. L. J. 364 :

180 I. C. 1 : 1939 M. W. N. 185 :

1939 O. W. N. 282 : 20 P. L. T. 265 :

49 L. W. 349 : 43 C. W. N. 473 :

1939 O. L. R. 134 : 11 R. P. C. 166 :

1939 A. L. J. 298 : 41 Bom. L. R. 428 :

41 P. L. R. 272 : 69 C. L. J. 273 : 5 B. R. 449 :

1939, 1 M. L. J. 756 : 18 Pat. 234 :

66 I. A. 66 P. C. : A. I. R. 1939 P. C. 47 :

———S. 32 (1)—*Statement by deceased—Relevancy of.*

According to S. 32 (1), Evidence Act, a statement made by a person who has died since the statement was made, if otherwise relevant, is not irrelevant simply because the person who made it was not at the time under expectation of death. Where two persons were killed by the violent assault committed on them by several accused persons: *Held*, that the statements made by the deceased before their deaths relating to the circumstances of the assault which resulted in their deaths were relevant against all the accused persons. *Khana v. Emperor.*

2 Cr. L. J. 237 :

6 P. L. R. 250.

———S. 32 (1)—*Statement of deceased as to cause of death—One transaction—Penal Code (Act XLV of 1860), S. 330.*

Where a person commits suicide as the result of ill-treatment received at the hands of an accused person and that treatment is the cause though not the direct cause of the death, the whole affair, (ill-treatment and subsequent suicide), forms one transaction and therefore, statements made by the deceased as to the cause of his death are admissible in evidence under S. 32 (1), Evidence Act. *Emperor v. Faiz.*

17 Cr. L. J. 438 :

35 I. C. 998 : 20 P. R. 1916 Cr. :

A. I. R. 1916 Lah. 106.

———S. 32 (1) and (3)—*Statement by deceased—Deceased present at scene of crime as assistant of Police—Cause of death not under trial—Admissibility of statement.*

A gave information to the Police that a dacoity was going to take place. In consequence of this information, the Police went to the spot. A was present among the band of dacoits who were engaged in committing the crime. In the skirmish that followed between the Police and the dacoits, A was mortally wounded by the Police and subsequently died. Before his death, he

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under threat or inducement. *The King v. Saw Min.*

41 Cr. L. J. 691 :

182 I. C. 705 : 1939 Rang. 97 :

12 R. Rang. 25 : A. I. R. 1939 Rang. 219.

———S. 32.

———Admissibility.

———Dying declaration.

———Gestures by wounded person.

———Scope of.

———Statement of deceased as to cause of death.

———Verbal statement.

———S. 32.

See also (i) Cr. P. C. 1898, S. 154.

(ii) Evidence Act, 1872, S. 21.

(iii) Pennl Code, 1860, Ss. 182, 302.

———S. 32—Admissibility—Case under S. 302, Penal Code (Act XLV of 1860)—Evidence as to intention consisting in statements alleged to have been made by deceased to witnesses.

Where in a case under S. 302, Penal Code, the only evidence regarding the motive of the accused, that the deceased was denying the return of the jewels borrowed by the accused, consists in statements alleged to have been made by the deceased himself to the witnesses, those statements are inadmissible since they are statements made by a deceased person not falling within S. 32, Evidence Act. *Tharhepedikayil Vccranjulli Haji v. Emperor.*

39 Cr. L. J. 947 :

177 I. C. 808 : 1938 M. W. N. 868 :

1938, 2 M. L. J. 618 : 48 L. W. 615 :

11 R. M. 387.

———S. 32—Dying declaration.

A dying declaration may be relevant under S. 32 although the person who makes it does not expect to die. *Emperor v. Akbarali Karimbhai.*

35 Cr. L. J. 109 (2) :

146 I. C. 548 : 35 Bom. L. R. 1021 :

58 Bom. 31 : 6 R. B. 157 :

A. I. R. 1933 Bom 479 (2).

———S. 32—Dying declaration.

A dying declaration which records the very words of the dying man, is most valuable evidence—while a dying declaration, parts of which have been supplied to the dying man either by interested parties or by Police Officers, has no evidentiary value. *Dial Singh v. Emperor.*

36 Cr. L. J. 427 :

153 I. C. 810 : 36 P. L. R. 24 :

7 R. L. 461 : A. I. R. 1934 Lah. 805.

———S. 32—Dying declaration.

Accused examined in hospital when he was wounded—Accused not charged with any offence—Statement not read over to him—No enquiry, under Chap. XIV, Cr. P. C.—No certificate under S. 164, Cr. P. C.—Accused not dying—Statement cannot be used either as confession or as dying declaration : *Held*, in evidence that prosecution failed to prove by positive evidence an offence under Explosive Substances Act. *Hari Krishna v. Emperor.*

36 Cr. L. J. 1007 :

156 I. C. 819 : 1935 O. W. N. 781 :

8 R. O. 6 : A. I. R. 1935 Oudh 477.

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———S. 32—Dying declaration—Accused when can be convicted on it—Evidence.

There are many cases in which it is quite safe to convict on a dying deposition, but these are cases in which there is absolutely no doubt that the deceased had a good opportunity of knowing who the assailant was and could not have been mistaken, and at the same time, there is no possible reason why he should be falsely accusing the alleged assailant. *Nga Po Si v. Emperor.*

37 Cr. L. J. 990 :

164 I. C. 139 : 9 R. Rang. 63 :

A. I. R. 1936 Rang. 324.

———S. 32—Dying declaration.

Because it transpires that something in a dying declaration is false, the whole dying declaration must not necessarily be disregarded. *Emperor v. Akbarali Karimbhai.*

35 Cr. L. J. 109 (2) :

146 I. C. 548 : 35 Bom. L. R. 1021 :

58 Bom. 31 : 6 R. B. 157 :

A. I. R. 1933 Bom. 479 (2).

———S. 32—Dying declaration, contradictory in parts—Admissibility in evidence.

It is doubtful whether a dying declaration which contradicts itself in its various parts is admissible. But even if it were admissible, its evidentiary value would be negligible. *Inayat Ali v. Emperor.*

29 Cr. L. J. 418 :

108 I. C. 526.

———S. 32—Dying declaration—Conviction, when can be based on uncorroborated dying declaration.

There may not be corroboration of the nature contemplated by S. 157, Evidence Act, or matters provable under S. 158, and the only direct evidence may be a statement by the deceased made admissible by S. 32. (It does not, however, necessarily follow that this evidence is insufficient to support a conviction. In such a case, the surrounding circumstances will have an important bearing. If the Court, after taking everything into consideration, is convinced that the statement is true, it is its duty to convict, notwithstanding that there is no corroboration in the true sense. The Court must, of course, be fully convinced of the truth of the statement and naturally it could not be fully convinced if there were anything in the other evidence or in the surrounding circumstances to raise suspicion as to its credibility. *In re : Guruswami Tevor.*

41 Cr. L. J. 437 :

187 I. C. 280 : 51 L. W. 65 :

1940 M. W. N. 81 : 12 R. M. 720 :

I. L. R. 1940 Mad. 158 :

A. I. R. 1940 Mad. 196.

———S. 32—Dying declaration—Falshood in it—Circumstantial evidence—Perfunctory conduct of Police in investigation.

If a dying declaration is as clear as could be, and bears none of the signs of mental confusion and distress (which sometimes induce a dying person to give a perverted account of the circumstances surround-

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- Cross-examination.
- Death of witness.
- Deposition of witness.
- Evidence of prosecution witness.
- Evidence of witness.
- First Information Reports.
- 'Judicial proceedings', meaning of.
- Previous deposition.
- Procedure.
- Production of medical certificate.
- Scope.
- Scope of.
- Statement.

———S. 33.

See also (i) Cr. P. C., 1898, Ss. 256, 257, 350, 537.

(ii) Evidence Act, 1872, S. 32.

———S. 33 — Applicability — Statement not verified under S. 360—Admissibility under S. 33, Evidence Act.

S. 33, Evidence Act, does not apply to a statement made before an inquiring Magistrate, if it was not read over to the deponent in the manner required by S. 360, Cr. P. C., inasmuch as, unless evidence is recorded in the manner provided in Ch. XXV, Cr. P. C., and the statement properly verified under S. 360, the defence cannot be considered to have had an opportunity to cross-examine. *Emperor v. Phagunia Bhuan.*

26 Cr. L. J. 1475 :

89 I. C. 1043 : A. I. R. 1926 Pat. 58.

———S. 33 — Approver, evidence of — Evidentiary value of evidence.

At a Sessions inquiry, a lengthy examination-in-chief of an approver was read over to him and admitted to be correct, but the accused persons were not asked then and there to cross-examine him. Before the trial in the Court of Session, the approver died and his evidence was put in under S. 33, Evidence Act : *Held*, that it was doubtful whether the evidence was admissible under the section, and even if it were admissible, its evidentiary value was small. *Ibrahim v. Emperor.*

14 Cr. L. J. 70 :

18 I. C. 406 : 17 C. W. N. 230.

———S. 33 — Corroboration — Evidence of accomplice.

Where an accused was prosecuted only because his accomplice had given his name in a previous trial when arrested, and there was no other evidence against him : *Held*, that the law with regard to the evidence of an accused was that it must be corroborated in material particulars, and that corroboration must be in some material fact tending to fix the guilt on the particular person charged. *Emperor v. Motibhai Bhanabhai.*

3 Cr. L. J. 185.

———S. 33 — Cross-examination, absence of, effect of—Death of witness—Statement made in inquiry, whether admissible.

A Judge should not assume the role of a Prosecutor, and where a witness has made a clear and definite statement as to a certain point,

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the Judge should not endeavour to make the witness change his statement. Where a statement made by a witness in an inquiry is sought to be used against the accused at the trial under S. 33, Evidence Act, the fact that there was practically no cross-examination of the witness on the occasion when he made the statement although there was opportunity to cross-examine, renders the evidence of little or no value. *Sarju Singh v. Emperor.*

26 Cr. L. J. 1236 :

88 I. C. 852 : A. I. R. 1925 Oudh 726.

———S. 33 — Death of witness—Evidence taken before Committing Magistrate—No cross-examination by accused—Evidence, admissibility of — Opportunity to examine Sub-Inspector of Police as to statements made and recorded, whether should be given—Cr. P. C., Ss. 161, 162.

Where at the time when the deposition of a witness is taken before the Committing Magistrate, the accused does not avail himself of his right and opportunity to cross-examine him and the witness dies immediately after the examination, his evidence does not become inadmissible merely because he had not been cross-examined. In such a case, the Sessions Judge does not err in refusing to allow the Sub-Inspector of Police to be cross-examined on the statements said to have been made to him and recorded by him under S. 161, Cr. P. C., inasmuch as S. 162, Cr. P. C., if applicable at all, could only apply during the stage of the inquiry before the Committing Magistrate and could not be held to be applicable when the case is in the Sessions Court. *Azimuddy v. Emperor.*

28 Cr. L. J. 485 :

101 I. C. 661 : 31 C. W. N. 410 :

A. I. R. 1927 Cal. 398.

———S. 33 — Death of witness before cross-examination — Witness—Examination-in-chief—Admissibility of evidence.

The plaintiff was examined-in-chief but died before his cross-examination. It was contended that such evidence was inadmissible : *Held*, that without going so far as to hold that it is inadmissible, it is clear that the principle underlying S. 33, Evidence Act, points to the conclusion that such evidence ought not ordinarily to be acted upon. *Rosi v. Yadala Pillamma.*

11 Cr. L. J. 145 :

5 I. C. 512 : 7 M. L. T. 41.

———S. 33 — Deposition of witness—Bare statement that deposition is admitted under S. 33, is not sufficient to bring such evidence within terms of S. 33.

Where a Committing Court has recorded the deposition of a witness and has presumably admitted it under S. 33, Evidence Act, but there is nothing on the record to show that such evidence came within the terms of S. 33, the bare statement "admitted under S. 33, Evidence Act," signed by the Judge, appearing on the face of the deposition is insufficient to bring such evidence within the terms of S. 33. *Nga Chil Tin v. The King.*

40 Cr. L. J. 725 :

183 I. C. 145 : 12 R. Rang. 45 :

A. I. R. 1939 Rang. 225.

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———S. 32—*Dying declaration, necessity of recording.*

The necessity of recording a dying declaration arises only when the hopes of life of the man are given up. *Upendra Nath Ta v. Emperor.*

32 Cr. L. J. 416 :
129 I. C. 676 : 52 C. L. J. 425.

———S. 32—*Dying declaration.*

Transaction resulting in death cannot include conspiracy to commit murder. *Mrs. M. F. Rago v. Emperor.*

34 Cr. L. J. 505 :
143 I. C. 17 : 29 N. L. R. 251 :
I. R. 1933 Nag. 153 :
A. I. R. 1933 Nag. 136.

———S. 32—*Dying declaration.*

Under S. 32, a statement made by a person who is dead, as to the cause of his death, is admissible in evidence. *Inayat Khan v. Emperor.*

36 Cr. L. J. 1335 :
158 I. C. 336 : 37 P. L. R. 705 :
16 Lah. 589 : A. I. R. 1935 Lah. 94.

———S. 32—*Dying declaration.*

Under S. 32 whether the statement made by a dying man and recorded by another is read over to him or not, or whether it is signed by him, makes no difference, the fact that it has been read over and signed by the deponent only makes its evidentiary value stronger. *Krishnama Naicken v. Emperor.*

33 Cr. L. J. 115 :
135 I. C. 337 : 60 M. L. J. 404 :
33 L. W. 348 : 1931 M. W. N. 167 :
54 Mad. 678 : I. R. 1932 Mad. 81 :
A. I. R. 1931 Mad. 430.

———S. 32—*Dying declaration, value of.*

A dying declaration made at a time when the person making the same was well aware of the fact that the accused had been named as the actual assailant does not carry any weight. *Muzaffar v. Emperor.*

28 Cr. L. J. 114 :
99 I. C. 322 : 27 P. L. R. 632 :
8 L. L. J. 410.

———S. 32—*Dying declaration—Victim making dying declaration by signs—Such declaration how to be recorded.*

Where on being questioned regarding his assailants, the victim who is in a serious condition and unable to speak, makes a dying declaration by signs of hands and head, there is the gravest doubt whether in the circumstances the so-called dying declaration can be admitted into evidence if the person recording it does not describe the signs more particularly than by stating that they were by waiving of the hands and movement of the head. It is not his function to record merely his interpretation of the signs, but he should record the precise nature of the signs, leaving the interpretation to the Tribunal. *Darpan Paidarin v. Emperor.*

39 Cr. L. J. 384 :
173 I. C. 833 : 10 R. P. 456 :
4 B. R. 342 : A. I. R. 1938 Pat. 153.

———S. 32—*Dying declaration—Presumption—Dying declaration reduced to writing—Substantive evidence.*

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When the dying declaration has appended to it a certificate that it has been read over to the deponent and declared to be correct, and this is signed by the Magistrate who recorded the statement, S. 80, Evidence Act, creates a presumption that the circumstances under which it is stated to have been taken are true. Dying declarations which have been reduced to writing are under S. 32 (1) admitted as relevant facts and become substantive evidence of the circumstances leading to the deceased person's death when the cause of the death is in question. *In re : Karuppan Samban.*

16 Cr. L. J. 759 :
31 I. C. 359 : A. I. R. 1916 Mad. 1211.

———S. 32—*Dying declaration.*

Where a dying man, after receiving extreme unction makes a declaration, it should generally be believed to be true and acted upon. *Pattam Athony v. Emperor.*

12 Cr. L. J. 528 :
12 I. C. 296 : 1911, 2 M. W. N. 188.

———S. 32—*Dying declaration.*

Where in view of the numerous and very severe injuries received by the deceased on his head, the Court has grave doubts as to his being in a condition to utter even a single word, the Court should discard the evidence of the dying declaration. *Ratan Lal v. Emperor.*

35 Cr. L. J. 45 :
146 I. C. 381 : 10 O. W. N. 557 :
8 Luck. 570 : 6 R. O. 107 :
A. I. R. 1933 Oudh 333.

———S. 32—*Dying declaration—Whether can be accepted in part—Statement made by deceased in answer to questions, value of.*

A dying declaration stands upon a widely different footing from the testimony of a witness given in Court. In the case of the latter, it is permissible and at times, necessary under certain circumstances, to accept a part which is unimpeachable and reject that which is obviously untrue, though to found a criminal conviction on such appraisalment of evidence is very often very unsafe. In the case of a dying declaration, which by the law of this country, assumes a character very widely different from what it is under the English Law, which is relevant under the provisions of the Evidence Act, where it is not couched in the very words of the person making it but is composed of a mixture of questions and answers, there are several objections open to its reception in evidence which it is desirable should not be open in cases in which the person has no opportunity of cross-examination. In such circumstances, the form of the declaration should be such that it would be possible to see what was the question and what was the answer so as to discover how much was suggested by the Examining Magistrate and how much was the production of the person making the statement. *Emperor v. Premananda Dutt.*

26 Cr. L. J. 1256 :
88 I. C. 1000 : 29 C. W. N. 738 :
42 C. L. J. 247 : 52 Cal. 987 :
A. I. R. 1925 Cal. 876.

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———S. 33—Previous deposition by witnesses, *admissibility of—Proof of requisites—Reasons—Duty of Court.*

The power given by S. 33, Evidence Act, requires to be exercised with great caution and the Court must insist on strict proof before holding that the requisite conditions have been satisfied. It is essential that a Judge or Magistrate admitting previous depositions of a witness should, either in his judgment or, preferably in a separate order, record his reasons for doing so. S. 33 pre-supposes a consideration of the grounds for the admission of the deposition prior to the admission of the evidence, and if the grounds and reasons are recorded prior to the admission of the deposition as evidence, the order constitutes a more convincing proof of the considered adequacy of the grounds than a passage in a judgment subsequently written which, in a case near the border line, might easily assume the appearance of a subsequent statement of excuses for a previous ill-considered action. *Nga Nyo v. Emperor.*

25 Cr. L. J. 257 :
76 I. C. 817 : 2 Bur. L. J. 205 :
1 Rang. 512 : A. I. R. 1924 Rang. 209.

———S. 33—Previous deposition of absent witness, *when admissible.*

Before evidence of absent witnesses can be admitted under S. 33, Evidence Act, from another judicial proceeding between the same parties, it must be established that the presence of the witnesses could not have been obtained. *Abdul Gaffoor v. Govind Prasad.*

30 Cr. L. J. 736 :
117 I. C. 241 : I. R. 1929 Rang. 177 :
A. I. R. 1928 Rang. 284.

———S. 33—Previous deposition of witness.

Sufficient ground for the admission of the previous deposition of a witness under S. 33, Evidence Act, is not established where the only evidence is the statement of a Police Officer that the witness is a man of another district and cannot be found, but where there is no evidence to show what was done to find the man. *Emperor v. Kangal Mali.*

15 Cr. L. J. 713 :
26 I. C. 161 : 41 Cal. 601 :
A. I. R. 1915 Cal. 256.

———S. 33—Previous deposition of witness, *when admissible—Consent of Counsel, effect of.*

A previous deposition of a living person can be admitted in evidence only under the provisions of S. 33, Evidence Act, and before it can be placed on the record of a criminal trial, the Court must decide judicially that a proper effort had been made on behalf of the prosecution to secure the presence of the witness, that in spite of that effort he had not been traced and could not be found out. Where none of these requirements is complied with, the statement is inadmissible in evidence and the fact that the Counsel for the accused gave his consent does not make any difference. *Ghulam Haider v. Emperor.*

30 Cr. L. J. 623 :
116 I. C. 329 : 30 P. L. R. 192 :
I. R. 1929 Lah. 505 : 10 Lah. 837 :
A. I. R. 1929 Lah. 542.

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———S. 33—Procedure.

A Sessions Judge cannot transfer to the record the deposition given by a prosecution witness before the Committing Magistrate, on the mere statement of the Public Prosecutor that the witness could not be found. He can do so only if, after taking evidence, he comes to a judicial decision in compliance with the requirements of S. 33. *Indar v. Emperor.*

32 Cr. L. J. 256 :
129 I. C. 195 : I. R. 1931 Lah. 131 :
31 P. L. R. 1021 : A. I. R. 1930 Lah. 1041.

———S. 33—Procedure—Use at trial before Court of Session of evidence taken at Magisterial inquiry—*Insufficient cause.*

A Sessions Judge finding that the witnesses who had been summoned to give evidence for the prosecution did not appear upon the date fixed, adjourned the case for eighteen days and ordered fresh summonses to be issued. On the adjourned date, the witnesses were again absent. Thereupon the Sessions Judge made use of the evidence which those witnesses had given before the Committing Magistrate, purporting to do so under S. 33, Evidence Act : *Held*, that the evidence could not be so used, but the Sessions Judge ought to have directed warrants to issue to enforce the attendance of the prosecution witnesses and compelled their attendance in Court. *Emperor v. Nanhe Khan.*

2 Cr. L. J. 518 :
25 A. W. N. 202.

———S. 33—Production of medical certificate—*Witness too ill to attend—Production of medical certificate, whether necessary before admitting evidence under S. 33.*

It is not absolutely necessary to examine a qualified medical practitioner, who grants a certificate of illness to a witness before the evidence of the witness can be accepted under S. 33, Evidence Act. *Alijan v. Emperor.*

28 Cr. L. J. 766 :
103 I. C. 846 : 31 C. W. N. 908 :
A. I. R. 1927 Cal. 679.

———S. 33—Scope.

General provisions of S. 33, Evidence Act, are in no way affected by S. 350, Cr. P. C. *Tekal v. Emperor.*

28 Cr. L. J. 451 :
101 I. C. 483 : 28 P. L. R. 199 : 8 Lah. 570 :
A. I. R. 1927 Lah. 332.

———S. 33—Scope of.

Horoscope produced to prove age of girl in case under Ss. 366, 458, Penal Code—Person who prepared horoscope examined in Committing Court and proving horoscope but not appearing in Sessions Court though summoned. S. 33 cannot be invoked. *Superintendent and Remembrancer of Legal Affairs, Bengal v. Forhad.*

36 Cr. L. J. 364 :
153 I. C. 493 : 7 R. C. 381 :
A. I. R. 1934 Cal. 766.

———S. 33—Scope of.

Verbal application is not sufficient ground for admission of evidence under S. 33. The Judge must be satisfied on materials before him that witness could not be found. Omission to ob-

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to him, the questions and signs taken together might properly be regarded as a "verbal statement" made by a person as to the cause of his death within the meaning of S. 32, Evidence Act, and are, therefore, admissible in evidence. The confession of an accused should not be rejected *in toto* merely because the accused at the time of making it was under the influence of a dose of opium. *Emperor v. Sadhu Charan Das*. 25 Cr. L. J. 529 :

77 I. C. 993 : 26 C. W. N. 414 :
49 Cal. 600 : A. I. R. 1922 Cal. 409.

-----Ss. 32, 8—Dying declaration—
Gestures of deceased in replying to questions—
Admissibility in evidence at trial for murder.

Gestures of the deceased shortly before his death in reply to questions put to him as explained by the questions will be relevant as conduct under S. 8, Evidence Act, although it is doubtful whether his gestures in reply to the questions put to him or the questions put to him taken together with his gestures in reply to them, could without straining of language be regarded as a verbal statement made by him within the meaning of S. 32. The form of the question cannot affect the admissibility of the signs, if such signs are rendered admissible under the Evidence Act. The evidence of this kind is admissible under S. 32, not under S. 8. *Emperor v. Motiram Raising*. 37 Cr. L. J. 1140 :

165 I. C. 422 : 38 Bom. L. R. 818 :
9 R. B. 134 : A. I. R. 1936 Bom. 372.

-----Ss. 32, 33—Dying declaration—Death
of person to whom declaration was made before a
Sessions trial, admissibility of—Admission of
statement in part, legality of.

A dying declaration was recorded by a Sub-Inspector of Police in the course of an investigation. The Sub-Inspector was examined in the Committing Court to prove this, but he died before the Sessions trial. The prosecution sought to put in the deposition of the Sub-Inspector under S. 33, Evidence Act. The Sessions Judge held that it could not be admitted in evidence on the ground that no specific opportunity had been given to cross-examine the witness. While, however, disallowing the prayer to put in the deposition, the learned Judge directed that portions of the statement itself as recorded by the Sub-Inspector in which the names of the "deceased's assailants were mentioned, might go in on the ground that some of the witnesses had deposed to those statements as having been made by the deceased in their presence to the Sub-Inspector: *Held*, (1) that the Judge acted erroneously in admitting portions of the statement in evidence as the dying declaration was wholly inadmissible; (2) that the deposition of the Sub-Inspector was admissible under S. 33, Evidence Act, as the defence had an opportunity of cross-examining him, though they did not avail themselves of it. *Tafiz Pramanik v. Emperor*. 31 Cr. L. J. 916 :

125 I. C. 743 : 50 C. L. J. 584 :
A. I. R. 1930 Cal. 228.

-----Ss. 32, 33, 158—Previous statement
of witness—Admissibility of.

When the statement of a witness previously,

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made is used as evidence under the provisions of Ss. 32 and 33, Evidence Act, any other statement made by the witness can be used by virtue of S. 158, Evidence Act, for the purpose of contradicting that witness as if such witness had appeared in Court and was cross-examined on such previous statement, and on question being asked, had denied the facts mentioned in the same. A previous statement which is not made in Court and at the trial, can be used only for the limited purpose of corroborating or contradicting a witness and does not become substantive evidence in the case. *Niamat Khan v. Emperor*. 32 Cr. L. J. 51 :

127 I. C. 850 : 31 P. L. R. 411 :
I. R. 1930 Lah. 882 : A. I. R. 1930 Lah. 409.

-----S. 32 (1)—Dying declaration—Admissibility under S. 32—The way in which it should be proved indicated.

Dying declaration of a deceased person is admissible under S. 32 (1), Evidence Act. The only satisfactory and reliable way of proving the dying declaration of a deceased person is to let the person who recorded it or in whose presence it was recorded directly prove the writing itself. Otherwise the proceedings would be reduced to a farce. No human being can be expected to remember word for word what he had written long ago and either the witness will have to learn the evidence by heart before he enters the witness-box or no dying declaration could be proved in a satisfactory manner at all. *Hanif Gul Rahim Gul v. Emperor*. 39 Cr. L. J. 744 :

176 I. C. 471 : 11 R. Pesh. 9 :
A. I. R. 1938 Pesh. 33.

-----S. 32 (1)—Dying declaration—Cr. P. C.,
S. 164—Statement of victim recorded by Third
Class Magistrate, relevancy of.

Though a Third Class Magistrate is not competent to record the statement of a witness under S. 164, Cr. P. C., yet the statement so recorded, may be a relevant piece of evidence as dying declaration under S. 32 (1), Evidence Act. *Chandgi v. Emperor*. 31 Cr. L. J. 79 :

120 I. C. 274 : A. I. R. 1930 Lah. 60.

-----S. 32 (1)—Dying declaration—Death
not caused by injuries inflicted but by pneumonia
—Statements of deceased as to who inflicted injuries,
admissibility of.

A statement cannot be admitted under S. 32 (1), Evidence Act, as a dying declaration unless it is a statement made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question. Where a person died of pneumonia and there was no reason to connect the onset of pneumonia with the injuries inflicted on him: *Held* that a statement made by him before his death as to who his assailants were, was not admissible in evidence as a dying declaration. *Wali Mohammad v. Emperor*. 31 Cr. L. J. 1025 :

126 I. C. 511 : 7 O. W. N. 466 :
A. I. R. 1930 Oudh 249.

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made certain statements implicating certain persons in the dacoity: *Held*, (1) that the statements were not admissible in evidence under S. 32 (1), Evidence Act, as the trial was not one as to the circumstances and cause of A's death: (2) that the statements could not be admitted under S. 32 (3), as A was present at the scene of the dacoity in his capacity of assistant to the Police and it could not be said that his statements would have exposed him to a criminal prosecution. *Nga Te v. Emperor*.

14 Cr. L. J. 510 :

20 I. C. 990 : 7 L. B. R. 33 : 6 Bur. L. T. 183.

— — — Ss. 32 (1), 33—*Dying declaration*.

The statement of a deceased person was recorded in the absence of the accused. Subsequently in the presence of the accused, the statement was read over and the accused were allowed to cross-examine the dying person: *Held*, that the statement was not a dying deposition under S. 33, Evidence Act, and was not admissible under S. 32 (1) unless it was proved by examining the Magistrate who recorded it or some one who heard it made. *Nga Po v. Emperor*.

14 Cr. L. J. 396 :

20 I. C. 220 : 6 Bur. L. T. 68.

— — — Ss. 32 (1), 157—*Corroboration—Criminal trial—Evidence—Conspiracy to commit murder*.

Accused were charged with abetment of murder. Evidence of the conspiracy to commit murder was given by a witness A who was of bad character, and to corroborate his evidence, a statement made by the deceased several months before the murder as to the proposal of the accused to such witness to commit murder was sought to be proved. A gave evidence that the accused had approached him a week before murder to secure men for the purpose. The corroboration of this testimony was sought in the evidence of another witness B who deposed that on the morrow of the murder, A gave out to the people assembled near the dead that the accused had approached him to secure men for the purpose: *Held*, having regard to the fact that the statement was said to have been made months before the alleged murder, it could hardly come within the terms of S. 32 (1), Evidence Act. The evidence of B might be a corroboration of the fact that A had made that statement in the presence of others on the day following the murder, but was certainly not corroboration of A's statement that accused had approached him in the manner suggested. *Harendra Kumar Mandal v. Emperor*.

39 Cr. L. J. 395 :

176 I. C. 36 : 66 C. L. J. 196 : 10 R. C. 607 :

A. I. R. 1938 Cal. 125.

— — — Ss. 32, Cl. (1) and 91—*Dying declaration—Complaint—Proof*.

A statement to the Magistrate is admissible under S. 32 (1) as a dying declaration, and it does not cease to be such because it contained a complaint. A dying declaration, as such is not a matter required by law to be reduced to

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the form of a document, and, therefore, S. 91, Evidence Act, is not applicable to it. The precise statement made ought to be proved by the Magistrate or someone who heard it. *Gouridas v. Emperor*.

10 Cr. L. J. 186 :

2 I. C. 841 : 13 C. W. N. 680 :

36 Cal. 659.

— — — S. 32 (3)—*Applicability—Statement made in course of gossip, admissibility of*.

A statement made by a person in the ordinary course of gossip and not in the ordinary course of business, is not a statement to which the provisions of S. 32 (2), Evidence Act would apply. *Ajodhi v. Emperor*.

21 Cr. L. J. 486 :

56 I. C. 582 : 16 N. L. R. 30 :

A. I. R. 1920 Nag. 170.

— — — S. 32 (2)—*Post mortem report—Admissibility of, after death of Doctor*.

A post mortem report made by a Doctor who has since died is admissible in evidence under S. 32 (2), Evidence Act. *Mohan Singh v. Emperor*.

26 Cr. L. J. 551 :

85 I. C. 647 : A. I. R. 1925 All. 413.

— — — S. 32 (3)—*Statement of deceased—When admissible against third persons—Weight of such statement*.

The statement of a deceased person, so far as it is against the pecuniary or proprietary interest of that person, is admissible under Sub-s. (3), S. 32, Evidence Act, not only against that person but also against persons mentioned and referred to therein provided that the reference to such third persons is not foreign to that portion of the statement which is against the interest of the declarant. Although in cases of the above kind the whole statement of the deceased person is admissible in evidence, the value which the Court will attach to such evidence will depend in each case upon a variety of circumstances. If the statement happens to be recorded in a document, it must naturally possess greater value than when it depends upon the evidence of a witness who purports to have heard it. The Court in each case will also have to consider whether or not the statement in question bears on its face the appearances of truth, also the circumstances under which it came to be made, and whether or not the deceased person had motive in making it or an object in naming the particular person whom he charges with complicity in the crime in question. *Mohammad v. Emperor*.

26 Cr. L. J. 1308 :

89 I. C. 252 : 1 L. C. 193 :

A. I. R. 1926 Lah. 54.

— — — S. 32 (3)—*Statement of deceased, accomplice exonerating accused—Admissibility*.

The statement of an accomplice incriminating himself and exonerating another from guilt is admissible in evidence after his death under S. 32 (3), Evidence Act. *Sheikh Shafi v. Emperor*.

31 Cr. L. J. 661 :

124 I. C. 459 : A. I. R. 1930 Nag. 259.

— — — S. 33.

— — — *Applicability*.— — — *Approver, evidence of*.— — — *Corroboration*.

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———S. 33—*Deposition of witness.*

Deposition in enquiry before Coroner—Death of witness prior to enquiry before Magistrate—Deposition cannot be taken in evidence at the trial in High Court. *Emperor v. Mahomed Yusuf.*

35 Cr. L. J. 106 :
146 I. C. 544 : 6 R. B. 156 (1) :
35 Bom. L. R. 1020 :
A. I. R. 1933 Bom. 479 (1).

———S. 33—*Deposition of witness—Deposition of witness made before Committing Magistrate, whether admissible at trial—Death of witness, proof of.*

Where the deposition of a witness made before the Committing Magistrate is sought to be admitted in evidence at the trial in the Sessions Court under S. 33, Evidence Act, the death of the witness must be first proved. In the absence of such proof, the statement is not admissible in evidence under S. 33. *Sajjan Singh v. Emperor.*

26 Cr. L. J. 1489 :
90 I. C. 145 : 6 Lah. 437 :
7 L. L. J. 259 : A. I. R. 1925 Lah. 418.

———S. 33—*Deposition of witness before Committing Magistrate, procedure.*

Where the deposition of a witness made before a Committing Magistrate is sought to be used at the trial under the provisions of S. 33, Evidence Act, the Court must first be satisfied that it was recorded after due compliance with the provisions of S. 300, Cr. P. C. *Dargahi v. Emperor.*

26 Cr. L. J. 1213 :
88 I. C. 733 : 52 Cal. 499 :
A. I. R. 1925 Cal. 831.

———S. 33—*Deposition of witness not cross-examined, Cr. P. C., S. 350—Witness turned round.*

Where cross-examination of the prosecution witnesses were declined in case of some and reserved in that of others, and where two of the witnesses having subsequently died, their depositions were sought to be put in when the proceedings were commenced *de novo* by the Judge's successor under S. 350, Cr. P. C.; *Held*, that, their evidence was admissible under S. 33, I. E. A., as the accused had the right and opportunity to cross-examine, though they might not have availed themselves of that right. *Shukal Harishankar Gopalji v. Bai Rupaliba.*

2 Cr. L. J. 595 :
15 K. L. R. 158.

———S. 33—*Evidence of prosecution witness—Cr. P. C., Ss. 252, 256—Warrant case—Accused, whether entitled to cross-examine prosecution witnesses before framing of charge—Evidence given before charge, admissibility of, against accused in subsequent proceedings.*

The accused in a warrant case has no right to cross-examine the prosecution witnesses until after the charge has been framed though the Magistrate in his discretion, may allow him to do so. The evidence of a prosecution witness examined in a case tried as a warrant case before the charge is framed, is not, therefore, admissible in evidence against the accused under S. 33, Evidence Act, when the case is

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subsequently tried by the Sessions Court. *Emperor v. C. A. Mathews.*

31 Cr. L. J. 809 :
125 I. C. 281 : A. I. R. 1929 Cal. 822.

———S. 33—*Evidence of witness at previous trial.*

Where a witness who gave evidence at a previous trial and whom the accused had an opportunity to cross-examine died subsequently, the evidence is admissible in the subsequent trial of the case. *Mulhiah Pillai v. Emperor.*

33 Cr. L. J. 738 :
139 I. C. 203 : 37 L. W. 134 :
1932 M. W. N. 857 :
I. R. 1932 Mad. 641 :
A. I. R. 1932 Mad. 559.

———S. 33.

Evidence of witness not found after charge for further cross-examination—His evidence can be used under S. 33. *Guru Dittu v. Emperor.*

36 Cr. L. J. 578 :
154 I. C. 369 : 7 R. N. 164 :
31 N. L. R. 276 :
A. I. R. 1935 Nag. 8.

———S. 33—*First Information Reports.*

First Information Reports do not prove themselves and have to be tendered under one or other of the provisions of the Evidence Act. The usual course is for the prosecution to call the informant and for the First Information Report to be tendered as corroboration under S. 157. But it can also be tendered in a proper case under S. 33 (1) as a declaration as to the cause of the informant's death or as part of the informant's conduct (of the *res gestae*) under S. 8. *Gajjan Singh v. Emperor.*

33 Cr. L. J. 183 :
135 I. C. 668 : I. R. 1932 Lah. 124 :
A. I. R. 1931 Lah. 103.

———S. 33—*'Judicial proceedings' meaning of—Evidence given in trial by Judge without jurisdiction, whether admissible in re-trial by competent Court—Commitment, validity of.*

A proceeding before a Judge or a Magistrate who had no jurisdiction is not a 'judicial proceeding' within the meaning of S. 33, Evidence Act, and therefore, the evidence of a witness given in such a proceeding is not admissible under the said section in a subsequent trial by a competent Court. Proceedings of a Magistrate committing an accused to the Sessions Court before a certificate under S. 188, Cr. P. C., is obtained, are void and illegal. *Bula Singh v. Emperor.*

27 Cr. L. J. 1168 :
97 I. C. 752 : 7 Lah. 396 :
27 P. L. R. 447 : A. I. R. 1926 Lah. 582.

———S. 33—*Previous deposition.*

Relation of accused examined as witness by Committing Magistrate and personal recognizance taken for re-appearance—Witness not attending Sessions trial—Previous deposition is admissible. *Abbas Mandal v. Emperor.*

32 Cr. L. J. 810 :
131 I. C. 855 : 35 C. W. N. 143 :
I. R. 1931 Cal. 503 :
A. I. R. 1931 Cal. 473.